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# CA Transparency in Supply Chains Act: Can It Stop Worker Abuses Among Suppliers in the Developing World?

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# **CA Transparency in Supply Chains Act: Can It Stop Worker Abuses Among Suppliers in the Developing World?**

In Partial Fulfillment of the Requirement for the Degree

MASTER OF ARTS IN INTERNATIONAL STUDIES

By

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November 2012

University of San Francisco

Under the guidance and approval of the committee, and approval by all the members this thesis has been accepted in partial fulfillment of the requirements for the degree.

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## CA Transparency in Supply Chains Act: Can It Stop Worker Abuses Among Suppliers in the Developing World?

### Introduction

Every product has a story that extends far beyond the moment it is purchased off a shelf.<sup>1</sup> After all, someone has to pick up cotton, turn it into textile, and sew it into a piece of clothing before it can be bought in a store. Unbeknownst to most western consumers, there is a high chance that the cotton picker is a child, sometimes as young as 12,<sup>2</sup> working 40 or more hours a week for less than minimum wage or no wage at all. It is also likely that the children are forced to toil in poor working conditions, living in dirty barracks and surviving off of infrequent and nutritiously deficient meals.<sup>3</sup> Factory workers manufacturing garments can, likewise, be children or adults. They are pressured, either by force or as a result of economic deprivation, to work long hours that violate international labor norms, experience physical and verbal abuse in the workplace that, due to poor enforcement of safety standards, might turn into a death trap.<sup>4</sup>

Inhumane treatment of workers in suppliers' factories, farms, mines, and other workplaces has received significant amount of public exposure in the last decade. As a result, multiple actors, from consumers and nonprofits to transnational corporations, have been

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<sup>1</sup> [www.Free2Work.org](http://www.Free2Work.org)

<sup>2</sup> "Schoolchildren in cotton fields in Kashkadarya," Uznews.net, last modified October 25, 2012, [http://www.uznews.net/news\\_single.php?lng=en&sub=&cid=30&nid=21109](http://www.uznews.net/news_single.php?lng=en&sub=&cid=30&nid=21109).

<sup>3</sup> "We Live Subject to their Orders': A Three-Province Survey of Forced Child Labor in Uzbekistan's 2008 Cotton Harvest." International Labor Rights Forum, (2009): 20-23. <http://www.laborrights.org/sites/default/files/publications-and-resources/UzbekCottonFall08Report.pdf>

<sup>4</sup> "Inspectors Certified Pakistani Factory as Safe Before Disaster," Declan Walsh and Steven Greenhouse, The New York Times, last modified September 19, 2012, [http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all&\\_r=0](http://www.nytimes.com/2012/09/20/world/asia/pakistan-factory-passed-inspection-before-fire.html?pagewanted=all&_r=0)

compelled to take a stand against abusive labor practices in supply chains. However, despite most passionate efforts, ensuring supplier compliance with international labor standards is a challenging task. Factory managers have to contend with costs of running a factory and fulfilling demanding production orders buyer corporations. Frequently, violation of labor rights allows factory managers to meet their production quotas and make a desirable profit, even though doing so means going against labor standards outlined in the supplier codes of conduct. Regulation of supply chains becomes more challenging moving upstream. Extraction of raw materials is permeated with labor and human rights abuses. Yet, manufacturers and, by extension, their buyer corporations have no knowledge of where and under what conditions raw materials such as cotton, cocoa, or tin have originated.

The newest effort to combat worker abuses in supply chains came to fruition in California with the passage of California Transparency in Supply Chains Act of 2010 (SB 657). The purpose of the Act is to put an end to forced labor among suppliers in the U.S. and internationally by empowering consumers with knowledge of potential worker abuse. The law intends to educate consumers on corporate social responsibility through mandatory SB 657 disclosures in which companies must reveal what measures they have taken to eradicate forced labor from their supply chains. The law was passed after a group called Chain Store Reaction sent questionnaires to companies to see what they were doing to end forced labor in their supply chains. Chain Store Reaction reported that over 90 percent of contacted companies never replied back, which energized the efforts to enact SB 657.<sup>5</sup> Since the act

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<sup>5</sup> Anthony Pacheco and Sara J. Brenner, "*United States: California's Transparency in Supply Chains Act : What it Provides, Why it Matters , and what Effects it Will have on Business.*" Mondaq Business Briefing, August 22, 2012.

officially went into effect in January of 2011, the word is still out on SB 657's success in holding corporations accountable for forced labor.

Therefore, the central question of this paper asks how effective SB 657 truly is, and what are the factors that might prevent the law from reaching its maximum impact? Ironically, the Act's most glaring oversight might be its sole focus on forced labor. In fact, worker rights abuses extend far beyond forced labor and include violations such as harassment and discrimination, unsafe work environment, excessive overtime, and retaliation against worker unions. Therefore, by drawing legislative and public awareness to forced labor, SB 657 risks neglecting other, more prevalent, forms of worker abuse. In order to further delve into this problem, I will be using information gathered by Free2Work, a non-profit consumer education organization focusing on labor rights abuses in supply chains, to study how SB 657 requirements compare to Free2Work's rigorous company evaluation criteria.

I will also use Michal Foucault's theory on power and discourse to explain how SB 657 affects power relations between companies, consumers, suppliers, and workers. Foucault believed that power is unequally distributed among different societal actors, benefiting some and disadvantaging other. Furthermore, Foucault theorized that power is exercised through discourse, whereby dominant groups produce specific type of knowledge about the world which is taken as truth. Foucault's theory is an important contribution to understanding how our society operates and why some people are subjected to unequal treatment and prejudice. Foucault's theory on power imbalance can also be applied to examine inequality in the global workforce.

The people who suffer in inhumane working conditions worldwide have been



historically marginalized by the society. They are frequently women, children, immigrants, racial and ethnic minorities, stateless persons, and other disenfranchised groups. Workers' position of vulnerability is further exacerbated by their status as members of the developing world. Alongside experiencing discrimination from within their own communities, the workers have to operate in the system of global economic inequality that puts them in the position of severe disadvantage when performing work that ultimately will benefit western companies. SB 657 has potential to start correcting some of the injustices faced by the workers. As the law implemented by the state government and affecting transnational corporations operating worldwide, SB 657 carries significant amount of power to shape the discourse around forced labor, worker rights and corporate social responsibility. However, while the purpose of the Act is to empower consumers and to protect workers, the law's vagueness with regards to corporate disclosure requirements might create a different outcome. I will combine Foucault's theory on power and discourse with the data gathered from 32 apparel and electronics companies to show that SB 657 does not alter the current power dynamic unfavorable to the workers. Contrary to its intentions, the Act gives companies enough leeway to create a version of CSR discourse advantageous to them, thus making corporations the SB 657's ultimate beneficiaries.

The first part of this paper looks at the background of the issue. Here, I will provide information on SB 657, including the law's requirements, its strengths and its weaknesses. In addition to information on SB 657, I will give definitions and statistics on forced labor. Furthermore, this part will contain a section on theoretical framework, which will go into more detail on how Foucault's theory applies to SB 657 and labor rights violations. The second part of this paper contains literature review that examines scholarly articles pertaining

to corporate social responsibility, corporate-consumer and corporate-supplier relations, and how these relations affect workers. Lastly, I will present research gathered from companies' SB 657 disclosures and through Free2Work's CSR evaluation tool. The research will show that SB 657 disclosure requirements are insufficient because they are too vague and do not address systemic issues, which leads to inadequate worker rights implementation in supply chains.

### ***Background***

#### *Forced Labor and How It Relates to Human Trafficking*

SB 657 specifically targets slavery and human trafficking, which in the context of the law refers to forced labor. Therefore, before further discussing merits and weaknesses of the Act, it is important to first describe what human trafficking is. According to the U.S. Department of State Office to Monitor and Combat Trafficking in Persons, "the United States government considers trafficking in persons to include all of the criminal conduct involved in forced labor and sex trafficking, essentially the conduct involved in reducing or holding someone in compelled service."<sup>6</sup> International and U.S law has similar definitions of trafficking. The Palermo Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children (Trafficking Protocol) states that human trafficking is:

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.

Likewise, United States' Trafficking Victims Protection Act (TVPA) defines human trafficking for the purposes other than commercial sexual exploitation as "the recruitment,

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<sup>6</sup> "What is Modern Slavery?" Office to Monitor and Combat Trafficking in Persons, accessed November 27, 2012, <http://www.state.gov/j/tip/what/index.htm>

harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.” Additionally, coercion is defined as “(A) threats of serious harm to or physical restraint against any person; (B) any scheme, plan, or pattern intended to cause a person to believe that failure to perform an act would result in serious harm to or physical restraint against any person; or (C) the abuse or threatened abuse of the legal process.” The common thread uniting these two definitions is that human trafficking is involuntary, and the labor is extracted from the victim without his or her consent. This means that in order to be considered a victim of human trafficking and forced labor a person must be compelled to perform labor either through threat and/or use of violence or, more indirectly, through fraud or deception. The later part frequently involves threatening victim with legal action, especially if a victim is an illegal immigrant, or trapping a trafficked person into debt bondage, which can be best described as a practice where employer gives worker a high-interest loan, but compensates him or her with extremely low wages, making the debt unpayable. Also important to note is that a person does not have to be transported to be considered a victim of trafficking.<sup>7</sup>

Some forms of child labor fall under the definition of human trafficking. ILO’s Worst Forms of Child Labour Convention, 1999 (No. 182) includes “all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour” in the definition of worst forms of child labor.<sup>8</sup>

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<sup>7</sup> “Human Trafficking FAQs,” Polaris Project, accessed November 27, 2012. <http://www.polarisproject.org/human-trafficking/human-trafficking-faqs>

<sup>8</sup> International Labour Organization (ILO), Convention 182, “Worst Forms of Child Labour Convention”, June 17, 1999,

ILO also defines “work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children” as a worst form of child labor and calls for its elimination.<sup>9</sup> However, SB 657 does not specify whether “human trafficking” is intended to mean all work harmful to children or if it is limited to forced child labor. For the purposes of this paper, terms “human trafficking” and “forced labor” mean work performed by an individual of any age against his or her will and under physical and/or psychological coercion. The term “child labor” will refer to ILO’s definition of worst forms of child labor presented above and to work performed by children that is “mentally, physically, socially or morally dangerous and harmful to children; and interferes with their schooling by: depriving them of the opportunity to attend school; obliging them to leave school prematurely; or requiring them to attempt to combine school attendance with excessively long and heavy work.”<sup>10</sup>

Within supply chains, forced labor is a prevalent phenomenon and can be found in multiple stages of production. According to the International Labor Organization (ILO), globally 20.9 million people are victims of forced labor. Forced labor is classified into three categories: labor imposed by the state, and labor imposed by the private economy for the purposes of industrial or sexual exploitation. Out of the three categories, forced labor in the private economy claims 90 percent, or 18.7 million, of individuals, where 4.5 million are victims of sex trafficking, and 14.2 million are victims of labor trafficking. Women and girls make up the majority, 55 percent, of total forced labor victims (98 percent are victims of the

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[http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100\\_INSTRUMENT\\_ID:312327](http://www.ilo.org/dyn/normlex/en/f?p=1000:12100:0::NO::P12100_INSTRUMENT_ID:312327)

<sup>9</sup> ILO Convention 182

<sup>10</sup> “What is Child Labor,” International Labor Organization, accessed November 27, 2012, <http://www.ilo.org/ipec/facts/lang--en/index.htm>

sex industry, and 40 percent are victims of forced industrial and domestic labor). Adults are more likely to be subjected to forced labor. The ILO study found that 74 percent of victims are 18 or older, whereas, 26 percent of victims are aged 17 or younger. <sup>11</sup>

### *SB 657*

To remediate the issue of lax supply chain management, SB 657 attempts to hold corporations accountable for labor violations among the suppliers. SB 657 requires that “retail sellers and manufacturers doing business in the state to disclose their efforts to eradicate slavery and human trafficking from their direct supply chains for tangible goods offered for sale” by creating a clearly visible and easy to access SB 657 compliance page on their website. If a company does not have a website, it must present a written copy of its efforts upon request (a company has 30 days to comply with the request). A company must disclose to what extent it: (a) engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery; (b) conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains; (c) requires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business; (d) maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking; and (e) provides company employees and supervisors, who have direct

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<sup>11</sup> “*ILO Global Estimate of Forced Labour Results and methodology.*” International Labor Organization, (2012): 13-21. [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_182004.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_182004.pdf)

responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.<sup>12</sup>

The law is limited in that it only applies to companies making \$100 million dollars or more in sales worldwide. A company is also subject to the law if a company is: (a) organized or commercially domiciled in California; (b) sales of the company in California exceed the lesser of \$500,000 or 25 percent of total sales; (c) real property and tangible personal property of the company in California exceed the lesser of \$50,000 or 25 percent of the taxpayer's total real property and tangible property; or (d) the amount paid by the company in California for compensation exceeds the lesser of \$50,000 or 25 percent of total compensation paid.<sup>13</sup> Yet, despite the restrictions, SB 657's scope is extensive enough to include 3200 of industry's leading corporations.<sup>14</sup>

#### *SB 657 Benefits*

SB 657 is significant for two main reasons. First, it is the only law in the nation to “expose and combat human trafficking through consumer awareness.”<sup>15</sup> Furthermore, the California law might be replicated at the federal level since a bill similar to SB 657 was “introduced in the United States House of Representatives in August of 2011.”<sup>16</sup> Second, SB 657 holds companies accountable for their supply chains, and, unlike corporate codes of conduct, compliance with SB 657 is mandatory. The law impacts major companies in apparel, electronics, food, beverage and other sectors. Making industry leaders to take

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<sup>12</sup> California Transparency in Supply Chains Act, CA Senate Bill 657 (passed Sept. 30, 2010)

<sup>13</sup> SB 657

<sup>14</sup> “*Compliance is Not Enough: Best Practices in Responding to The California Transparency in Supply Chains Act.*” Verite, (2011): 3.

[http://www.verite.org/sites/default/files/VTE\\_WhitePaper\\_California\\_Bill657FINAL5.pdf](http://www.verite.org/sites/default/files/VTE_WhitePaper_California_Bill657FINAL5.pdf)

<sup>15</sup> Pacheco and Brenner “United States: California's Transparency In Supply Chains Act.”

<sup>16</sup> Ibid.

command of their supply chains can have a wide-reaching impact. Some of the corporations affected by SB 657 have thousands of suppliers employing hundreds of thousands of workers throughout the world. Institutional isomorphism<sup>17</sup> suggests that diligent implementation of the law would create higher corporate social responsibility (CSR) standards, compelling competing corporations to raise their level of accountability in order to remain relevant, thus scaling SB 657's reach. However, for all its positives, the law has several drawbacks, which will be discussed in the following section.

### *SB 657 Weaknesses*

SB 657 is unable to fulfill its full potential due to the following three factors: 1) it places the bulk of enforcement responsibility on the consumers; 2) its scope is too narrow; 3) it shifts the discourse from addressing different kinds of worker rights violations to focusing on only one concern: forced labor.

SB 657 is a transparency and awareness rising mechanism.<sup>18</sup> The law requires that companies disclose what, if any measures, they have taken to eliminate human trafficking from their supply chains. Stating that a company has only addressed the problem to a limited extent would make it complaint with the law.<sup>19</sup> According to Verite, “the penalty for non-compliance with the Act is injunctive relief by the California Attorney General. This means companies will not face a monetary penalty for failure to disclose, but that they will receive an order from the Attorney General to take specific action.” However, there appears to be

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<sup>17</sup> According to Islam and McPhail, “One key aspect of institutional theory is the concept of *isomorphism*. Dillard, Rigsby and Goodman explain that ‘isomorphism refers to the adaptation of an institutional practice by an organisation.’ In particular, this concept refers to the processes whereby organizations within the same line of business come to adopt similar kinds of response to the same set of social and environmental pressures” (pg. 11).

<sup>18</sup> SB 657

<sup>19</sup> Verite, “Compliance is Not Enough,” 2.

little action taken by the state of California to enforce the law.<sup>20</sup> So far, the only negative consequences a company might suffer from SB 657 is retaliation from the consumers who might be unhappy with company's lack of initiative. Thus, the responsibility of turning SB 657 into an effective law rests primarily with the consumers. The fairness of this demand is debatable. In order for SB 657 to have maximum impact, consumers must research a brand prior to making a purchase. While a segment of population will do so, not everyone will have the desire and motivation to familiarize themselves with companies' adherence to SB 657 and then alter their shopping behavior accordingly. Yet, the power of consumer pressure cannot be underestimated. Past shows, that individuals who decide to shop conscientiously have influenced corporate practices.<sup>21</sup> For example, Nike agreed to release a public list of its suppliers and made efforts to improve labor conditions in the supply chain as a result of consumer boycotts.<sup>22</sup>

However, SB 657's biggest limitation is the very function it intends to serve. By focusing only on human trafficking, SB 657 allows the company to be unresponsive to other types of labor abuse such as long working hours, mandated overtime, low wages, and discrimination based on personal attributes. Forced labor in supply chains arises from systemic conditions that contribute to a broader set of worker rights violations. While forced labor is undoubtedly an important concern, a person does not have to be trafficked to be subjected to labor abuses.

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<sup>20</sup> Pacheco and Brenner "United States: California's Transparency In Supply Chains Act."

<sup>21</sup> David J. Doorey, "The Transparent Supply Chain: From Resistance to Implementation at Nike and Levi-Strauss." *Journal of Business Ethics* 103, no. 4 (11/01, 2011): 587-603, doi:10.1007/s10551-011-0882-1.

