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Can Transparency in Supply Chains Advance Labor Rights? Mapping of Existing Efforts

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Executive Summary

Supply chain initiatives wed government mandates delineating the "right to know" with corporate governance and voluntary corporate social responsibility (CSR) strategies. They are an attempt by government officials (at the behest of their citizens) to mandate companies to be transparent about their supply chain practices in the hopes that firms will then act in a responsible manner. In the US and the EU, policymakers have put in place four supply chain transparency initiatives: two to ensure that a supply chain does not contain conflict minerals and two to ensure that companies divulge slave labor in their supply chain. The conflict minerals supply chain initiatives only tangentially address labor rights, but the two supply chain anti-slavery initiatives directly tackle forced labor issues. However, the architects of the two supply chain anti-slavery initiatives were influenced by corporate response to Dodd-Frank conflict minerals.

These initiatives are relatively new and hence it may be too early to assess their impact. However, the authors reviewed the findings of civil society groups, consulting firms, and researchers in order to provide an initial assessment. In general, these investigators found that these supply chain initiatives:

- are expensive for firms to implement;
- have not led the bulk of firms to report, and the ones that do make broad statements and general commitments;
- require transparency about supply chain practices but say little about how firms should behave when they find slave or trafficked labor;
- do not yet appear to have changed corporate behavior, although they have led firms to discuss how to address supply chain problems;
- can help governments and activists monitor those firms that do report but firms are not providing the right kind or sufficient information to facilitate effective monitoring; and
- can do little to empower workers.

Can Transparency in Supply Chains Advance Labor Rights?

A Mapping of Existing Efforts

Organization of This Report

In this paper, we map the use of government led supply chain transparency initiatives focusing in particular on those that attempt to advance labor rights. We begin by explaining the strategies that underpin supply chain transparency initiatives. Next, we provide a brief literature review. We define a *supply chain* as a network of companies from suppliers to end-users, designed to integrate supply and demand via coordination (Frankel et al., 2008). Then we discuss the state of play of supply chain initiatives. Finally we develop some conclusions and discuss the potential future of these initiatives. We also include two annexes which delineate:

(1) key players active on labor rights transparency issues and

(2) the state of play for supply chain transparency initiatives in the 38 countries of the OECD and other important trading nations.

I. What is the Rationale for Supply Chain Transparency Initiatives?

Public officials, civil servants, managers, directors of companies and organizations, and board trustees have a duty to act visibly, predictably, and understandably to serve their citizens or consumers. Transparency is supposed to make governments and firms less corrupt, more efficient, accountable and legitimate (Meijer et al: 2015). Supply chain transparency initiatives are built on this premise. Many companies' supply chains pass through multiple nations, some of which do not consistently enforce internationally accepted labor rights. Transparency is one way to help these firms act in an accountable manner when they operate in nations with lax regulation and enforcement of workers' rights.

S*upply chain transparency* has three components: the disclosure of information about the names of suppliers involved in producing the firm's product--which allows individuals to trace the suppliers and gather information about their sustainability conditions--further leading individuals to assess suppliers, the buying firms, and the buyers' purchasing practices—all to allow consumers to make informed decisions about whether to purchase goods and services (Egels-Zanden et al: 2015, 3, 5). Activists and policymakers hope to use supply chain transparency to make voluntary corporate supply chain initiatives more meaningful (Doorey: 2011). Stakeholders can use the information provided by such transparency to punish or reward corporate behavior. In so doing, government led supply chain initiatives could help influence labor rights practices.

The proponents of supply chain transparency legislation or regulation assume that because firms are required to provide such information, executives will have significant incentives to behave responsibly. They also assume that other market actors will then use that information to reward responsible companies and punish irresponsible ones. But researchers don't know if these premises are correct or incorrect.

Herein we argue that supply chain initiatives wed government mandates delineating the "right to know" with corporate governance and voluntary corporate social responsibility (CSR) strategies. To understand why activists and policymakers have proposed supply chain transparency initiatives, we further describe these three concepts: "right to know," corporate governance, and voluntary CSR initiatives, below.

a. Right to Know: Under international human rights law, everyone has a right to freedom of expression and the right to seek, to receive, and to impart information and ideas through any media regardless of frontiers. States are required to provide information held by public bodies. The right to information is an essential tool for the public's participation in political affairs and to achieve accountability (UN General Assembly: 2015, 2, 3). The U.S. was the first country to mandate such laws. In 1966, Congress passed the Freedom of Information Act, which required the U.S. government to make information about what the government was doing available to the public (Yu and Robinson: 2012, 185-186). After the publication of Rachel Carson's influential book Silent Spring, the U.S. adopted laws that provided individuals with the right to know the chemicals used in their communities. In 1986, the U.S. Congress passed the Emergency Planning and Community Right to Know Act (EPCRA). This law requires companies to disclose information about the chemicals they use, store, and release from their facilities. The U.S. government provides this information in a publicly accessible database known as the Toxic Release Inventory. In the last decade of the century, some 100 governments have passed similar laws.[1]

[1] http://www3.epa.gov/epahome/r2k.htm; https://osha.europa.eu/en; http://ec.europa.eu/transparency/index_en.htm. For a ranking of country regimes, http://www.rti-rating.org/country-data/ and http://www.freedominfo.org/regions/global/foi-regimes/

However, in the 1980s, many developing and middle-income countries did not have such legislation. Activists became concerned that right to know responsibilities applied only to corporate behavior in industrialized countries and not to corporate behavior in the developing world. Many of these groups were motivated by an industrial disaster in Bhopal India in 1984. Because of inadequate safety procedures, a Union Carbide plant leaked dangerous chemicals, killing thousands of innocent victims. These groups noted that under U.S. laws, the company was required to inform its stakeholders about the toxicity of the chemicals, but those laws did not apply abroad (International Right to Know: 2003, 4). Several NGOs developed proposals to use corporate governance rules to increase the transparency of labor and environmental practices in global markets. For example, the Ethical Trading Action Group (based in Canada) ranked companies on their disclosure of labor practices,[2] and the U.S. National Labor Committee proposed to amend the Tariff Act of 1930 to require public disclosure of factory addresses (Doorey: 2005, 356 fn.4). In the U.S., a diverse group of NGOs, including unions and environmental groups, developed the International Right to Know Campaign, designed to require U.S. and foreign companies traded on U.S. stock exchanges to disclose information on overseas operations. They wanted the U.S. Government to mandate such disclosures (International Right to Know: 2003, 8).

