



HUMAN TRAFFICKING, SLAVERY & YOUR SUPPLY CHAIN



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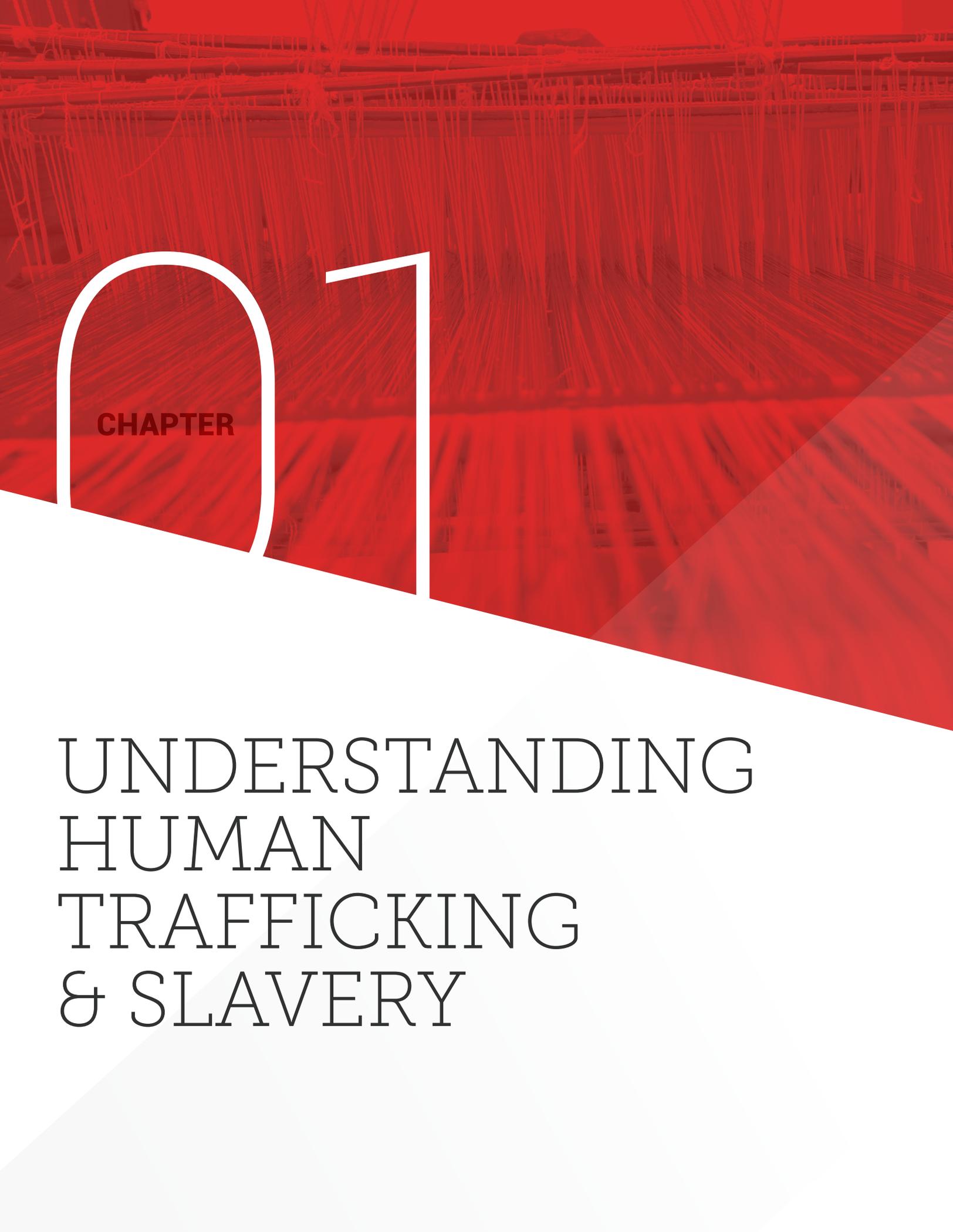
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CHAPTER

UNDERSTANDING
HUMAN
TRAFFICKING
& SLAVERY



CHAPTER 1: UNDERSTANDING HUMAN TRAFFICKING & SLAVERY

WHAT IS HUMAN TRAFFICKING & SLAVERY?

Today, it is estimated there are 45.8 million people who are experiencing some form of modern slavery, which includes human trafficking and other forms of forced labor, within 167 countries.¹ While active international efforts to end the practice have had notable success, this illegal industry continues to generate a profit of \$150 million annually.²

In 2000, the United Nations General Assembly adopted the Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children as part of the Convention against Transnational Organized Crime (the 'Palermo Protocol').

Officially entering into force in 2003, the protocol on trafficking made history as the world's first legally-binding instrument with a widely agreed upon

definition on trafficking in persons. As per Article 3 paragraph (a), this definition states:

"Trafficking in persons" shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Exploitation shall include, at a minimum, the exploitation of the prostitution of others or other forms of sexual exploitation, forced labour or services, slavery or practices similar to slavery, servitude or the removal of organs.

¹ The Global Slavery Index. (2016). *2016 Global Slavery Index*. Retrieved from <http://www.globalslaveryindex.org/findings/>

² United Nations General Assembly [UNGA]. (2000). *Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, Supplementing the United Nations Convention Against Trafficking in Persons*. Retrieved from <http://www.osce.org/odhr/19223?download=true>



In short, a person can be considered to have been trafficked if they work in a position of forced labor including domestic servitude, bonded labor, forced child labor and sex trafficking, among other examples. Most often, trafficking occurs when this labor is the result of physical or other threats, psychological coercion, deception, debt bondage, and various other forms of exploitation. In this way, human trafficking can involve the movement of people, yet movement is not a requirement for proving that it has occurred.

WHY IS HUMAN TRAFFICKING & SLAVERY IMPORTANT TO COMPANIES?

The growing complexity of supply chains around the world have made them prime targets for human trafficking and slavery activities. This is highly relevant to companies as 90 percent of all forced

labor is imposed by private entities.³ Furthermore, 71 percent of companies feel there is credible reason to believe modern slavery occurs at some stage in their supply chain.⁴

The increased international focus on human trafficking and slavery has made due diligence a cost of doing business.⁵ Beyond the ethical motivations to address this risk, human trafficking and slavery presents serious financial, legal, reputational and operational risks if not properly identified and addressed.

Even for companies that do not fall in scope of worldwide human trafficking and slavery regulations, due diligence is still an expectation and/or requirement from key stakeholders who now consider Environmental, Social and Governance (ESG) efforts to be mainstream practice.

³ International Labour Organization. (2012). *21 Million People Are Now Victims of Forced Labour, ILO says*. Retrieved from http://www.ilo.org/global/about-the-ilo/newsroom/news/WCMS_181961/lang--it/index.htm.

