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Cutting Slavery from U.S. Supply Chains: How Supplementing U.S. Customs and Border Protection Withhold Release Order Procedures Will More Effectively Address Forced Labor in Supply Chains

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**CUTTING SLAVERY FROM U.S. SUPPLY CHAINS:
HOW SUPPLEMENTING U.S. CUSTOMS AND BORDER
PROTECTION WITHHOLD RELEASE ORDER
PROCEDURES WILL MORE EFFECTIVELY ADDRESS
FORCED LABOR IN SUPPLY CHAINS**

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INTRODUCTION

Most of the world’s supply of cobalt, a necessary material for lithium-ion batteries in cars and electronics, is mined in the Democratic Republic of the Congo (DRC).¹ Tragically, child miners are often exploited, maimed, or killed in the collection process.² In 2020, in *Doe I v. Apple Inc.*, thirteen Doe plaintiffs, on behalf of themselves as well as other child cobalt miners in the DRC and represented by

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1. See *Doe I v. Apple Inc.*, No. 1:19-cv-03737, 2021 WL 5774224, at *1 (D.D.C. Nov. 2, 2021).

2. *Id.* at *1-2. The plaintiffs in *Doe I v. Apple* represent child miners who labored in dangerous conditions for little compensation. *Id.* Many were severely injured or killed. *Id.* at *2. One miner was paralyzed from a fall that occurred while carrying cobalt down a mountainside, and several others died when mining tunnels collapsed. *Id.* Yet another lost a leg while transporting cobalt. *Id.*

human rights firm International Rights Advocates, brought a federal class action against Apple, Inc., Alphabet, Inc., Microsoft, Inc., Dell Technologies, Inc., and Tesla, Inc.³ Among other claims, the plaintiffs sought civil relief under § 1595 of the Trafficking Victims Protection Reauthorization Act of 2003 for forced labor and trafficking violations.⁴ Although cobalt is difficult to track in a product's supply chain,⁵ the plaintiffs claimed that the defendants knowingly benefitted from the children's exploitation.⁶ Despite noting the gravity of the plaintiffs' injuries, the court dismissed the case.⁷ In addition to concluding that 18 U.S.C. § 1596 did not apply to § 1595 and thus the court did not have jurisdiction over the case,⁸ the court held that the plaintiffs lacked standing to assert a claim against the defendants altogether.⁹

The outcome of *Doe I v. Apple Inc.* illustrates the inadequate approach the United States currently has for addressing forced labor in supply chains.¹⁰ If exploited laborers cannot benefit from an ex post remedy, it would be logical to assume that the United States is proactively addressing forced labor in supply chains ex ante. That is not the case. Despite the U.S. Department of Labor advising that cobalt originating from the DRC is produced using child labor,¹¹ and the media

3. First Amended Complaint at 1-7, *Doe I v. Apple Inc.*, No. 1:19-cv-03737 (D.D.C. June 26, 2020), ECF No. 25.

4. See *Apple*, 2021 WL 5774224, at *10; First Amended Complaint, *supra* note 3, at 7; see also *infra* Section II.C.2.

5. See *Apple*, 2021 WL 5774224, at *1. Cobalt is mined by two classes of producers in the DRC: "artisanal" miners and large-scale producers. *Id.* Artisanal miners use only primitive tools without the aid of safety equipment. *Id.* Artisanal mines, which are often state-run, usually do not have structurally reinforced tunnels. First Amended Complaint, *supra* note 3, at 5. As a result, collapses are common. *Id.* Child miners typically only suffer exploitation through artisanal mining. *Id.* However, cobalt from both types of operations is often mixed together before being sold to manufacturers such as the defendants here. *Apple*, 2021 WL 5774224, at *1.

6. First Amended Complaint, *supra* note 3, at 2.

7. *Doe I v. Apple Inc.*, No. 1:19-cv-03737, 2021 WL 5774224, at *1 (D.D.C. Nov. 2, 2021).

8. *Id.* at *16. Section 1596 authorizes extra-territorial jurisdiction to U.S. courts over various provisions of Chapter 77 (Peonage, Slavery, and Trafficking in Persons), including provisions of the Trafficking Victims Protection Act. 18 U.S.C. § 1596; see also *infra* Section II.C.2.

9. *Apple*, 2021 WL 5774224, at *1. In explaining why standing was inadequate, the court stated that there were too many independent third parties involved to establish a causal chain between the plaintiffs and the defendants to indicate a traceable injury. *Id.* at *7.

10. The *Doe I v. Apple Inc.* plaintiffs have appealed to the United States Court of Appeals for the District of Columbia Circuit. Notice of Appeal, *Doe v. Apple*, No. 1:19-cv-03737 (D.D.C. Nov. 30, 2021), ECF No. 52.

11. U.S. DEP'T OF LAB., 2020 LIST OF GOODS PRODUCED BY CHILD LABOR OR FORCED LABOR 31 (2020), https://www.dol.gov/sites/dolgov/files/ILAB/child_labor_reports/tda2019/2020_TVPRList_Online_Final.pdf [<https://perma.cc/NGQ4-VZ8L>].

having thoroughly discussed the plight of child cobalt miners in the DRC,¹² the U.S. Customs and Border Protection agency (CBP) has not issued a Withhold Release Order (WRO) for any cobalt originating from the DRC.¹³

CBP's blind spots in issuing WROs are not unique to cobalt originating from the DRC. While WROs are effective tools to police *products* tainted with forced labor,¹⁴ the agency's current procedures overlook many *sources* of forced labor.¹⁵ Moreover, even if CBP maximized its use of WROs, the measures are still only reactive. The focus when addressing forced labor in supply chains should be on prevention, not punishment. Indeed, as *Doe v. Apple* demonstrates, the latter approach can result in the victims of forced labor being punished.

This Note proposes supplementing current CBP WRO procedures to more efficiently address forced labor in supply chains. Specifically, this Note advocates a forward-focused approach that draws from the most effective aspects of existing agency procedures, as well as state and federal legislation. Part I of this Note illustrates the scope of forced labor globally and in U.S. supply chains, and demonstrates the need for immediate reevaluation of existing procedures to address this staggering problem. Part II examines several existing efforts to reduce forced labor in supply chains, each of which is deficient in its approach. Part III proposes supplements to CBP's current and flawed WRO procedures. These supplements would proactively place the burden of

12. *E.g.*, Todd C. Frankel & Michael Robinson Chavez, *The Cobalt Pipeline*, WASH. POST, Oct. 2, 2016, at A1.

13. *See infra* Section II.D. Briefly, Section 307 of the Tariff Act of 1930 authorizes U.S. Customs and Border Protection to deny goods produced with forced labor entry into the country. 19 U.S.C. § 1307. This objective is carried out, in part, through CBP issuing WROs and Findings. *Forced Labor*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/forced-labor> [https://perma.cc/T28A-QJDB] (Mar. 24, 2023) [hereinafter U.S. Customs, *Forced Labor*]. CBP issues a WRO when the agency has reasonable evidence that a shipment includes a good produced or manufactured with forced labor. *Withhold Release Orders and Findings List*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings> [https://perma.cc/7T9L-NY8U] (Feb. 8, 2023) [hereinafter U.S. Customs, *Withhold Release Orders*]. From there, CBP may detain a shipment until the importer can prove that no forced labor was involved in the product's supply chain. *Id.* In contrast, CBP issues a Finding when the agency has conclusive evidence that forced labor was used in the production or manufacturing of a good. *Id.* Once issued, the agency may seize the cargo. *Id.* This Note concerns only WRO procedures.

14. *See* U.S. Customs, *Forced Labor*, *supra* note 13. During the last quarter of 2021, CBP detained 912 shipments of cargo that the agency suspected were produced with forced labor. *Id.*

15. *See infra* Section II.D. For example, there is evidence that at least four factories in Apple's supply chain use Uyghur labor—one of which employs over one thousand Uyghurs to produce iPhone components. VICKY XIUZHONG XU ET AL., AUSTL. STRATEGIC POL. INST., UYGHURS FOR SALE 22-23 (2020), https://ad-aspi.s3.ap-southeast-2.amazonaws.com/2022-10/Uyghurs_for_sale-11OCT2022.pdf?VersionId=N2JQOako7S4OTiSb6L7kKE5nY2d_LD25 [https://perma.cc/45A9-K4XG]. However, CBP has not issued a single WRO for any of those products or factories. U.S. Customs, *Forced Labor*, *supra* note 13.

addressing forced labor on corporations.¹⁶ Part III also demonstrates how corporations are best positioned to address the issue of forced labor, and explains why intensifying the requirements that corporations must comply with is justified and may even benefit corporations.