Some academics also played a prominent role in developing proposals that used transparency to hold corporations to account. Sabel, O'Rourke, and Fung (Sabel et al.: 2000) argued that reputation-sensitive multinationals competed to show concern for their workplace and the environment. They wanted to systemize and extend this competition through transparency (Sabel et al.: 2000). Williams (1999) argued that the U.S. Securities and Exchange Commission should require that firms disclose their labor and environmental practices so investors could fully judge their risks. If a firm violated labor rights or dumped pesticides, shareholders would find this information significant ("material" in legal terminology). She suggested that material information included "information that tracks compliance with a comprehensive array of statutes and international treaties" and "information about activity that is legal, though controversial" (Williams: 1999). SEC staff and officials were influenced by these arguments which also gained prominence as the CSR movement grew.

b. Corporate Governance Rules: Building on the work of Williams and other scholars, activists began to demand a broader conception of corporate governance. While every nation has its own approach to corporate governance, in general,

[2] http://en.archive.maquilasolidarity.org/about/etag

corporate governance provisions require firms to provide only *financial* information necessary for their shareholders. Specifically, corporate governance rules aim to increase the security of investors' returns, guarantee disclosure, accountability, owners' equity, and compliance with local laws. Corporate governance oversees the control and monitoring systems established by the controlling shareholders so that executives are required to make their decisions of resource allocation according to shareholder interests (Mendes-da-Silva and Black: 2005). Gradually as a result of activist and scholarly pressure, government officials came to recognize that they needed to revise corporate governance rules to encompass labor and environmental information. In this way, stakeholders have information regarding how the products they consume are produced.

By 2011, 23 countries had enacted legislation requiring public companies to issue reports including environmental and/or social information (Initiative for Responsible Investment: 2015) so that investors could have a more complete picture of risk. In 2002, France became the first country to require publicly-listed companies to report data on 40 different labor and social criteria. Public companies in Sweden report both on financial information and on sustainability information in a manner consistent with the Global Reporting Initiative.[3] Denmark requires some 1,100 companies to publish an annual corporate responsibility report. Since July 2013, Norwegian companies must report on labor issues, gender equality, antidiscrimination, and environmental issues, including reporting on what they are doing to incorporate these issues and human rights concerns into management practices (Williams: 2015, 15-16). As of December 6, 2014, the EU also requires firm to disclose relevant environmental or social information. Member states will have two years to integrate such disclosure into their national legislation. The regulation will require approximately 6,000 large companies and "public interest organizations," such as banks and insurance companies, to "prepare a nonfinancial statement containing information relating to at least environmental matters, social and employee-related matters, respect for human rights, anti-corruption and bribery matters." [4] This requirement builds upon EU accounting rules (from the EU Accounts Modernization Directive) that have, since 2003, required companies to report on environmental and labor issues "to the extent necessary" to provide

[3] GRI provides the world's most widely used standards on sustainability reporting and disclosure. https://www.globalreporting.org/information/about-gri/Pages/default.aspx

[4] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Official Journal of the European Union L330/1-330/9.

investors with an accurate view of the company's financial position and the risks to that position.[5]

c. Global Corporate Responsibility

Finally, these initiatives are also derived from global corporate social responsibility (CSR) initiatives or voluntary initiatives by companies to show that they will address the social and economic concerns of their stakeholders. There is no uniform definition for CSR. The International Institute for Sustainable Development (IISD) says that socially responsible companies promote a vision of business accountability to a wide range of stakeholders, besides shareholders and investors.[6] Blogging for Business for Social Responsibility, Eric Olsen, Senior Vice President writes that a socially responsible company "delivers value for investors, customers, and employees; improves the living standards of its employees and the communities it touches; makes wise use of natural resources; and treats people fairly."[7] Firms now recognize they must act responsibly not just in their home market, but everywhere they operate, hence global CSR initiatives.

Activists, policymakers, and executives have devised a wide range of approaches to advance CSR including aspirational strategies such as company or sectoral codes of conduct; reporting requirements such as the Global Reporting Initiative and SA8000; and government initiated strategies such as the UN Global Compact, the ILO Declaration, and the OECD Guidelines (Aaronson and Reeves: 2002, 5-15). Firms have been under increasing pressure to adhere to CSR. In 2013, the consulting firm KPMG reported that over 90% of the Global 250 companies voluntarily disclose more environmental, social and governance (ESG) information than is required by law (KPMG: 2013).

Most governments have tried to provide incentives to CSR in the belief that CSR should be voluntary. India is the only country that officially mandates CSR. Indian companies must establish a corporate responsibility committee on corporate boards and the nation requires firms to contribute 2% of net profits to corporate responsibility initiatives as of 2014 (Price Waterhouse Coopers: 2013).