⁴ Lake, Q., MacAlister, J., Berman, C., Gitsham, M. and Page, N. (2015). *Corporate Approaches to Addressing Modern Slavery in Supply Chains: A Snapshot of Current Practice*. London, UK: Hult International Business School. Retrieved from <https://www.hult.edu/en/executive-education/insights/>

⁵ BusinessHumanRights. (n.d.). *Business & Human Rights Resource Centre*. Retrieved from <https://www.youtube.com/user/BusinessHumanRights>

Failure to assess human trafficking and slavery risks can result in an array of consequences:



OPERATIONAL RISK

Supply chain disruption is likely if a supplier is accused of human rights violations.



REPUTATIONAL DAMAGE

Companies failing to take steps to combat these activities within their supply chains risk damage to their brand as regulators, consumers and investors become more aware of human trafficking and slavery.



LOSS OF CONTRACT OR INVESTMENT

Tendering processes for some of the world's most lucrative public procurement and private contracts require companies to demonstrate the nature of their efforts and policies regarding human rights. An inability to present information on human trafficking and slavery in supply chains could exclude a company from eligibility.



LOSS OF COMPETITIVE ADVANTAGE

Investors have stated they consider due diligence and supply chain transparency as strong indicators of a company's management quality, and use these indicators to make investment decisions. Companies that do not perform human rights due diligence are less attractive to customers and investors.



LEGAL RISK

The growing list of rules and regulations on human trafficking and slavery means there is a real risk of litigation, penalties, fines and reputational damage for non-compliance.

By taking steps to reduce the risk of human trafficking and slavery in their operations, companies not only protect themselves, but also become industry leaders through the establishment of supply chains that respect, promote and defend the rights of its labor force.

WHICH COMPANIES ARE MOST AT RISK?

The globalized nature of today's supply chains means that no company can afford to make the mistake of assuming it is insulated from the practice. Human trafficking and slavery are a liability for all companies and must therefore be factored into due diligence planning at all tiers of the supply chain.

Nonetheless, there are particular risk factors linked to specific sectors. Informed by up-to-date industry research, some key risk factors for companies include those associated with:⁶

1/ Particular products or industries involving

- a. Low-skilled labor and dirty, difficult or dangerous work
- b. Seasonal product cycles
- c. Highly competitive industries with low entry barriers
- d. Examples include the forestry, agriculture, electronics, textile and mining industries

2/ Particular business processes

- a. Offshore manufacturing where accountability is low
- b. Reliance on labor recruitment which can fuel worker vulnerability
- c. Long and complex supply chains where transparency can suffer
- d. Lack of participation in multi-stakeholder CSR initiatives

3/ Use of certain vulnerable social groups

- a. Poor, vulnerable, low-skilled workers
- b. Migrant workers
- c. Women and children

4/ Operations in countries deemed 'high-risk'

- a. Examples include Thailand, Russia, Venezuela, the Central African Republic, Algeria, Syria, Kuwait and others, according to U.S. 'Tier 3' classifications⁷
- b. In terms of victims as a proportion of total populations, the Global Slavery Index adds Uzbekistan, North Korea, Cambodia, India and Qatar to this list. By absolute numbers, the index also names China, Bangladesh and Pakistan as high risk⁸

⁶ *Forced Labor and Human Trafficking Archives*. (n.d.). Retrieved from <https://www.verite.org/category/forced-labor-and-human-trafficking/>

⁷ U.S. Department of State. (2015). *Trafficking in Persons Report - July 2015*. Retrieved from <https://www.state.gov/documents/organization/245365.pdf>

⁸ *Highlights*. (n.d.). Retrieved from <https://www.globallslaveryindex.org/2018/findings/highlights/>



CHAPTER

THE HUMAN
TRAFFICKING
& SLAVERY
REGULATORY
ENVIRONMENT



CHAPTER 2: THE HUMAN TRAFFICKING & SLAVERY REGULATORY ENVIRONMENT

A significant impact of the Protocol on Human Trafficking was that it obliged the international community of states to implement domestic criminal legislation on the issue in order to align their national approaches with international standards. As a result, there are various pieces of domestic legislation around the world that restrict, discourage or entirely prohibit human trafficking and slavery.

This growing regulatory infrastructure places emphasis on transparent and ethical supply chain sourcing as an integral part of the way companies must operate if they plan on remaining competitive and sustainable.

The following section offers a brief insight into the most important regulations governing human trafficking and slavery in supply chains in the U.S. and United Kingdom (UK), and explains what they mean for companies in scope of these laws.

U.S. FEDERAL ACQUISITION REGULATION (FAR)

In January 2015, a final amendment to the Federal Acquisition Regulation (FAR) was issued to implement Executive Order 13627 Strengthening Protections Against Trafficking in Persons in Federal Contracts. This order applies to all contractors, subcontractors and employees providing goods and services to the U.S. government.⁹

Additional commitments are required from contractors providing supplies from abroad, or who perform services as part of U.S. contracts outside of the country, when the relevant portion of the contract is above \$500,000. Non-adherence with these regulations can result in serious financial losses, contract termination and other setbacks.

⁹ Federal Acquisition Regulation; *Ending Trafficking in Persons*. (2015, January 29). Retrieved from <https://www.federalregister.gov/documents/2015/01/29/2015-01524/federal-acquisition-regulation-ending-trafficking-in-persons>



Prior to this 2015 amendment, the FAR (subpart 22.17) already prohibited government contractors and subcontractors from:¹⁰

- Engaging in severe forms of trafficking in persons during the contract period
- Procuring commercial sex acts during the contract
- Using forced labor in the performance of the contract

Under the new amendments, federal contractors, their subcontractors and employees are also prohibited from:

- Destroying, concealing, confiscating or otherwise denying an employee's access to their identity or immigration documents (e.g. passports, driver's licenses, etc.)
- Recruiting workers using misleading or fraudulent practices such as failing to disclose accurate wages, working conditions, hazards and more in a language the worker can understand, as well as using recruiters that do not comply with local labor laws
- Charging employee recruitment fees
- Failing to provide return transportation to an employee's home country if they are not a national of that country and were brought

there to provide labor for U.S. government contracts or subcontracts

- Failing to provide or arrange housing that meets minimum housing and safety standards in the host country
- Failing to provide a written employment contract, recruitment agreement or any other required work document to the employee

Additionally, the new amendment requires contractors to adequately inform employees of their policy prohibiting trafficking and of the potential measures that could be taken against employees or their agents in response to violations of this policy. Contractors are also obligated to notify their contracting officer and inspection agent about any credible evidence suggesting an employee or subcontractor has violated the policy. They must also notify them of any remedial action undertaken in response.

WHICH COMPANIES ARE IN SCOPE?

- All companies with U.S. federal contracts are in scope of FAR subpart 22.17 requiring them to assess and mitigate risks through due diligence.
- Companies acquiring goods outside of the U.S. with an estimated value of more than \$500,000 (excludes commercial off-the-shelf or 'COTS' products) are in scope of FAR subpart 22.17 and face additional obligations, including the compliance plan and certification requirements.