I. THE SCOPE OF FORCED LABOR

Although there is national and international resolve to address forced labor, it remains a universal challenge.¹⁷ Forced labor is not legal anywhere,¹⁸ yet millions of people are victims of it.¹⁹ Today, forced labor takes many forms.²⁰ Some victims are controlled by violence. For example, workers in Pakistan's *peshgi* system of debt bondage often work at brick kilns.²¹ Under this system, workers are not given a salary and often face more than economic exploitation.²² In addition to

16. The recommendations of this Note implicate any company or corporation (i.e., any profit-driven entity) importing goods into the United States. For ease, however, this Note will only use the term "corporation" unless illustrations require otherwise.

17. See generally KEVIN BALES, *DISPOSABLE PEOPLE* (Univ. of Cal. Press rev. ed. 2012) (describing the present global phenomena of modern slavery and the many forms it takes).

18. *Id.* at 5.

19. HUM. TRAFFICKING LEGAL CTR., *IMPORTING FREEDOM: USING THE U.S. TARIFF ACT TO COMBAT FORCED LABOR IN SUPPLY CHAINS* 4 (2020), https://htlegalcenter.org/wp-content/uploads/Importing-Freedom-Using-the-U.S.-Tariff-Act-to-Combat-Forced-Labor-in-Supply-Chains_FINAL.pdf [<https://perma.cc/72X6-Q69D>]. The International Labor Organization estimated in 2017 that there were forty million enslaved people worldwide, twenty-five million of which were victims of forced labor. *Id.* Other sources estimate the number of enslaved people globally at twenty-seven million, with fifteen to twenty million being victims of forced labor. BALES, *supra* note 17, at 8-9. Shockingly, there are more people enslaved today than the total number of victims of the Atlantic slave trade. *Id.* at 9.

20. BALES, *supra* note 17, at 19-20. In contrast to chattel slavery, which defined the Atlantic slave trade and involved people being born, captured, or sold into permanent servitude, most modern forced laborers work under systems of debt bondage or contract slavery. *Id.* Debt bondage, or bonded labor, is characterized by a never-ending debt passed through generations. *Id.* at 20. Contract slavery involves workers who are typically duped into slavery by the promise of legitimate employment and then paid nothing. *Id.* Additionally, while categories help articulate the issue, reality is often more muddled, with overlap between forms of slavery. *Id.* at 19.

21. *Id.* at 154, 161. In 2012, there were 7,000 brick kilns in Pakistan employing 750,000 bonded laborers. *Id.* at 154.

22. *Id.* at 165. Rather than a salary, families working at brick kilns earn a piece rate determined by the number of bricks they produce. *Id.* On a productive week, a family might earn the equivalent of fifteen dollars, which is only enough to survive. *Id.* at 156.

creating hazardous working conditions,²³ kiln owners frequently sexually abuse women and kidnap children as security against the working families' debts.²⁴ Further, armed guards prevent workers from escaping.²⁵

Some victims are controlled by intergenerational debt that is impossible to escape.²⁶ For example, workers in India's *koliya* system of debt bondage labor under a landlord in exchange for food and the use of a small plot of land.²⁷ An individual may enter into an arrangement with a landlord to satisfy a debt, but often the entire family's labor will be used as collateral.²⁸ As a result, the landlord has complete control over an entire family of laborers.²⁹ Despite multiple people working, bonded labor is effectively impossible to escape.³⁰ In fact, it is common for generations of bonded laborers to be attached to the same landlord for centuries.³¹ A bonded laborer is typically "born in debt and fully expect[s] to die in debt."³²

Whatever form forced labor takes, its victims are trapped in a circle of exploitation that ultimately benefits corporations.³³ While presumably no member of a corporation desires to perpetuate forced labor,³⁴ the United States imports over one hundred billion dollars' worth of goods produced using forced labor annually.³⁵ In 2020, the U.S. Department of Labor identified 155 products originating from 77 countries that were produced or manufactured with child or forced

23. *Id.* at 151. Workers sometimes fall through brick kilns as fires rage below. *Id.* A limb falling through is disastrous, but a worker falling completely through is certainly fatal. *Id.*

24. *Id.* at 151-52, 158-59.

25. *Id.* at 168.

26. In addition to physical violence and restraint, Pakistan's brick kiln workers also face an endless cycle of debt that is often passed down through generations. *Id.* at 156.

27. *Id.* at 199.

28. Elena Samanova, *Human Rights Through the Eyes of Bonded Labourers in India*, 7 J. MOD. SLAVERY 82, 88 (2022).

29. *Id.*

30. *Id.* at 87.

31. BALES, *supra* note 17, at 202.

32. *Id.* at 205.

33. *Id.* at 4; Samanova, *supra* note 28, at 87.

34. See, e.g., Adiel Kaplan, *U.S. Cracks Down on Imported Goods Made by Uyghurs and Other Victims of Forced Labor*, NBC NEWS (Sept. 10, 2021, 1:12 PM), <https://www.nbcnews.com/business/economy/u-s-cracks-down-imported-goods-made-uyghurs-other-victims-n1278157> [<https://perma.cc/X4EY-VNFZ>] (quoting the president of the American Apparel and Footwear Association as stating that the "apparel and footwear industry has a moral and legal obligation to make sure forced labor does not infect our supply chains").

35. HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 3.

labor.³⁶ Given the range of products that forced labor affects, it is no wonder that slavery's reach extends into the lives of corporations' customers, who are typically unaware of the impact of their purchases.³⁷

Many corporations unknowingly violate the Tariff Act of 1930, which prohibits importing goods produced with forced labor.³⁸ There is a fundamental lack of knowledge regarding the treatment of workers in the lower levels of supply chains, which is where forced labor usually occurs.³⁹ One reason for this information gap is the informal arrangements concerning laborers at this level.⁴⁰ Additionally, rather than overseeing lower levels of the supply chains directly, corporations often use contractors to identify the most cost-efficient methods of production.⁴¹ Supply chains are also inherently complex, which makes it difficult for a corporation to track every step of a product's life cycle from raw materials to final product.⁴²

The exploitation of Uyghurs in China demonstrates the convoluted nature of supply chains. Between 2017 and 2019, there were approximately eighty thousand Uyghurs in forced labor for Chinese factories.⁴³ This figure pales compared to the more than one million Uyghurs who have disappeared or who the government has imprisoned since 2017 through the country's "cultural genocide" of the ethnic minority.⁴⁴ Uyghurs laboring in Chinese factories contribute to the supply chains of at least eighty-two international corporations,⁴⁵ yet

36. U.S. DEP'T OF LAB., *supra* note 11, at 19. The Department of Labor recently added several new products to the agency's advisory, including tomato products, rubber gloves, and hair products. *Id.* Other products and origin countries include cattle and peanuts from Bolivia, sugarcane from the DRC, cotton from Kazakhstan, timber and gold from Peru, and bricks and textiles from India. *Id.* at 20-24 tbl.1. The report contains an extensive list of flagged products from China, including Christmas decorations, fish, footwear, cotton, and electronics. *Id.*

37. *See infra* Section II.B.

38. Tariff Act of 1930, ch. 497, § 307, 19 U.S.C. § 1307; *see also* XU ET AL., *supra* note 15, at 3. The Tariff Act provisions exclude more than goods made with forced labor from the United States. For example, § 1305 prohibits importing "immoral" materials, and § 1308 prohibits importing cat and dog fur products. 19 U.S.C. §§ 1305, 1308.

39. Jolijn Engelbertink & Ans Kolk, *Multinational Enterprises and Child Labour: Insights from Supply-Chain Initiatives in Different Sectors*, 6 J. MOD. SLAVERY 76-77 (2021).