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[5] Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014, amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups, Official Journal of the European Union L330/1-330/9.
[6] https://www.iisd.org/business/issues/sr.aspx
[7] Eric Olsen, "BSR and the State of CSR: What We Mean When We Say 'CSR'" 5 February, 2013, https://www.bsr.org/our-insights/blog-view/bsr-and-the-state-of-csr-what-we-mean-when-we-say-csr

In earlier research, scholars found that the sheer number and complexity of these voluntary approaches send confusing signals to market actors. As a result, activists have increasingly called on policymakers to provide clarification. Policymakers have responded with government initiatives designed to encourage a wide range of their firms to act in a socially responsible manner (Aaronson and Reeves: 2002, 2, 4; Aaronson: 2005). For example the US Department of State now has a Responsible Business Conduct (RBC) team to provide "guidance, promotion and support for responsible business practices, engaging the private sector, labor groups, non-governmental organizations, and other governments." Since 1999, the US has worked to incentivize companies to adopt CSR not only through dialogue, but by recognizing U.S. firms that uphold high standards of responsible business conduct with an annual award.[8] This office also leads the US National Action Plan on Responsible Business Conduct. These National Action Plans delineate how governments will respect human rights including labor rights, and how they will hold firms to account for their responsibilities to protect human rights.[9] According to the Department of State, "The President made the commitment to develop this National Action Plan to be transparent about how the United States government encourages companies to achieve high standards of responsible business conduct – and champions those that achieve such best practices." These plans also highlight what the United States government and its partners are doing to encourage an enabling environment for responsible business conduct. [10]

II. Scholarship on Supply Chain Transparency

Few researchers have addressed supply train transparency as a tool to promote labor rights. Chen et al. (2015) set out to model how supply chain transparency works. The authors examined whether or not buyers should reveal their lists of suppliers, because revealed suppliers could face a different level of NGO scrutiny than the unrevealed ones. They modeled the relationship between a buyer, its suppliers, and the NGOs that monitor corporate practices. They identified conditions under which the buyer finds it beneficial to reveal its supplier list. The authors conclude that supply chain transparency can lead to better supply chain sustainability, but also acknowledge that more supply chain transparency may lower supply chain sustainability.

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[8] http://www.state.gov/e/eb/ace/index.htm
[9] http://www.state.gov/e/eb/eppd/csr/
[10] http://www.state.gov/e/eb/eppd/csr/; http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible- http://www.humanrights.gov/dyn/2015/usg-national-action-plan-on-responsible-business-conduct/business-conduct/

Egels-Zanden et al (2015) used a qualitative and micro strategy; they examined one firm, Nudie Jeans, which wanted to become "the most transparent company in the world" (Egels-Zanden: 2015, 8). The authors acknowledged that the company is unique—it is medium sized, with few suppliers, few long-term supplier relationships, and a mainly European supply network. Moreover, the company already had strong labor rights policies. Some scholars have examined how multinationals view transparency pressure and regulations. Doorey (2011) examines how Nike and Levis responded to activist demands to disclose the identity of their global supplier factories. He argues that mandatory factory disclosure would level the playing field among big firms and help ensure that those corporations which do not police their supply chain labor practices, cannot hide. Hence, he finds disclosure is useful to larger global firms. In an earlier (2005) legal article, he looks more broadly at "disclosure regulation," and finds the right kind of disclosure strategy (one that lists factory location rather than conditions) could empower workers and unions in the developing world.

Lee (2015) examines the role of corporate social responsibility (CSR) in supply-chain formation and the consequence of buyers' initiatives in promoting CSR. Using firm-level CSR measures from the KLD dataset and buyer-supplier pairs from the Compustat Segment dataset, the author introduces CSR similarity between buyers and suppliers as a selection criterion for supply-chain formation and examines why socially responsible (or irresponsible) buyers often source from responsible (as well as irresponsible) suppliers. They find that there is still not enough data to identify bad actors.

Two writers have tried to address the potential impact of these new transparency initiatives. Sarfati (2015) analyzes the effectiveness of emerging domestic legislation on global supply chain transparency with respect to human rights and labor practices. She draws from a quantitative and qualitative study of the implementation of recent U.S. conflict minerals legislation, section 1502 of the Dodd-Frank Financial Reform Act, which is driving global norms in this area and serving as a guide for comparable domestic legislation abroad. She finds a due diligence gap is present among firms, with only about 7% of companies reporting strong due diligence measures in their 2014 Conflict Minerals Reports. She concludes that while these strategies *could* shape corporate behavior, the existing due diligence gap suggests that the shift to domestic governance is not going far enough. In a recent Utrech University dissertation,[11] Vytopil finds that laws prodding transparency requirements for MNCs do not carve out clear responsibilities for labor rights behavior, and hence such laws are unlikely to be very helpful in promoting labor rights.

Taken in sum, the existing literature tells us little about the potential or actual effectiveness of these initiatives. Moreover, these initiatives do not mandate specific labor rights practices. Instead they require firms to be transparent about what they are doing in the hopes that transparency and the effects of such an action will lead firms to change their behavior. But that assumption that transparency will encourage firms to improve their labor rights practices may not be correct

III. The State of Play of Supply Chain Transparency Initiatives

As of December 2016, we found <u>four</u> laws mandating supply chain transparency

a. Dodd Frank Conflict Minerals and Publish What You Pay Provisions: Section 1502

The U.S. was the first country to experiment with supply chain transparency to protect and prevent workers in conflict zones. Policymakers understood that armed groups in the Great Lakes Region of Africa (including the Democratic Republic of the Congo) were profiting from the exploitation of minerals such as gold, tin, tantalum, and tungsten.[12] With the funds from the trade in these minerals, these armed groups committed human rights violations and perpetuated conflict. Many manufacturing companies use these minerals for batteries, manufactured products such as cars and cell phones, and jewelry) so these firms had little choice but to source from these areas (GAO: 2015). U.S. policymakers had long applied sanctions to stop this kind of behavior, but policymakers recognized that such sanctions could hurt the very people that policymakers aimed to help. A wide range of civil society groups such as the Enough Project and Oxfam pushed the Congress to think differently about how to ensure that sale and use of these minerals did not finance conflict or put miners in compromised or forced labor conditions. At the request of Senator Richard Lugar, the U.S. adopted the first laws to mandate supply chain transparency related to conflict minerals in the Dodd-Frank Wall Street Reform and

[11] Anna Louise Vytopil, " Contractual Control in the Supply Chain. On Corporate Social Responsibility, Codes of Conduct, Contracts and (Avoiding) Liability," 2015, https://business-humanrights.org/en/multinationals-unlikely-to-be-held-liable-for-csr-violations-due-to-lack-of-transparency-research-finds