<sup>22</sup> *Ibid*, 589.



Apple's recent controversy with Foxconn, an electronics components manufacturer, demonstrates how labor issues extend far beyond trafficking. Foxconn is the world's largest maker of electronic components; it also counts Apple Inc., Acer Inc., Dell, Toshiba, Hewlett-Packard and other electronics giants as its major customers. Investigations of Foxconn have found illegal amounts of overtime, crowded working conditions, and numerous industrial accidents that resulted in four deaths and 100 accidents.<sup>23</sup> Foxconn's workers have been found to live in unsanitary dormitories, feeling stressed everyday due to the high-pressure working environment, and experiencing humiliating punishments by the management for taking short breaks. Foxconn has also been accused of using forced labor, adding one more worker rights violation to an already sizeable list not covered by SB 657.

Lastly, SB 657 runs the risk of reshaping the discourse on labor rights violations by framing the issue in terms of human trafficking only. By concentrating solely on forced labor (which is already treated by companies as a severe zero-tolerance violation and grounds for termination of supplier contract), SB 657 misses an opportunity for a more comprehensive regulation of supply chains. As was mentioned earlier, in order for human trafficking to occur, certain conditions must be in place for suppliers to condone the practice in the workplace. Trying to eliminate human trafficking without eliminating the root causes will not lead to a long-term solution. Conversely, targeting systemic issues in the supply chain management will help to curtail trafficking and other labor abuses. In short, SB 657's current approach to problem will not have the strongest impact.

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<sup>23</sup> "China Contractor Again Faces Labor Issue on iPhones," David Barboza and Charles Duhigg, *The New York Times*, date modified September, 10, 2012, [http://www.nytimes.com/2012/09/11/technology/foxconn-said-to-use-forced-student-labor-to-make-iphones.html?\\_r=1](http://www.nytimes.com/2012/09/11/technology/foxconn-said-to-use-forced-student-labor-to-make-iphones.html?_r=1)

## **Theoretical framework**

The purpose of SB 657 is to provide consumers with insight into the way corporations operate and what measures the companies have taken to address human trafficking in supply chains. To accomplish this, SB 657 establishes several criteria by which consumers can assess how well the companies are complying with the law. By making knowledge on aspects of supply chain management public, SB 657 provides consumers with power to penalize companies whose social performance is not up to par. The impact of SB 657 also does not end with consumers and corporations, but rather, it reaches suppliers, whose performance is monitored by companies, and workers whose wellbeing is dependent upon SB 657's successful implementation. As a result, SB 657 produces multiple subjects who can be divided into four major groups of consumers, corporations, suppliers and workers. Therefore, the process of subject formation is important to understand in order to evaluate how much power each of the groups possesses under the law, and how well SB 657 addresses inequalities that might exist between them. This section will use Michel Foucault's theories on subject formation, power and surveillance to examine how SB 657 shapes the categories of consumers, corporations, suppliers and workers and how they relate to each other.

For Foucault the term 'discourse' refers to "well-bounded areas of social knowledge," meaning that "in any given historical period we can write, or think about a given social object or practice only in certain specific ways and not others. 'A discourse' would then be whatever constraints-but also enables – writing, speaking and thinking writing such specific

historical limits.”<sup>24</sup> Furthermore, McHoul and Grace write that “Foucault’s conception of discourse is indispensable for an understanding of the role of ‘power’ in the production of knowledge.”<sup>25</sup> Since SB 657 has legislative power to demand that companies produce a specific kind of knowledge about their supply chains, it limits the understanding of workers rights abuses to the knowledge companies create. Due to SB 657’s focus on forced labor, forced labor will likely come dominate consumer awareness as the worker’s rights issue of outmost importance. While victims of forced labor might benefit from increased awareness of the problem, the situation of workers unaffected by it is unlikely to change. Additionally, whatever knowledge consumers gather from SB 657 disclosures will shape their understanding of CSR and supply chain management. Since SB 657 is not very detailed about the kind of information companies are required to provide, they will have a significant degree of influence over the type of knowledge that will reach consumers. This will give companies an opportunity to manipulate consumer perception of the extent to which companies engage in CSR. This has serious repercussions for successful SB 657 implementation, which are explained below.

### *Consumers*

Foucault postulates that power is understood in “terms of the techniques through which it is exercised.”<sup>26</sup> Foucault uses Jeremy Bentham’s plan for the Panopticon to illustrate how power operates through surveillance.<sup>27</sup> The Panopticon consists of a watchtower in the center of a courtyard surrounded by buildings filled with cells. Each cell contains two

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<sup>24</sup> Alec McHoul and Wendy Grace, *A Foucault Primer: Discourse, power and the subject.* New York: New York University Press, (1997): 31.

<sup>25</sup> McHoul and Grace, *A Foucault Primer*, 57.

<sup>26</sup> *Ibid.*, 65.

<sup>27</sup> Hubert L. Dreyfus and Paul Rabinow, *Michael Foucault: Beyond Structuralism and Hermeneutics.* Chicago: The University of Chicago Press, (1982): 188.

windows: one to allow for the passage of light and another one facing the surveillance tower, providing a complete view of the inmate. Although the inmate is constantly on display, he himself has no way of telling if the tower contains a guardian. Therefore, the inmate must act as if surveillance is continuous and absolute.<sup>28</sup> After a period of adjusting his or her behavior to meet required standards, the subject internalizes the said standards and becomes a self-policing entity. Furthermore, the power of the observer is anonymous and uninterrupted, and anyone can assume that role. At the same time, the observers also become subjects of control by occupying central position within the Panopticon, where they are “thoroughly enmeshed in localization and ordering of their behavior.”<sup>29</sup>

Unlike Panopticon, SB 657 does not regulate physical space; such task with regards to transnational corporations and their suppliers operating worldwide would be impossible to accomplish. However, SB 657 makes transparent aspects of corporate processes that might have been previously concealed from consumer base, thus fulfilling Panopticon’s function of surveillance by putting consumers in the position of observer and making companies the object of consumer discipline. Since companies are made to reveal information about themselves for public scrutiny, the information has to be honest and genuine. Once the information is given to the public use, it can be verified for accuracy, and being caught in a lie can be more damaging for corporate image than failing to provide a necessary disclosure. Like Panopticon, SB 657 can lead companies to internalize the law’s criteria and make more of an effort to provide honest information that fulfills all of the requirements. These CSR practices would be motivated by companies’ knowledge that at any time they are being evaluated by consumers, whose purchasing decisions determine business’s success.

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<sup>28</sup> Ibid., 189.

<sup>29</sup> Ibid.

Additionally, SB 657 engineers a more user-friendly mechanism of assessing corporate social responsibility performance. While variety of watchdog groups exist to document and report corporate malpractices, such reports are scattered and presented in different formats lacking uniformity. With implementation of SB 657, consumers seeking information on companies' progress in eliminating labor trafficking from supply chains will have a specific place (company's website) to access the information covering five requirements set out by SB 657. Such streamlining of the disclosure process turns it into an easy-to-enforce disciplinary technology wielded by anonymous consumer mass. However, as consumers are fulfilling their observer role, their behavior is also controlled by SB 657's limitations. In other words, consumers' actions will be informed by the knowledge made transparent through SB 657, which might not accurately reflect reality of corporate engagement with social responsibility.

### *Corporations*

If enforcement of labor rights depended solely on consumer demand for and implementation of corporate social responsibility, fair workplace would have become a universal standard in the 90s, when the public first began to speak out against sweatshop working conditions in the developing world. Foucault's theories help to explain why that did not happen. Foucault views power as a "cluster of relations," which is "multidirectional, operating from the top down and also from the bottom up."<sup>30</sup> The interplay between consumers and corporations is more complex than the straightforward transparency-and-accountability approach created by SB 657. Companies do not unconditionally comply with

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<sup>30</sup> Ibid, 184-185.

expectations placed upon them. Rather, they search for a way to leverage existing regulations to their advantage.

Foucault claims that power relations are “intentional and nonsubjective...they are imbued, through and through, with calculation: there is no power that is exercised without a series of aims and objectives.”<sup>31</sup> Companies pursue their own goals, the primary objective of which typically involves profit accumulation. To continue maximizing their returns, companies must balance social and business concerns. Nevertheless, business objectives usually take priority over meaningful social compliance engagement with suppliers. Lim and Phillips describe the situation in the following way: “The traditional market-oriented governance model has been inhospitable to [companies’] CSR codes because the suppliers’ performance is judged entirely on price, quality, and delivery. These economic pressures encourage suppliers to cheat on CSR to avoid costly changes and lost competitiveness.”<sup>32</sup> Lim and Phillips use Nike to demonstrate their point. The company was able to transfer “competitive pressures of manufacturing” such as low costs and order delivery to suppliers, while generating profits through its core activities which include “innovation, strategic marketing, distribution, and design.”<sup>33</sup> However, when sweatshop conditions in Nike’s factories became public knowledge, Nike turned into one of the first corporations to experience the fallout of neglecting supplier CSR concerns in favor of making profit. In order to rectify the damage to its image, Nike had to make a difficult choice between disclosing addresses of its suppliers and losing its collegiate market (which was a major actor in the

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<sup>31</sup> Ibid, 187.

<sup>32</sup> Suk-Jun Lim and Joe Phillips, "Embedding CSR Values: The Global Footwear Industry's Evolving Governance Structure." *Journal of Business Ethics* no. 1 (2008):143, doi:10.1007/s10551-007-9485-2

<sup>33</sup> Lim and Phillips, "Embedding CSR Values," 144-145.

anti-sweatshop movement in the 90s). Neither of these options was desirable to Nike's business objective. Even though Nike eventually took extensive measures to correct its wrongdoings, its image is still associated with worker abuses of the past. To avoid reliving Nike's experience, companies try to generate their own discourse to manipulate consumer perception and create a more favorable impression of themselves. By doing so, corporations can secure favorable consumer attitudes and willingness to buy from them.

SB 657 disclosure requirements are not specific enough, leaving companies to decide how much detail about their operations to make public. While SB 657 ensures that consumers are provided knowledge, it is incomplete, addressing only parts of anti-human trafficking efforts and none of the other labor concerns. Foucault theorized that while different power relations are unequal, domination of one side by the other "is not the essence of power," and "power is exercised on the dominant as well as on the dominated; there is a process of self-formation or autocolonization involved."<sup>34</sup> Using bourgeoisie as an example, Foucault reasoned that in order to become the dominant group, they first had to form themselves as a class. Technologies of control (such as regulation of health and mental institutions and the confessional) had to first be applied by the bourgeoisie on the bourgeoisie, before they could be extended to the working class.<sup>35</sup> According to Foucault, "one could say that the strategy of moralization (health campaigns, workers' housing, clinics, etc.) of the working class was that of the bourgeoisie. One could even say that it is this strategy which defined them as a class and enabled them to exercise their domination."<sup>36</sup> Companies use CSR to self-regulate, and thus to establish themselves as a class of ethical

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<sup>34</sup> Dreyfus and Rabinow, *Michael Foucault*, 186.

<sup>35</sup> Ibid

<sup>36</sup> Ibid

corporate citizens. SB 657 is another means by which such self-regulation takes place. Companies now can use SB 657 to control the parameters of discussion and public awareness with regards to human trafficking. SB 657 lacks strong provisions that would demand the level of transparency needed to impact meaningful change on corporate practices. While consumers are given the power to discipline companies, the discipline is still exercised on companies' terms. Being in complete compliance with SB 657 will not necessarily make company's mode of operation more ethical. For example, telling consumers that a company conducts supplier audits has limited impact, if detailed monitoring results and corrective action plans are not publically disclosed. If consumers have little or no knowledge about audit results, how are they to know what the specific issues are and how these issues are being addressed? Similarly, stating that the audits take place does not speak to the audits' quality. Are workers interviewed off-site? Were interviewed workers pre-selected by factory's management? How well can auditors speak workers' native language, and are auditors trained to properly identify rights abuses they might encounter? SB 657 does not ask for disclosure to any of these questions, but these are the questions that make a difference to how thoroughly workers' rights are protected. SB 657 creates a kind of discourse, where companies ultimately decide what information to disclose. Companies might be considered ethical if they comply with the law. However, corporations play significant role in defining the meaning of "ethical". In this regard, the companies are endowed with considerable amount of power that is denied to suppliers and workers.

### *Suppliers and Workers*

The discourse created by SB 657 is not limited to companies and consumers concerned with ethical business practices. Suppliers, who are often located in the developing



world, are directly affected by consumer and corporate demands. Buying companies usually have a set of ethical compliance criteria, which is already reflected in SB 657 and might become more prominent now that it is a part of the law. These criteria dictate supplier behavior, leading suppliers to prioritize some aspects of CSR over others. For example, majority of suppliers have been responsive to prohibition on child labor since companies have zero-tolerance stance on the issue. Violation of the child labor rules might lead to the termination of supplier contract, which is an unacceptable outcome for suppliers who, like corporations, are driven by profit accumulation. The power relations between consumers and corporations are replicated here between corporations and suppliers with one notable exception: suppliers' status as members of the developing world puts them at a significant disadvantage with Western-based companies. So, while holding suppliers to higher social compliance standards can ideally lead to improved working conditions, the lack of level playing field between companies and suppliers places majority of compliance costs on the latter.<sup>37</sup> What often turns out to be the case is that corporations saddle suppliers with high ethical standards, but provide them no support to meet these standards. For example, putting limits on excessive overtime will not help if the company presents suppliers high production quota and insufficient lead time. However, SB 657 does not have any measures that would resolve the power imbalance between suppliers and corporations.

While SB 657 intends to empower consumers with information to make better purchasing decisions, the other part of its mission is to improve the lives of individuals who have been subjected to labor trafficking. However, SB 657 is incapable of providing workers with agency. Even though the rights of forced laborers are SB 657's ultimate concern, the

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<sup>37</sup> Lim and Phillips, "Embedding CSR Values," 143-156.

workers' empowerment is dependent upon decisions of consumers, corporations, and suppliers. Furthermore, the discourse produced by SB 657 fails to call for transparency in areas that would provide a clear picture of worker's conditions and how they are being impacted by the law. Merely finding forced labor in the supply chain is not enough. SB 657 needs to be more aggressive in producing knowledge that shows what happens after a corporation intervenes with its suppliers to correct labor violations. The law does not ask if companies have a remediation programs for trafficked workers or if workers are compensated for their labor. Ironically, despite being the reason for SB 657's existence, worker's rights are sidelined by SB 657's focus on corporate-consumer relations. Not one of the law's requirements asks for more in-depth transparency that would provide a comprehensive look at workplace conditions. More importantly, SB 657 excludes many prevalent worker rights violations from the discourse by focusing on human trafficking only.

According to Foucault's theory, SB 657 is a discursive practice that "establishes relations between the other types of relations."<sup>38</sup> While consumers, corporations, suppliers and workers existed within a network of power relations prior to SB 657, the new law reshapes how the four entities interact with each other in the context of human trafficking. When SB 657 reframes discourse on labor issues to focus on forced labor, it prioritizes these violations in consumer and corporate consciousness by giving them legal support. Regrettably, SB 657 unintentionally shifts the power away from the workers who are not trafficking victims by blocking their access to one mechanism that has legal and state power to influence corporate and supplier actions. SB 657 also leaves companies to decide the

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<sup>38</sup> Dreyfus and Rabinow, *Michael Foucault*, 63.

extent of their transparency, which prevents consumers from receiving an accurate portrayal of corporate activities.

### **Literature Review**

Since SB 657 only recently went into effect, no information exists which thoroughly analyzes the law and its possible impacts. This literature review focuses on the works that examine relations between consumers, corporations, suppliers and workers. By researching these works, I was hoping to look more closely at consumer and corporate attitudes to ethical business practices and to draw attention to the systemic causes of human trafficking and other labor abuses. The goal of this review is to use current literature to determine how SB 657 might fit in with already existing connections between consumers, companies, suppliers and workers.

### ***Consumer and Corporate Relations***

The study of literature shows that consumer-corporate relations are more complicated than a straightforward exchange of money in return for goods and services. Consumers and corporations influence each other's behavior. By making a purchase or by deciding to boycott a product, consumers signal to companies what type of corporate conduct is appropriate in a society at large. Corporate social responsibility standards were developed as a way to satisfy consumer demand for more ethical social and environmental practices. Since consumers have the power to influence companies, businesses and sociologists alike have invested significant amount of resources to understand how strong consumer concern with CSR is, and what motivates consumer ethical purchasing behavior. Because implementation of SB 657 and disciplinary action against companies depends on consumer behavior, below section examines how consumers and companies relate to each other and what guides their

decision making process.

### *Consumer Power*

Different surveys have been carried out to determine the percentage of consumers willing to buy ethically made products. While around 80 percent of respondents report their support for purchasing sweat-free products, a significantly smaller percentage actually follows through on the idea. The discrepancy between verbal support for ethical purchasing and action is in part attributed to higher prices that are incurred by ethically manufactured goods.<sup>39</sup> Prasad and her colleagues have conducted an experiment to test how much more consumers are willing to pay for ethically made products. A well-known department store in a Michigan working class neighborhood was selected as experiment's venue. There, the researchers placed two racks of identical socks. However, one rack was labeled as containing products produced under ethical working conditions. The other rack did not have a label, letting consumers to believe that the socks were not made under ethical working conditions.<sup>40</sup> Over the period of five months, the researchers incrementally increased the price on labeled socks from 0 to 40 percent. The findings revealed that when labeled and non-labeled socks were sold for the same price, half the customers chose labeled product, while the other half didn't. When the price on labeled socks was raised, the purchases fell to 30 percent, and once the price reached 30 percent increase, only 11 percent of customers would still buy the labeled product.<sup>41</sup>

The authors conclude "that most consumers preferred the cheaper unlabeled socks,

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<sup>39</sup> Monica Prasad, Howard Kimeldorf, Rachel Meyer, and Ian Robinson, "Consumers of the World Unite: A Market-Based Response to Sweatshops." *Labor Studies Journal* 29, no. 3 (Fall, 2004): 63, doi:10.1353/lab.2004.0043

<sup>40</sup> Prasad, "Consumers of the World Unite," 66.