¹⁰ Part 22 - Application of Labor Laws to Government Acquisitions. (n.d.). Retrieved from <https://www.acquisition.gov/content/part-22-application-labor-laws-government-acquisitions>

CERTAIN REQUIREMENTS FOR CERTAIN CONTRACTORS

Some contractors are subject to further requirements under FAR if the contract – or any portion of it – includes goods acquired and services used outside of the U.S. with an estimated value of more than \$500,000. These requirements stipulate:

- All contractors should submit and maintain a compliance plan proportional to the size and nature of the contract and the activities involved (this must be submitted prior to receiving an award.

- Before being awarded a contract (and annually throughout the contract's duration), the contractor and their subcontractors must each certify they have implemented a compliance plan for anti-human trafficking, and must also demonstrate that it meets the minimum requirements for compliance plans.

Contracts for COTS products are exempt from these additional obligations.

WHAT SHOULD A COMPLIANCE PLAN INCLUDE?

For companies subject to the additional requirements under FAR (those dealing with goods and services outside of the U.S. with an estimated value of more than \$500,000), staff must create a compliance plan proportional to the size, nature and complexity of the award, as well as to the nature of the activities to be performed. A strong compliance plan will include the following:

HUMAN TRAFFICKING POLICY

A clearly defined company-wide policy prohibiting employees, subcontractors and agents from engaging in or using trafficked labor.

EMPLOYEE AWARENESS PROGRAM

Details of the company's implementation of an employee awareness program on anti-human trafficking policies and procedures, including information on the kinds of activities prohibited by the company policy and about the actions taken against employees for violations.

EMPLOYEE REPORTING/GRIEVANCE PROCESS

A description of the process used by the company to ensure employees can confidentially report violations of the anti-human trafficking policy or of the broader FAR requirements.

RECRUITMENT & WAGE PLAN

Details of the measures taken to only use recruiting companies that have trained employees, which prohibit employee recruitment fees and which ensure wages meet the legal standards of the host country, along with other recruitment and wage-related FAR requirements.

HOUSING PLAN

If a contractor agrees to provide or arrange housing for employees, this section must demonstrate that it meets the minimum living and safety standards of the host country.

VIOLATION MONITORING & REMEDIATION

Details of the measures proactively undertaken by the company to detect, monitor, remediate and punish any violation of FAR and the company's anti-human trafficking policy.

If contractors violate these rules, the penalties can be severe. This could involve – but is not limited to – the termination of a contract, the suspension of contract payments until the issue is resolved or a retraction of the award fee altogether. Finally, contractors for whom accusations of rule violations have been substantiated must post those allegations to the Federal Awardee Performance and Integrity Information System. This could jeopardize future contract opportunities.



U.S. DEFENSE FEDERAL ACQUISITION REGULATION SUPPLEMENT (DFARS)

For contractors doing business with the U.S. Department of Defense (DoD), compliance with the Defense Federal Acquisition Regulation Supplement (DFARS) is essential. The requirements under DFARS are similar to those of FAR, with a few additions. According to the 2015 rule amendments, defense contractors must:¹¹

- Ensure their employees are aware of their rights at work, such as the right to receive agreed-upon wages on time and to take breaks in their work. This should be achieved by openly posting information about employee rights in work spaces to encourage enforcement.
- Display DoD hotline posters in employee spaces.
- Include a contractor representation on anti-human trafficking policies if the contract is expected to exceed the simplified acquisition threshold.

Additionally, if the value of a DoD contract for a non-commercial item exceeds \$5 million, the contractor must also display “Combating Trafficking in

Persons and Whistleblower Protection” posters at all worksites (in addition to the ‘rights at work’ posters).

Defense contractors are particularly vulnerable to human trafficking violations given the heightened risks associated with work on military bases in conflict areas. Human trafficking can become commonplace among low-income earners within poor countries. The DFARS intends to prevent its proliferation through well-rounded monitoring and prevention mechanisms.¹²

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

All companies that do business with the government should be prepared for the possibility of a supply chain audit. If an audit or regulatory body finds the company is not in compliance with the regulations, the company stands at risk of a contract termination, government-imposed penalties, criminal or civil investigations, and/or suspension or debarment from government contract, grant and loan eligibility.

¹¹ Defense Federal Acquisition Regulation Supplement (DFARS). (n.d.). Retrieved from <https://www.federalregister.gov/defense-federal-acquisition-regulation-supplement-dfars->

¹² Newman, J. (2012). *America's Shame: The U.S. Government's Human Trafficking Dilemma*. Huffington Post. Retrieved from https://www.huffingtonpost.com/joe-newman/americas-shame-the-us-gov_b_1478136.html

UK MODERN SLAVERY ACT

Introduced in 2015, the UK Modern Slavery Act requires companies to provide a statement on their policies and efforts with regard to eliminating human trafficking and modern slavery from their supply chains.¹³

The UK Modern Slavery Act statement has three important requirements:

- A company's disclosure be updated every financial year.
- All businesses that supply goods or services in the UK are in-scope.
- All disclosures must be signed by at least one executive member of the company and approved by the Board of Directors, making them directly responsible for the content of the statement.

WHICH COMPANIES ARE IN SCOPE?

Companies with a total turnover equal to or greater than 36 million British pounds, or 45 million U.S. dollars, are in scope. This threshold is set by the Secretary of State.

WHAT IS REQUIRED?

According to Section 54 of the act, the mandatory statement should include the following information:

COMPANY OVERVIEW

Details about the company's structure, the type of business it engages in and the nature of its supply chain (this offers the reader some useful context).

POLICIES

Any policies related to reducing and removing human trafficking and slavery (this may include those applying to the supply chain directly, or those that govern human resources decisions, for example).

RISK ASSESSMENT

An assessment or survey of any and all components of the business that could be at risk of trafficking and slavery, and the measures taken to overcome this reality (this may include risks associated with particular countries or industries).

DUE DILIGENCE

A description of processes undertaken in relation to slavery and human trafficking to show the company knows who is involved in their supply chain (supplier audits).

EFFECTIVENESS REVIEW

An assessment of the effectiveness of the company's approaches to minimizing or eliminating trafficking and slavery throughout all business activities (this could be illustrated using measurements against predetermined performance indicators).

TRAINING

Trainings conducted on trafficking and modern slavery for employees (the act does not mandate that trainings be implemented, but if they are, information on these will be included in any comprehensive statement).

¹³ *Modern Slavery Act 2015. (n.d.)*. Retrieved from <http://www.legislation.gov.uk/ukpga/2015/30/enacted>



ADDITIONAL STATEMENT REQUIREMENTS

The statement must be clearly accessible from the company's website, and if the company does not maintain a website, must be made available in written form for anyone who requests it. Furthermore, depending on the nature of the company, it must be signed by executive staff.

- If the company is a body corporate (other than a limited liability partnership), the statement must be approved by the board of directors and signed by a director.
- For limited liability partnerships, the statement should be approved by all members and signed by a designated member.
- In the case of limited partnerships (those registered under the Limited Partnerships Act of 1907), the statement must be signed by a general partner.
- For any other kind of organization, a partner, director or equivalent executive staff member must sign it.