[12] Final report of the Group of Experts on the Democratic Republic of the Congo, http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N09/601/43/PDF/N0960143.pdf?OpenElement

Consumer Protection Act of 2010.[13] Section 1502 of the law called on all publicly traded companies listed on U.S. stock exchanges to report if and where they purchased tin, tantalum, tungsten or gold mined in the Great Lakes Region of Africa. The law covers conflict zones in the Democratic Republic of the Congo (DRC), Republic of Congo, Angola, Zambia, Tanzania, Rwanda, Burundi, Uganda, South Sudan and the Central African Republic. The law also included requirements that mining companies make public what they paid for the rights to extract minerals, forestry, or oil. With this approach, the law aimed to address the linkages between human rights abuses, armed groups mining of conflict minerals, and commercial products.[14]

But for the law to have an impact, the U.S. Securities and Exchange Commission (SEC) had to first devise regulations telling affected firms how to deal with the law. The SEC had little experience devising corporate governance regulations to address this kind of problem. After deliberations with stakeholders and relevant U.S. government agencies, the U.S. SEC developed regulations to guide companies in their compliance with the law, but the regulations were not as clear as they could have been. They required firms to disclose whether their supply chains were conflict free and what they paid for mineral rights (Browning: 2015).

At the same time as many firms attempted to implement the regulations, three U.S. business associations challenged the legality of the regulations in Washington, DC Circuit Court. Their challenge would have important implications for future supply chain initiatives affecting labor.

The associations stated that forcing them to disclose and label their supply chains as “conflict free” would be a violation of the right to free speech. In several 20th century cases, the US Supreme Court found that corporations and other business entities should be understood as aggregations or associations of individuals, and so firms should not be distinguished from individuals under the first amendment—the right to free speech. However, in a case that examined Nike’s claims about monitoring its supply chain, the US determined that there is a clear distinction between free speech and commercial speech (where the company makes a warranty or a claim). Accurate "commercial speech" is usually constitutionally protected (though not as much as other speech), but false or misleading commercial speech is unprotected (Coates: 2015; Marcantonio: 2003).

[13] 9 Pub. L. No. 109-456, § 102(14), 120 Stat. 3384.
[14] Dodd-Frank, S. 1502, 838–843, http://www.sec.gov/about/laws/wallstreetreform-cpa.pdf.

The associations argued that “publish what you pay,” or requiring these firms to provide information on the payments of certain goods, would force them to reveal confidential business information and would put them at a competitive disadvantage. The Court found in favor of the challengers, stating that requiring companies to disclose whether raw materials in their supply chain are “conflict free” is unconstitutional compelled speech and not commercial speech. The court also voided the “publish what you pay” rule because it did not include any exemptions for public disclosure where host countries prohibit it (such as Angola, Cameroon, China, and Qatar), and for interpreting Dodd-Frank to require public disclosure rather than considering disclosure only to the SEC. The DC Circuit court ordered the SEC to revisit and strengthen its legal justifications for its original rules on both conflict minerals and publish what you pay (Williams: 2015; Odom: 2015, and Browning: 2015). The SEC revised the rules and again sought public comment.[15]

During the two year period of court challenge and deliberation, corporations were still required to disclose the minerals used in their supply chains. In 2014, 1,321 companies filed the required form. In 2015, the second year of required reporting, some 1,260 companies filed Form SD to indicate whether their products contain tin, tantalum, tungsten or gold sourced in the Great Lakes Region (GAO: 2015, 5; Odom: 2015). Nevertheless, analysts reported that companies found it hard to monitor their supply chain beyond the first tier of suppliers (Browning: 2015). A Congressional agency, the U.S. General Accounting Office, noted that most multinationals do not directly deal with suppliers below tier two and hence “are unable to ascertain whether the minerals financed or benefited armed groups in those countries” (GAO: 2015, 2, 8). The Responsible Sourcing Network examined the corporate response in 2015 and found that Intel was the only company with a verifiable conflict-free product line (Responsible Sourcing Network: 2015). Tulane University researchers prepared a third study which compared how much a company complied with Dodd Frank and how well a company followed “good practice” in figuring out its exposure. Only a few companies followed good practice; only Microsoft received a perfect compliance score (Browning: 2015). The NGO’s Amnesty International and Global Witness had different takes; they found 80 per cent of U.S. public companies analyzed by the human rights groups failed to adequately check and disclose whether their products contain conflict minerals from Central Africa. Only 16 per cent go beyond their direct suppliers (tier one and tier two) to contact, or attempt to contact, the smelters or refiners that process the minerals. However, they also noted that most firms could not ascertain if the

[15] http://www.sec.gov/News/PressRelease/Detail/PressRelease/1365171484028; and http://www.sec.gov/rules/proposed/2015/34-76620.pdf

minerals they were sourcing were benefitting armed groups (Amnesty International and Global Witness: 2015).

Moreover, the transparency initiative was on average quite costly and hence helped bigger firms, which could more easily comply and amortize their costs, over smaller ones. Big firms like Apple, Motorola, or Microsoft firms have longstanding supply chain management groups as well as the staff, the technology infrastructure, and the funds to do the due diligence (Browning: 2015; Tulane: 2015). Nonetheless, these reports indicate that small firms are trying to comply. PricewaterhouseCoopers noted that "outside of the legal implications of not complying, issuers may also face pressure from human rights activists, nongovernmental organizations, consumer or other market forces to prove they are conflict-free" (Browning: 2015). But mandated disclosure does not mean that the rule is yielding complete or accurate information (Odom: 2015).