40. *See id.*

41. BALES, *supra* note 17, at 236.

42. Engelbertink & Kolk, *supra* note 39, at 77.

43. XU ET AL., *supra* note 15, at 3.

44. *Id.* at 4.

45. *Id.* at 3. With varying levels of exposure to forced labor, corporations identified by one group as directly or indirectly profiting from Uyghur labor in China as of 2019 include: Nike, Zara, Gap, Nintendo, Mercedes-Benz, Adidas, Apple, and B.M.W. *Id.* at 5, 27. These and other corporations operate through at least twenty-seven factories in Xinjiang and across China that use Uyghur forced labor. *Id.* at 4.

many corporations are unaware of their involvement.⁴⁶ Consider China's Xinjiang region, which, in part through Uyghur forced labor, produces twenty percent of the world's supply of cotton.⁴⁷ In addition to the cotton industry's scope, it can be difficult to determine the origin of any particular unit of cotton due to Xinjiang cotton being combined with cotton from other regions before being sold to manufacturers.⁴⁸ Further, due to the nationwide expansion of Uyghur labor, forced laborers are often interwoven with willing laborers.⁴⁹ As a result of tangled supply chains and workforces, cotton originating from China accounted for the majority of CBP detentions in 2021, despite many corporations having boycotted Chinese cotton altogether.⁵⁰

Definitions of forced labor vary,⁵¹ but the common factor is that it is motivated by profit. U.S. corporations capitalize, albeit sometimes unknowingly, from forced labor under their subsidiaries and suppliers in developing countries.⁵² In deciding to operate through developing countries rather than domestically, corporations are primarily motivated by keeping costs low.⁵³ After all, no paid employee in the United States can ever be as cost efficient as a slave laborer in a developing country.⁵⁴ In short, even without intent, corporations have allowed concern for human rights to be "pushed aside by commercial opportunity."⁵⁵

46. See *id.* at 5. Some corporations, including Adidas and Bosch, terminated contracts with suppliers identified as exploiting Uyghurs but were still unable to ensure that forced labor was not involved in their supply chains. *Id.*

47. Kaplan, *supra* note 34.

48. *Id.*

49. XU ET AL., *supra* note 15, at 27.

50. Kaplan, *supra* note 34; see, e.g., XU ET AL., *supra* note 15, at 33. Victoria's Secret parent company, L Brands, cut ties with all Chinese cotton suppliers due to concerns over forced labor. *Id.*

51. Compare Int'l Lab. Org., Forced Labour Convention art. 2, June 10, 1930, ILO No. 29, 39 U.N.T.S. 55 (defining forced labor as all involuntary work exacted from a person under the menace of any penalty), with 18 U.S.C. § 1589 (establishing forced labor as labor compelled through (1) force, restraint, or threats of force or restraint; (2) serious harm or threats of serious harm; (3) abuse or threats of abuse of the legal system; or (4) means intended to cause a person to believe that harm or restraint would result from nonperformance), and BALES, *supra* note 17, at 6 (defining slavery as the total control of a person "for the purpose of economic exploitation"), and *Slavery*, BLACK'S LAW DICTIONARY (11th ed. 2019) (defining slavery as "absolute power over the life, fortune, and liberty of another").

52. BALES, *supra* note 17, at 9.

53. *Id.* at 9-10.

54. *Id.* at 10.

55. *Id.* at 9 (quoting WILLIAM GREIDER, ONE WORLD READY OR NOT: THE MANIC LOGIC OF GLOBAL CAPITALISM 37 (1997)).

II. SURVEY OF CURRENT EFFORTS ADDRESSING FORCED LABOR IN U.S. SUPPLY CHAINS

An effective plan to address forced labor in supply chains requires a comprehensive approach involving multiple sectors.⁵⁶ A recommendation calling for supplements to CBP's WRO procedures does not negate any of the efforts surveyed below, but each of these efforts has defects that necessitate improving WRO procedures.

A. *Foreign Governments and the United Nations*

Victims of forced labor often cannot depend on their own governments for protection.⁵⁷ While some countries turn a "blind eye" to the issue of forced labor in favor of policing other concerns, others directly perpetuate forced labor.⁵⁸ Some have difficulty executing their own laws.⁵⁹ Regardless, outside forces, such as the United Nations, cannot compel a government to protect its own people.⁶⁰

Whether through dishonesty or affirmative efforts, some foreign governments directly taint supply chains with forced labor. India, for example, may have as many as twenty million bonded laborers,⁶¹ yet the Indian government insists that debt bondage is a relic of the past.⁶² Despite overwhelming evidence to the contrary,⁶³ China has denied facilitating Uyghur forced labor,⁶⁴ and although directly violating its own Constitution, the Chinese government has continued to ignore international condemnation for its treatment of Uyghurs.⁶⁵ To the extent the United States criticizes foreign governments for forced labor violations, it does so while also allowing American corporations to profit from those violations.

Even countries with official resolve to end forced labor can nonetheless fail to make progress. As illustrated by India's attempts to tackle the issue, government corruption often thwarts efforts to address forced labor.⁶⁶ Even though Indian law expressly prohibits it, bonded

56. See Jonathan Todres, *The Private Sector's Pivotal Role in Combating Human Trafficking*, 3 CALIF. L. REV. CIR., 80, 85 (2012).

57. See BALES, *supra* note 17, at 14.

58. *Id.* at xi-x, 14.

59. See *id.* at 3-6, 32.

60. *Id.* at 32-33.

61. *Id.* at 198. Common items made with forced labor and exported from India include tea, jewelry, and rugs. *Id.*

62. *Id.*

63. See *supra* Part I.

64. XU ET AL., *supra* note 15, at 6.

65. *Id.* at 3, 6-7, 43 n.46. Article 4 of the Chinese Constitution prohibits ethnic or religious discrimination. See *id.* at 43 n.46.

66. BALES, *supra* note 17, at 215.

labor is common in all sectors of the Indian economy.⁶⁷ A primary reason the Indian government has difficulty enforcing bondage laws is greed.⁶⁸ Slavery is highly profitable, which enables slaveholders to purchase influence with local police and other entities charged with enforcement.⁶⁹ Thus, police sustain forced labor abuses,⁷⁰ and corrupt government employees conspire with slaveholders to steal funds from loans intended to rehabilitate bonded laborers.⁷¹ Further, local authorities tasked with identifying bonded laborers in need of rehabilitation may face discipline for not having discovered them sooner and, as a result, may choose to remain willfully ignorant.⁷² Moreover, even if officials were to act honestly, human rights are often a “foreign concept” in countries where forced labor occurs.⁷³ Due to unequal power dynamics and fear of uncooperative law enforcement, many bonded laborers are afraid to report abusive situations.⁷⁴ In short, corruption has prevented India and other countries from making meaningful progress in reducing forced labor.⁷⁵

Similarly, the United Nations (UN) has not achieved more than symbolic success.⁷⁶ Indeed, there is very little the UN has been able to do other than make recommendations to countries.⁷⁷ This obstacle can be demonstrated through UN efforts to promulgate a binding prohibition of forced labor.

In 2003, the UN Sub-Commission on the Promotion and Protection of Human Rights approved the Norms of the Responsibilities of

67. Samanova, *supra* note 28, at 84. Articles 21, 23, 29, 33, and 42 of the Indian Constitution prohibit slavery and other human rights abuses. *Id.* Further, India’s Bonded Labour System Abolition Act of 1976 specifically prohibits bonded labor. *Id.*; see also Aparna Ravi, *Combating Child Labour with Labels: Case of Rugmark*, 36 *ECON. & POL. WKLY.* 1141, 1142 (2001) (stating that despite India’s Child Labor Act prohibiting child labor in carpet-making, the industry frequently exploits children).

68. BALES, *supra* note 17, at 217-18, 230.

69. *Id.* at 29.

70. *Id.* at 5.