<sup>41</sup> *Ibid*, 69.

suggesting that price considerations dominated the purchasing decision made by about three-fourths of all consumers.”<sup>42</sup> Prasad and her colleagues admit that the study was not necessarily an accurate simulation of consumer reality. Because the experiment used identical products, it eliminated the question of consumer preference for unlabeled products due to characteristics other than price. Not accounting for personal preference is a significant experimental limitation. As other studies will show, consumer behavior can be fickle and a desire for a specific product can override concerns for ethical production. However, Prasad’s study does accurately show a segment of consumers who will buy ethically made goods because it is a morally responsible thing to do. The question is whether conscientious consumers have enough clout to alter corporate behavior in a significant way.

While not every consumer who professes his or her support for ethical buying follows through on these beliefs, enough people do to warrant concerns among businesses. Consumer boycotts have been shown to be an effective tool for enforcement of corporate responsibility. Given their usefulness, Jill Klein and her colleagues have conducted a study to determine what leads consumers to boycott in the first place. The research provides some insight into consumer motivation that was absent in Prasad’s experiment. One of the major findings shows that perceived egregiousness of company’s actions is a strong driving force behind decision to boycott. Klein writes that “the more egregious a consumer perceived the firm’s behavior, the more likely the consumer was to boycott. However, egregiousness notwithstanding, most of the [consumer] sample was *not* participating in the [case study]

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<sup>42</sup> Ibid, 71.

boycott.”<sup>43</sup> One of the mitigating factors behind consumer choice to abstain from the boycott is the cost of the product that would have to be given up. This supports Prasad’s findings of decreasing ethical consumption due to the prize increase. Another interesting finding indicates that consumers “need to realize intrinsic rewards of boycott participation, potentially boosting or maintaining self-esteem by, for example, avoiding guilt and responding to social pressure.”<sup>44</sup>

Klein concludes that although high levels of perceived egregiousness is not enough to solicit high consumer participation in the boycott, small amount of participation is still sufficient to inflict damage on the target company. The boycott studied by Klein resulted in sales loss in a competitive market for Bremmer (the boycotted company), and gave Bremmer’s customers a reason to try products of its competitors. More importantly, the brand’s image was damaged among boycotters and non-boycotters, so even after the boycott is over, the negative perception of the brand will result in future lost sales.<sup>45</sup> Ultimately, Prasad’s and Klein’s research proves that the lawmakers trust in consumer ability to enforce SB 657 is not misplaced. From theoretical standpoint, the importance of transparency and accurate knowledge of companies’ social responsibility practices becomes even more important since research shows that consumers respond to CSR infractions by attempting to regulate corporate behavior. However, the extent to which consumers can be trusted to police companies might have to be reevaluated in lieu of the findings presented below.

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<sup>43</sup> Jill Gabrielle Klein, N. C. Smith, and Andrew John, "Why we Boycott: Consumer Motivations for Boycott Participation." *Journal of Marketing* 68, no. 3 (07, 2004):105, doi:10.1509/jmkg.68.3.92.34770

<sup>44</sup> Klein et al., “Why we Boycott,” 105.

<sup>45</sup> *Ibid*, 104.

### *Consumers' Motivations*

As noted by the Prasad and Klein, consumer buying habits are more complex than choosing a product not made in sweatshop conditions. Companies know this. Engagement between consumers and corporations involves smart marketing and public relations campaigns conducted by the companies to keep their costumers satisfied. Foucault's theory suggests that companies will do whatever is necessary to achieve their objective, and winning consumer approval is part of the profit making strategy. Bhattacharya and Sen write that businesses leaders are striving to find "the appropriate goals guiding the formulation and deployment of CSR initiatives that will reap the greatest benefits for their companies."<sup>46</sup> However, consumers do not have identical reactions to corporate CSR efforts. The authors state:

First, there is significant heterogeneity across consumers in their reactions to CSR initiatives; what works for one consumer segment does not work for another. Second, the impact of CSR initiatives on outcomes "internal" to the consumer (e.g., awareness, attitudes, and attributions) is significantly greater and more easily assessable than its impact on the "external" or visible outcomes (e.g., purchase behavior, word- of-mouth). Third, the focal company is not the only one that benefits from engaging in CSR initiatives; both consumers and the social issues the initiatives represent benefit as well.<sup>47</sup>

Consumers studied by Bhattacharya and Sen admitted that companies' CSR initiatives have only a marginal effect on their purchasing decisions. Customers reported that they were unwilling to buy from companies with better CSR if the product quality or price was not satisfactory.<sup>48</sup> This finding is consistent with Prasad's research that fewer customers

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<sup>46</sup> C. B. Bhattacharya and Sankar Sen, "Doing Better at Doing Good: WHEN, WHY, AND HOW CONSUMERS RESPOND TO CORPORATE SOCIAL INITIATIVES." *California Management Review* 47, no. 1 (Fall, 2004): 10, doi:10.2307/41166284

<sup>47</sup> Bhattacharya and Sen, "Dong Better at Doing Good," 12-13.

<sup>48</sup> *Ibid*, 22.

will pay extra for an ethical product. It is also one of the mitigating factors found by Klein. Fewer consumers will boycott if the alternative product costs more.

Bhattacharya and Sen also found that when consumer is aware company's CSR activities, his or her sense of wellbeing is enhanced.<sup>49</sup> Simply knowing that the company is doing something to address problematic aspects of business is enough to boost consumers' mood. This finding once again complements Klein's discovery that consumers experience positive sense of self by boycotting products from companies with egregious CSR violations. This suggests that consumers' interaction with companies is guided by their emotions. High levels of perceived egregiousness will result in strong emotional response from the consumers, prompting them to act if the cost to the self is not too high.

What emerges is a surface level of engagement between consumers, companies and their CSR initiatives that makes everybody feel good, but does not necessarily lead to tangible results. This is especially important to SB 657 implementation. Companies can inform customers about their CSR efforts and put up SB 657 disclosures without following through on them to ensure optimum implementation. Consumers can look at such efforts and be happy they exist. Moreover, Bhattacharya and Sen found that "consumers may even penalize companies if they perceive that CSR initiatives are typically realized at the expense of investments in product and/or service quality. Such adverse reactions are particularly likely to hurt sales when these consumers do not feel that the company's CSR efforts somehow improve the product."<sup>50</sup> In other words customer support of CSR is contingent upon personal benefits consumers receive for giving said support.

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<sup>49</sup> Ibid, 16

<sup>50</sup> Ibid, 18.



*Consumers, Corporations and Discourse*

Bhattacharya and Sen found that when companies decide to put their resources behind championing the cause, awareness of that cause is likely to rise.<sup>51</sup> It follows that as companies continue to publish SB 657 disclosures, consumer awareness of human trafficking in supply chains should become more widespread. While companies posting SB 657 disclosures do so to comply with a legal requirement and not necessarily because human trafficking is their preferred cause, some use the said disclosures to provide more information on human trafficking and to state their moral disapproval of the practice. For instance, Patagonia quotes UN Office on Drugs and Crime calling human trafficking a “crime against humanity,” followed by two paragraphs explaining what human trafficking is.<sup>52</sup> GAP’s disclosure states “we believe that no person should be subject to a situation where basic needs and fundamental rights are denied.”<sup>53</sup> Other companies including Eileen Fisher, Gildan, and HP put information on what human trafficking is and emphasize the importance of human rights in their disclosures. By using the language that goes beyond SB 657’s requirements, companies undertake a certain level of cause sponsorship and rise consumer awareness of human trafficking. Such sponsorship frames forced labor as a workers rights issue worthy of immediate concern, while remaining silent on other types of labor abuse. Combined with the fact that forced labor is a highly egregious violation, it would not be surprising to see consumers react strongly to it and reject companies where forced labor

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<sup>51</sup> Ibid, 16.

<sup>52</sup> “California Transparency in Supply Chains Act of 2010 (SB 657),” Patagonia, accessed November 26, 2012, <http://www.patagonia.com/us/patagonia.go?assetid=67581>

<sup>53</sup> “California Transparency in Supply Chains Act (SB 657),” Gap Inc., accessed November 26, 2012, <http://www.gapinc.com/content/csr/html/OurResponsibility/governance/SB657.html>

might be present. If SB 657 was a better designed tool, consumers indignation over forced labor could be channeled to capably fulfill their disciplinary function, as suggested by Foucault's theory. However, SB 657's vagueness impedes informed action by the consumers and empties consumer power of its impact.

Although SB 657 is meant to create greater transparency, it can be used to deflect consumer attention away from CSR violations. David Doorey's paper, which discusses how Nike and Levi's came to the decision to publically disclose locations and addresses of their suppliers, indirectly touches on this problem. Both, Nike and Levi's, experienced public censure and attacks from NGOs and the media for the way they conducted business. Levi's was criticized for its unwillingness to be transparent about working conditions in its factories, while Nike was condemned for its suppliers' worker abuses. Realizing, that something needed to be done to alleviate negative publicity, the companies began considering providing full disclosure of their suppliers' locations. Doorey writes that "although relatively few corporations have adopted it to date, factory disclosure has become a new corporate social responsibility (CSR) strategy to deflect criticism about supply chain labor practices, a strong signal that corporations have 'nothing to hide.'"<sup>54</sup> Doorey supports this point by recounting Nike's Transparency 101 initiative through which Nike began posting some of the factory auditing results on its website. When talking about the initiative, Nike's Director of Global Issues at that time said that "we needed a defense against investigations into our factories from outside forces. It's a way to pre-empt nongovernmental organizations and the media from playing 'gotcha.'"<sup>55</sup> Although they were initially resistant, Nike and Levi's disclosed names and addresses of their suppliers in 2005, after experimenting with limited forms of

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<sup>54</sup> Doorey, "The Transparent Supply Chain," 588.

<sup>55</sup> Doorey, "The Transparent Supply Chain," 593.

disclosure and discovering that it did not hurt their self-interest. Doorey's article shows that Nike's and Levi's engagement with CSR was a highly calculated process that became a solution to social and corporate problems. Realizing that it needed to preempt criticism, Nike corrected some of the worst issues in its supplier factories, before it made its operations transparent to the public. While Levi's suppliers did not display any serious labor rights violations, Levi's had to become transparent in order to preserve its good public standing. However, in both cases, CSR was used to serve corporate objective of pacifying consumer and NGO ire directed at the two companies. Companies can now use SB 657 to show that they have "nothing to hide," by providing vague disclosures on supply chain monitoring and verification. Additionally, SB 657 requires significantly less transparency than was demanded from Nike and Levi's, making it a preferable alternative to an exacting consumer boycott. From the theoretical perspective, implementing SB 657 disclosures is one of the steps that companies can take to construct themselves into a class of ethical businesses, where companies have the power to determine what constitutes such business.

Another tactic through which companies can preserve their dominance is described by Smith, Palazzo, and Bhattacharya, who suggest that in order to set their products apart from competitors, companies are "loading values in their brand messages."<sup>56</sup> Nike and Levi's can distinguish themselves from the competition by stating that they are part of a handful of companies to publically disclose their suppliers' names and addresses, thus providing for greater transparency which promotes better working conditions. In addition to setting themselves apart from competitors, companies can continue presenting themselves as good

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<sup>56</sup> N.C. Smith, Guido Palazzo, and C. B. Bhattacharya, "Marketing's Consequences: Stakeholder Marketing and Supply Chain Corporate Social Responsibility Issues." *Business Ethics Quarterly* 20, no. 4 (10/01, 2010): 623.

corporate citizens and gathering consumer support by infusing values into their branding. Smith writes that “if stronger relationships between corporations and their customers are promoted by aligned values, the social and environmental values of the CSR discourse offer an ideal opportunity for innovative forms of brand management.”<sup>57</sup> SB 657 disclosure can be another opportunity for companies to engage in “brand management,” akin to how Nike and Levi’s tried to influence public perception by releasing the list of their suppliers.

In a different study exploring connections between personal identity and brand identification, Bhattacharya concludes that “people's need for self-continuity goes hand in hand with their need for self-enhancement, or the maintenance and affirmation of positive self-views,” and further, “a key way consumers seek to satisfy their self-enhancement need is by identifying with organizations that have prestigious identities. Prestige here refers to organizational stakeholders' perceptions that other people, whose opinions they value, believe that the organization is well regarded.”<sup>58</sup> In other words, by identifying with companies that have positive reputation among certain people, consumers can augment their sense of self-worth. Moreover, Bhattacharya suggests that a brand can become an extension of consumer’s identity. According to him, the link of perceived identity similarity between consumers and a company “is likely to occur not only because consumers find the self-relevant information inherent to company identities that are similar to their own easier to focus on, process, and retrieve but also because such identities enable them to maintain and express more fully and authentically their sense of who they are. For example, a consumer

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<sup>57</sup> Smith, et al., “Marketing’s Consequences,” 623.

<sup>58</sup> C. B. Bhattacharya and Sankar Sen, "Consumer--Company Identification: A Framework for Understanding Consumers' Relationships with Companies." *Journal of Marketing* 67, no. 2 (04, 2003):80, doi:10.1509/jmkg.67.2.76.18609

who cares about animal rights will be more attracted to a company that has distinguished itself in this regard.”<sup>59</sup> By demonstrating their anti-trafficking stance, companies can play on consumers’ desire to express their identity by associating with a “prestigious” company. Most everyone will agree that ending forced labor is a cause worthy of support; however, not every corporation will have an SB 657 disclosure outlining what it is doing to eradicate trafficking from the workplace. Companies that do might be at advantage in attracting consumers who care about human rights and human trafficking.

There is a flip side to engaging with consumer’s values since consumers might react strongly if the company’s infraction is considered to be sufficiently unethical. However, the benefit of SB 657 is that it only requires companies to show effort to improve working conditions in their supply chains, without asking to show specific results. SB 657 allows companies to tell consumers that they are trying to be better, which might be enough to placate majority of customers, seeing how they reward companies for engaging with corporate socially responsibility by being willing to overlook and forgive CSR breaches.<sup>60</sup> This enables companies to react to the “growing relevance of social and environmental concerns in society by impression management, not by changing their overall marketing and procurement policies.”<sup>61</sup> In light of corporate manipulation of consumer perception, Smith points to the necessity of consumers’ understanding the social impact resulting from their purchasing choices. At the same time, Smith cautions against viewing consumers as rational actors; a point that is supported by the amount of emotional appeal and manipulation conducted by the companies, and consumers’ strong response to emotional issues such as

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<sup>59</sup> Bhattacharya and Sen, “Consumer-Company Identification,” 80.

<sup>60</sup> Bhattacharya and Sen, “Doing Better at Doing Good,” 19.

<sup>61</sup> Smith, et al., “Marketing’s Consequences,” 626.

forced and child labor. To support his argument, Smith cites the work of Caruana and Crane which discusses how the category of conscientious consumer is constructed through corporate discourse.

Caruana and Crane argue that consumer responsibility, as communicated by corporations, is presented as a morally unconflicting concept that is helpful in simplifying consumer purchasing choices. The idea behind providing customers with morally unconflicting choices is to create a conscientious consumer who would shop based on companies' commitment to social and environmental issues. As it turns out, "there is not a pre-existing market of responsible consumers out there waiting to be served, but rather it 'must be brought into existence through the assumptions and technologies of market segmentation.'"<sup>62</sup>

SB 657 adds to the definition of conscientious consumer as someone who is attentive to companies' efforts to eliminate forced labor from their supply chains. The problematic aspect of creating an easily identified conscientious consumer is the subsequent bifurcation of purchasing decisions into ethical and unethical and the definitions that are attached to each category. The process creates a "very specific ethical gaze that simultaneously makes visible certain aspects of responsibility while drawing a 'moral curtain' around others."<sup>63</sup> Caruana and Crane draw on Foucault's theory to make their case. If corporations first establish themselves as an ethical class, Caruana and Crane explain how companies further manipulate discourse to extend their reach by creating a class of ethical consumers. In case of SB 657, the "moral curtain" is drawn around these aspects of labor abuse that do not include forced

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<sup>62</sup> Robert Caruana and Andrew Crane, "Constructing Consumer Responsibility: Exploring the Role of Corporate Communications." *Organization Studies* 29, no. 12 (12, 2008): 1499, doi:10.1177/0170840607096387.

<sup>63</sup> Caruana and Crane, "Constructing Consumer Responsibility," 1512.

labor. This suits corporate interests since consumer attention is focused on an issue of trafficking, which the companies can manage through SB 657 with little cost to themselves. Under these circumstances, problems such as unlivable wages and excessive overtime might be excluded from consumer awareness, despite their damaging effects on workers' quality of life. SB 657 embeds the concern for human trafficking victims into consumer consciousness and values, but skips doing the same for other, just as important, labor issues. It is possible that consumer is already aware of labor violations unrelated to human trafficking and takes companies' track on these violations into consideration when making a purchasing decision. It is also equally possible that he or she does not ask these types of questions. However, if the goal of the legislative measure is to protect workers' human rights, consumer knowledge of labor violations should not be left to chance and limited to only one issue. Consumers have ability to influence corporations, which has a tangible impact on the lives of real people. For that reason, it is important to ensure that consumers' purchasing choices are as informed as possible.