Despite these problems, other governments and international organizations have also developed strategies to address the conflict minerals problem with supply chain transparency strategies. In 2011, the members of the OECD as well as Argentina, Brazil, Egypt, Latvia, Lithuania, Morocco, Peru, and Romania approved a "Recommendation on Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas." This 2011 recommendation was developed to provide guidance to firms that rely on conflict minerals, which are minerals mined in situations of conflict and human rights abuse. The recommendation discusses how to identify and reduce use of these conflict minerals to ensure that mineral trade does not encourage human rights abuse or further conflict. Other governments tried to pass similar legislation. In 2014, the Canadian Parliament debated but did not pass a conflict minerals transparency law.[16] The EU also developed legislation on conflict minerals, but EU policymakers took their time to learn from the mistakes and successes of the existing initiatives.

The corporate and association challenge to conflict minerals legislation affected the architects of labor rights supply chain initiatives. In the US and the EU (including the UK), the designers of these initiatives understood that they needed to design their initiatives carefully. In California, they learned they needed to avoid the minefields of litigation over corporate free speech vs. commercial speech *Hence, we note the supply chain initiatives that followed had vaguer requirements as to what firms should do and how they should do it.*

b. EU Conflict Minerals Supply Chain Transparency Regulation

[16] https://openparliament.ca/bills/41-2/C-486/

In March 2013, the European Commission launched a public consultation on so-called conflict minerals. The aim of the consultation was to get interested parties' views on a potential EU initiative for responsible sourcing of minerals coming from conflict-affected and high-risk areas – for example, war zones, postwar zones, and areas vulnerable to political instability or civil unrest.[17] After two years of deliberation, on May 20, 2015 the members of Parliament voted and requested mandatory compliance for "all Union importers" sourcing in conflict areas. In addition, "downstream" companies, that is, the 880,000 potentially affected EU firms that use tin, tungsten, tantalum and gold in manufacturing consumer products, will be obliged to provide information on the steps they take to identify and address risks in their supply chains for the minerals and metals concerned. The EU Parliament also insisted on tougher monitoring of the scheme, with a review two years after it is applied and every three years thereafter (instead of after three and six years respectively, as planned by Commission.)[18] The Council of the EU is currently developing its position on the conflict minerals regulation. The EU Council, the Parliament and the Commission will then determine the scope of the regulations (Thomas and Stokes: 2015). Given this early stage of development, we could find no evaluation of this initiative.

c. California Transparency in Supply Chains Act (SB 657)

American officials had long been interested in trying to find ways to address slave labor in imported and domestic products. Although the Executive developed regulations and executive orders, Congress was unable to pass legislation related to supply chain management.[19] Hence some activists began to work at the state level. California became a key target because it is a populous state where many companies are active and many of its consumers care about ethical consumption (Ball et al: 2015).

In 2010, at the behest of several prominent members, the California State Legislature held hearings and issued a report that examined the relationship between slavery, human trafficking, and the production of goods and services. Legislators acknowledged that these crimes are often hidden from view and are difficult to uncover and track. The Legislature also found that consumers and businesses are inadvertently promoting and sanctioning these crimes through the

[17] European Commission, Public Consultation on a EU initiative on responsible sourcing of minerals originating from conflict-affected and high-risk areas, http://ec.europa.eu/yourvoice/ipm/forms/dispatch?form
[18] EU Parliament, "Conflict minerals: MEPs ask for mandatory certification of EU importers," May 20, 2015, http://www.europarl.europa.eu/news/en/news-room/20150513IPR55318/Conflict-minerals-MEPs-ask-for-mandatory-certification-of-EU-importers
[19] Shoosmiths, LLP, "Modern Slavery Legislation: A Global Outlook,"

purchase of goods and products that have been tainted in the supply chain, and that, absent publicly available disclosures, consumers cannot distinguish among companies based on the merits of their efforts to supply products free from the taint of slavery and trafficking. In October of that year, the legislature passed "The California Transparency in Supply Chains Act, which was signed into law in October 2010 and went into effect in January 2012. The law requires certain companies to report on their specific actions to eradicate slavery and human trafficking in their supply chains. The law stated that California wanted to ensure that large retailers and manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and thereby improve the lives of victims of slavery and human trafficking."[20]

The law does not apply to all firms; it covers only retail sellers or manufacturers doing business in the State of California with annual worldwide gross receipts in excess of $100,000,000. In short, policymakers aimed the law at big multinationals and traders.[21] Moreover, the law was vague--companies were confused as to how far down the supply chain they needed to go (Ball et al: 2015). And although the law went into effect in 2012, the California Attorney General did not provide guidance on how to comply with the law until April 2015.[22] As a result, many companies didn't know how to implement the law, yet they were required to report (Know the Chain; 2015, 6).

Companies subject to the Act must post disclosures on their websites related to five specific areas: verification, audits, certification, internal accountability, and training. The law does not mandate that businesses implement effective measures to ensure that their product supply chains are free from human trafficking and slavery. Instead, the law only requires that covered businesses make the required disclosures – even if they do little or nothing at all to safeguard their supply chains. Companies subject to the Act must therefore disclose particular information within each disclosure category, and the Act offers companies discretion in how to do so.[23] The guidance notes: "disclosures will not help consumers or companies unless the information is understandable, accurate, and widely available… Ultimately,

[20] https://oag.ca.gov/SB657
[21] https://oag.ca.gov/SB657
[22] https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf?
[23] Ibid, p. i. For an example of compliance, see the GAP, http://www.gapinc.com//content/csr/html/company-overview/california-transparencyinsupplychainsact.html and Texas Instruments, http://www.ti.com/corp/docs/csr/2012/company/sourcing.shtml

companies stand to gain from their compliance with the Act. They will not only strengthen their relationships with consumers, but their prevention efforts will help reduce the demand for tainted materials and labor in product supply chains and improve the quality of the goods they bring to market."[24] In short, eat your medicine.

Moreover, the law was unclear on how activists could respond to the legislation if they learn a company has slave labor in its supply chain. Although the law does not expressly state that citizens or consumers can sue, individuals can bring lawsuits on the basis of claims that a company makes about supply chain practices. Costco was sued for selling shrimp from Thailand that was farmed by forced labor, and this fact was inconsistent with the company's disclosure under the law. As a result of the litigation, a major law firm said that companies needed a "boot camp" to learn how to respond to criticism about ethical sourcing (Squire Patton Boggs: 2015b).