71. *Id.* at 214. India has a robust rehabilitation program for bonded laborers that, but for corruption, would be effective. *Id.* at 224, 230. Although there are state variations, generally the government identifies bonded laborers, forgives their debts, and issues them grants. *Id.* at 224-25. The Indian government encourages NGOs to take part in its rehabilitation programs, yet corruption still typically hinders progress. *Id.* at 230. For example, due to some bonded laborers’ illiteracy, landlords can reroute loans meant to rehabilitate bonded laborers for their own gain. *Id.* at 214. These schemes are disastrous for bonded laborers, who, as a result, now have inescapable debts to their landlords as well as the Indian government. *Id.* at 214-15.

72. *Id.* at 217-18.

73. Samanova, *supra* note 28, at 90.

74. *Id.* at 92.

75. BALES, *supra* note 17, at 215.

76. See *id.* at 236. Pakistan and India, for example, have both signed UN agreements regarding slavery, yet it is estimated that millions of people remain enslaved in those countries. *Id.* at 8-9, 236.

77. *Id.* at 32-33.

Transnational Corporations and Other Businesses with Regard to Human Rights (Norms).⁷⁸ Among other provisions, the Norms contained a prohibition on using forced labor.⁷⁹ The Norms were binding on corporations and represented a departure from the standard of voluntary guidelines for businesses in regard to human rights.⁸⁰ The UN would have imposed the Norms directly onto businesses rather than indirectly through the nations in which the businesses operate.⁸¹ Additionally, because of the Norms' non-voluntary nature and because the Norms would have applied to businesses regardless of location, they would have ensured that no corporation would have an unfair advantage.⁸²

Unsurprisingly, many governments and non-governmental organizations (NGOs) alike supported the Norms as an important step forward in ensuring international corporate responsibility for human rights.⁸³ Nonetheless, businesses fiercely opposed the mandatory nature of the Norms.⁸⁴ As a result of this resistance, the UN replaced the Norms with the Guiding Principles for Business and Human Rights (Guiding Principles).⁸⁵ The Guiding Principles are a set of voluntary guidelines concerning business practices.⁸⁶ If utilized, the Guiding Principles contain mechanisms for ensuring due diligence in eliminating human rights abuses in supply chains.⁸⁷ While some countries have

78. See David Weissbrodt, *Business and Human Rights*, 74 U. CIN. L. REV. 55, 70 (2005).

79. U.N. Comm. on Hum. Rts., Sub-Comm. on the Promotion & Prot. of Hum. Rts., Norms of the Responsibilities of Transnational Corporations and Other Businesses with Regard to Human Rights, UN Doc. E/CN.4/Sub.2/2003/12/Rev.2 (Aug. 13, 2003).

80. Pini Pavel Miretski & Sascha-Dominik Bachmann, *The UN Norms on the Responsibility of Transnational Corporations and Other Business Enterprises with Regard to Human Rights: A Requiem*, 17 DEAKIN L. REV. 5, 8 (2012). The drafters referred to the Norms as a "non-voluntary set of norms binding upon corporations." See *id.* at 9.

81. *Id.* at 8.

82. *Id.* at 21, 23, 26.

83. *Id.* at 13; Weissbrodt, *supra* note 78, at 55.

84. See Weissbrodt, *supra* note 78, at 70. Most of the business community was not in favor of the Norms. Miretski & Bachmann, *supra* note 80, at 8. The International Chamber of Commerce (ICC) and the International Organization of Employers (IOE), two bodies representing the largest transnational corporations, would only accept voluntary guidelines from the UN. Weissbrodt, *supra* note 78, at 70. The ICC and the IOE lobbied to kill the Norms. *Id.* Accordingly, after two years, the UN "rapidly" abandoned the Norms in 2005. Miretski & Bachmann, *supra* note 80, at 5, 9.

85. Miretski & Bachmann, *supra* note 80, at 5.

86. See OFF. OF HIGH COMM'R FOR HUM. RTS., UNITED NATIONS, GUIDING PRINCIPLES ON BUSINESS AND HUMAN RIGHTS: IMPLEMENTING THE UNITED NATIONS "PROTECT, RESPECT AND REMEDY" FRAMEWORK 13 (2011) [hereinafter U.N., GUIDING PRINCIPLES].

87. See Engelbertink & Kolk, *supra* note 39, at 87. Due diligence under the Guiding Principles involves "assessing actual and potential human rights impacts, integrating and acting upon the findings, tracking responses, and communicating how impacts are addressed." U.N., GUIDING PRINCIPLES, *supra* note 86, at 17.

adopted laws in accordance with the Guiding Principles, when given the option, corporations are likely to adopt the least stringent, most profit-driven approach to due diligence.⁸⁸

B. *Certifications and Consumer Choice*

Most people care about the social implications of the goods they purchase and—if given the choice—would choose an ethically produced item.⁸⁹ Though most people would pay more for a good to ensure proper working conditions throughout the supply chain, there is a difference between what consumers espouse and what consumers practice.⁹⁰ One cause of this disconnect is ignorance.⁹¹ Because consumers have neither the time nor the resources to gather sufficient data to make informed decisions,⁹² the burden of eliminating forced labor from supply chains must be placed elsewhere.⁹³

When combined with uninformed decisionmaking, consumers' desire to ensure human rights at every level of supply chains sometimes results in well-intentioned but ultimately harmful boycotts. To demonstrate, experts warn against “knee jerk rejection[s],” even of Chinese products produced with Uyghur labor.⁹⁴ Often, boycotts intended to make a statement to manufacturers damage the livelihood of an entire industry's workforce.⁹⁵ This effect can be demonstrated through a previously proposed U.S. ban on all Ivory Coast cocoa.⁹⁶ Proponents of the ban, which would have been enforced through CBP, claimed it was justified because of “overwhelming evidence” the Ivorian cocoa industry

88. Engelbertink & Kolk, *supra* note 39, at 88.

89. See Ravi, *supra* note 67, at 1142; see also Thomas Reuland, A Revised Approach to Reducing Labor Abuses and Human Trafficking 1, 11 n.46 (Oct. 2010) (Working Paper for the University of Nebraska's Conference on Human Trafficking, 2010) (on file with Digital-Commons at the University of Nebraska—Lincoln) (clarifying that consumers recognize that their purchases implicate more than products alone and that by purchasing, they are supporting the “moral ... economy” surrounding the production process (citation omitted)).

90. See Ravi, *supra* note 67, at 1142.

91. *Id.*

92. *Id.*

93. See BALES, *supra* note 17, at 239.

94. See XU ET AL., *supra* note 15, at 29.

95. One reason India's Rugmark certification was created was to avoid boycotts of all rugs originating from India, which would have been detrimental to the country's entire rug industry—including non-exploited workers. Ravi, *supra* note 67, at 1143. Preventing boycotts was especially important for the industry given that as little as three percent of the industry was tarnished with forced labor prior to Rugmark. *Id.* at 1143-45.

96. See Peter Whoriskey, *U.S. Weighs Plan to Block Cocoa Imports Produced with Child Labor. Ivory Coast Calls Ban Unfair.*, WASH. POST (Aug. 7, 2019, 10:44 AM), <https://www.washingtonpost.com/business/2019/08/07/ivory-coast-first-lady-says-ban-cocoa-imports-due-child-labor-would-be-unfair/> [https://perma.cc/E7CW-P7NF].

utilized child labor.⁹⁷ However, with six million Ivorians dependent on the industry, cocoa is part of the country's economic foundation.⁹⁸ As a result, the proposed ban would have harmed not only the entire industry, but the country as a whole.⁹⁹

One way to avoid the damaging effects of black-and-white boycotts is certification programs.¹⁰⁰ Certifications function as a tool for consumers concerned with business ethics, allowing consumers to make nuanced decisions about what products to purchase.¹⁰¹ Although an improvement over boycotts, certifications still largely miss the mark.