According to Caruana and Crane:

The construction of the responsible consumer shifts the locus of choice – from whether to consume [a product] to which type of [product] to consume, and ultimately to which type of responsible consumer product to choose. By shifting from the former to the latter, the text assures us that most, if not all, of the relevant social, ethical and environmental issues have been attended to. The moral evaluation has already taken place, discreetly, behind the scenes. Our task is simply to choose between 'responsible' alternatives, not to assess whether one option is more responsible than another.<sup>64</sup>

Since SB 657 applies to around 3200 businesses, there will be no shortage of ethical alternatives, if the consumer is using efforts to eliminate forced labor from supply chains as

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<sup>64</sup> Ibid, 1513.

the only metric for purchasing decisions. Problematically, a more nuanced evaluation of a product might be absent from the process. If a consumer was to take time to learn more details about companies' supply chain management systems, he or she would have to consider a more complex set of criteria than the anti-trafficking stance to evaluate CSR. However, such learning process is time consuming and might require specialized knowledge. To comprehensively evaluate a company, consumer will need to read through thick CSR reports and be able to spot areas where a company omits or manipulates information to its advantage. Companies with good SB 657 disclosures might have poor policies on subcontracting, lead times, collective bargaining and other worker protection mechanisms. Therefore, relying only SB 657 for insight into companies' operations will not produce a well-informed consumer.

### ***Non-Trafficked Labor***

This section focuses on detailing worker rights violations, unrelated to human trafficking, which have been made public during the 90s. As a result, the literature examined here highlights the broad scope of labor rights abuses that, despite their severity, don't qualify as human trafficking because the workers in question are not forced or coerced into servitude. Additionally, this section looks the literature that discusses measures taken by the companies to address supplier compliance problems and how the nature of corporate response is dependent on the amount of public inquiry given to an issue. Lastly the section presents a discussion on overall effectiveness of corporate codes of conduct.

### ***Public Scrutiny and Corporate Response to Supplier Noncompliance***

A research by Muhammad Islam and Ken McPhail shows that the companies will primarily engage with ethical issues that have high exposure in the media and among



consumers. Islam and McPhail studied 18 multinational apparel companies, examining their codes of conduct and annual CSR reports for the adoption of ILO's workplace human rights standards. The study's goal was to investigate how companies construct their range of responsibility and how ILO principles influence these constructs.

According to the research findings, in 2007 selected companies' codes of conduct addressed majority of the following ILO standards: right to the freedom of association, elimination of child labor, elimination of forced labor, elimination of all forms of discrimination, and demand for a safe and healthy work environment. One code did not contain information of freedom of association, and another code did not mention elimination of all forms of discrimination.<sup>65</sup> The authors found a connection between issues that received extra attention from the corporations and issues that were being targeted by media and NGOs as instances of human rights abuses in the supply chains. For example, Islam and McPhail's research demonstrates that the issue of child labor received the greatest amount of corporate attention between 1990s and 2007. The issue of child labor also frequently appeared in the media starting in the 90s and continuing to today. Conversely, freedom of association is a "comparatively new issue" enjoying less awareness among media and consumers. The overall findings are summarized as such:

In 2007, 72 percent of major clothing companies disclosed that they adopted standards including elimination of child labour, elimination of forced labour, elimination of all forms of discriminations, and providing a safe and healthy work environment, compared with 20 percent or below in 1997. Disclosure on freedom of association remained the lowest of all types but increased over the period (50% in 2007 compared with 13% in 1997).<sup>66</sup>

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<sup>65</sup> Islam Azizul Muhammad and Ken McPhail, "Regulating for Corporate Human Rights Abuses: The Emergence of Corporate Reporting on the ILO's Human Rights Standards within the Global Garment Manufacturing and Retail Industry." (2011):17.

<sup>66</sup> Islam and McPhail, "Regulating for Corporate Human Rights Abuses," 20.

Similarly, the study of corporate stand alone reports showed an acute increase in companies disclosing on adoption of labor codes such as the right to freedom of association, elimination of child and forced labor, elimination of all forms of discrimination, and requirement for safe and healthy working conditions. Islam and McPhail's study parallels Caruana and Crane's theory on creation of responsible consumer. Event though, in the case presented by Islam, corporations are the subjects being influenced by NGO, media, and consumer discourse of what it means to be a responsible company. There is a seeming contradiction in determining whether consumers or companies shape the CSR discourse. However, as Foucault's theory have stated, power does not lie with one entity, but rather with multiple actors who possess it and exercise it in different degrees. The literature reviewed so far suggest that both, consumers and companies, play a part in determining which labor issue to concentrate on in corporate policies. Companies construct a category of conscientious consumer based on the issues that consumers respond to the most either through boycotting or simply by voicing their disapproval. By doing so, companies align themselves with consumer values, creating a bond based on shared beliefs.<sup>67</sup>

A study by Stephanie Barrientos focuses on the issue of labor brokers and contract workers, which, unlike the noncompliance issues studied by Islam and McPhail, are not highly publicized labor concerns. Labor brokers and contract workers operate in a vastly unregulated environment, where contract workers have minimum legal protection, are subject to inhumane treatment, and are at a high risk of human trafficking. However, the use of labor brokers and contract workers has not been sufficiently addressed in supplier codes of conduct

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<sup>67</sup> Smith, et al., "Marketing's Consequences," 617-641.

or SB 657, which only requires that a company “maintains internal accountability standards ... for employees or contractors failing to meet company standards regarding slavery and trafficking.” Thus, the issue of contract workers is limited to human trafficking framework.

Barrientos states that demand for contract workers arises out of power imbalance between buyers (corporations) and the fragmented supplier base. As a result of the power imbalance, the buyers are able to apply pressure on suppliers to “reduce costs, reduce lead times and increase “just in time’ efficiency within the chain.”<sup>68</sup> The buyers also expect suppliers to comply with the demanding requirements of socially responsible production, which allows companies to gain higher profit from the finished product and present it to consumers as being made under ethical working conditions. Barrientos describes the resulting situation as a Catch 22 for suppliers “where they have to deliver on quality (and associated value) which is passed up the value chain, whilst cost and risk is being passed down the chain” onto the shoulders of contract workers.<sup>69</sup>

Labor brokers play a key part in providing suppliers with contract labor. They recruit vulnerable workers, frequently immigrants and women, in sufficient numbers to meet high production demands while reducing costs of employment for suppliers.<sup>70</sup> While there has been some opposition on behalf of the consumers and NGOs to the use of labor brokers, the issue is not widely addressed by the companies.<sup>71</sup> Such negligence puts into question companies’ commitment to their CSR principles beyond appeasing the consumers. The field of contract labor is ripe with human rights abuses. Yet, “in the face of strong commercial

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<sup>68</sup> Stephanie Barrientos, "Contract Labour: The 'Achilles Heel' of Corporate Codes in Commercial Value Chains." *Development and Change* 39, no. 6 (11, 2008): 982, doi:10.1111/j.1467-7660.2008.00524.x

<sup>69</sup> Barrientos, “Contract Labour,” 982.

<sup>70</sup> *Ibid*, 980.

<sup>71</sup> *Ibid*, 986.

pressures driving the use of casual and contract labour” companies opt to forego stronger regulation of contract workers in favor of carrying on with business.<sup>72</sup> As a result, the societal power imbalances described by Foucault present themselves in the company-supplier relations outlined by Barrientos. Since suppliers are directly responsible for creating ethical workplace, they must be given an opportunity to do so. Yet, they are immobilized by the competitiveness of the global market place and companies’ demands for better CSR. SB 657 does not address unequal power distribution between suppliers and companies, thus undercutting its own effectiveness. After all, a change in the workplace cannot occur until people in the position to effect it are empowered to act.

#### *Labor Rights Violations Case Studies*

Robert Ross presents cases of labor rights violations that do not constitute human trafficking and fall outside of SB 657’s scope. Ross looks at two factories with serious labor abuses in Mexico and Dominican Republic. The workers in these factories cooperated with U.S.- based unions, NGOs and consumer advocacy groups to temporarily change their working conditions for the better.

The first case is Mexico’s Kukdong/Mexmode factory, which produced apparel for Nike and Reebok. According to Ross, “abusive supervisors, infested cafeteria food, illegal withholding of bonuses, and mandatory overtime” were common types of worker maltreatment found at Kukdong.<sup>73</sup> The factory’s official worker union, CROC, was deeply corrupt and functioned as a company protection union that decidedly did not represent

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<sup>72</sup> Ibid

<sup>73</sup> Robert J. S. Ross, "A Tale of Two Factories: Successful Resistance to Sweatshops and the Limits of Firefighting." *Labor Studies Journal* 30, no. 4 (Winter, 2006): 69, doi:10.1353/lab.2005.0092

worker interests. At first, the workers tried to form an independent union and win collective bargaining rights. However, these efforts were sabotaged when the members of independent union were fired and then beaten by CROC agents. Tired of the situation, Kukdong's workers went on strike demanding better cafeteria food, replacement of CROC, and reinstatement of fired supervisors. The protestors, 85 percent of whom were women, were violently disbanded by the police, creating a moral outrage in the U.S. that led to activist mobilization.<sup>74</sup>

Kukdong's case fits well with the theories of other authors examined in this literature review. Although the right to collective bargaining and the right to independent unions is not a leading CSR issue, the plight of Kukdong's workers was able to gain public attention due to violence used to break the workers' strike. The presence of violence pushed Nike and Reebok into the category of companies behaving egregiously; as a result, these companies had to suffer through a consumer lashback.

The second case examined by Ross is BJ&B factory in Dominican Republic responsible for manufacturing baseball caps. Investigations of BJ&B found that Korean managers sexually and physically abused workers, and subjected them to "graphic racial" and sexual slurs. Workers were also underpaid, making less than Dominican government's standards for providing adequate basic necessities for an average family. Additionally, "most BJ&B workers lived in small self-made houses of corrugated iron or wood. Many lacked indoor plumbing; all were crowded."<sup>75</sup> There were reports of firing workers who were injured on the job.<sup>76</sup> In April 1998, two of BJ&B workers were brought to the U.S. to share their stories. The tour received significant media attention, with articles appearing in the New

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<sup>74</sup> Ross, "A Tale of Two Factories," 69-70.

<sup>75</sup> Ibid, 73.

<sup>76</sup> Ibid

York Times, Boston Globe, Boston Herald, Irish Times, and student newspapers.<sup>77</sup>

This case presents a highly publicized instance of sexual and racial discrimination, hazardous working conditions, and unlivable wages. Concurrent with Islam and McPhail's study, the CSR focus on the issues of discrimination and unsafe working environment was on the rise in the 90s. On the other hand, Islam and McPhail found little to no change on the issues of collective bargaining, freedom of association, and living wages, nor were these issues a part of corporate conscientious consumer discourse. The outcomes in Kukdong and BJ&B cases reflect Islam and McPhail's discoveries. Workers saw greatest improvements in nondiscrimination and safety compliance; and although, workers won better wages and right to independent union, companies' interest in doing business with the two factories declined. Ross ends by recounting what appears to be short-lived nature of Kukdong's and BJ&B's victories. One of the biggest problems facing factories now is losing the jobs to China "where the policy environment for labor organizing is far more hostile than in Mexico or the Dominican Republic."<sup>78</sup> Ross's concluding point is similar to Barrientos's and further reinforces the imbalance of power between companies, suppliers and workers. According to Ross, since there are tens of millions of workers globally available to work in supplier plants, the buyers are at a clear advantage due to their power to chose which "community of workers" to employ. The companies' freedom to chose suppliers also gives them the freedom to choose which work standards to enforce, so when the costs of CSR get too high, companies can take their business elsewhere.

### *Codes of Conduct*

Gay Seidman studies the overall effectiveness of corporate codes of conduct by

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<sup>77</sup> Ibid, 74.

<sup>78</sup> Ibid, 78.

looking to the past and examining implementation of the Sullivan Principles. The Principles consisted of two corporate codes of conduct, and their enforcement in South Africa helped to end the apartheid system. Despite Principles' seeming success, Seidman doubts their overall effectiveness. Although Sullivan Principles had an impact on corporate performance, it is unclear if the Principles accomplished much in terms empowering black communities.<sup>79</sup>

Seidman states that "corporate officials were much more concerned about fulfilling any aspects of social responsibility that would raise their grade, than they were about involving their employees' voices in the process."<sup>80</sup> Additionally, Sullivan's tentative success came as a result of continuous and prolonged social pressure on the corporations to address one broad social injustice. Severity of companies' transgressions was once again an important motivator for the consumer participation. Seidman states that "sustained activism came in response to a particularly egregious and oppressive form of racial exclusion—a systematic, overarching grievance that evoked far more sympathy internationally than the kind of individual, daily grievances that pervade factories in the developing world, like forced overtime, delayed wages or bathroom breaks denied."<sup>81</sup> Seidman's conclusion supports the hypothesis that emotionality of the issue is far more important in getting consumers motivated to act. Both, the apartheid system in South Africa and human trafficking constitute a terrible violation of human rights, making it easier for the consumers to rally behind these causes. Similar to the Sullivan Principles, current corporate codes of conduct do not do enough address root causes of the problem, be it forced labor or other worker abuses. Since SB 657 is another set of rules designed to hold companies accountable to standards that do not include systemic reform and

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<sup>79</sup> Gay W. Seidman, "Monitoring Multinationals: Lessons from the Anti-Apartheid Era." *Politics & Society* 31, no. 3 (09, 2003): 401, doi:10.1177/0032329203254861.

<sup>80</sup> Seidman, "Monitoring Multinationals," 401.

<sup>81</sup> *Ibid*, 402.

preserve current company-supplier power dynamics, it is unlikely that the law will have any kind of substantial effect. The importance of eliminating root causes behind labor rights violations will be examined in more detail in the next section.

### ***Root Causes of Labor Abuse***

This section presents research demonstrating that codes of conduct are not adequately implemented in the workplace, as well as the reasons for why the code enforcement fails. Also discussed here are suppliers' attitudes towards codes of conduct. Overall, the literature indicates that SB 657 will not be enough to overcome systemic inequalities that produce forced labor and other worker rights violations.

### *Codes of Conduct Implementation Challenges*

Whilst Islam and McPhail looked at the causes that led to increased corporate adoption of workplace standards, Smith and Barrientos did a study to see if these codes had any tangible effect on the workers. Their findings showed that while there were improvements in working conditions in some areas, others remained unchanged. The biggest shift for the better occurred with regards to health and safety standards that benefited both permanent and casual workers. Other improvements included provision of minimum wage, better working hours, and employment benefits such as insurance and pension; although, contract workers are ineligible for the later category. With regards to wage, the increases did not come about as a result of collective bargaining agreements, and the wages paid still failed to constitute a living income.<sup>82</sup> The study also failed to find creation of collective bargaining

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<sup>82</sup> Stephanie Barrientos and Sally Smith, "Do Workers Benefit from Ethical Trade? Assessing Codes of Labour Practice in Global Production Systems." *Third World Quarterly* no. 4 (2007): 722, doi:10.1080/01436590701336580



agreements as a result of code implementation. In India, authors have discovered that workers were afraid of joining unions because it would cost them their jobs. The workers, therefore, abstained from union participation.<sup>83</sup> Additionally, trade unions could only communicate with the workers outside of factory premises, which is a violation of freedom of association. Workers continued suffering discrimination on the bases of gender, ethnicity, and religion. Women and ethnic and religious groups were rarely found in senior supervisory and managerial positions.<sup>84</sup> Child labor was one area that saw significant improvement. However, the authors note that “most suppliers in our study had long been aware of buyer non-tolerance of child labour, and were already compliant with legislation on this issue.”<sup>85</sup>

Barrientos and Smith also found that in instances where corporations managed their supply chains in a more integrated manner, maintained close relations with suppliers and had a code implementation strategy in place, the tensions between “doing business” and adhering to code standards were handled much better than in complex supply chains where “volumes sourced from individual suppliers were often low or channeled through intermediaries and agents.”<sup>86</sup> The type of management system that the company implements to run its supply chain has an impact on the effectiveness of the codes of conduct. However, SB 657 does not require companies to provide the kind of disclosure that would make their supply chain management strategies clear to consumers. Therefore, it is challenging for consumers to fulfill their function as observers and enforcers of fair labor standards. According to Foucault’s theory, by lacking more detailed CSR knowledge, consumers also lack power to demand more systemic adjustments to the corporate administration of supply chain.

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<sup>83</sup> Barrientos and Smith, “Do Workers Benefit from Ethical Trade?” 723.

<sup>84</sup> Ibid

<sup>85</sup> Ibid, 720.

<sup>86</sup> Ibid, 724.