Despite seeing the legislation as progress, NGOs are quite critical about the strategy. Human Rights First argued that the legislation limits the ability of consumers to sue companies, because under the law, companies have no obligation to have any specific policies or practices in place to combat slavery. Hence, a company can be in compliance by stating that they do not have any related policies. Instead of this strategy, the NGO wants to see more targeted legislation to eliminate forced labor from all corporate supply chains.[25] In 2015, another NGO with expertise on this issue, "Know the Chain," examined 500 companies affected by SB 657. The NGO noted that the law does not require that the names of the companies subject to the law to be made public. Thus it is hard for activists to hold these corporations to account, as these activists only know some of the companies with slavery problems. Moreover, the NGO asserted that companies did not always understand their responsibilities. Some companies posted information that was not required while others did not provide adequate information. The NGO recommended that future transparency laws should require enforcement agencies to release clear and timely guidance and to illuminate what companies must do to comply and what they can do beyond the law. Moreover, it noted that some companies that should be subject to the law are not (these firms are not manufacturers or sellers). Finally, the law required only one time, rather than annual, disclosures, making it less likely to alter supply chain decision-making (Know the Chain: 2015, 5-9**)**. In another recently published study, a supply chain expert identified 2,126 potentially qualifying companies, of which only 1,325 (62%)

[24] https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf?
[25] http://www.humanrightsfirst.org/blog/human-trafficking-corporate-liability-and-courts

issued statements on their web sites. He also found compliance performance was uneven and companies were not living up to the letter of the law (Bayer: 2015). Two NGO groups active in calling for the law, Free the Slaves and ATEST, used the five year anniversary of the law to make suggestions. They called on the Attorney General to take enforcement action against those companies still not in compliance with the posting requirements of the bill. Free the Slaves added that for such transparency initiatives to be effective they must work at the national level (Attest: 2015).

d. The U.K. Modern Slavery Act

The U.K. Modern Slavery Act was built on Britain's long history of civil society and government anti-slavery activism. In 2013, then Home Secretary Theresa May (now prime minister) announced her intention to introduce a Modern Slavery Bill. The U.K. outlined its strategic response to modern slavery in the Modern Slavery Strategy, published in November 2014.[26] In March 2015, the U.K. parliament adopted the Modern Slavery Act which obliges some commercial organizations to prepare an annual slavery and human trafficking statement of the steps taken to prevent these practices in any part of its own business and in any part of its supply chains. The law went into effect in October 2015.[27] Any firm doing business in the U.K is subject to the law, which requires firms to report on the whole supply chain (not merely with direct suppliers). Moreover, in contrast with the California Act, it not only covers manufacturers or retailers, but also those that service these firms such as marketing and technology firms. The Act states that the report must include "the steps the organization has taken during the financial year to ensure that slavery and human trafficking is not taking place in any of its supply chains, and in any part of its own business." However, the organization does not need to guarantee that the entire supply chain is slavery free (Squire, Patton and Boggs: 2015a).

On October 29, 2015, the U.K. Government issued guidance on the requirements of the Modern Slavery Act. The government suggested that a "focus on tackling modern slavery not only protects vulnerable workers and helps prevent and remedy severe human rights violations," but benefits business by protecting and enhancing an organization's reputation and brand; protecting and growing the organization's

[26] Human Trafficking: Inter-departmental Ministerial Group Report, 2013." Gov.UK. Home Office, 18 Oct. 2013. And https://www.gov.uk/government/publications/human-trafficking-inter-departmental-ministerial-group-report-2013 https://www.gov.uk/government/publications/modern-slavery-strategy
[27] Modern Slavery Act 2015." Legislation.gov.uk. The National Archives, http://www.legislation.gov.uk/ukpga/2015/30/notes/division/3

customer base as more consumers seek out businesses with higher ethical standards; improving investor confidence; helping firms achieve greater staff retention and loyalty based on values and respect; and acting ethnically by developing more responsive, stable, and innovative supply chains.[28] The U.K. government clearly hopes that transparency will create a virtuous circle. Firms will report on what they are doing, consumers and activists will monitor the firms, and they will prod affected businesses to take steps to rid their supply chain of slavery.

The Business and Human Rights Resource Center and CORE, two U.K. based NGOs examined the first companies to report. In March 2016, they found "most companies provide too little information on the structure and complexity of their supply chains. Even fewer identify specific slavery risks, both with regard to the type of risk and where in the supply chain the risk was identified (sector or location). Without this crucial first step of understanding their own operations and supply chains, companies are unlikely to be able to take significant action on slavery." The two groups recommended that the UK government create a central database or 'registry' to host all modern slavery statements. They believe a registry would enable the public to review the statements, hold companies to account for compliance with the legislation, and to evaluate companies' commitment and actions in tackling the risks and incidence of modern slavery (Business and Human rights Resource Center and Core: 2016a and b).

We found one other study of the legislation. A British consulting firm, Ergon Associates examined the rate of disclosure in May 2016. They analyzed more than 230 statements and found "most statements do not go further than general commitments and broad indications of processes." They concluded, "the current basic level of detail contrasts with the expectations of civil society organizations and governments" (Ergon: 2016, 1).

III. Conclusion

We found four supply chain initiatives at the state and national level; these initiatives can be divided into two groups: those designed to encourage responsible resource use for specific products and those designed to encourage managers to monitor their supply chains to avoid forced labor. As these strategies have proliferated, policymakers seemed to learn from earlier initiatives by tightening or clarifying reporting requirements, making them broader but less onerous. Thus, the U.K. antislavery provisions include all types of companies (not just retailers or manufacturers as with the California supply chain legislation) and the EU Conflict

[28] https://www.gov.uk/government/publications/transparency-in-supply-chains-a-practical-guide

Minerals tightened the language that led to court challenges of Dodd-Frank conflict minerals provisions.