To illustrate, Rugmark and Fairtrade certifications were both established in 1994 with dual purposes of appealing to consumers as well as improving workers' conditions.¹⁰² Rugmark certifications indicate that Indian rugs are not produced with child labor—often bonded child labor—verified by independent inspections of certified looms.¹⁰³ Fairtrade labels, used for products ranging from coffee to cotton, aim to reduce the supply chain links between producer and consumer as well as to increase the percentage of profits producers retain.¹⁰⁴

Although certifications have made progress in reducing forced labor,¹⁰⁵ these programs have several flaws. First, certifications are voluntary.¹⁰⁶ Compulsory requirements are necessary for an industry as a whole to make significant progress. To demonstrate, after five years, only four U.S. rug importers were members of Rugmark's network.¹⁰⁷ Similarly, after twenty years, only one percent of products in any industry in which Fairtrade operates were Fairtrade-certified.¹⁰⁸ Moreover, rather than prohibiting certain abuses, many certifications only communicate methods of monitoring those abuses.¹⁰⁹

97. *See id.*

98. *See* Tim Adams, *From Bean to Bar in Ivory Coast, a Country Built on Cocoa*, *GUARDIAN* (Feb. 24, 2019, 2:00 PM), <https://www.theguardian.com/global-development/2019/feb/24/ivory-coast-cocoa-farmers-fairtrade-fortnight-women-farmers-trade-justice> [<https://perma.cc/MUC9-SDJE>].

99. *See* Whoriskey, *supra* note 96.

100. *See, e.g.*, RUGMARK INDIA, <https://rugmarkindia.de/> [<https://perma.cc/8WBM-UNR3>] (last visited Apr. 3, 2023).

101. *See* Ravi, *supra* note 67, at 1141-44.

102. *See* RUGMARK INDIA, *supra* note 100; Adams, *supra* note 98; Ravi, *supra* note 67, at 1141.

103. RUGMARK INDIA, *supra* note 100; Ravi, *supra* note 67, at 1141-43.

104. Michael Barratt Brown, *Fair Trade' with Africa*, 34 *REV. AFR. POL. ECON.* 267, 271 (2007). Fairtrade certifications empower workers through providing educational opportunities, connecting workers in different countries, and not disqualifying workers for making mistakes. *Id.* at 271, 276.

105. *See, e.g.*, Ravi, *supra* note 67, at 1141. In the first five years of operation, over one million Rugmark-certified rugs were exported from India. *Id.*

106. *See id.* at 1146.

107. *Id.*

108. Brown, *supra* note 104, at 273.

109. Engelbertink & Kolk, *supra* note 39, at 86-87.

Second, many certification programs have difficulty executing their own requirements. Rugmark, for example, has faced issues with corruption among the inspectors it hires to audit looms.¹¹⁰ Even if the inspectors were completely honest in their audits, some argue it would still be impossible for Rugmark to police effectively the twenty-five thousand looms in its network.¹¹¹ Further, even if the inspectors visited all the necessary looms, loom owners often establish additional or secret looms to hide their use of forced child labor.¹¹² Additionally, while rugs are delivered to consumers in the same form as they leave the looms, many other certifications concern products with inputs from forced labor that occur at more distant levels of the supply chain.¹¹³ In addition to supply chain complexity, which makes it difficult to track production,¹¹⁴ this difference in input level is problematic for certification programs because the impacts of these standards are less visible to consumers.¹¹⁵

Third, existing certifications often spur additional programs which negate the effects of certifications altogether by confusing consumers.¹¹⁶ The success of certifications already depends on having consumers who can “afford to be discriminating.”¹¹⁷ Thus, overwhelming consumers with the burden of determining which certifications to rely upon is asking too much.¹¹⁸

C. Current U.S. Legislation

There is robust state and federal legislation aimed at reducing forced labor in the supply chains of products entering the United States. While many of these efforts have useful features,¹¹⁹ all have shortcomings and even perhaps negative outcomes.

1. Transparency Laws

The U.S. Department of Labor releases an annual report of goods produced or manufactured using forced labor,¹²⁰ but the report does not

110. BALES, *supra* note 17, at 239.

111. Ravi, *supra* note 67, at 1145-46. In 2001, Rugmark employed only seventeen inspectors who were tasked with auditing the entire network of Rugmark looms. *Id.* at 1146.

112. *Id.* at 1145.

113. BALES, *supra* note 17, at 241-42.

114. Engelbertink & Kolk, *supra* note 39, at 87.

115. BALES, *supra* note 17, at 241-42.

116. See Ravi, *supra* note 67, at 1146. One example of increasingly segmented certification efforts is Green & Black Chocolate withdrawing from the Fairtrade certification system in favor of its own program. Adams, *supra* note 98.

117. Brown, *supra* note 104, at 272.

118. See Ravi, *supra* note 67, at 1146.

119. See *infra* Section III.C.

120. See *supra* Part I.

identify specific corporations utilizing forced labor.¹²¹ Although some corporations voluntarily disclose information about various levels of their supply chains,¹²² legislation is necessary to ensure widespread transparency. California's Transparency in Supply Chains Act of 2010 (Supply Chains Act), for example, requires business entities of a certain size operating in the state to disclose measures aimed at addressing forced labor in supply chains.¹²³ Like certification programs,¹²⁴ the Supply Chains Act aims to inform consumers who desire to purchase ethically produced goods.¹²⁵ It also similarly incentivizes businesses to seek out solutions to forced labor as a way to appeal to concerned consumers.¹²⁶ Further, like the UN Norms would have done,¹²⁷ the Supply Chains Act ensures that no business gains an unfair advantage over its competition by subjecting all similarly sized entities to the same requirements.¹²⁸

Despite its benefits, the Supply Chains Act also has several defects. First, it does not create a private right of action for victims,¹²⁹ which is problematic for victims of forced labor hoping to seek relief. Second, it does not impose on corporations an affirmative duty to reduce forced labor.¹³⁰ Some even interpret the Supply Chains Act as only requiring disclosure of the extent of a company's efforts to monitor supply chains—that is, a company with no efforts to *address* forced

121. Todres, *supra* note 56, at 62.

122. See, e.g., *The '90s Cheeky Jean*, EVERLANE, <https://www.everlane.com/products/womens-90s-cheeky-straight-jean-northridge> [<https://perma.cc/W6NK-Z3QM>] (last visited Apr. 3, 2023). Clothing company Everlane discloses information on its factories and is considered a “slave free company.” *Id.*; *Slave Free Companies*, END SLAVERY NOW, <http://www.endslaverynow.org/act/buy-slave-free/slave-free-companies> [<https://perma.cc/ET8G-UEVT>] (last visited Apr. 3, 2023). However, Everlane does not disclose information on where its materials are sourced. This lack of full transparency indicates that, despite its ethical optics, Everlane could nonetheless be profiting from forced labor, even if unknowingly.

123. California Transparency in Supply Chains Act of 2010, CAL. CIV. CODE § 1714.43 (West 2012). The Act mandates that corporations doing business in California with at least one hundred million dollars in gross receipts comply with its requirements. *Id.* When the Act took effect in 2012, it concerned 3,200 businesses. *Id.*; Todres, *supra* note 56, at 81. At a minimum, the Act requires that a corporation disclose its efforts toward each of the following: (1) directly verifying the risks of trafficking and slavery in supply chains, (2) auditing suppliers to evaluate their compliance with corporate standards regarding trafficking and slavery, (3) requiring that direct suppliers comply with local laws, (4) maintaining internal accountability procedures for employees and contractors failing to comply with corporate standards regarding trafficking and slavery, and (5) providing personnel directly overseeing supply chain management with tools to mitigate risks of trafficking and slavery in supply chains. CAL. CIV. CODE § 1714.43(c)(1)-(5).

124. See *supra* Section II.B.

125. Todres, *supra* note 56, at 92-93.

126. *Id.*

127. See *supra* Section II.A.

128. Todres, *supra* note 56, at 81.

129. *Id.* at 81 n.8.

130. *Id.* at 81.

labor at all would nonetheless be in compliance.¹³¹ Indeed, a corporation following the Supply Chains Act may at the same time benefit from forced labor in its supply chains.¹³²

Federal legislators have failed to pass a federal equivalent to the California law,¹³³ despite other nations having similar requirements.¹³⁴ Victims of forced labor in supply chains cannot continue to wait for a federal equivalent, yet transparency requirements alone are still insufficient to address the problem.