### *Suppliers' Perspectives*

The reasons behind uneven implementation of labor standards are further explained in Islam and Deegan's study of Bangladesh Garment Manufacturers and Exporters Association (BGMEA). Islam and Deegan conducted interviews with BGMEA's senior executives to study the pressure they experience to comply with social and environmental standards. Through the interview process, the authors discovered that multinational buyers were the main guiding force behind supplier participation in the social disclosure and the type of issues being disclosed. Besides corporations (buyers), western consumers, NGOs, labor advocacy organizations, and media also play a part in supplier compliance. One of the executives interviewed by Islam stated that "we had to change ourselves following buyers' requirements and to fit with global requirements and restrictions. Western consumers and human right organisations pressured foreign buyers, and then foreign buyers pressured us."<sup>87</sup>

Furthermore, the decision to disclose information on social responsibility is driven by suppliers' desire to stay in business and present themselves as appropriate partners for transnational companies. Concern for workers' wellbeing is secondary at best. One interviewee states outright, "we immediately take positive steps to ensure adequate safety measure for garments workers in order to survive," implying that staying in business takes priority over workers' human rights.<sup>88</sup> Consequently, suppliers will adopt whatever workplace standards are of outmost concern to western companies and their customers.<sup>89</sup> The BGMEA executives believe that before 1990's industry survival did not depend on supplier compliance with social issues such as child labor; however, in the early 90s (around the time

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<sup>87</sup> Islam and Deegan, "Motivations for an Organisation," 860.

<sup>88</sup> Ibid, 862.

<sup>89</sup> Ibid, 850-874.

news of sweatshops reached the public) elimination of child labor was required to continue working with the buyers. The issues of nondiscrimination became important when mental and physical abuse of female workers came to light. Similarly, safety became a concern after a series of deadly factory fires received attention in the media.<sup>90</sup>

Lastly, suppliers are limited in the kinds of changes they can make because they are under constant pressure to meet stringent production demands such as downward movement in price, shorter lead times between order and delivery, increasing demands of production specification, and insecurity of orders.<sup>91</sup> Lim and Phillips further explore this point in their paper, using Nike as a case study. As a result of massive public outcry against Nike's sweatshop working conditions, the company tried to implement codes of conduct among its Korean and Taiwanese suppliers by creating a "collaborative partnership where suppliers had a deeper and securer association with the buyer."<sup>92</sup> Nike's first attempt to implement the code failed, since it did not account for Nike's prioritization of financial gains and economic pressures faced by suppliers. On its second attempt, Nike began offering select suppliers "an expanded relationship and securer footwear orders, thereby reducing the intense economic competition and introducing an incentive to remain CSR compliant."<sup>93</sup> Lim and Phillips report that suppliers selected for collaborative partnership showed significant improvement in their code of conduct compliance. For example, workers gained benefits such as housing subsidies, interest-free loans, and evening education classes. Additionally, the authors found that as a result of continued code of conduct implementation, suppliers in their study started moving "from 'conditional morality,' where they complied with CSR solely to secure orders

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<sup>90</sup> Ibid, 865.

<sup>91</sup> Barrientos and Smith, "Do Workers Benefit from Ethical Trade?" 725.

<sup>92</sup> Lim and Phillips, "Embedding CSR Values," 144.

<sup>93</sup> Lim and Phillips, "Embedding CSR Values," 147.

and labor supplies, to embedding a ‘community morality’ where CSR is considered a good in itself.”<sup>94</sup> Phillips and Lim show that it is possible for suppliers to better their working conditions, if they are provided with adequate tools to meet CSR standards while staying in business.

The attitudes displayed by BGMEA’s managers and, to some extent, by Nike’s suppliers explain why Barrientos and Smith’s research found that some workplace standards are more effective than others. Improvements in the treatment of female workers, better health and safety conditions, and significant reduction in instances of child labor discovered by Barrientos and Smith, as well as improvements described by Lim and Phillips, can no doubt be attributed to pressure exerted on suppliers by corporations and consumers. The studies draw another related conclusion. Islam and Deegan discovered that BGMEA executives’ motivation for compliance are driven by need to keep companies doing business with them. Lim and Phillips also state that suppliers initially complied with CSR to secure orders. At the same time, compliance for the sake of appeasing companies does not go far enough in ensuring meaningful improvement in the workplace. Barrientos and Smith conclude that the reason for ineffective code implementation in supplier factories are “the technocratic approaches that simply verify actions according to pre-set standards, rather than engaging in processes of accountability that might help to challenge embedded norms and shape change.”<sup>95</sup> Barrientos points to the concern with outward easily identifiable CSR issues as the reason why successful implementation of codes of conduct has not been fully realized. Seidman alluded to it when he wrote that “corporate officials were much more concerned about fulfilling any aspects of social responsibility that would raise their grade.” Lim and

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<sup>94</sup> Ibid, 152.

<sup>95</sup> Barrientos and Smith, “Do Workers Benefit from Ethical Trade?” 717.

Phillips make similar point, when they show that Nike's initial attempts to implement codes of conduct failed because the company did not account for market pressures (embedded norms described by Barrientso) that pushed suppliers to sacrifice meaningful CSR compliance in favor of meeting product performance and price standards. The bottom line of these findings is that, so far, companies have not engaged with challenging the current system because it would not serve their interests. Nike is somewhat of an exception since it was forced to go above-and-beyond on its CSR engagement or risk further boycotts and deterioration of its image. However, Nike's CSR reforms were driven by undeniable self-interest. Regardless of Nike's experiences, the results remain the same. In the present system, suppliers have to meet whatever norms companies set for them, and companies don't challenge suppliers to do better, unless a strong reaction from a consumer base pushes them to adopt new standards. Even then, corporations are learning how to manage consumer behavior so that whatever negative feedback consumers provide does not significantly interfere with corporate operations. From the theoretical standpoint, current norms allow corporations to maintain significant degree of power over consumers, suppliers, and workers by engaging with CSR just enough to keep consumer support but not enough to undermine the structures that keep companies in control. Under these circumstances SB 657 can only have a limited effect in the workplace. It asks corporations, and by extension suppliers, to do something about forced labor in the supply chains, but it does not provide for a more equal distribution of power between suppliers and corporations to engender change.

### ***Literature Review Conclusions***

Several overarching conclusions can be drawn from the literature review. First, enough consumers are willing to buy ethically and participate in boycotts to raise corporate

concern. Second, companies try to control consumer behavior by engaging in brand impression management and by manipulating the meaning of responsible purchasing and conscientious consumption. Third, consumers are more likely to respond to emotionally charged issues, such as human trafficking, then to more mundane concerns, such as excessive overtime and interference with the unions. Fourth, the pressure from consumers can be enough to alter corporate approach to certain CSR aspects. Fifth, companies are unwilling to make systemic changes that would compromise their positions of power, and while suppliers dislike the need to comply with CSR standards they will adapt as needed to stay in business. This can mean several things for SB 657. Since human trafficking is an emotional issue consumers are likely to respond favorably to the law and might even use SB 657 disclosures to guide their purchasing decisions. However, SB 657 presents no real threat to corporate power and might help companies with brand impression management. Therefore, while SB 657 stands a high chance of being enforced by consumers, it is unclear how much it can achieve better working conditions in supply chains. Viewed from theoretical perspective, SB 657 does not do enough to shift the balance of power from companies to consumers; although, such shift would help the Act to accomplish its objective of empowering consumers and assisting workers. As long as SB 657 language keeps skirting around the transparency demands placed on companies, they will have most of the control over CSR discourse. Without full transparency, consumer knowledge of corporations' activities is limited, and consumer actions are restrained from reaching their full impact.

### **Methodology**

The methodology will use the framework developed by Free2Work to grade companies based on their supply chain management, and juxtapose it with SB 657's five

disclosure requirements in order to gather empirical data on whether the law is an effective transparency and worker right protection mechanism. The study will use 22 apparel and 10 electronics companies that have been previously graded by Free2Work. The companies will be evaluated on their management of manufacturing, inputs and raw materials suppliers. Free2Work selects companies based on various criteria, including consumer feedback received by the organization and a corporation's standing as a leader within its industry. For instance, Free2Work's apparel report includes data on popular companies such as American Eagle, Forever 21, Walmart, Adidas and Gap (complete list of companies evaluated in this study can be found in the appendix). Similarly, Free2Work's research on electronics companies, which is not yet publically available, grades popular brands such as Dell and HP. Free2Work also evaluates less known companies that try to implement best supply chain practices, usually through obtaining Fairtrade USA certification. This data is not included here since majority of smaller businesses does not meet necessary criteria to fall under SB 657's scope.

Free2Work evaluates companies' management of different phases of the supply chain that goes beyond the manufacturing stage. While a product might pass through different phases of production, Free2Work identifies "one main raw material, one main input, and the final manufacturing stage."<sup>96</sup> In case of the apparel industry, Free2Work looks at the cotton farming (raw), fabric-making (inputs), and cut-make-trim (manufacturing/final) stages of clothing production. In the electronics sector, Free2Work focuses on the mineral mining (raw), smelting (inputs), and assembly (manufacturing/final) stages of production. Lastly, in

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<sup>96</sup> Haley Wrinkle, "Apparel Industry Trends: From Factory to Factory." Free2Work, November, 2012.

instances where a company addresses problems in other production phases (such as leather processing in the apparel industry), Free2Work “[caters its] assessment to best evaluate the company’s initiatives.”<sup>97</sup>

The overall aim of this research is to see how Foucault’s theory on power applies in practice. One of the ways corporations maintain their control over consumers is by embracing their concerns for workplace conditions and creating corporate social responsibility discourse that claims to address the said concerns. Companies try to stay in power by pacifying negative consumer attitudes that can lead to consumer mobilization and boycotts. However, the issues are only being handled insofar as to check them off the list and inform consumers that appropriate action is being taken. Companies are reluctant to undertake reforms that would require giving up their control over the supply chains. The literature review shows that implementing overarching structural changes does not typically serve corporate interest. Since the image of being in compliance with CSR standards is important to companies’ representation of themselves as ethical corporate citizens and to companies’ subsequent hold on power, I expect this study to show that majority of companies are in compliance with SB 657 disclosure requirements. However, I expect to see less disclosure to the questions borrowed from Free2Work evaluation criteria because these questions pertain to systemic issues in supply chains and would require a deeper level of CSR engagement from the companies. I also expect to find more CSR disclosures in the areas that have undergone greater amount of public scrutiny. Since Islam and Barrientos have already studied the correlation between adoption and implementation of codes of conduct and public pressure, I will instead compare industries (apparel and electronics) and stages of

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<sup>97</sup> Ibid.



production (final/manufacturing, inputs and raw). I expect to find higher rate of disclosures in the apparel sector than the electronics sector because apparel has been criticized for its poor labor standards for a longer period of time. I also anticipate higher disclosure rate on CSR enforcement at the manufacturing stage of production than at inputs and raw material stages because manufacturing has received the greatest amount of public attention. The section below gives more details about Free2Work evaluation procedures, which will be used to gather data about companies' CSR practices and SB 657 disclosures.

### ***Free2Work***

Free2Work is a joint project between Not For Sale Campaign and International Labor Rights Forum. While Not For Sale focuses on working with survivors of human trafficking (predominantly in a commercial sexual exploitation sector), Free2Work works with issues of forced and child labor. Free2Work's stated goal is to provide "consumers with information on how products relate to modern-day slavery."<sup>98</sup> This mission is accomplished through a consumer tool available on the Free2Work website and as an iPhone and Android app that provides grade ratings for popular brands based on corporations' management of their supply chains. Although Free2Work markets itself as anti-human trafficking mechanism, which it certainly is, Free2Work's scope goes beyond human trafficking and encompasses broader labor injustices suffered by the workers. In the Free2Work scorecard, only eight out of fifty-seven questions directly address human trafficking.

Free2Work measures corporate performance based on four main criteria: companies' policies, traceability and transparency, monitoring and training, and worker rights. More information about each of these categories can be found in the next section. Majority of the

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<sup>98</sup> "Why Free2Work?" [www.free2work.org](http://www.free2work.org)

questions are designed to have yes/no answers, with “partial” also being a possible answer choice. The rest of the questions require a numerical input either with percentages or whole numbers; other possible answer choices to these questions include “unknown or non-public,” “some portion,” or “significant portion.” Free2Work uses information publically available on companies’ websites, and in some cases, websites of other organizations such as Fair Labor Association to fill out a preliminary scorecard. Afterwards, the scorecards are send to the companies for review and to provide missing information. If a company does not respond, Free2Work gives it zero credit for the missing information and uses available materials to finalize the scorecard and release it to the public.

### ***Free2Work Evaluation Criteria***

#### *Policies*

The first section of Free2Work tool evaluates corporations’ supplier policies, which are typically found in supplier codes of conduct. Free2Work questions in the Policies section are reflective of international worker rights principles outlined in the Social Accountability International SA8000 Standard, the ILO and various UN conventions dealing with labor. These standards address, among other things, topics of child and forced labor, working hours, the right to freedom of association and collective bargaining, and protection from discrimination. Along with incorporating international labor standards, Free2Work tool asks questions that help to determine how thoroughly the codes of conduct are enforced. For example, Free2Work wants to know if the codes are applied to multiple levels of supply chain, including the raw materials stage of production, and if the workplace standards are included in supplier contracts, making supplier compliance with the code mandatory instead of optional. Aware that contract laborers are some of the most vulnerable individuals in the

workplace, Free2Work inquires into companies' subcontracting policies. More specifically, Free2Work wants to know if a company has a policy that "addresses subcontracting in the supply chain (including homework where applicable)," stipulating that "policy must include either a plan to prevent subcontracting or else a plan to ensure Code standards are met in subcontracting arrangements." Free2Work also asks if suppliers are prohibited from using recruitment fees, which can put workers into debt bondage. Additionally, Free2Work checks if a company is a part of any multi-stakeholder initiatives and whether or not a company has made any effort to use responsible purchasing practices, meaning that a company is "managing sampling, order timelines or prices to enable factories to provide decent working conditions."

#### *Traceability and Transparency*

Traceability and Transparency category evaluates how companies manage their supply chains at manufacturing, inputs (when applicable), and raw material stages. The purpose of this category is to assess how much information the company has about its suppliers, since oftentimes companies do not know who some of the suppliers are, precluding monitoring of working conditions. Companies are expected to answer how many suppliers produce for them and if they have traced or are in a process of tracing locations of unknown suppliers. To follow up, Free2Work asks if a company posts a public list of supplier addresses and locations. By doing so, a company can demonstrate its commitment to greater transparency and better CSR, since watchdog groups can use supplier names and locations to investigate them and to produce independent reports on working conditions for consumers to view. Free2Work also pays special attention to the countries where suppliers are located since certain places are more likely to be in violation of labor standards than others. For

instance, Uzbekistan is notorious for the use of child labor in cotton farming. Therefore, if a company is sourcing its cotton from Uzbekistan, it will be graded on a high-risk scale, unless it can prove that the cotton is free of child labor. On the other hand, if company's suppliers are located in place with a strong rule of law and enforced worker rights, the company will be rated on a low-risk scale. If the company does not disclose countries where its suppliers operate, the company is automatically placed in the high-risk category. Additionally, Free2Work checks if companies' monitoring of labor brokers extends beyond measures at the policy level. Free2Work asks if a company is tracking suppliers' use of temporary contract workers and if a company requires direct suppliers to keep record on every subcontractor and subcontract.

### *Monitoring and Training*

As with Traceability and Transparency, questions in this category apply to various levels of supply chains, organized by Free2Work into manufacturing, inputs, and raw materials phases. Within the Monitoring and Training category, Free2Work checks what measures companies have taken to ensure that suppliers are compliant with the codes of conduct. Free2Work asks what percent of suppliers is monitored internally per year by the company and by third-party monitors with labor standards accreditation. Moreover, Free2Work wants to know if suppliers are monitored with unannounced visits and off-site worker interviews, if suppliers are checked for the use of labor brokers, and if the broad monitoring results are shared publically. For the training portion of evaluation, companies are checked on whether "auditors and factory managers [are] trained to identify human trafficking, child labor, and forced labor," and whether a company invests in supplier compliance through training and financial support.

### *Worker Rights*

The final evaluation category is Worker Rights. Here, questions asked by Free2Work are meant to determine if companies' policies have tangible effect on the lives of workers. The issue of living wage is brought up, as well as inquiries into whether a company adjusts its behavior to be more considerate of worker rights. For example, Free2Work wants to know if a company has a policy of making sourcing decisions based on supplier labor conditions, and if a company has a way of ensuring that the workers are fully paid for the hours worked in cases where company decides to end its relationship with the supplier. Free2Work checks if suppliers have co-operatives or unions that are worker-owned and democratically organized. Free2Work specifically asks "how many suppliers are known to have collective bargaining agreements in place?" Free2Work also wants to know if a company has grievance system and dispute resolution mechanisms in place, if workers can submit anonymous complaints, if a third party can report grievances on workers' behalf, and if the resolutions are publically disclosed. The last question is a transparency and awareness measure for the workers and the general public, since it gives a clear view of how a company addresses infringements on worker rights. Lastly, Free2Work asks a series of questions to determine what mechanisms companies have in place to remediate child and forced labor. The questions are as follows: Does the [company] have local partnerships in place in high-risk areas to rehabilitate child or forced laborers when found?; When child or forced labor is removed from the workplace, is it later verified by unannounced monitoring?; If child labor is discovered, does the [company] find a way to provide for the child's education and replace the lost income to the family?; If forced labor is discovered, does the [company] facilitate the individual's reintegration into the labor market and transition to decent work?; Where

appropriate will the [company] cooperate with local authorities, government, law enforcement, victim service providers and others to ensure full protection of trafficking, forced and/or child laborer(s)?