Taken in sum, the four initiatives

- are expensive to implement;[29]
- have not led the bulk of firms to report and the ones that do make broad statements and general commitments;
- require transparency about supply chain practices but say little about how firms should behave;
- do not yet appear to have changed corporate behavior, although they have led firms to discuss how to address supply chain problems;
- have disappointed many of the activists who called for them
- can help governments and activists monitor those firms that do report, but firms are not providing the right kind or sufficient information to facilitate effective monitoring; and
- can do little to empower workers.

These initiatives are based on three assumptions that may not be correct—

First: proponents assumed that firms can effectively monitor their supply chain to protect workers' rights. With every one of these initiatives firms are struggling to monitor beyond the first tier.

Second: proponents presumed that transparency would yield accountability as activists used the information they garnered from the reportage to hold firms to account. The executives of firms that found supply chain problems would respond to the disincentive of negative publicity (or the reward of positive publicity). But firms are not providing enough useful information about their supply chains for activists and policymakers to effectively hold them to account. Moreover, many firms that should report are not reporting.

Third: policymakers assumed that these initiatives would make it easier to respect labor rights because firms would take responsibility for their supply chains. But as

[29] Verdantix asserted that global investments in supply chain monitoring will nearly double from $369 million in 2016 to $648 million by 2021. In short, these initiatives will provide more jobs for consultants, but unclear results for workers http://www.verdantix.com/blog/small-but-fast-growing-supply-chain-stewardship-market-attracts-diverse-vendors

noted above, we don't have sufficient evidence to say that firms are taking such responsibility. Moreover, these initiatives do little to help governments promote, respect, and remedy labor rights violations and can do little to help workers demand their rights. What they do is encourage companies to become aware of the labor rights risks in their supply chain, but they do not appear to change the behavior of executives thus far as such changes are not mandated.

IV. Potential New Supply Chain Initiatives?

In many countries, people are increasingly concerned about the supply chain, given implications for human rights,[30] food safety,[31] drug safety,[32] and terrorism.[33] Legislatures are debating the potential of supply chain transparency to meet these needs. For example, both houses of Congress are also examining legislation building on the California Supply Chain Act (HR 3226 and S. 1968).[34] These bills will require publicly traded companies with over $100 million in worldwide gross receipts to disclose in their annual filings to the Securities and Exchange Commission (SEC) what steps they are taking to addressing slavery and human trafficking in their supply chains and business operations. Significantly, the data that would be generated through these disclosures would be publicly available--accessible through company websites and a database maintained by the SEC (Attest: 2015). Congress is also reviewing the Stop Blood Tomatoes Act, which requires each public or private company that produces or sells products in interstate commerce and has gross annual revenues exceeding $1 million, to submit to annual audits of its supply chains by an independent auditor to determine if the chains are free of child labor and forced labor.[35]

On 30th March 2015, the Assemblée Nationale (the French parliament) passed private bill 501. It passed the Senate on March 24, 2016, but is waiting for the President to sign the legislation and make it law. 501 would require all French companies with over 5,000 employees based in the country, or 10,000 employees under its direct control globally, to prepare and make public a 'plan de vigilance'

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[30] Shift, "Respecting Human Rights Through Global Supply Chains," Workshop report No.2, November 2012, http://shiftproject.org/sites/default/files/%20Respecting%20Human%20Rights%20Through%20Global%20Supply%20Chains%20Report.pdf

[31] http://articles.latimes.com/2013/feb/08/world/la-fg-wn-britain-food-scandal-20130208

[32] NA "Surprise! No federal law on track-and-trace or e-pedigree made it out of Congress before the summer recess," Pharmaceutical Commerce, August 3, 2013, http://pharmaceuticalcommerce.com/latest_news?articleid=26934

[33] http://web.mit.edu/scresponse/; and http://www.dhs.gov/news/2011/01/06/securing-global-supply-chain

[34] https://www.govtrack.us/congress/bills/114/s1968/text; and https://www.govtrack.us/congress/bills/114/hr3226

[35] H.R.2385 - Stop Blood Tomatoes Act."https://www.congress.gov/bill/114th-congress/house-bill/2385/text

regarding risks such as human rights and environmental regulations. The bill applies to French companies' subsidiaries, sub-contractors, and suppliers.[36]

Technology may also facilitate greater public pressure for supply chain transparency as well as enabling more companies to do such monitoring. The consulting firm Deloitte reports that companies can now track compliance or employment data using mobile technology. LaborLink, LaborVoices, and other service providers offer confidential means for factory, farm, and other supplier-level employees to voice concerns via SMS technology. The technology is easy to use, happens in real-time, and offers both confidentiality and low cost. Unilever, as example, uses an app created by Muddy Boots Software to track in real time how effectively its agricultural suppliers are complying with the company's Sustainable Agriculture Code. Sourcemap is another new technology which allows executives to visualize and map the end-to-end supply chain automatically from raw materials to end customers. In short, technology is making monitoring the supply chain easier (Linich: 2015). If such monitoring is easier, it will be harder for firms to argue that they can't conduct such monitoring without high costs.

IV. Food For Thought

In 2014, the Transparency and Accountability Initiative (T/A Initiative), a donor collaborative working to expand the impact and scale of transparency and accountability interventions, assessed their investments in these initiatives.[37] They noted, "Over the past decade, efforts to promote and strengthen transparency and accountability (T/A) have proliferated. Yet the impact of these interventions is questionable." They found transparency strategies may empower one set of voices, but neglect others. Moreover, the T/A Initiative noted that their efforts may have unintended consequences for political stability (T/A Initiative: 2014). In a similar vein, supply chain transparency may lead to greater transparency of labor rights conditions fueled by globalization, but it can do little to prod policymakers in the developing world to enforce internationally accepted norms (Guerzovich and Mills: 2013).