TOP TIPS FOR YOUR DISCLOSURE

- Cover all recommended disclosure topics.
- Include links to relevant policies.
- Provide details of your due diligence efforts.
- Set and communicate realistic targets.¹⁴

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

Enforcement of the UK Modern Slavery Act comes down to the capacity and willingness of the Secretary of State to impose an injunction ordering a company to publish a statement. If the company neglects to comply with the injunction, they will be held in contempt of a court order and could be subject to an unlimited fine. Despite these penalties, the UK government has indicated that its goal is for stakeholder and consumer pressure to serve as the primary motivation for compliance.

¹⁴ The Social Responsibility Alliance (n.d.). Retrieved from <https://www.socialresponsibilityalliance.org/>

THE COUNTERING AMERICA'S ADVERSARIES THROUGH SANCTIONS ACT (CAATSA) - TITLE III—SANCTIONS WITH RESPECT TO NORTH KOREA¹⁵

Passed on August 2, 2017, the Countering America's Adversaries Through Sanctions Act (CAATSA) imposes new sanctions on Iran, Russia and North Korea. It reiterates the need for comprehensive due diligence by U.S. companies and on behalf of U.S. companies involved in importing goods.¹⁶

Under the CAATSA Section 321(b) (22 U.S.C. § 9241 a) "significant goods, wares, merchandise and articles mined, produced, or manufactured wholly or in part by North Korean nationals or North Korean citizens anywhere in the world are forced-labor goods are prohibited from importation under the Tariff Act of 1930 (19 U.S.C. § 1307) and shall not be entitled to entry at any port of the United States and may be subject to detention, seizure and forfeiture."¹⁷

WHICH COMPANIES ARE IN SCOPE?

Companies that import goods, wares, merchandise and articles into the United States.

WHAT IS REQUIRED?

Companies should establish a strong due diligence program to assess and mitigate risks of North Korean labor in their supply chains. Violations of CAATSA should be reported using the U.S. Customs and Border Protection (CBP) eAllegations site, as well as Immigration and Customs Enforcement's (ICE) forced labor intake point.¹⁸

TOP TIPS FOR STRONG DUE DILIGENCE:¹⁹

CAATSA recommendations, as per the Department of Homeland Security, include the following:

- A high-level statement of policy demonstrating the company's commitment to respect human rights and labor rights, including a specific prohibition on the use of North Korean forced labor.
- Conducting a rigorous risk assessment of actual and potential human rights and labor impacts, or risks of company activities and relationships.
- Establishing internal controls and oversight for both your operations and supply chain.
- Risk tracking and reporting.

WHAT ARE THE PENALTIES FOR NON-COMPLIANCE?

Knowingly engaging in significant transactions with sanctioned entities can incur five or more of the following measures:²⁰

- Denial of Export-Import Bank financing.
- Prohibition of loans from U.S. financial institutions.
- Prohibition of loans from international financial institutions.
- Prohibitions on financial institutions.

¹⁵ One Hundred Fifteenth Congress of the United States of America. (2017, January 3). *U.S. Department of the Treasury*. Retrieved from https://www.treasury.gov/resource-center/sanctions/Programs/Documents/hr3364_p1115-44.pdf

¹⁶ *U.S. Department of the Treasury*. (n.d.). Retrieved from <https://www.treasury.gov/resource-center/sanctions/programs/pages/nkorea.aspx>

¹⁷ CAATSA Title III Section 321(b) FAQs. (2018, August 14). Retrieved from <https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs>

¹⁸ (n.d.). Retrieved from <https://eallegations.cbp.gov/Home/Index2>

¹⁹ CAATSA Title III Section 321(b) FAQs. (2018, August 14). Retrieved from <https://www.dhs.gov/news/2018/03/30/caatsa-title-iii-section-321b-faqs>

²⁰ *U.S. Department of the Treasury*. (n.d.). Retrieved from <https://www.treasury.gov/resource-center/sanctions/programs/pages/nkorea.aspx>

- Prohibition of any person from acquiring any property that is subject to U.S. jurisdiction.
- Procurement sanctions prohibiting the sanctioned body from entering into any contract with the U.S. government.
- Prohibition of any transactions in foreign exchange in which the sanctioned person has any interest.
- Prohibition of any transfers of credit or payments between financial institutions.

Violations of the North Korean Forced Labor Sanction can include civil monetary penalties at either double the value of the goods transaction, or \$295,141 per violation, with the option to recommend criminal prosecution.²¹

There are a number of U.S. agencies that uphold these regulations, including; the Office of Foreign Assets Control (OFAC), Immigration and Customs Enforcement (ICE), and Customs and Border Protection (CBP).

²¹ U.S. Department of the Treasury. (n.d.). Retrieved from <https://www.treasury.gov/resource-center/sanctions/OFAC-Enforcement/Pages/20180723.aspx>



OTHER HUMAN TRAFFICKING & SLAVERY REGULATIONS AROUND THE WORLD

Increased awareness of ethical supply chain sourcing among international governments, consumers and investors has inspired the rise of voluntary and mandatory compliance planning and reporting in a number of markets, including the U.S., Australia and across Europe.²²

UNITED STATES

U.S. TRADE FACILITATION & TRADE ENFORCEMENT ACT²³

Goal of the regulation: To facilitate and streamline the flow of legitimate trade, strengthen protections against human trafficking and slavery, and enforce existing U.S. trade laws.

Status: In effect.

Nature: Mandatory for companies to be able to demonstrate legal sources for all products. Voluntary audit and verification programs can be used to do this.

Companies in scope: All companies involved in imports to the U.S.

Requirements: Companies in scope must work with their suppliers to ensure their products are not made using forced or child labor.

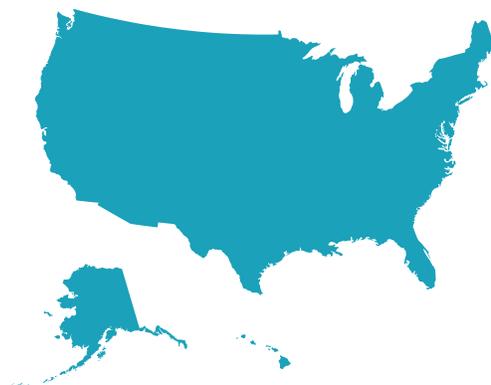
Penalty for non-compliance: The act gives the U.S. government the ability to turn away items at the border which it reasonably suspects were made using forced or child labor.

THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT

Goal of the regulation: To improve transparency and sourcing information for consumers in California.

Status: In effect.

Nature: Mandatory due-diligence.



Companies in scope: Companies that do business in California, identify as manufacturers or retailers on their California state tax returns and have worldwide gross receipts over \$100 million each year.

Requirements: Companies in scope of the act must post public disclosures on the company's website and must be easily accessible through a homepage link. If a company does not have a website, it is required to offer a written disclosure within 30 days of receiving a consumer request for the information. The disclosure must cover, at minimum, five topics: verification, audit, certification, internal accountability and training.