### ***Free2Work and SB 657***

Like Free2Work, SB 657 is an evaluation tool designed to measure companies' CSR performance. Both mechanisms are meant to raise consumer awareness of human trafficking in the supply chains and the actions companies have taken to stop the practice. However, while Free2Work is primarily marketed as an anti-human trafficking tool, it evaluates companies based on a broad set of criteria that covers labor violations other than forced and child labor, thus holding companies accountable to the wider range of labor standards. Furthermore, Free2Work asks questions that shed light on structural problems within the buyer-supplier relations, which are one of the root causes of labor rights violations. By asking more detailed and exact questions, Free2Work guides consumer attention past the obvious problems and toward systemic inequalities embedded in the production process.

### ***SB 657 Evaluation Tool***

Free2Work has developed a tool to ascertain how well the companies are complying with SB 657 requirements; the data on SB 657 evaluations is not publically available. The SB 657 evaluation tool breaks the law's requirements into five categories: verification, auditing, certification, internal accountability, and training. Within each category, Free2Work asks questions to see if a company is compliant with SB 657 and if a company is engaging in best practices that, while not being mandated by the law, create stronger accountability in supply chains. Below are the definitions for each category and the subsequent questions. Most of the questions are answered with "yes," "no," or "partial;" the rest can be answered with "no

disclosure,” “significant portion,” “some portion,” or “N/A.” The information used to complete the evaluation form is taken from companies’ SB657 disclosures and corporate websites.

### *Verification*

Free2Work defines Verification as “the extent of which the company has engaged product supply chains to work with internal mechanisms and a third party to identify the overall risks of human trafficking and slavery, including tracing the supply chain, and identifying countries in which the company has sourced from.” Free2Work states that in order to effectively manage risks in the supply chain, a company should determine high-risk regions of operation and focus on the types of risk present within each region. The knowledge of suppliers’ locations becomes imperative in this task. In the verification category for mandatory SB657 disclosure, Free2Work asks the following questions:

Q1.Does the company disclose information on the verification of product supply chains?

Q2.Does the company disclose information on the use of a third party to verify product supply chains?

In the verification category for best practice disclosure, Free2Work asks:

Q3.Does the company conduct a tracing project to identify locations of unknown producers?

Q4.Does the company publish a public list of suppliers, including names and addresses?

Q5.Does the company publish a public list of countries in which suppliers are located?

Q6.Dos the company state how many suppliers the brand has traced? (“Traced” is defined as knowing of suppliers name and locations)

### *Auditing*

Free2Work defines auditing as practices “compliant with a set of standards that address human trafficking and slavery that are deployed by the company internally and by a third party.” Free2Work emphasizes that while SB 657 concentrates on the final stage (manufacturing) production, comprehensive auditing is needed at all levels of the supply chain, including input and raw materials stages of production. Free2Work also calls for monitoring of labor brokers and recruitment agencies and public disclosure of audit finds. In the auditing category for mandatory SB 657 disclosure, Free2Work asks the following questions:

Q7. Does the company disclose information on monitoring?

Q8. Does the company disclose information on an independent, third party that conducts unannounced monitoring of product supply chains?

In the auditing category for best practice disclosure, Free2Work asks:

Q9. Does the company disclose statistics on the number of suppliers that are monitored annually?

Q10. Does the company disclose statistics on the number of unannounced visits or off-site worker interviews conducted annually?

Q11. Does the company disclose information on the use of labor brokers?

Q12. Does the company share broad monitoring results publically?

### *Certification*

Certification is taken to mean that company’s direct suppliers must be compliant with human trafficking laws throughout the supply chain. Additionally, human trafficking laws



have to be extended to apply to contract workers. In the certification category for mandatory SB 657 disclosure, Free2Work asks the following question:

Q13. Does the company disclose whether materials incorporated into company products are certified (in compliance with country laws in which they are doing business) by direct suppliers?

In the certification category for best practice disclosure, Free2Work asks:

Q14. Does the company disclose information about its relationship or its direct suppliers' relationships with inputs or raw materials suppliers?

Q15. Does the company use a third party certification system that certifies suppliers down to the raw materials level?

#### *Internal Accountability*

Free2Work separates Internal Accountability practices into two parts. The first part looks at whether the company has “internal mechanisms of action in place to hold persons in non-compliance accountable with standards on human-trafficking and slavery, including dispute resolution mechanisms, preferred supplier programs, exit strategies, and corrective action plans.” The second part checks if the company has policies in place to address human trafficking. In the internal accountability category for mandatory SB 657 disclosure,

Free2Work asks the following question:

Q16. Does the company disclose information on internal accountability standards and procedures?

In the internal accountability category for best practice disclosure, Free2Work asks:

Q17. Does the company have a Code of Conduct that addresses labor standards?

- Q18. Does the company include standards (Ex. Vendor Code of Conduct) in supplier contracts?
- Q19. Does the company have a preferred supplier program (to promote suppliers that demonstrate better and improved labor conditions)?
- Q20. Does the company have a functioning grievance mechanism (must do more than hear complaints; must include investigation and efforts to address grievance)?
- Q21. Does the company post results of corrective action plans?
- Q22. When child labor is discovered, does the company find a way to provide for the child's education and replace the lost income to the family?
- Q23. When forced labor is discovered, does the company facilitate the individual's reintegration into the labor market and transition to decent work?

### *Training*

Free2Work defines training criteria as requiring employees and managers in direct responsibility in the supply chain to receive training on identifying human trafficking and mitigating human trafficking risks. In the training category for mandatory SB 657 disclosure, Free2Work asks the following question:

- Q24. Does the company disclose information on whether employees and management are trained on human trafficking and risk mitigation in supply chains?

In the internal accountability category for best practice disclosure, Free2Work asks:

- Q25. Are both auditors and factory managers trained to identify human trafficking, child labor and forced labor?

### *Additional Free2Work Questions*

Free2Work questions listed below are not included in the SB 657 evaluation tool. However, they disclose important information about corporate codes of conduct and companies' engagement with their supply chains. Therefore, the following questions are also a part of this study:

Q26. Does Supplier Code of Conduct include freedom of association?

Q27. Does Supplier Code of Conduct include rights to collective bargaining?

Q28. Does Supplier Code of Conduct prohibit discrimination on the basis of personal attributes, tenants or affiliations?

Q29. Are suppliers prohibited from using recruitment fees?

Q30. Does the Code of Conduct prohibit the use of regular and excessive overtime?

Q31. Has the company taken steps to use responsible purchasing practices?

Q32. Does the company have a policy that addresses subcontracting in the supply chain?

Q33. Do workers make a living wage?

Q34. Is a stable price guaranteed to suppliers regardless of world price fluctuation?

### **Findings**

This research studied SB 657 disclosures of apparel and electronics companies and Free2Work grades of the same companies to see how SB 657 requirements compare to comprehensive evaluations conducted by Free2Work. Looking at the results gathered from the two evaluation tools side-by-side allows me to examine specific weaknesses in SB 657. The overall results are concurrent with Islam's and Barreintos' findings summarized in the literature review: supply chain management policies that receive majority of the corporate response address labor issues that have been a subject of public scrutiny. Overall, attempts at

workplace regulations undertaken by companies in this study do not do enough to fix core problems behind labor rights violations. These findings are also consistent with theoretical supposition that companies will pay special attention to issues that are of concern to the public. Engaging with these issues is part of companies' strategy to shape consumers' perception and action in order to maintain corporate control over consumers' buying decision. Furthermore, the results of this study show that while majority of the companies are compliant with all of SB 657 requirements, the legislation, in its current form, is not demanding enough to provide comprehensive disclosure on human trafficking in supply chains. Consequentially consumers' potential to enact changes that would benefit the workers is suppressed by SB 657's limitations.

*Verification: Law Requirement*

The first SB 657 requirement states that a company must disclose information on its engagement "in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party." Among 32 companies evaluated in this study, 94 percent have published information addressing their efforts to verify risks in the supply chains, and 53 percent specified whether the verification was conducted with the help of the third party. Apparel sector had higher disclosure rates than electronics sector, with a 100 percent of apparel companies disclosing information on verification, compared to electronics' 80 percent. On the question of third party involvement, 68 percent of apparel companies provided information, versus 20 percent of electronics companies.

*Verification: Best Practice*

Disclosure rate drops significantly in the verification best practice section. Since the law does not mandate that the information sought by best practice questions is stated in SB 657 disclosures, I relied on information obtained by Free2Work from companies' CSR websites to fill in the blanks. The highest percentage of positive responses was given to question six, asking how many of its suppliers a company has traced. Seventy-three percent of apparel companies and fifty percent of electronics companies have some knowledge of who the suppliers are and where they are located. It should be noted, that to receive a credit to this question the company does not have to know all of its suppliers, but only to indicate that such knowledge exists, however incomplete. The question with the least disclosure inquired if a company had a public list of suppliers, including names and addresses. In the apparel sector, 27 percent of companies have a list containing at least a portion of the information, and 30 percent of electronics companies make some of the information available. However, only four out of thirty-two companies, all in the apparel category, receive a full credit for the question, meaning all of the known supplier names and addresses are publically disclosed.

**Table 1.1: VERIFICATION**

VERIFICATION LAW REQUIREMENT		VERIFICATION BEST PRACTICE				
Q1: Does the company disclose information on the verification of product supply chains?	Q2: Does the company disclose information on the use of a third party to verify product supply chains?	Q3: Does the company conduct a tracing project to identify locations of unknown producers?	Q4: Does the company publish a public list of suppliers, including names and addresses?	Q5: Does the company publish a public list of countries in which suppliers are located?	Q6: Does the company state how many suppliers the brand has traced?	
YES	30	17	11	4	12	21
NO	2	15	18	23	12	11
PARTIAL	0	0	1	5	8	0
PERCENT DISCLOSED	94%	53%	40%*	28%	63%	66%

\*Timberland and Walmart are marked as N/A for this question; therefore, they are not counted here. In Timberland's case, manufacturing and inputs suppliers have been traced.

**Table 1.2: APPAREL AND ELECTRONICS COMPARISON**

LAW REQUIREMENT	VERIFICATION				ELECTRONICS			
	YES	NO	PARTIAL	PERCENT DISCLOSED	YES	NO	PARTIAL	PERCENT DISCLOSED
Q1	22	0	0	100%	8	2	0	80%
Q2	15	7	0	68%	2	8	0	20%
<b>BEST PRACTICE</b>								
Q3	7*	13*	0	35%	4	5	1	50%
Q4	4	16	2	27%	0	7	3	30%
Q5	12	5	5	77%	0	7	3	30%
Q6	16	6	0	73%	5	5	0	50%

\*Timberland and Walmart are marked as N/A for this question; therefore, they are not counted here. In Timberland's case, manufacturing and inputs suppliers have been traced.

### *Auditing: Law Requirement*

The second SB 657 requirement states that a company must conduct “audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an “independent, unannounced audit.” All of the companies evaluated in this study reported conducting audits that checked for human trafficking in supply chains. Companies varied in how much

information they disclosed about independent party verification; however, majority was still in compliance with the law's demands. Twenty-two companies reported using a mix of internal and third party audits, and six other companies said to only be using internal auditors. Out of these, only five stated the names of the independent monitoring organizations. Twenty-two companies reported whether they conducted announced or unannounced audits. Another three companies did not disclose any information. As with verification category, apparel sector had greater degree of disclosure, with 91 percent of companies being fully or partially compliant with SB 657 requirements, compared to electronics' 80 percent compliance rate.

#### *Auditing: Best Practice*

Fewer companies presented information in the best practice section. The question with highest affirmative response asked if the company disclosed statistics on the number of suppliers monitored annually. Once again, the company did not have to provide monitoring statistics on all of its suppliers to receive credit. The research found that 73 percent of apparel companies and 40 percent of electronics companies disclosed monitoring information on some of their suppliers. However, not a single company could claim to have been monitoring all of its suppliers. The question that received the least amount of positive responses pertained to companies' disclosure on the use of labor brokers. Only 36 percent of apparel companies and none of the electronics companies provided some kind of information on the contractors in their supply chains. Additionally, less than half of the evaluated companies made their broad monitoring results available to the public, and only the apparel sector

companies provided statistics on the number of unannounced visits or off-site worker interviews conducted annually.

**Table 2.1: AUDITING**

AUDITING LAW REQUIREMENT		AUDITING BEST PRACTICE				
Q7: Does the company disclose information on monitoring?	Q8: Does the company disclose information on an independent, third party that conducts unannounced monitoring of product supply chains?	Q9: Does the company disclose statistics on the number of suppliers that are monitored annually?	Q10: Does the company disclose statistics on the number of unannounced visits or off-site worker interviews conducted annually?	Q11: Does the company disclose information on the use of labor brokers?	Q12: Does the company share broad monitoring results publicly?	
YES	32	22	20	12	8	10
NO	0	4	12	19	24	19
PARTIAL	0	6	0	1	0	3
PERCENT DISCLOSED	100%	88%	63%	41%	25%	41%

**Table 2.2: APPAREL AND ELECTRONICS COMPARISON**

LAW REQUIREMENT	AUDITING APPAREL				AUDITING ELECTRONICS			
	YES	NO	PARTIAL	PERCENT DISCLOSED	YES	NO	PARTIAL	PERCENT DISCLOSED
Q7	22	0	0	100%	10	0	0	100%
Q8	19	2	1	91%	3	2	5	80%
<b>BEST PRACTICE</b>								
Q9	16	6	0	73%	4	6	0	40%
Q10	12	9	1	59%	0	10	0	0%
Q11	8	14	0	36%	0	10	0	0%
Q12	7	13	2	41%	3	6	1	40%



*Certification: Law Requirement*

The third SB 657 requirement asks that companies' direct suppliers certify that "materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business." Out of the 32 companies evaluated, 26 posted disclosure on certification. Out of these, 21 (95 percent) come from the apparel sector, and 5 (50 percent) come from electronics.

*Certification: Best Practice*

In the best practice section, Free2Work asks if a company discloses information about its relations or its suppliers' relations with the inputs or raw materials producers. Thirteen apparel companies and four electronics companies made a mention of researching supply chains upstream, beyond manufacturing level of production. However, out of all the companies, only three have used a third-party certification system to certify suppliers to the raw materials level. Timberland and Gildan have relied on Social Accountability International and the Fair Labor Association, respectively, to source cotton that is certified as free of forced and child labor. In the electronics sector, Motorola received partial credit for participating in a workgroup tasked with identifying smelters that could validate through a third party that they only source conflict-free minerals.

**Table 3.1: CERTIFICATION**

	CERTIFICATION LAW REQUIREMENT		CERTIFICATION BEST PRACTICE	
	Q13: Does the company disclose whether materials incorporated into company products are certified by direct suppliers?		Q14: Does the company disclose information about its relationship or its direct suppliers' relationships with inputs or raw materials suppliers?	
YES	26		15	2
NO	6		15	29
PARTIAL	0		2	1
PERCENT DISCLOSED	81%		53%	9%

**Table 3.2: APPAREL AND ELECTRONICS COMPARISON CERTIFICATION**

LAW REQUIREMENT	APPAREL				ELECTRONICS			
	YES	NO	PARTIAL	PERCENT DISCLOSED	YES	NO	PARTIAL	PERCENT DISCLOSED
Q13	21	1	0	95%	5	5	0	50%
<b>BEST PRACTICE</b>								
Q14	13	9	0	59%	2	6	2	40%
Q15	2	20	0	9%	0	9	1	10%

*Internal Accountability: Law Requirement*

SB 657 demands that a company “maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.” All of the companies in this study were compliant with the requirement, making a mention of accountability standards in their SB 657 disclosures. Additionally, despite not being required by the law, all of the companies reported to having a supplier code of conduct that addressed labor standards.

*Internal Accountability: Best Practice*

Ten of the companies used their SB 657 disclosures to mention that the code of conduct is included in supplier contracts, thus making supplier compliance with the code mandatory. Thirteen other companies in this study have similar information available on their websites. However, when it came to implementing mechanisms that would facilitate successful supplier compliance with the code, many companies have fallen short. Only 38 percent of evaluated corporations have a preferred supplier program based on supplier demonstration of better or improved working conditions. Half of the companies was found to have a functioning grievance mechanism available to the suppliers' workforce. Additionally, very few companies post public results of corrective action plans, preventing general public from knowing the severity of labor rights violations and methods employed to address them. Few companies also take action to rehabilitate victims of child or forced labor found in the supply chain. In case of child labor, 10 (all in the apparel sector) out of 32 companies have a system to provide for child's education and replace income lost to the family as a result of child's removal from the workplace. The corporate involvement with the fate of forced labor victims is even lower. Five apparel sector companies have stated that they help victims of labor trafficking to transition into decent work.

**Table 4.1: INTERNAL ACCOUNTABILITY**

INTERNAL ACCOUNTABILITY LAW REQUIREMENT		INTERNAL ACCOUNTABILITY BEST PRACTICE						
Q16: Does the company disclose information on internal accountability standards and procedures?		Q17: Does the company have a Code of Conduct that addresses labor standards?	Q18: Does the company include standards in supplier contracts?	Q19: Does the company have a preferred supplier program?	Q20: Does the company have a functioning grievance mechanism?	Q21: Does the company post results of corrective action plans?	Q22: When child labor is discovered, does the company find a way to provide for the child's education and replace the lost income to the family?	Q23: When forced labor is discovered, does the company facilitate the individual's reintegration into the labor market to decrease work
YES	31	32	23	11	12	8	10	5
NO	0	0	9	20	16	24	22	27
PARTIAL	1	0	0	1	4	0	0	0
PERCENT DISCLOSED	100%	100%	72%	38%	50%	25%	31%	16%

**Table 4.2: INTERNAL ACCOUNTABILITY APPAREL AND ELECTRONICS COMPARISON**

LAW REQUIREMENT	APPAREL				ELECTRONICS			
	YES	NO	PARTIAL	PERCENT DISCLOSED	YES	NO	PARTIAL	PERCENT DISCLOSED
Q16	22	0	0	100%	9	0	1	100%
<b>BEST PRACTICE</b>								
Q17	22	0	0	100%	10	0	0	100%
Q18	18	4	0	82%	5	5	0	50%
Q19	10	11	1	50%	1	9	0	10%
Q20	10	8	4	64%	2	8	0	20%
Q21	8	14	0	36%	0	10	0	0%
Q22	10	12	0	45%	0	10	0	0%
Q23	5	17	0	23%	0	10	0	0%

*Training: Law Requirement*

The last part of SB 657 demands that a company provides its “employees and

management, who have direct responsibility for supply chain management, training on human trafficking and slavery.” Eighty-four percent of the companies in this study are in compliance with training disclosure, stating that company employees and, in some cases, suppliers are educated on the subject of human trafficking. As with all previous categories, apparel sector has a higher disclosure rate than electronics.