2. *Trafficking Victims Protection Act*

The Trafficking Victims Protection Act (TVPA) and its subsequent reauthorizations provide criminal and civil mechanisms for holding perpetrators of forced labor responsible.¹³⁵ While an improvement over

131. *Id.* at 96-97. This interpretation would require assuming a business could survive the public scrutiny of communicating a total disregard for human rights abuses in its supply chain. *Id.*

132. *See, e.g.,* Nike, Inc. Statement on Forced Labor, Human Trafficking and Modern Slavery for Fiscal Year 2021 (Nov. 29, 2022), <https://purpose.nike.com/nike-statement-on-forced-labor> [<https://perma.cc/9EGV-2S8Z>]. Despite a vigorous statement on its efforts to monitor forced labor in its supply chains, Nike has recently benefited from forced labor. XU ET AL., *supra* note 15, at 8. For example, in 2020, a Chinese factory employing hundreds of Uyghurs produced more than seven million pairs of shoes for Nike. *Id.*

133. Federal equivalents have been proposed. *See* Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. (2011); Business Supply Chain Transparency on Trafficking and Slavery Act of 2014, H.R. 4842, 113th Cong. (2014); Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, S. 1968, 114th Cong. (2015). All attempts to pass a federal equivalent ended with referrals to committees or sub-committees. *See H.R.2759—Business Transparency on Trafficking and Slavery Act*, CONGRESS.GOV, <https://www.congress.gov/bill/112th-congress/house-bill/2759> [<https://perma.cc/37JF-KKLU>] (last visited Apr. 3, 2023); *H.R.4842—Business Supply Chain Transparency on Trafficking and Slavery Act of 2014*, CONGRESS.GOV, <https://www.congress.gov/bill/113th-congress/house-bill/4842/actions> [<https://perma.cc/8JUC-9KZV>] (last visited Apr. 3, 2023); *S. 1968 (IS)—Business Supply Chain Transparency on Trafficking and Slavery Act of 2015*, GOVINFO, <https://www.govinfo.gov/app/details/BILLS-114s1968is> [<https://perma.cc/96QP-5MZE>] (last visited Apr. 3, 2023).

134. Both Australia and the United Kingdom have laws requiring certain business entities operating within the nations to make statements disclosing efforts to address slavery in supply chains. *See Modern Slavery Act 2018* (Cth) (Austl.); *Modern Slavery Act 2015* c. 30 (UK). Similar to California's law, Australia's law requires that any entity with an annual consolidated revenue of at least one hundred million Australian dollars disclose primarily the following: (1) the structure of the entity's supply chains, (2) the risks of slavery in those supply chains, (3) the actions the entity has taken to address those risks, and (4) the metrics the entity uses to assess those actions. *Modern Slavery Act 2018* (Cth) s 16(1)(b)-(e).

135. *See* Trafficking Victims Protection Act of 2000, Pub. L. No. 106-386, 114 Stat. 1466 (codified as amended at 22 U.S.C. §§ 7101-114). To name a few provisions of the current TVPA, § 1589 criminalizes obtaining or knowingly benefitting from ventures using forced labor or having a reckless disregard to those ventures using forced labor. 18 U.S.C. § 1589. Section 1590 criminalizes trafficking for forced labor. *Id.* § 1590.

previous measures available to victims generally,¹³⁶ it nonetheless fails to provide adequate relief to victims of forced labor in U.S. supply chains abroad.

To begin with, corporations are rarely prosecuted under any of the TVPA criminal provisions due to the high burden of showing a corporation's direct involvement in the alleged offenses.¹³⁷ Further, due to the nature of vicarious liability, corporations are effectively insulated from civil liability.¹³⁸ To illustrate, for a court to hold a corporation responsible for forced labor in the lower tiers of its supply chain, the prosecution would need to prove that the entity directly facilitating the abuse was an agent of the corporation.¹³⁹ Because these facilitators are typically contractors, this is often an impossible task.¹⁴⁰ Before the corporation can be vicariously liable, the prosecution must also first show that the contractor would be liable.¹⁴¹

Moreover, revisiting *Doe I v. Apple Inc.*, victims seeking to send a message of deterrence by civil remedy through § 1595 of the Trafficking Victims Protection Reauthorization Act are also unlikely to be successful.¹⁴² In addition to potential issues with standing and jurisdiction, like

136. In *United States v. Kozminski*, the Supreme Court narrowly construed 18 U.S.C. § 1584, which predates the TVPA and criminalizes knowingly and willfully holding others in involuntary servitude. *United States v. Kozminski*, 487 U.S. 931, 952 (1988). Specifically, the Court held that the statute only encompassed instances of servitude achieved through physical or legal force or threats of physical or legal force. *Id.* Reasoning that assessing involuntary servitude is an objective inquiry, the Court stated that prosecutors may only present evidence of "special vulnerabilities" to corroborate force. *Id.* at 948-49, 952. This holding is problematic for bonded laborers around the world who are not restrained by force but rather inescapable debt. BALES, *supra* note 17, at 211. The holding is also problematic because it does not adequately consider the vulnerabilities of many bonded laborers, such as lack of education. *Id.* at 213-14. Section 1589 of the TVPA filled the voids of the Court's interpretation of § 1584 by including a wide range of circumstances amounting to forced labor. *See* 18 U.S.C. § 1589. Section 1589 states that forced labor can be achieved through (1) force, restraint, or threats of force or restraint; (2) serious harm or threats of serious harm; (3) abuse or threats of abuse of the legal system; or (4) means intended to cause a person to believe that harm or restraint would result from nonperformance. *Id.*

137. Sarah C. Pierce, *Turning a Blind Eye: U.S. Corporate Involvement in Modern Day Slavery*, 14 J. GENDER RACE & JUST. 577, 578 (2011).

138. *Id.* at 595.

139. *Id.* at 590.

140. *Id.* To be an agent, a person must have been acting on the principal's behalf and must have been under the principal's control. RESTATEMENT (THIRD) OF AGENCY § 1.01 (AM. L. INST. 2006). The element of control does not exist when the principal does not dictate exactly how to complete a task (i.e., the nature of contractors' involvement with corporations). Pierce, *supra* note 137, at 590.

141. Pierce, *supra* note 137, at 590.

142. Section 1595 allows for a civil action against those who knowingly benefitted from a venture involving forced labor. 18 U.S.C. § 1595. Specifically, § 1595 allows victims of forced labor to bring civil cases against the alleged perpetrator or those who knowingly benefitted from other offenses in Chapter 77 (Peonage, Slavery, and Trafficking in Persons). *Id.* The *Apple* plaintiffs, for example, sought relief under § 1595 for violations of § 1589 and § 1590 of the TVPA. *Doe I v. Apple Inc.*, No. 1:19-cv-03737, 2021 WL 5774224, at *4 (D.D.C. Nov. 2, 2021).

the *Apple* plaintiffs encountered,¹⁴³ victims will also likely face the same conclusion drawn by the *Apple* court: that § 1595 does not apply overseas.¹⁴⁴ More specifically, the court in *Apple* held that 18 U.S.C. § 1596, which authorizes extra-territorial jurisdiction to U.S. courts over certain provisions of the TVPA, did not encompass § 1595.¹⁴⁵

3. Legislation Aimed at Specific Instances of Forced Labor

Two recent pieces of U.S. legislation address forced labor predominantly occurring in the Xinjiang region of China.¹⁴⁶ The first, the Uyghur Human Rights Policy Act, among other provisions, authorizes the creation of an executive report detailing foreign entities contributing to the exploitation of Uyghurs and other ethnic minorities in Xinjiang.¹⁴⁷ The U.S. President may impose sanctions on entities listed in the report.¹⁴⁸ The second, the Uyghur Forced Labor Prevention Act (UFLPA), requires the interagency Forced Labor Enforcement Task Force to consider how best to ensure that Chinese goods made with forced labor do not enter the United States.¹⁴⁹ It also creates a rebuttable presumption that goods originating from Xinjiang or from certain listed entities are tainted with forced labor.¹⁵⁰ Importers may only overcome this presumption by complying with stringent procedures and by showing clear and convincing evidence to the contrary.¹⁵¹ Specifically, the importer must thoroughly respond to all CBP inquiries

143. *Apple*, 2021 WL 5774224, at *5-10. In addition to determining that the plaintiffs lacked standing to assert a claim against any of the defendants, the *Apple* court further held that it did not have personal jurisdiction over Dell. *Id.* at *8-10.