Penalty for non-compliance: Penalties for non-compliance with the act is injunctive relief by the California Attorney General. While there is no predetermined financial penalty for failing to disclose, companies should expect to receive an order from the Attorney General to take action.

²² Davis, P. and Becker, L. (2016). *The Ever-Changing Compliance Landscape: What Is the Next Wave?* Organisation for Economic Co-operation and Development. Retrieved from <http://www.oecd.org/cleangovbiz/Integrity-Forum-16-Pamela-Davis-Lily-Becker.pdf>

²³ CBP and the Trade Facilitation and Trade Enforcement Act of 2015 (TFTEA). (n.d.). Retrieved from <https://www.cbp.gov/trade/trade-enforcement/tftea>



AUSTRALIA

AUSTRALIA MODERN SLAVERY ACT²⁴

Goal of the regulation: To encourage companies to mitigate modern slavery risk in their operations and supply chains through mandatory reporting.

Status: Active.

Nature: Mandatory due diligence.

Companies in scope: Companies and government agencies that operate or do business in Australia with a revenue of over 100 million Australian dollars.

Requirements: In-scope organizations must submit an annual Modern Slavery Statement covering each of the act's mandatory reporting topics, including actions taken to assess and address risks of modern slavery in their operations and supply chains. Unlike the UK Modern Slavery Act, the reporting topics for this act are mandatory.

Penalty for non-compliance: Companies may receive a written request from the Minister asking them to explain their failure to comply within a specific period. There is a significant risk of being publicly identified as non-compliant, as the Minister may publish information on a government-maintained public registry about a company's failure to comply, which could result in reputational damage.

²⁴ Commonwealth Parliament, & Parliament House. (2017, March 30). *Modern Slavery Bill 2018*. Retrieved from https://www.aph.gov.au/Parliamentary_Business/Bills_Legislation/Bills_Search_Results/Result?bid=r6148



EUROPEAN UNION

EU NON-FINANCIAL REPORTING DIRECTIVE

Goal of the regulation: To increase the transparency of the social and environmental information provided by businesses in the EU (including those related to human trafficking).

Status: In effect and increasingly reflected in legislation within EU Member States.

Nature: Mandatory due diligence.

Companies in scope: Large public interest companies with over 500 employees, and a balance sheet of at least 20 million euros or net turnover of at least 40 million euros.

Requirements: Annual publishing of risk assessment and reports on environmental and social issues, including human rights, anti-corruption and anti-bribery measures.

Penalty for non-compliance: To be determined by national legislation.



FRANCE

DUTY OF CARE BILL

Goal of the regulation: To reduce or eliminate human and environmental harms (including human trafficking) in corporate supply chains and related activities.

Status: In effect.

Nature: Mandatory due diligence.

Companies in scope: French parent and subcontracting companies with at least 5,000 employees, and foreign companies with at least 10,000 employees.

Requirements: Companies in scope must create and publish due diligence plans.

Penalty for non-compliance: Max fine of 10 million euros.



SWITZERLAND

RESPONSIBLE BUSINESS INITIATIVE – COUNTER PROPOSAL

Goal of the regulation: To compel companies to identify and address risks to people and the environment arising from their corporate activities.

Status: Council of States to vote on the text (expected in 2019).

Nature: Mandatory due diligence.

Companies in scope: Companies exceeding at least two of the following: 500 employees, annual sales of 80 million Swiss francs (\$80 million) and/or total assets of 40 million Swiss francs.

Requirements: Companies must carry out mandatory due diligence steps, possibly through mandatory compliance planning and reporting. Details pending.

Penalty for non-compliance: To be determined.



GERMANY

HUMAN RIGHTS DUE DILIGENCE PROCESSES WITHIN THE NATIONAL ACTION PLAN (NAP) FOR BUSINESS AND HUMAN RIGHTS

Goal of the regulation: Enforcement of due diligence requirements for state-owned companies regarding key human rights standards (including anti-human trafficking measures).

Status: NAP adopted.

Nature: Voluntary due diligence, to be followed by mandatory measures in 2020 if less than 50 percent of private companies have implemented voluntary compliance measures.

Companies in scope: Initially, state-owned companies (binding) and private companies with 5,000 or more employees (voluntary). Expansion expected.

Requirements: Combination of mandatory and voluntary due diligence processes.

Penalty for non-compliance: To be determined.

In consideration of this ever-expanding list of regulations, the UN Office of the High Commissioner for Human Rights recommends that companies get ahead of the curve.²⁵ This requires them to leverage existing compliance frameworks in order to ensure they can comprehensively meet both current and future human trafficking and slavery laws.

²⁵ The Corporate Responsibility To Respect Human Rights (2012, December 2) *The Office of the High Commissioner for Human Rights*. Retrieved from https://www.ohchr.org/Documents/Publications/HR.PUB.12.2_En.pdf



NESTLÉ TAKEN TO COURT DUE TO FORCED LABOR IN THEIR SUPPLY CHAIN

REGULATION

The California Transparency in Supply Chains Act²⁶

STORY

The shrimp fishing industry has been put under the spotlight due to mounting allegations of human trafficking among supplier companies. This is especially true for the Thai shrimp fishing industry, which has received increased media attention in recent years.²⁷ New information about these activities continues to come to light as more workers in the industry are coming forward claiming they have been victims of trafficking. The result is an increased number of lawsuits filed involving various U.S. companies, such as Nestlé, that have sourced shrimp from companies accused of human trafficking.

The following case study reviews the 2015 lawsuit brought against Nestlé by plaintiff Melanie Barber *et al.*²⁸ The plaintiff filed the lawsuit against Nestlé for publicly stating it prohibits the use of forced labor in its supply chain, while continuing to sell products that were likely sourced using forced labor (specifically, the shrimp contained within Nestlé's 'Fancy Feast' cat food). The suit alleges consumers would not have purchased the product if they had known the manner in which it was sourced.

²⁶ (n.d.). Retrieved from <https://www.state.gov/>

²⁷ For more information, see Hodal, K., Kelly, C. and Lawrence, F. (2014). *Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK*. *Guardian*. Retrieved from www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour

²⁸ *Melanie Barber V. Nestle USA, Inc., No. 16-55041 (9th Cir. 2018)*. (n.d.). Retrieved from <https://law.justia.com/cases/federal/appellate-courts/ca9/16-55041/16-55041-2018-07-10.html>

Nestlé argued it did not violate the California Transparency in Supply Chains Act as the law only requires companies to publicly disclose the details of their efforts to eradicate slavery and human trafficking from their supply chain. It does not obligate them to disclose every instance of trafficking or to prohibit it entirely.

Nestlé argued the case should be dismissed due to the 'safe harbor' doctrine which protects companies from liability in certain cases where the law has already spoken on a particular matter. In this case, the legislature had already considered the extent of the disclosures that large companies potentially using forced labor in their supply chains need to make to consumers, and elected not to require the disclosures the plaintiff was now seeking.