*Training: Best Practice*

Free2Work criteria for training are stricter than the one defined in SB 657. Free2Work specifically checks if both, auditors and factory managers, are trained to identify human trafficking in supply chains. Training factory managers and auditors is imperative, since the former are in direct control of workplace conditions, and latter are responsible for correctly identifying instances of human trafficking. Fewer companies are able to satisfy Free2Work standards. Six companies received full credit for this question, and thirteen more were given partial credit. The remaining 13 companies do not provide any information regarding supplier and auditor training.

**Table 5.1: TRAINING**

	TRAINING LAW REQUIREMENT	TRAINING BEST PRACTICE
	Q24: Does the company disclose information on whether employees and management are trained on human trafficking and risk mitigation in supply chains?	Q25: Are both auditors and factory managers trained to identify human trafficking, child labor, and forced labor?
YES	27	6
NO	5	13
PARTIAL	0	13
PERCENT DISCLOSED	84%	59%

**Table 5.2: APPAREL AND ELECTRONICS COMPARISON**

**TRAINING**

LAW REQUIREME NT	APPAREL				ELECTRONICS			
	YES	NO	PARTIA L	PERCENT DISCLOSE D	YES	NO	PARTIA L	PERCENT DISCLOS ED
Q24	20	2	0	91%	7	3	0	70%
<b>BEST PRACTICE</b>								
Q25	6	8	8	64%	0	5	5	50%

### *Free2Work: Additional Questions*

In this study, I also looked at the information the companies provided to additional Free2Work questions that were not included in SB 657 evaluation form, but were important to better analyzing companies' supply chain management systems. The information gathered here further confirms findings of various authors presented in the literature review: beyond creating policies that address some of the more widespread labor concerns, the companies rarely engage in thorough restructuring of the supply chains. Majority of the companies have policies that prohibit discrimination, guarantee freedom of association and rights to collective bargaining. However, fewer companies outright prohibit excessive overtime, usually settling for demanding that the work time does not exceed 60 hours/week. None of the companies in this study promise their workers a living wage, although all guarantee a minimum wage, which frequently falls short of securing adequate living conditions. Only 38 percent of the companies prohibit suppliers from using recruitment fees. Additionally, 10 out of 32 companies have taken measures to address subcontracting in supply chains, which is area most fraught with human trafficking and other labor abuses. Out of these ten, only five apparel companies have received full credit for their efforts. Lastly, only three percent of all surveyed companies guarantee suppliers a stable price for their products regardless of the world price fluctuation, demonstrating that majority of suppliers must operate in volatile

economic conditions with little help from their buyers. Under these circumstances, suppliers become more likely to cut corners, resulting in the worsening working conditions for the labor force.

**Table 6.1: ADDITIONAL FREE2WORK QUESTIONS**

	Q26: Does Supplier Code of Conduct include freedom of association ?	Q27: Does Code include rights to collective bargaining?	Q28: Does Code prohibit discrimination on the basis of personal attributes, tenants or affiliations?	Q29: Are suppliers prohibited from using recruitment fees?	Q30: Code prohibits the use of regular and excessive overtime?	Q31: Has the company taken steps to use responsible purchasing practices?	Q32: Does the company have a policy that addresses subcontracting in the supply chain?	Q33: Do workers make a living wage?	Q34: Is a stable price guaranteed to suppliers regardless of world price fluctuation ?
YES	29	23	28	9	7	6	5	0	0
NO	3	9	4	20	5	22	22	32	31
PARTIAL	0	0	0	3	20	4	5	0	1
PERCENT DISCLOSED	91%	72%	88%	38%	84%	31%	31%	0%	3%

**Table 6.2 APPAREL AND ELECTRONICS COMPARISON**

	APPAREL				ELECTRONICS			
	YES	NO	PARTIAL	PERCENT DISCLOSED	YES	NO	PARTIAL	PERCENT DISCLOSED
Q26	20	2	0	91%	9	1	0	90%
Q27	17	5	0	77%	6	4	0	60%
Q28	19	3	0	86%	9	1	0	90%
Q29	7	13	2	41%	2	7	1	30%
Q30	6	4	12	82%	1	1	8	90%
Q31	6	12	4	45%	0	10	0	0%
Q32	5	12	5	45%	0	10	0	0%
Q33	0	22	0	0%	0	10	0	0%
Q34	0	21	1	3%	0	10	0	0%

*Supply Chain Production Stages*

In addition to checking company's management of its suppliers' policies, transparency, monitoring, and worker rights, Free2Work evaluates company's management of various levels of supply chain. To make the grading process easier, Free2Work divides these levels into manufacturing, inputs and raw material stages. For apparel industry, manufacturing refers to a stage at which fabrics are turned into clothes; inputs is a stage at which textiles are produced; raw materials is a point at which the said materials are extracted. In the electronics sector, raw materials stage refers to the mining minerals such as tungsten and tin; inputs is processing extracted minerals into metals which will be later used in manufacturing stage to make electronics products.

SB 657 requires companies to disclose their efforts to eradicate human trafficking from their direct supply chains without specifying what "direct" means and if it extends down to the raw materials level. As is evidenced by companies' answers to questions 14 and 15 in the best practices verification section, most companies do not publically discuss their engagement with inputs and raw materials suppliers. I used Free2Work scorecards, which evaluate corporate management of raw materials and inputs suppliers to gather additional information on companies' involvement with these stages of production. Questions 3-6, 9-12, 19-23, and 25 all look at manufacturing, inputs and raw materials phases of product development.

In the manufacturing stage, the overall rate of disclosure, complete and partial, was 44 percent. For inputs, the rate dropped to 16 percent, and for raw materials stage the rate went further down to 8 percent. Manufacturing stage of production has a considerably higher rate of disclosure than do the other two stages. This can be attributed to the fact that majority of past campaigns targeted working conditions among manufacturers of finished goods, and



little attention has been paid to conditions of inputs and raw materials suppliers. Given the lack of scrutiny, the low rate of disclosure for these two stages is complementary with the theory that higher public exposure leads to higher CSR engagement.

**Table 7: SUPPLY CHAINS PRODUCTION STAGES**

FINAL STAGE							
YES	PARTIAL	SOME	MOST	ALL	N/A	NO	PERCENT DISCLOSED
75	38	48	18	8	6	255	44%
INPUTS							
YES	PARTIAL	SOME	MOST	ALL	N/A	NO	PERCENT DISCLOSED
21	20	18	4	3	4	378	16%
RAW MATERIALS							
YES	PARTIAL	SOME	MOST	ALL	N/A	NO	PERCENT DISCLOSED
17	5	7	1	2	1	415	8%

### Research Limitations

One problem that came up during this research is the question of how to account for the CSR information linked in SB 657 disclosures but not actually presented there.

Companies that link to additional CSR material are unquestionably providing consumers with more transparency than companies that do not. When this is the case, should the linked information be counted as part of SB 657 disclosure? I decided that it should not, simply because there is no absolute guarantee that an average consumer would take the time to click on the links and peruse company's CSR website to uncover more information. In other

words, linking to additional CSR material is not the most consumer-friendly way to educate the public. While NGOs, such as Not For Sale's Free2Work, specializing in corporate monitoring have experience with navigating and presenting CSR information for consumer use, SB 657 describes itself as a tool for consumers. Therefore, I evaluated SB 657 disclosures as stand-alone documents intended for consumers. However, additional CSR information provided by the companies is not ignored in this research. Instead, it is incorporated through the Free2Work scorecards, which cover a wider range of criteria than SB 657 disclosure requirements.

Another challenge was interpreting CSR information provided by companies and translating it into objective numerical data. The information gathered from scorecards used in this research was evaluated by three different Free2Work researchers, including myself. Therefore, it is important to be aware that CSR data was examined by different people whose thinking process might be a subject to bias. Whenever CSR statement is too vague to interpret with certainty, a researcher has to make a judgment call about how much credit a company can receive. However, despite some uncertainties, the data gathered here does represent a general trend within corporate CSR engagement. The disparity in transparency on different Free2Work and SB 657 questions is too great to be of no consequence in determining the level of companies' supply chain engagement. Therefore, this research can be used to examine some of the major weakness in CSR and SB 657 implementation.

### **Discussion and Recommendations**

As was suggested by the theoretical framework, the companies in this study comply with majority of SB 657 disclosure requirements. However, a significantly smaller amount can provide answers to Free2Work questions, which ask for more specific information. In

fact, majority of information given in SB 657 disclosures is extremely general and does little to explain what companies do to ensure effective supply chain management. As a result, SB 657 risks misrepresenting companies' level of commitment to ethical standards. Instead of curbing corporate power by requiring transparency necessary for consumers to make informed purchasing choices to support companies that best address labor issues, SB 657 preserves the current imbalance of power so that companies have the final say on how they are presented in the public eye.

One example of this is seen with Forever 21. For the auditing portion of SB 657 disclosure, Forever 21 responded that "we conduct audits of our suppliers through inspectors who are employees of the company and check for compliance with company standards for trafficking and slavery. We conduct both announced and unannounced audits."<sup>99</sup> This provides little insight into Forever 21's operations. How many of the total suppliers are audited and how often? What exactly are the company's standards for trafficking? What are the consequences for a supplier in violation of these standards? Similarly, in the accountability section Forever 21 simply states that "we maintain internal accountability standards and procedures for employees and contractors who fail to meet company standards in [regard to human trafficking]."<sup>100</sup> No detail explaining Forever 21's accountability standards is given. Despite failing to provide concrete information, Forever 21 is in perfect compliance with SB 657 because it meets all of the law's disclosure requirements. However, Forever 21 fared poorly when its CSR policies were held to a higher standard. The company received a "D-" grade from Free2Work, because it failed to answer majority of Free2Work's

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<sup>99</sup> "Forever 21 Corporate Social Responsibility," Forever 21, accessed November 26, 2012, <http://www.forever21.com/Product/Main.aspx?br=f21>

<sup>100</sup> Forever 21 CSR

questions.<sup>101</sup> Forever 21 is one of numerous examples demonstrating why SB 657 is incapable of changing current power distribution between companies and other actors connected to them. In a way, SB 657 conceals CSR implementation differences between companies. The research in this study shows that majority of the 32 corporations were able to meet SB 657's requirements, making them appear equally ethical to an average consumer.

In some instances, companies with robust CSR practices did not provide full disclosure to the SB 657 requirements. Patagonia's Free2Work overall score is "B+," but Patagonia's SB 657 does not give a comprehensive answer to Question 2, thus appearing to be less compliant than Forever 21. Yet, Patagonia thoroughly engages with its suppliers in an effort to create a more ethical production process. Patagonia is an FLA participant with an accredited compliance program. Patagonia also monitors 100 percent of its manufacturing suppliers and 20 percent of its inputs suppliers, and has a policy that prohibits unauthorized subcontracting. Patagonia is not perfect; it scores a "C+" on worker rights and does not comprehensively engage with raw materials suppliers.<sup>102</sup> Nevertheless, it has shown more commitment to ethical business practices than Forever 21.

Furthermore, companies might be taking a variety of steps to improve their CSR practices in areas that do not easily lend themselves to SB 657 disclosure format. Free2Work highlights several apparel companies that exemplify the best practices needed for tangible change. According to Free2Work, Patagonia holds itself to high transparency standards worthy of recognition. The company discloses all of its final stage-manufacturing suppliers. Patagonia specifically works to make information about supplier conditions easily accessible

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<sup>101</sup> "Forever 21," Free2Work, accessed November 26, 2012  
[http://widgets.free2work.org/frontend\\_ratings/public\\_view/811](http://widgets.free2work.org/frontend_ratings/public_view/811)

<sup>102</sup> "Patagonia," Free2Work, accessed November 26, 2012  
[http://widgets.free2work.org/frontend\\_ratings/public\\_view/18](http://widgets.free2work.org/frontend_ratings/public_view/18)

to the public by visually linking “factory locations to their physical addresses and some factory demographics (languages spoken, number of employees, gender mix) for all cut-make-trim manufacturing sites and some textile mills Patagonia website visitor can also see photos and videos on suppliers that produce primarily for Patagonia.”<sup>103</sup> Timberland is another company willing to be more transparent about its operations. Like Patagonia, Timberland discloses a full list of its final stage production suppliers and their locations, as well as a partial list of its other suppliers. Timberland also has a “direct knowledge of, or relationship with, 100% of its leather suppliers.”<sup>104</sup> Patagonia and Timberland give consumers a significant degree of insight into their operations, but this detail of information is not provided in SB 657 disclosures. However, the kind of transparency given by Patagonia and Timberland is much higher in quality than transparency provided by Forever 21 and other companies with low Free2Work scores. By disclosing names and addresses of a significant portion of their suppliers, Patagonia and Timberland open doors for verification of worker conditions in a way that majority of other companies does not. Transparency is a chief mechanism through which consumers can exercise their power over companies, and companies that take extra steps toward transparency signal their willingness to engage with worker rights protection in a more significant manner. While SB 657 is at its core a transparency mechanism, its efficiency could be improved by distinguishing between levels of transparency displayed by different companies.

Some companies also take steps to ensure greater worker empowerment, which helps to eliminate conditions resulting in forced and child labor. Currently, SB 657 does not incorporate worker empowerment efforts into its framework, which is detrimental to the law.

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<sup>103</sup> Apparel Industry Trends, pg. 19

<sup>104</sup> Ibid

According to Free2Work, “In 2011 a handful of major sportswear brands signed an innovative freedom of association protocol with Indonesian trade unions and suppliers.” The protocol requires suppliers to support workers’ ability to represent themselves and to facilitate their right to collective bargaining. The protocol stands out from other similar types of agreements because it is legally binding and was negotiated directly with Indonesian trade unions. Furthermore, “the agreement outlines a concrete protocol,” which will make corporate “meaningful action more likely.”<sup>105</sup> Play Fair reports that New Balance and Puma, both evaluated in this study, have made progress in implementing protocol on the factory level.<sup>106</sup> This example demonstrates a shift in the company-supplier-worker dynamic. Although companies are still applying pressure on suppliers, the ultimate outcome is meant to empower the workers. Since the protocol is legally binding, it indicates that participating companies are serious about surrendering portion of power in order to commit to stricter worker protection procedures. The companies highlighted for best practice by Free2Work show that a corporation can take an in-depth approach to ethical practices of its own volition. While it is impossible to know for sure what motivates companies to put more limits on their power by providing high level of transparency or entering legally binding agreements, articles examined in the literature review indicate that self-interest plays a role in the decision. However, unlike companies that practice more surface-level CSR engagement, such as adopting pro-worker policies but not making a necessary effort to implement them, Patagonia, Timberland, New Balance and Puma appear more committed to instituting change among their suppliers. Like Nike and Levi’s in the past, they might be trying to stay ahead of the curve by “pre-empt[ing] nongovernmental organizations and the media from playing

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<sup>105</sup> Ibid, 27

<sup>106</sup> Ibid

‘gotcha.’”<sup>107</sup> However, by trying to stay ahead of the curve, these companies also managed to rise above the current status quo. Theoretically, the new redistribution of power is a different take on self-interest; the companies are still working to benefit themselves by attracting and keeping consumers, but this time it is done through meaningful and tangential CSR compliance. The main difference between these two approaches to CSR is that actors who in the past have been denied access to power now have a chance to reclaim some of it. Problematically, SB 657 does not adequately measure varying degrees of transparency among companies (hindering informed consumer decisions), nor does it highlight companies that are committed to altering their power dynamics with suppliers and workers to be more equitable.

Overall, SB 657 disclosures, alone, make it difficult to judge how far apart companies are on the CSR scale. In Patagonia’s case, SB 657 reveals a good deal about company’s monitoring practices, its engagement with suppliers, and its training procedures. In contrast to Patagonia, Timberland is an example of an ethical company with a generic SB 657 disclosure. Timberland’s regard for the CSR concerns earned it an “A-” from Free2Work.<sup>108</sup> The reason why Timberland’s disclosure is so weak is because it is owned by the V.F. Corporation, so the two companies share SB 657 disclosure. However, Timberland manages its own supply chain to the standards much higher than V.F.’s (graded “C+” by Free2Work). New Balance also has a brief SB 657 disclosure that is a paragraph long and does not reflect New Balance’s fairly high Free2Work score, or its participation in the freedom of association protocol with Indonesian unions and suppliers.

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<sup>107</sup> Doorey, “The Transparent Supply Chain,” 593.

