

# Supply Chain Disclosure Risk

A 30-Minute Boot Camp

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# Today's Presenters

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## Costco and suppliers

- One named plaintiff (Monica Sud)
- Northern District of California
- Shrimp sold at Costco for human consumption
- California Transparency in Supply Chains Act disclosure
- (Supplier Code of Conduct)

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## Nestlé USA, Inc. and affiliate

- Four named plaintiffs
- Central District of California
- Fancy Feast brand cat food products
- Internal corporate policies available on website

Fisheries → Fishmeal Companies → Shrimp Farmers →  
Costco Suppliers → Costco

**Small Fishing Boats** → “Mother Ships” → Canning  
Companies → Thai Union → Nestlé

## Costco California Act Disclosure Statement

“Costco has a supplier Code of Conduct which prohibits human rights abuses in our supply chain.... Our suppliers contractually agree to follow the Code and to ensure that their sub-suppliers also comply....

To evaluate compliance, we arrange for the audit of facilities of selected suppliers.... Audits are performed by independent third-party auditors who specialize in social responsibility audits....

If we discover a violation of our Code of Conduct, we respond in a manner commensurate with the nature and extent of the violation. ‘Critical violations’ are considered serious enough to require immediate and decisive remedial action and may result in the termination of the business relationship. For less serious violations, we allow the supplier reasonable time to develop and implement a plan for remediation. In those instances we conduct follow-up audits to monitor progress....”

## Publicly available corporate policies

- **Nestlé Corporate Business Principles:** “Nestlé fully support[s] the United Nations Global Compact’s (UNGC) guiding principles on human rights and labor and aim to provide an example of good human rights and labor practices throughout our business activities.” Also: “Nestlé require[s] our suppliers, agents, subcontractors and their employees to demonstrate honesty, integrity and fairness and to adhere to [Nestlé Supplier Code of Conduct).”
- **Supplier Code of Conduct:** “[Nestlé] expects the Supplier to adhere to all applicable laws and regulations... and strive to comply with international and industry standards and practices.” Also: “[Nestlé] reserves the right to verify compliance with the Code.” And: “Supplier must under no circumstances use, or in any way benefit, from forced labor.” And: “[Supplier must be] capable to disclose all the potential sources of primary origins ... associated with deliveries made.”



- **March 2014 Environmental Justice Foundation documentary, “*Slavery at Sea: The Continued Plight of Trafficked Migrants in Thailand’s Fishing Industry*”**
- **The Guardian Article, “*Revealed: Asian slave labour producing prawns for supermarkets in US, UK,*” June 10, 2014**

- **New York Times Article**, “*Sea Slaves: The Human Misery That Feeds Pets and Livestock*,” July 27, 2015

## Industry Conditions

- Agriculture and processed foods
- Construction
- Electronics
- Mining
- Fishing and aquaculture
- Forestry / timber
- Healthcare (including healthcare equipment manufacturing)
- Hospitality
- Textile and apparel (including prison labor)
- Transportation and warehousing

*Source: Verité Report, “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains,” January 2015*

## Geographic Conditions

- Regions with low protections for civil rights and liberties
- Tolerance of corruption
- Low economic development
- “Export Processing Zones” or Free Trade Zones (export oriented regions)
- Expensive guestworker Visa programs (Qatar, Malaysia, US aggra workers)

*Source: Verité Report, “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains,” January 2015*

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## Labor Practices and Conditions

- Low-skilled or dangerous work
- Seasonal work (need for large work force for a short period of time)
- Use of brokers/intermediaries for hiring
- Migrant work force
- Employer takes possession of identity, travel, or personal documents

*Source: Verité Report, “Strengthening Protections Against Trafficking in Persons in Federal and Corporate Supply Chains,” January 2015*

## Negative PR or media reports

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## **In assessing supply chain risks, business entities must consider:**

- traditional commercial third-party vendor risk
- information obtained as a result of their own supply chain transparency efforts
- human rights and ethical sourcing risks relating to their products and supply chains
- whether their industry may be the subject of media reports, activist or NGO focus with respect to certain ethical sourcing issues
- whether their own particular stakeholders are likely to raise ethical sourcing concerns and how they might do so


Developing and implementing an integrated compliance program to address sourcing and supply chain risks is challenging, but

- protects brand value
- reduces the likelihood of high-profile and costly litigation
- provides a response to criticisms about ethical sourcing efforts

Best compliance programs:

- identify risks
- include remedial action in response to risks
- implement continuous improvement