The court also considered whether Nestlé's forced labor disclosures were misleading. It concluded Nestlé did not misrepresent its efforts to eliminate forced labor from its supply chain, with the court noting, based on the company's disclosures, "Nestlé seems to anticipate a certain level of non-compliance" from its suppliers.²⁹ Accordingly, Nestlé's motion to dismiss the case was granted.

ENFORCEMENT OUTCOME

Nestlé was successful in this case because, rather than revealing its oversights, the company was able to demonstrate compliance with the law in terms of publicly disclosing its efforts to reduce human trafficking and forced labor in the supply chain. By demonstrating they had a consistent and documented compliance process that matched their disclosure, Nestlé successfully demonstrated

they were compliant with the law and therefore did not face any court-mandated fines.

It should be noted, a positive legal outcome such as this still does not alleviate the potential for other risks associated with damage to brand image or investor scrutiny.

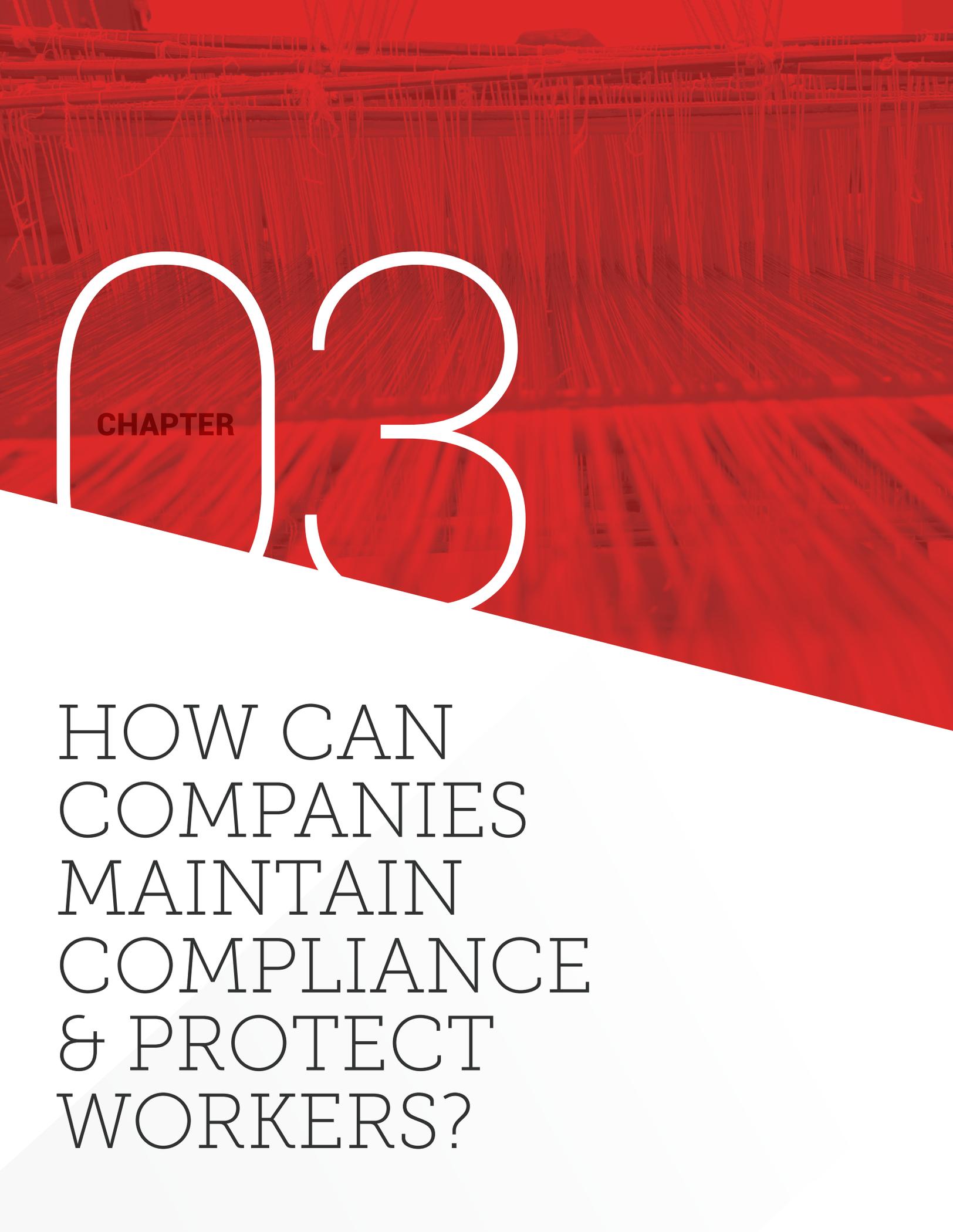
LESSONS LEARNED

This outcome highlights the importance of meeting compliance regulatory requirements in a legal sense (through public disclosures on ethical sourcing efforts), while still investing the resources to defend the disclosure's content due to the possibility of reputational damage.

Under the California Transparency in Supply Chains Act, a company may state they have no intention to fully evaluate the risk of human trafficking and slavery in their supply chain and, as with the Nestlé case, this could be sufficient to show compliance with the law in a technical sense. However, the company will likely still face significant repercussions from other third parties for their practices (NGOs, customers, investors or law firms, for example).