<sup>108</sup> “Timberland,” Free2Work, accessed November 26, 2012, [http://widgets.free2work.org/frontend\\_ratings/public\\_view/446](http://widgets.free2work.org/frontend_ratings/public_view/446)

Most other companies in this study used SB 657 to create a positive image of themselves, while disclosing as little information as possible. Walmart (Free2Work grade D+) writes that “while auditing had been the primary focus of Walmart’s Ethical Sourcing program, it was soon realized that ethical sourcing goes far beyond monitoring and should also confront the complexities that are at the root of noncompliance, and drive improvements in working conditions globally.”<sup>109</sup> <sup>110</sup> However, Walmart does not say how many of its suppliers are audited, nor does it disclose monitoring results; there is also no indication that Walmart’s suppliers have better working conditions than the global average. However, Walmart satisfies all but one of SB 657 disclosure requirements. Like Walmart, Abercrombie and Fitch (Free2Work grade “D+”) uses SB 657 to show its support for worker rights and its opposition to human trafficking.<sup>111</sup> Furthermore, the company provides some measure of detail about its auditing process:

The auditors are experts in the local laws of the countries in which we produce, and they speak the local languages. Each audit consists of a factory walk-through, confidential interviews with workers, and a review of relative documentation (e.g. payroll, time records, employee age verification, etc.). We typically audit factories once per year, but we can visit more or less depending on the factory's performance and track record. To maintain the integrity of the audit, we do not provide the audit date to the factories ahead of time. However, to ensure the necessary personnel is available and the documentation can be gathered in time, we do offer a two-week window during which we will audit the factory.<sup>112</sup>

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<sup>109</sup> “Walmart,” Free2Work, accessed November 26, 2012,

[http://widgets.free2work.org/frontend\\_ratings/public\\_view/912](http://widgets.free2work.org/frontend_ratings/public_view/912)

<sup>110</sup> “California Transparency In Supply Chains Act,” Walmart, accessed November 26, 2012, <http://corporate.walmart.com/global-responsibility/ethical-sourcing/california-transparency-in-supply-chains-act>

<sup>111</sup> “Abercrombie and Fitch,” Free2Work, accessed November 26, 2012,

[http://widgets.free2work.org/frontend\\_ratings/public\\_view/738](http://widgets.free2work.org/frontend_ratings/public_view/738)

<sup>112</sup> “California’s Transparency In Supply Chains Act of 2010,” Abercrombie and Fitch, accessed November 26, 2012,

[http://www.anfcares.org/sustainability/social/human\\_trafficking.jsp](http://www.anfcares.org/sustainability/social/human_trafficking.jsp)



Nevertheless, in all other areas little is known. Abercrombie and Fitch gives only partial information about its supplier locations and does not publically share its monitoring results.

For the most part, companies' SB 657 disclosures fall short of providing information that accurately reflects their supply chain management systems. This becomes evident when comparing low Free2Work questions response rate to a much higher response rate for SB 657 disclosures. Part of the reason why SB 657 demands are easier to meet is their lack of specificity. SB 657 language does not incorporate the level of detail needed to provide true transparency, thus lowering the risks companies would face from having to disclose negative information about themselves. Asking a company to report if it "conducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains," is not the same as asking it about the number of suppliers monitored, the use of contract workers, credibility of the auditing firm, etc.

Lastly, it is unreasonable to expect that an average consumer would know enough about supply chain management to discern how ethical companies' practices are from disclosures alone. Reading that company has a code of conduct, monitors its suppliers for compliance, and trains its employees on human trafficking would generally make a positive impression on a consumer. The danger with SB 657 is that instead of empowering conscientious consumers, it might give them a false sense of security that their favorite company is doing everything in its power to eliminate forced labor from the supply chains.

Foucault's theory tells us that power can be applied through transparency i.e. making a subject completely visible to the observer, would make the subject alter his or her behavior to meet observer's expectations. By bringing more transparency to the supply chains, SB 657 is supposed to endow consumers with power to discipline and change corporate behavior.

This intention is made clear in SB 657, which states that “absent publicly available disclosures, consumers are at a disadvantage in being able to distinguish companies on the merits of their efforts to supply products free from the taint of slavery and trafficking. Consumers are at a disadvantage in being able to force the eradication of slavery and trafficking by way of their purchasing decisions.” Unfortunately, SB 657’s disclosure demands do more to aid companies than they do to empower consumers. Since SB 657 leaves a lot of areas in need of transparency unaddressed, the companies are free to use the ambiguity to their advantage and usurp consumers’ power by withholding crucial information.

Foucault believed that “we are subjected to the production of truth through power and we cannot exercise power except through the production of truth.”<sup>113</sup> Various agents in our society strive to create truth amiable to them in order to secure more power. Transnational companies are no exception. For them, the truth has to match with consumers’ values and expectations of a good business. Recently, it became understood that a good business must be able to provide a quality product, as well as be able to meet safe and ethical workplace standards. However, consumers’ demands for strong CSR practices and easily available and affordable products are not always compatible with each other. Companies have to deliver on tangible products and on a more ambiguous concept of ethical business standards. In case of the former, consumers can easily assess characteristic of a product by examining it in the store. For the later companies have to create a narrative to convince consumers that the product they might want to purchase does not come with a price tag of sweatshop labor conditions and exploited workers. Part of companies’ success depends on how well they can

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<sup>113</sup> McHoul and Grace, *A Foucault Primer*, 59.

convince consumers that their products are made under fair working conditions. Corporate power over consumer relies on consumers' willingness to believe that their money does not go toward supporting harmful practices. When that belief is lost, companies risk serious damage to their image and profits. SB 657 allows companies to create "truth" that is favorable to them, by showcasing their strongest ethical practices and glossing over flaws within their supply chain management systems. Through SB 657, Walmart, Forever 21 and Abercrombie and Fitch try to project the image of themselves as ethical corporate citizens that does not match up with their business practices. In fact, it's almost impossible to tell how responsible business practices of these organizations are because they do not give enough public information to create an accurate portrayal. So while Walmart and Abercrombie and Fitch's SB 657 disclosures fit the law's requirements, both of these companies are currently targets of labor rights violations campaigns.<sup>114</sup> Conforming to Foucault's theory, companies are trying to produce their own version of discourse by manipulating the truth to preserve control over their public image. By doing so, a company can claim to be ethical and present its compliance with SB 657 as evidence to support these assertions. In cases where information to contrary might exist, it has to compete against the "truth" a company crafts about itself. Consumer then must make a decision what information to believe and how to act accordingly. While consumers might mobilize together to regulate corporate behavior, mixed messages about companies' ethics can deter a united effort to hold companies accountable.

One way to remediate the current imbalance of power is to give consumers accurate knowledge of the workplace conditions where products are created. Consumers have shown their willingness to act when they know of existing injustices. While unable to exercise the

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<sup>114</sup> Apparel Industry Trends, pg. 31

power of a law-binding agreement such as freedom of association protocol signed by Puma and New Balance, consumers can penalize companies through boycotts and shaming tactics, which help to regulate corporate behavior. Foucault's theory states that dominant groups exercise their power by producing knowledge. Having better transparency in supply chain management would help to counteract marketing strategies companies have been using to present themselves as ethical businesses, where such marketing might be inaccurate or misleading. Free2Work states that "public transparency is important...because it shows a company's willingness to being held externally accountable for its supply chain."

<sup>115</sup>Transparency provides public with knowledge that can be verified against companies' discourse about themselves and demand accountability when needed. This means that SB 657 requirements must to be more demanding and more specific about which information to disclose. SB 657 has to start asking more of Free2Work-type questions that request more insight into companies' efforts to correct structural flaws. One potential question to ask would be about companies' policies on the use of labor brokers (in this study only 25 percent of companies disclose this information). Another question can inquire into company's use of responsible purchasing practices (only 28 percent of companies in this study have tried to implement these practices). Indeed, all Free2Work questions presented here want a significantly higher level of accountability and transparency from companies than SB 657. In order to truly fulfill SB 657's objective, consumers must be given knowledge that targets the problem at its core. Therefore, the more detailed and precise the information is, the better consumers will be able to "force the eradication of trafficking" through their purchasing choices and be successful at it.

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<sup>115</sup> Ibid, 17

Along with ending human trafficking, demanding better transparency from the companies might have another positive outcome. Free2Work observes that its indicators (policies, transparency and traceability, monitoring and training, and worker rights) correlate “with a piece of a system that should, if appropriately used, enable improvement in working conditions and the elimination of modern slavery. We hold that child and forced labor are far less likely in supply chains that are highly visible to companies and where workers have a voice to negotiate working conditions and speak out against grievances.”<sup>116</sup> In other words, eradication of forced and child labor depends on the overall improvement in the workplace regulation. It follows that although SB 657 is only concerned with forced and child labor, its impact can be extended to effect corporate enforcement of other workplace standards such as wages and grievance mechanisms. Making companies transparent about how they address systemic issues in supply chains, even only with regard to forced labor, might eventually force companies to implement institutional changes. Since labor rights are violated as a result of systemic power imbalances between corporations and suppliers, correcting some of these imbalances will lead to a more effective compliance with various labor standards. Currently, SB 657 is shaping the discourse around corporate accountability on human trafficking. However, by excluding other labor concerns from the discussion, SB 657 fails to construct the issue of labor rights abuses as a product of a deeply-rooted problem. This formulation is flawed because it gives companies significant amount of power when the opposite is intended to happen. However, with adjustments to the law’s disclosure demands to ask for better transparency, SB 657 can be a formidable anti-trafficking mechanism that also protects the rights of non-trafficked workers.

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<sup>116</sup> Ibid, 1

**APPENDIX: LIST OF COMPNIES RESEARCHED****APPAREL**

Abercrombie and Fitch  
Aeropostale  
American Eagle  
Carter's  
Eileen Fisher  
Forever 21  
Fruit of the Loom  
Gap Inc.  
Gildan  
Hanes  
Levi's  
Lululemon  
New Balance  
Patagonia  
Puma  
Phillips-Van Heusen  
Quicksilver  
Russell Athletic  
Skechers  
Timberland  
VF  
Walmart

**ELECTORNICS**

Acer  
Dell  
Hewlett-Packard  
IBM  
Motorola  
Oracle  
SanDisk  
Garmin  
Lenovo  
TomTom



## Apparel Companies Data Contd.

	New Balance	Patagonia	Puma	PVH	Quicksilver	Russell	Skechers	Timberland	VF	Walmart
<b>VERIFICATION LAW REQUIREMENT</b>										
Q1	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Q2	NO	NO	YES	YES	YES	YES	YES	NO	NO	NO
<b>VERIFICATION BEST PRACTICE</b>										
Q3	NO	YES	YES	NO	NO	NO	NO	NA	NO	NA
Q4	PARTIAL	YES	NO	NO	NO	NO	NO	YES	NO	NO
Q5	YES	YES	YES	YES	NO	PARTIAL	NO	YES	YES	PARTIAL
Q6	YES	YES	YES	YES	NO	YES	NO	YES	YES	YES
<b>AUDITING LAW REQUIREMENT</b>										
Q7	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Q8	YES	YES	YES	YES	YES	YES	YES	NO	NO	YES
<b>AUDITING BEST PRACTICE</b>										
Q9	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
Q10	YES	YES	YES	NO	YES	YES	NO	YES	NO	YES
Q11	YES	YES	YES	NO	NO	NO	NO	YES	NO	NO
Q12	NO	PARTIAL	YES	YES	NO	PARTIAL	NO	YES	NO	YES
<b>CERTIFICATION LAW REQUIREMENT</b>										
Q13	YES	YES	NO	YES	YES	YES	YES	YES	YES	YES
<b>CERTIFICATION BEST PRACTICE</b>										
Q14	NO	YES	YES	YES	NO	NO	NO	YES	YES	NO
Q15	NO	NO	NO	NO	NO	NO	NO	YES	NO	NO
<b>INTERNAL ACCOUNTABILITY LAW REQUIREMENT</b>										
Q16	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
<b>INTERNAL ACCOUNTABILITY BEST PRACTICE</b>										
Q17	YES	YES	YES	YES	YES	YES	YES	YES	YES	YES
Q18	YES	YES	YES	YES	YES	NO	YES	YES	YES	YES
Q19	YES	YES	YES	NO	NO	PARTIAL	NO	YES	YES	NO
Q20	YES	YES	YES	YES	NO	YES	NO	YES	NO	NO
Q21	YES	YES	YES	NO	NO	YES	NO	NO	NO	NO
Q22	YES	YES	YES	NO	NO	NO	NO	NO	NO	NO
Q23	YES	YES	NO	NO	NO	NO	NO	NO	NO	NO
<b>TRAINING LAW REQUIREMENT</b>										
Q24	YES	YES	YES	YES	YES	YES	YES	NO	NO	YES
<b>TRAINING BEST PRACTICE</b>										
Q25	PARTIAL	PARTIAL	PARTIAL	NO	NO	PARTIAL	NO	YES	YES	NO
<b>ADDITIONAL FREE2WORK QUESTIONS</b>										
Q26	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
Q27	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
Q28	YES	YES	YES	YES	YES	YES	NO	YES	YES	YES
Q29	YES	YES	NO	NO	NO	YES	NO	PARTIAL	NO	NO
Q30	PARTIAL	PARTIAL	PARTIAL	PARTIAL	PARTIAL	YES	NO	PARTIAL	PARTIAL	NO
Q31	YES	YES	PARTIAL	NO	NO	PARTIAL	NO	YES	NO	NO
Q32	PARTIAL	YES	PARTIAL	NO	NO	NO	NO	YES	PARTIAL	NO
Q33	NO	NO	NO	NO	NO	NO	NO	NO	NO	NO
Q34	NO	NO	NO	NO	NO	NO	NO	PARTIAL	NO	NO





## APPENDIX

### Stages of Production Data

FINAL STAGE							
	YES	PARTIAL	SOME (1-50% or unspecified)	MOST (51-99%)	ALL (100%)	N/A	NO
Does the company conduct a tracing project to identify locations of unknown producers?	2	0				6	24
Does the company publish a public list of suppliers, including names and addresses?	4	5				0	23
Does the company publish a public list of countries in which suppliers are located?	11	9				0	12
Does the company state how many suppliers the brand has traced?			12	7	5	0	8
Does the company disclose statistics on the number of suppliers that are monitored annually?			15	10	2	0	5
Does the company disclose statistics on the number of unannounced visits or off-site worker interviews conducted annually?			13	1	1	0	17
Does the company disclose information on the use of labor brokers?	7	1				0	24
Does the company share broad monitoring results publically?	10	3				0	19
Does the company have a preferred supplier program?	9	2				0	21
Does the company have a functioning grievance mechanism?	11	5				0	16
Does the company post results of corrective action plans?			8	0	0	0	24
When child labor is discovered, does the company find a way to provide for the child's education and replace the lost income to the family?	10	0				0	22
When forced labor is discovered, does the company facilitate the individual's reintegration into the labor market and transition to decent work?	5	0				0	27
Are both auditors and factory managers trained to identify human trafficking, child labor, and forced labor?	6	13				0	13

## Stages of Production Data Contd.

INPUTS							
	YES	PARTIAL	SOME (1-50% or unspecified)	MOST (51-99%)	ALL (100%)	N/A	NO
Does the company conduct a tracing project to identify locations of unknown producers?	5	1				4	22
Does the company publish a public list of suppliers, including names and addresses?	0	1				0	31
Does the company publish a public list of countries in which suppliers are located?	1	8				0	23
Does the company state how many suppliers the brand has traced?			6	2	3	0	21
Does the company disclose statistics on the number of suppliers that are monitored annually?			6	2	0	0	24
Does the company disclose statistics on the number of unannounced visits or off-site worker interviews conducted annually?			4	0	0	0	28
Does the company disclose information on the use of labor brokers?	1	1				0	30
Does the company share broad monitoring results publically?	3	0					29
Does the company have a preferred supplier program?	3	2					27
Does the company have a functioning grievance mechanism?	4	2					26
Does the company post results of corrective action plans?			2	0	0	0	30
When child labor is discovered, does the company find a way to provide for the child's education and replace the lost income to the family?	2	1				0	29
When forced labor is discovered, does the company facilitate the individual's reintegration into the labor market and transition to decent work?	1	0				0	31
Are both auditors and factory managers trained to identify human trafficking, child labor, and forced labor?	1	4				0	27

## Stages of Production Data Contd.

RAW MATERIALS							
	YES	PARTIAL	SOME (1-50% or unspecified)	MOST (51-99%)	ALL (100%)	N/A	NO
Does the company conduct a tracing project to identify locations of unknown producers?	7	1				1	23
Does the company publish a public list of suppliers, including names and addresses?	1	0				0	31
Does the company publish a public list of countries in which suppliers are located?	0	3				0	29
Does the company state how many suppliers the brand has traced?			5	1	1	0	25
Does the company disclose statistics on the number of suppliers that are monitored annually?			1	0	1	0	30
Does the company disclose statistics on the number of unannounced visits or off-site worker interviews conducted annually?			1	0	0	0	31
Does the company disclose information on the use of labor brokers?	1	0				0	31
Does the company share broad monitoring results publically?	1	0				0	31
Does the company have a preferred supplier program?	2	0				0	30
Does the company have a functioning grievance mechanism?	2	0				0	30
Does the company post results of corrective action plans?			0	0	0	0	32
When child labor is discovered, does the company find a way to provide for the child's education and replace the lost income to the family?	1	0				0	31
When forced labor is discovered, does the company facilitate the individual's reintegration into the labor market and transition to decent work?	1	0				0	31
Are both auditors and factory managers trained to identify human trafficking, child labor, and forced labor?	1	1				0	30