144. *Id.* at *14-16.

145. *Id.* at *15-16. The court stated that a statute must affirmatively indicate it is applicable abroad for the court to extend its reach. *Id.* at *14-16. Section 1596 explicitly grants extra-territorial jurisdiction over §§ 1581, 1583, 1584, 1589, 1590, and 1591, but it does not mention § 1595. *See id.* at *15-16; 18 U.S.C. § 1596. Further, the text of § 1596 suggests it was only meant to apply to criminal provisions (the statute uses the term “prosecutions” as well as the term “offense,” both of which generally refers only to crimes). *Apple*, 2021 WL 5774224, at *15-16. Because of these details, the court determined that the Legislature did not intend for the terms of § 1596 to apply to § 1595. *Id.* at *16.

146. Uyghur Human Rights Policy Act of 2020, Pub. L. No. 116-145, 134 Stat. 648; Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, 135 Stat. 1525 (2021).

147. Uyghur Human Rights Policy Act of 2020, § 6, 134 Stat. 651-54.

148. *Id.* Sanctions include blocking assets and revoking U.S. visas. *Id.*

149. Uyghur Forced Labor Prevention Act § 2. The UFLPA mandates that, through notice and comment proceedings, the Forced Labor Enforcement Task Force create a strategy that most effectively ensures that goods touched by slave labor do not enter the United States. *Id.* CBP held a public hearing on the matter in early 2022. Notice of Public Hearing on the Use of Forced Labor in the People’s Republic of China, 87 Fed. Reg. 53, 15448-49 (Mar. 18, 2022).

150. Uyghur Forced Labor Prevention Act § 3(a). The presumption of forced labor means that goods originating from these sources are presumed to be in violation of § 307 of the Tariff Act and are therefore not eligible to enter the United States. *Id.*

151. *Id.* § 3(b)(1)-(2).

regarding the production of goods.¹⁵² The importer must also follow procedures regarding the following CBP objectives: (1) ensuring effective supply chain tracing and management, (2) ensuring that goods entering the United States were not produced in Xinjiang, and (3) ensuring that goods entering the United States were not produced with forced labor.¹⁵³

While effective in addressing a specific instance of forced labor, like many other efforts, these laws fail to address forced labor comprehensively and proactively. First, these laws are too narrow in only concerning abuses occurring in China. After all, there are millions of forced labor victims globally.¹⁵⁴ Victims cannot wait for the United States to create legislation addressing abuses in each country where forced labor occurs. Broader measures are thus necessary. Second, the Uyghur Human Rights Policy Act penalizes foreign individuals directly benefitting from forced labor but ignores U.S. corporations who not only contribute to the demand for forced labor but also benefit from it, albeit indirectly.¹⁵⁵ Third, the “knee jerk” nature of the UFLPA smacks of a boycott, which experts have warned against due to the potential for collateral punishment.¹⁵⁶

D. Current U.S. Customs and Border Protection Procedures

Section 307 of the Tariff Act prohibits goods made with forced labor from entering the United States.¹⁵⁷ CBP executes this prohibition through the agency’s use of WROs and Findings.¹⁵⁸ Although CBP has had this authority for decades, the “consumptive demand” exception constrained the agency’s ability to exercise it fully.¹⁵⁹ This exception allowed goods for which U.S. demand exceeded U.S. production to be exempt from § 307’s prohibition.¹⁶⁰ The Trade Facilitation and Trade Enforcement Act of 2015 repealed the consumptive demand exception and thus expanded the agency’s ability to exercise its authority.¹⁶¹

152. Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 3(b)(1)-(2), 135 Stat. 1525, 1529 (2021).

153. *Id.* §§ 2(d)(6), 3(b)(1)-(2).

154. *See supra* Part I.

155. *See text* accompanying notes 51-55.

156. *See supra* Section II.B.

157. Tariff Act of 1930, ch. 497, § 307, 19 U.S.C. § 1307.

158. U.S. Customs, *Forced Labor*, *supra* note 13. For further information on Findings, *see supra* note 13.

159. Mark K. Neville, Jr., *Forced Labor Takes Center Stage: CBP Detains Shipments Tied to Abuses*, 32 J. INT’L TAX’N, Aug. 2021, at 25, 25.

160. *Id.* The goods Congress had in mind when drafting the consumptive demand exception were not produced, or were produced in very limited quantities, within the United States. *See id.* at 26 n.3.

161. Trade Facilitation and Trade Enforcement Act of 2015, Pub. L. No. 114-125, § 910, 130 Stat. 122, 239-40.

There are five steps in CBP's enforcement process: (1) receipt of allegation, (2) agency evaluation, (3) authorization of WRO or Finding, (4) issuance of WRO or Finding, and (5) detention (WRO) or seizure (Finding) of cargo.¹⁶² Regarding the first step, any person within or outside the agency can communicate suspicion that a good was produced with forced labor—though typically outside entities, such as NGOs, petition the agency to act.¹⁶³ An entity outside the agency, whose identity the agency protects, can communicate suspicion through a petition.¹⁶⁴ The petition must include evidence indicating both that the labor used to produce the good was involuntary and that the laborer was under menace of penalty.¹⁶⁵ CBP does not investigate a shipment until it receives a communication alleging that forced labor was involved in the production process, and if the agency “reasonably” concludes that goods were made using forced labor, it may issue a WRO.¹⁶⁶ Once issued, a WRO enables the agency to detain goods until the importer can show that no forced labor was used at any point in the supply chain.¹⁶⁷

CBP uses the International Labour Organization's (ILO) Eleven Indicators of Forced Labour as a basis for WRO investigations.¹⁶⁸ To demonstrate, in 2019, the agency referenced the ILO indicators in each WRO.¹⁶⁹ The ILO indicators represent common signs of forced labor

162. U.S. Customs, *Forced Labor*, *supra* note 13.

163. Findings of Commissioner of CBP, 19 C.F.R. § 12.42(a)-(b) (2022); Kaplan, *supra* note 34.

164. 19 C.F.R. § 12.42(b); HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 11, 20. The petition must include a statement outlining the reasons for suspicion that the good was produced with forced labor, a detailed description of the good, and facts related to the good's production. 19 C.F.R. § 12.42(b). To describe the good, the petitioner may include information such as production methods, levels of that good's supply chain, and the location of production. HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 15. The petitioner should also include corroborating evidence, such as media reports and institutional studies. *Id.* at 16. Although CBP never reveals the identity of petitioners, resources from organizations such as the Human Trafficking Legal Center recommend taking precautions to ensure that victims and advocates are protected from retaliation. *Id.* at 20.

165. HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 11. Examples of a showing of involuntariness include unfree recruitment, work without substantial wages, excessive hours, and work without ability to terminate labor. *Id.* Examples of a showing of menace of penalty include violence or threats of violence to workers or their families, debt bondage, and withholding of wages. *Id.*

166. 19 C.F.R. § 12.42(d)-(e).

167. U.S. Customs, *Forced Labor*, *supra* note 13.

168. Neville, *supra* note 159, at 27. The ILO is a specialized agency within the UN that was established in 1919 and includes 187 member nations, including the United States. *About the ILO*, INT'L LAB. ORG., <https://www.ilo.org/global/about-the-ilo/lang-en/index.htm> [<https://perma.cc/9NN3-9YNQ>] (last visited Apr. 3, 2023).

169. HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 13. For example, in issuing a WRO related to products originating from the Xinjiang region, the CBP referenced the following indicators: debt bondage, restriction of movement, isolation, intimidation and threats, withholding of wages, and abusive living or working conditions. *CBP Issues Region-Wide Withhold Release Order on Products Made by Slave Labor in Xinjiang*, U.S. CUSTOMS & BORDER

and are designed to assist enforcement officials.¹⁷⁰ The eleven indicators are as follows: (1) abuse of vulnerability, (2) deception, (3) restriction of movement, (4) isolation, (5) physical or sexual violence, (6) intimidation or threats, (7) retention of identity documents, (8) withholding of wages, (9) debt bondage, (10) abusive working or living conditions, and (11) excessive overtime.¹⁷¹

III. MORE PROACTIVE AND STRINGENT PROCEDURES ARE NECESSARY

U.S. lawmakers are actively concerned with how to improve CBP procedures to ensure that forced labor does not infect U.S. supply chains.¹⁷² Accordingly, when considering how to improve agency procedures, lawmakers should draw from the most effective provisions of existing agency procedures, as well as state and federal legislation, to create a proactive approach to addressing forced labor in U.S. supply chains that places the burden on corporations.