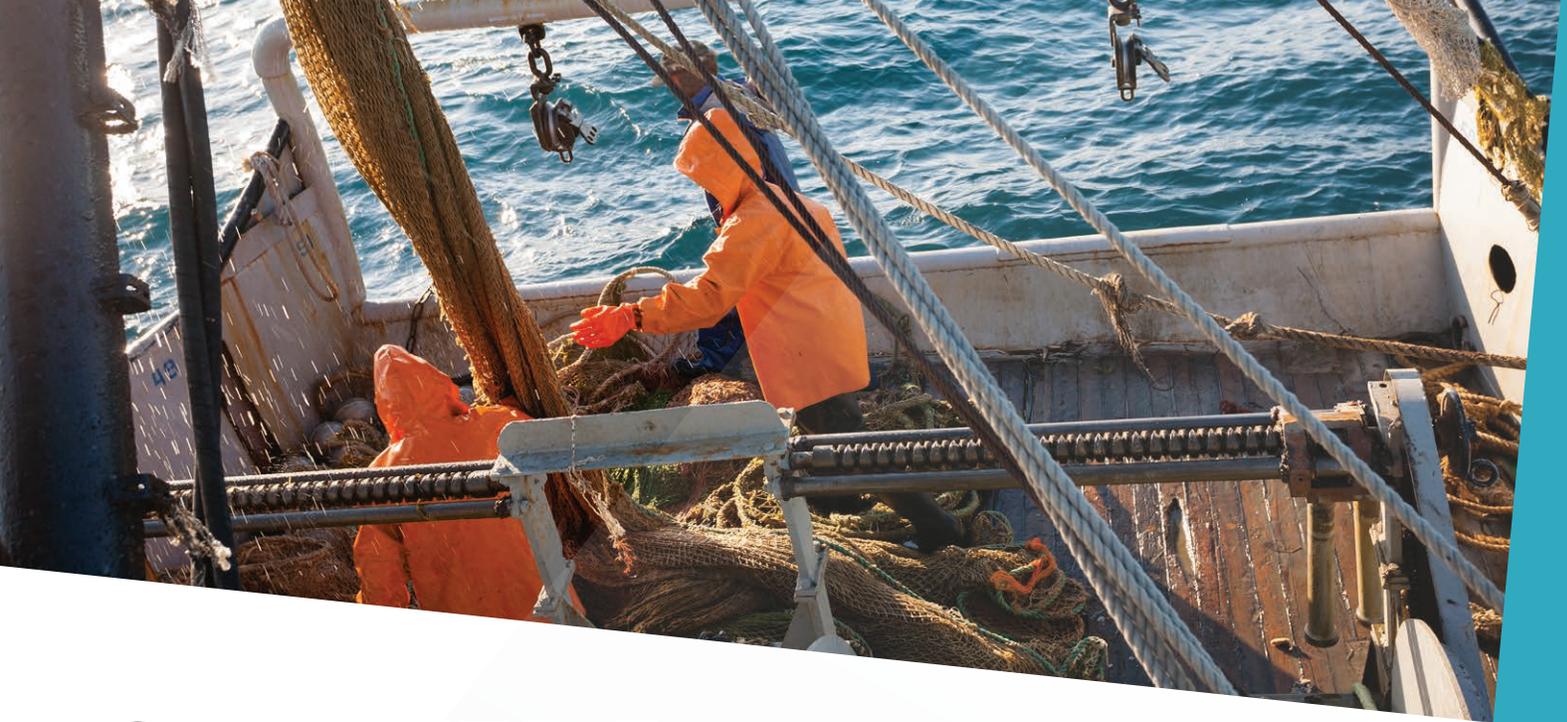
Nestlé is a public-facing company that likely faces increased scrutiny as they sell products falling within a commodity index known to be at high risk of human trafficking and slavery. They are therefore likely to have a stronger commitment to reducing the risk of human trafficking in their supply chain compared to other companies obligated under the Californian law, in large part due to the sheer size of their brand. This case highlights the importance of companies being able to offer truthful and verifiable disclosures under the California Transparency in Supply Chains Act to ensure they are found to be compliant when put under the spotlight.

²⁹ California Transparency in Supply Chains Act. (n.d.). Retrieved from <https://www.nestleusa.com/about-us/supply-chains-act>



CHAPTER 03

HOW CAN
COMPANIES
MAINTAIN
COMPLIANCE
& PROTECT
WORKERS?



CHAPTER 3: HOW CAN COMPANIES MAINTAIN COMPLIANCE & PROTECT WORKERS?

DUE DILIGENCE IN ACTION

While regulations to combat human trafficking and slavery in public and private sectors vary between countries, the central components of a strong due diligence program do not. Implementing such a program can help ensure companies do not suffer the financial, legal, reputational and operational risks that can arise if they fail to sufficiently protect workers in their supply chain.

HIGH LEVEL COMMITMENT

The development of a policy document is often the first step companies undertake with regard to due diligence on human trafficking and slavery, but this may not be the best starting point if a real commitment to eradicating these issues has not yet been established among high-level executives.

The tone set by executives with regard to human trafficking and slavery is an important precursor to ensuring companies take meaningful action to protect workers in their supply chain. An important part of setting this tone will be educating executives and management staff about the issues and the risks they pose to the company.

If your company is already receiving requests from clients about how it protects workers in the supply chain, this can be a powerful motivator for executive-level buy-in. Not only does it help to associate responsibility for human trafficking and slavery with those at the core of the company, it also encourages internal conversations between employees on the matter and helps indicate its importance to suppliers and stakeholders before more formal measures are introduced.

POLICY CREATION & DISSEMINATION

Creating a clear policy on human trafficking is an important step in ensuring your company protects the workers in its supply chain and complies with the anti-human trafficking regulations applicable in the countries where you do business.

A policy provides the basis for embedding worker protection measures within the company's business functions. Additionally, the very process of developing a policy often has positive spin-offs by helping to build enthusiasm and internal understanding around the topic. A strong human rights policy doesn't just include a general prohibition on trafficked and forced labor, but also contains specific provisions on factors that are considered key enablers of these practices.

To develop this policy, senior management (potentially with the input of outside counsel) should work to develop a strong document that not only meets regulatory requirements, but also reflects an awareness of the combination of unique vulnerabilities associated with the industry, sector or country in which the company operates. The policy must clearly state how it applies to your company's relationships with suppliers and to the other entities with which it does business. It should then be communicated effectively to all staff, contractors, suppliers and partners so it is understood that guarding against human trafficking and slavery is everybody's responsibility.

RISK IDENTIFICATION

The factors that pose the greatest risks to the workers in your supply chain are intrinsically linked to the factors that pose the greatest risks to the financial, legal, reputational and operational health of your company. Risk identification in the context of human trafficking and slavery requires companies to use a documented and systematic approach that engages suppliers in the process of identifying where the 'red flags' are, including those associated with particular industries, production lines, countries and worker types (see Chapter 1: Which Companies Are Most At Risk?).

A standard supplier risk assessment survey, like the Slavery and Trafficking Risk Template (STRT),³⁰ can help companies achieve this. By enabling companies to collect standardized data from its suppliers on a range of risk factors relating to human trafficking and slavery, they can prioritize the suppliers in their chain for whom further due diligence action needs to be taken. Using this approach, companies are able to understand where the highest risks may be so they can better target their resources and efforts.

The STRT is an open-source industry standard template used to help companies in their compliance efforts with human trafficking and slavery regulations or internal initiatives.

RISK MITIGATION & PREVENTION

Once a company has identified high-risk suppliers, it then needs to begin risk prevention and mitigation activities. Prevention and mitigation efforts are focused on attempting to stop forced and trafficked labor from taking hold, and are therefore proactive in nature. A company's leverage over its suppliers can often be utilized to strategically influence supplier behavior with the goal of increasing compliance with human trafficking and slavery regulations and best practices.

³⁰ The Slavery & Trafficking Risk Template. (n.d.). Retrieved from <https://www.assentcompliance.com/slavery-and-trafficking-risk-template-strt/>

Companies frequently underestimate the options they have for creating and using leverage and should be wary of throwing in the towel too early. Identifying moments of traction, such as contract negotiation, can facilitate this process. Raising awareness among suppliers and offering training on human rights due diligence will help give them the tools to recognize and mitigate labor-related risks. Companies are increasingly collaborating with other companies, suppliers, governments, trade unions and non-governmental organizations to develop effective solutions to combat human trafficking and slavery.

WORKER REMEDIATION

In instances where trafficked or forced labor is identified despite efforts to prevent it, companies need to ensure victims are adequately compensated, protected and supported, and should put in place effective remediation measures to ensure such issues do not recur. Importantly, companies need to think about compensation proactively and should have all relevant remediation processes in place before the need to use them arises.