Doorey asserts that the secret is in the design: he argues that the information must be presented in a manner that is useful and meaningful; the information needs to be verified by the state (and/or a credible outside auditor); and finally, the state

[36] http://www.assemblee-nationale.fr/14/pdf/ta/ta0501.pdf

[37] The T/A collaborative includes the Ford, Hewlett and Open Society Foundations as well as HIVOS (Netherlands), Omidyar Network and UKAID.

needs to find ways to avoid unintended adverse effects rising from market responses (Doorey: 2005, 379).

Supply chain transparency initiatives can help reveal corporate governance problems, but they can't solve these problems. As Kosack and Fung note, transparency somehow has evolved from an *end, into a tool to resolve governance concerns* (Kosack and Fung: 2014). However, a wide range of scholarship shows that transparency is not the same as accountability (Fox: 2015; Aaronson: 2011). While firms have responsibility to respect and remedy labor rights deficiencies, in general, accountability lies with government officials (Locke et al. 2006, 2008; Marx et al: 2015). Moreover, we have no evidence that these transparency strategies change power relationships or effectively involve or empower workers in the developing world. However, as Doorey notes, sustainable policies to raise labor standards require domestic involvement by a strong state and by local actors--those parties that understand the nuances of local labor markets (Doorey: 2005, 400). Hence, we need more research to understand how supply chain transparency might empower such local actors.

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Annex 1

a. Organizations active in promoting supply chain transparency

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2. As You Sow.". http://www.asyousow.org/about-us/

3. Responsible Sourcing Network, http://www.sourcingnetwork.org/mission/

4. ATEST. The Alliance To End Slavery and Trafficking, https://endslaveryandtrafficking.org/about-atest/

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Annex II. OECD (and some additional) Country Specific Status on Supply Chain Transparency

Australia: Australia has no legislation directed at employing supply chain transparency to promote labor rights. However, it has "established a Supply Chains Working Group to examine ways to combat human trafficking and related exploitative practices in supply chains."

http://www.nortonrosefulbright.com/knowledge/publications/126258/challenges-for-australian-businesses-arising-from-modern-slavery-legislation

Canada: Canada has no legislation directed at employing supply chain transparency to promote labor rights. However, the Federal Minister of Employment, Workforce Development and Labor stated that she is reviewing legislative options.

http://www.labourandemploymentlaw.com/2016/06/supply-chain-transparency-reporting-legislation-coming-soon-to-canada/

Denmark: Denmark has no supply chain transparency legislation but the 2001 Danish Financial Statements Act requires companies to disclose in their management report their use of environmental resources, if it is material to providing a true and fair view of the company's financial position.. Under section 99A, state-owned companies and companies with total assets of more than EUR 19 million, revenues more than EUR 38 million, and more than 250 employees, must report on their responsibility to society and are encouraged to do so using the GRI Sustainability Reporting Guidelines. "Denmark Leading the Way on the Implementation of New European Rules on Corporate Transparency." ECCJ. European Coalition for Corporate Justice, 17 June 2015. Web. 2015. http://www.corporatejustice.org/Denmark-leading-the-way-on-the.html "Recommendations for Corporate Governance." CorporateGovernance.dk. Danish Business Authority., https://corporategovernance.dk/recommendations-corporate-governance. Danish Action Plan 2012." CSRgov.dk. Danish Business Authority., 17 Nov. 2015. http://csrgov.dk/danish_action_plan_2012 "Legislation." CSRgov.dk. Danish Business Authority, 17 Nov. 2015. http://csrgov.dk/legislation

Finland: Finland has no legislation directed at employing supply chain transparency to promote labor rights but it does hold the Finnish Corporate Governance Code, wherein it promotes "openness, transparency, and comparability, as well as good corporate governance, in a manner that enhances the competitiveness and success of Finnish listed companies." http://cgfinland.fi/files/2012/01/hallinnointikoodi-2015eng.pdf

http://cgfinland.fi/en/recommendations/the-finnish-corporate-governance-code/

France: Private Bill 501

The French Parliament has passed Private Bill 501, which requires all French companies with over 5,000 employees based in the country, or 10,000 employees under its direct control globally, to prepare and make public a report on the oversight mechanisms each company has in place to identify & solve any human rights risks arising from its activities.

http://www.assemblee-nationale.fr/14/pdf/ta/ta0501.pdf

South Africa: Although South Africa has no legislation directed at employing supply chain transparency, the 2009 Mineral Resources and Petroleum Bill requires

certain companies to disclose Social and Labor Plans to the government, describing how they will address the social impacts of their operations, during and after such operations.
http://www.treasury.gov.za/public%20comments/EM%20Royalty%20Bill%202008%20-%2020%20Aug%202008.pdf

Switzerland: Switzerland has no legislation directed at employing supply chain transparency to promote labor rights. However, the Swiss Coalition for Corporate Justice (SCCJ) has instigated a Responsible Business Initiative (RBI) movement in Switzerland by proposing an amendment to the Swiss constitution. The initiative aims to require businesses to carry out due diligence to identify impacts (both real and potential) on internationally recognized human rights issues and environmental standards, stop existing violations, and to account for the actions they have taken thus far.

http://konzern-initiative.ch/initiativtext/?lang=en

United Kingdom: Modern Slavery Act.

http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted/data.htm

United States: Dodd-Frank Act & California Transparency in Supply Chains Act (SB 657)

European Union: EU Corporate Disclosure Law

In 2014 The European Parliament required mandatory disclosure of non-financial and diversity information by certain large companies and groups on a 'comply or explain' basis. This vote amends Directive 2013/34/EU and affects all European-based "Public Interest Entities" (PIEs) of 500 employees or more as well as parent companies. Affected companies must disclose information on policies, risks and outcomes as regards environmental matters, social and employee aspects, respect for human rights, anticorruption and bribery issues, and diversity in their board of directors.

OECD Countries without any legislation directed at employing supply chain transparency to promote labor rights:

Austria, Belgium, Chile, Czech Republic, Estonia, Germany, Greece, Hungary, Iceland, Indonesia, The Republic of Ireland, Israel, Italy, Japan, Korea, Luxembourg, Malaysia, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Turkey