	<b>California Transparency in Supply Chains Act 2010</b> (Disclosure Required Starting July 2012)	<b>UK Modern Slavery Act 2015</b> (Disclosure Required Starting October 2015)	
		<b>How the UK Modern Slavery Act Requires More</b>	
<b>Entities Subject to the Requirement</b>	<ul style="list-style-type: none"> <li>Does business in California</li> <li>Does not have to be California entity</li> <li>Has annual worldwide gross receipts over \$100 million</li> <li>Is identified as manufacturer or retail seller on California state tax returns</li> </ul>	<ul style="list-style-type: none"> <li>Applies to entities that supply goods <b>or services</b></li> <li>Applies to entities with annual turnover of £36 million (~ <b>\$56 million</b>)</li> </ul>	<ul style="list-style-type: none"> <li>Commercial organization (body corporate or partnership, limited partnership or similar entity)</li> <li>Does not have to be UK entity</li> <li>Carries on part of a business in UK</li> </ul>
<b>Disclosure Required</b>	<ul style="list-style-type: none"> <li>Post statement on website</li> <li>"Conspicuous and easily understood link" on homepage</li> <li>If no homepage, must provide within 30 days after request</li> <li>Describe efforts to eradicate slavery and human trafficking from direct supply chain for tangible goods offered for sale</li> </ul>	<ul style="list-style-type: none"> <li>Requires entities to describe steps taken to ensure that slavery and human trafficking is not taking place <b>in any of the supply chains or in its own business operations</b></li> </ul>	<ul style="list-style-type: none"> <li>Post statement on website</li> <li>Disclosure for a financial year</li> <li>Link to statement in "prominent" place on website's homepage</li> <li>If no website, must provide within 30 days after request</li> </ul>
<b>Topics to be Covered in Statement</b>	[Mandatory elements] <ul style="list-style-type: none"> <li>Verification of product supply chains</li> <li>Audits of suppliers to evaluate compliance with company standards</li> <li>Internal Accountability of employees and contractors who fail to meet standards</li> <li>Certification by direct suppliers that materials in products comply with local laws</li> <li>Training of employees and management that have direct responsibility for supply chain management</li> </ul>		[Suggested elements] <ul style="list-style-type: none"> <li>Organization's structure, business, and supply chains</li> <li>Policies relating to slavery and human trafficking</li> <li>Due diligence processes</li> <li>When there is a risk of slavery and human trafficking and steps taken to identify and manage risk</li> <li>Effectiveness in ensuring slavery and human trafficking not in business or supply chain</li> <li>Training available to staff</li> </ul>
<b>Signatures/ Company Approvals</b>	[No Requirement]	Requires statement <b>signed</b> by a Director or Partner For company: <ul style="list-style-type: none"> <li>Board approve/director sign</li> <li>Members approve/Designated member sign</li> </ul> For partnership: <ul style="list-style-type: none"> <li>General partner approve and sign</li> </ul>	
<b>Remedy/Penalty</b>	State Attorney General can require the posting		UK Secretary of State can require the posting

## 1. Organize Your Team:

- Designate an internal working group and name point person with overall responsibility
- Assure representation from relevant departments
  - Legal
  - Compliance
  - Purchasing / Supply Chain
  - IT
  - Internal audit
- Develop overall schedule with key deadlines
- Working group meetings
- Assure management and board buy-in
- Assign accountability
- Develop policy

## 2. Take An Inventory:

- Assess policies and supply chain transparency statements on websites, to customers, and to third parties for accuracy, consistency, and for commitments for future action
- Identify operations and supply chain elements that may pose the highest risk for slavery / human trafficking elements

## 3. Get Ready:

- Commence product and procurement background review
- Chart supply chains from raw material to finished product, including labor practices
- Examine products and supply chain risks
- Engage with industry groups

## 4. Be Aware:

- The first reports under the UK Modern Slavery Act required October 2015.
- In April 2015, the California Department of Justice started notifying enterprises that it expected to post the California Transparency in Supply Chains Act disclosures. Companies should be prepared to post statements or explain why they are not subject to the Act.

## 5. Be Careful:

- All supply chain transparency and ethic sourcing disclosures to the public, to customers, and to suppliers will receive increased scrutiny by NGOs, consumers, activists, and plaintiffs' law firms going forward.
- Review all disclosures carefully with all stakeholder sensitivity, supply chain sourcing and labor risks in mind.
- Plan to respond to regulators, NGOs, and lawsuits.

## 6. Consider Consumer and Investor Risk:

- Identify consumer or investor risk based on an analysis of publicly available information about countries, products and labor that are part of your supply chain.
- Activist consumers and “socially responsible investors” are focusing on ethical sourcing issues.
- Senior management should assess the likelihood of such activity with respect to their company

# Additional Consequences of Supply Chain Transparency and Disclosure

- Due diligence yields detailed information about source and chain of custody of materials and about labor practices
- Practices and efforts must be disclosed, but care must be taken in deciding what statements to make
- US persons must check factory/facility names against US Treasury's Office of Foreign Assets Control (OFAC) list of sanctioned countries and Specially Designated Nationals list
- Disclosure and policy statements are subject to review and scrutiny by NGO's, media, customers, potential plaintiffs
- Existence of compliance efforts and the disclosure can be the basis of consumer fraud claims or used as evidence to support other claims



# Thank You for Joining Us

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# Global Coverage

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■ Office locations

■ Regional desks and strategic alliances