Another important part of remediation involves the need for companies to ensure the workers in their supply chain have a trusted system through which they can raise concerns and complaints relating to human trafficking and slavery without fear of retribution or punishment. This should be supported by an effective system to process, address and resolve the claims they may make.

REPORTING & CONTINUOUS IMPROVEMENT

Companies should establish robust review and monitoring systems such as audits to monitor their due diligence performance, both against internal benchmarks for labor rights and against international regulatory standards. Companies should also





be prepared to openly demonstrate the effectiveness of their efforts to prevent and address the risks of trafficking and slavery with external stakeholders (for example, through the public disclosures mandated by the UK Modern Slavery Act and the California Transparency in Supply Chains Act detailed in Chapter 2). If an auditor is used to measure regulatory effectiveness, the auditor should be specially trained to detect human trafficking given that this kind of abuse is often hidden.

Importantly, adopting a pass/fail approach to auditing encourages suppliers to deceive auditors in order to retain business. An alternative approach is one that focuses on comprehensive continuous improvement. This kind of approach is capable of facilitating regulatory compliance and worker protection while also shifting a company's relationship with its suppliers from "policeman" to "partner", thereby producing more sustainable change.

MEETING THE COMPLIANCE CHALLENGE

Driven by growing consumer, investor and governmental awareness of human trafficking and forced labor around the world, the trafficking and slavery regulatory landscape is rapidly expanding. Given the vast majority of trafficked and forced labor occurs within the supply chains of private entities, companies are being increasingly scrutinized for the part they play in these human rights violations, and are being obliged to do more to address them.

Companies particularly vulnerable to human trafficking and slavery in their supply chains include those using low-skilled, poor or migrant workers to produce goods, as well those who utilize third-party recruiters or who are operating in countries deemed at 'high risk' of trafficking. Domestic and international regulations seek to address these risks through a variety of measures, such as voluntary and compulsory reporting, the development of public statements on trafficking and slavery, and the implementation of compliance plans.

Failure to comply with these laws can result in fines, irreparable brand damage, and the loss of business contracts and investment dollars. This signals that compliance is a critical matter companies must address if they wish to remain sustainable and competitive in a market driven by more ethical consumer preferences. As the regulatory landscape expands, so too does its burden on companies who lack the resources and/or expertise to scale their supply chain due diligence programs alongside these new and evolving requirements.

Led by a team of business and human rights analysts, Assent provides a consolidated data management platform that leverages industry-standard human trafficking and slavery reporting tools, such as the STRT. Contact us today for more details about the human trafficking and slavery regulations that may be applicable to your company, and for information on how you can assess and mitigate these risks in your supply chain.



WHO IS ASSENT?

Assent is the trusted supply chain data management company for clients and suppliers worldwide who face evolving product compliance, corporate social responsibility and vendor management program requirements. We combine industry-leading technology with regulatory expertise and world-class support, offering a comprehensive approach to supply chain data management.

WHAT WE DO

Assent provides cloud-based SaaS solutions that help companies identify and assess risk in their supply chains, educate stakeholders on regulatory and data program requirements, and increase transparency between businesses. Our world-class support services and regulatory expertise ensure companies have the guidance and resources they need for program success.

I didn't really start enjoying compliance until I started working with Assent.

—BILL WHEATLEY

FORMER DIRECTOR OF STRATEGIC PROJECTS
\$1.5B MARKET CAP MEDICAL DEVICE COMPANY

10,000-12,000

working hours saved

\$400-500k

annual savings

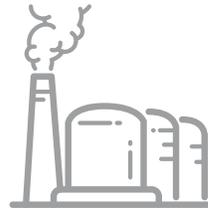
SOME OF THE INDUSTRIES WE WORK WITH



OIL & GAS



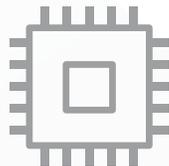
MEDICAL/BIO-TECH



MANUFACTURING



RETAIL/CONSUMER



ELECTRONICS



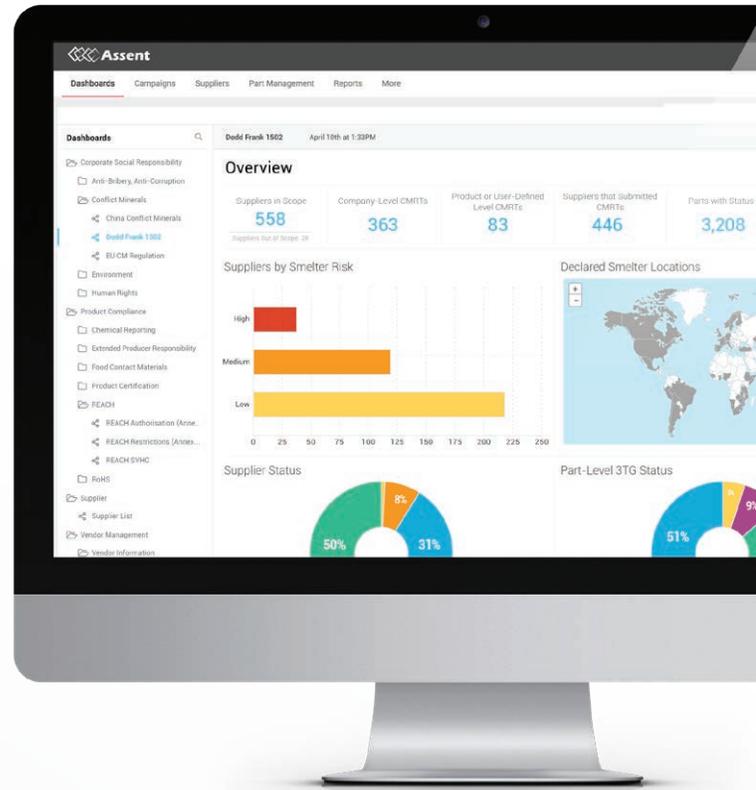
AEROSPACE & DEFENSE

Assent Compliance Platform



The Assent Compliance Platform is a supply chain data management platform that leverages automated supplier engagement and logic-driven data validation to deliver efficient data collection, validation and centralized management for an extensive scope of regulatory requirements. The platform is organized into three core software suites:

- 1/ Corporate Social Responsibility
- 2/ Product Compliance
- 3/ Vendor Management



THE ASSENT UNIVERSITY CLASSROOM

The Assent University Classroom learning management system facilitates stakeholder and supply chain education with expert-created courses on a variety of compliance topics. As an integral part of our comprehensive supply chain data management solution, the Assent University Classroom is well-curated with informative content to support your compliance education and due diligence requirements.



THE ASSENT AUDIT & INSPECTION MANAGER

The Assent Audit and Inspection Manager is a powerful enterprise workflow and task management software that optimizes the audit and inspection process. The software application ensures consistent, centralized data, allowing companies to target risk and track results.

DATA & NETWORK

Assent works with a network of over 250,000 manufacturers for real-time access to contact data, with a database that increases by thousands of records per day.

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