A. *Issues with Current Withhold Release Order Procedures*

There are numerous issues with current CBP WRO procedures which require immediate improvement. Addressing these issues will enhance the agency's ability to carry out its § 307 objectives. Currently, CBP's use of WROs functions as a reactive measure that does not adequately prevent forced labor in supply chains. Further, current procedures may be unfair to corporations and most certainly waste already minimal federal resources.

WROs could be effective tools,¹⁷³ but they are not being executed properly. To begin, despite the U.S. Department of Labor's extensive advisory of products made with forced labor, at the time of this writing, there are currently only fifty-four WROs in place.¹⁷⁴ For instance, in the face of overwhelming evidence of forced labor occurring in India,¹⁷⁵

PROT., <https://www.cbp.gov/newsroom/national-media-release/cbp-issues-region-wide-withhold-release-order-products-made-slave> [<https://perma.cc/B58H-44R2>] (Oct. 5, 2022).

170. INT'L LAB. OFF., ILO INDICATORS OF FORCED LABOUR 2 (2012).

171. *Id.* at 3.

172. See Uyghur Forced Labor Prevention Act, Pub. L. No. 117-78, § 2(d)(4)-(5), 135 Stat. 1525, 1528 (2021). Provisions of the UFLPA require that the strategy the Forced Labor Enforcement Task Force creates consider how to maximize CBP procedures to ensure no Chinese goods entering the United States were made with forced labor. *Id.*

173. See U.S. Customs, *Withhold Release Orders*, *supra* note 13; Kaplan, *supra* note 34. In 2020, CBP issued a WRO for products made by Malaysian corporation Top Glove. U.S. Customs, *Withhold Release Orders*, *supra* note 13. Top Glove, the world's largest disposable glove importer, responded to CBP's concerns regarding indicators of forced labor. Kaplan, *supra* note 34. CBP has since deactivated its WRO concerning Top Glove's products, which means that the corporation, for now, may import into the United States unimpeded. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

174. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

175. See *supra* Parts I, II.

CBP only has one active WRO concerning products from that country—and that WRO is over two decades old.¹⁷⁶ Further, between 1995 and 2015, CBP did not issue a single WRO.¹⁷⁷ Even after the enhancement of the agency's authority following the repeal of the consumptive demand exception in 2016,¹⁷⁸ CBP has issued only thirty-seven WROs.¹⁷⁹ One explanation for the inefficiency of WRO procedures, a subject of frequent criticism,¹⁸⁰ is that CBP does not act until after it receives an allegation of forced labor.¹⁸¹

Critically, due to CBP's seemingly selective application, current WRO procedures mock that the consumptive demand exception was ever repealed. While CBP issues WROs for products the United States could produce (e.g., cotton from Turkmenistan and China or tomatoes from Mexico and China),¹⁸² it consistently overlooks products like DRC cobalt, for which there is high U.S. demand and no ability to produce.¹⁸³

Additionally, current WRO procedures do not allow for nuanced assessment of goods entering the United States. For example, in 2018 and 2019, CBP issued WROs for *all* cotton originating from Turkmenistan and *all* gold originating from artisanal mines in the DRC.¹⁸⁴ Not only do these measures approach the level of an overly broad boycott, but agency resources are also wasted correcting the overreach. To demonstrate, within a year of issuing the WRO on DRC gold, CBP modified the order to allow for one producer that had indicated fair practices to import to the United States.¹⁸⁵

Further, the current reactive and opaque procedures do not present a fair opportunity for compliance by corporations. Indeed, because CBP does not require corporations to address concerns proactively, corporations may be oblivious to forced labor abuses in supply chains.¹⁸⁶ Currently, CBP does not alert importers about its investigations.¹⁸⁷ Even after completing an investigation, CBP only communicates

176. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

177. *Id.*

178. *See supra* Section II.D.

179. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

180. Kaplan, *supra* note 34.

181. Findings of Commissioner of CB., 19 C.F.R. § 12.42(d) (2022).

182. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

183. *See id.* Additionally, despite numerous accusations of forced labor occurring in Apple's Chinese supply chains and at least four Apple suppliers using forced labor, CBP has not issued a single WRO for Apple components coming from China. *See id.*; Neville, *supra* note 159, at 26.

184. U.S. Customs, *Withhold Release Orders*, *supra* note 13.

185. *Id.*; *CBP Modifies Withhold Release Order on Gold Imports from the Democratic Republic of the Congo*, U.S. CUSTOMS & BORDER PROT., <https://www.cbp.gov/newsroom/national-media-release/cbp-modifies-withhold-release-order-gold-imports-democratic-republic> [<https://perma.cc/25N8-DKR2>] (Oct. 5, 2022).

186. Kaplan, *supra* note 34.

187. Neville, *supra* note 159, at 28.

which of the Forced Labor Indicators were implicated.¹⁸⁸ Without more detailed information, it is difficult for corporations to respond effectively to allegations.¹⁸⁹ Moreover, although CBP has theoretically unlimited time to conduct its investigations, importers have only three months to act in response to those investigations.¹⁹⁰ Additionally, CBP should and does protect the identity of informers,¹⁹¹ but this detail creates the possibility that competitors will invent accusations regarding forced labor.

The slanted nature of current procedures may lead to lawsuits which waste valuable federal resources and could be prevented had corporations been more affirmatively on notice.¹⁹² In February 2021, CBP detained a shipment of goods bound for Virtus Nutrition—a U.S. corporation that manufactures dairy products¹⁹³—pursuant to a 2020 WRO issued for palm oil products from Sime Darby Plantation in Malaysia.¹⁹⁴ Although Virtus has denied that the detained palm oil products originated from Sime Darby,¹⁹⁵ CBP refused to release the products.¹⁹⁶ As a result, Virtus has commenced an action in the U.S. Court of International Trade requesting the court to direct CBP to release the shipment.¹⁹⁷

B. Justifications for Imposing a Heavy Burden on Corporations

Corporations are the ideal candidates to execute a forward-focused approach to addressing forced labor in supply chains. Not only do corporations have an ethical duty to reduce human rights violations,¹⁹⁸ corporations are also more effectively positioned than government agencies to bear the burden of improvements to WRO procedures.¹⁹⁹ After all, the law aims to allocate resources efficiently,²⁰⁰ and corporations are the only entities that can ultimately prevent forced labor in

188. *Id.*

189. *Id.*

190. Findings of Commissioner of CBP, 19 C.F.R. § 12.42(a)(1) (2022).

191. HUM. TRAFFICKING LEGAL CTR., *supra* note 19, at 20.

192. See Complaint, Virtus Nutrition LLC v. United States, No. 21-00165 (Ct. Int'l Trade Apr. 15, 2021), ECF No. 2; Answer, Virtus Nutrition LLC v. United States, No. 21-00165 (Ct. Int'l Trade June 4, 2021), ECF No. 22.

193. VIRTUS NUTRITION, <https://virtusnutrition.com/> [<https://perma.cc/6R2N-KB8Y>] (last visited Apr. 3, 2023).

194. Complaint, *supra* note 192, at 2; Answer, *supra* note 192, at 2. The goods which CBP detained are currently in a storage facility in California. Complaint, *supra* note 192, at 4; Answer, *supra* note 192, at 3.

195. Complaint, *supra* note 192, at 4.

196. *Id.*; Answer, *supra* note 192, at 3.

197. Complaint, *supra* note 192, at 5.

198. Engelbertink & Kolk, *supra* note 39, at 76.

199. See Todres, *supra* note 56, at 86.

200. See *id.*

supply chains.²⁰¹ Further, unlike CBP,²⁰² corporations are more likely to have the financial and personnel resources with which to create innovative solutions to forced labor in supply chains.²⁰³

Although adopting a proactive approach to addressing forced labor would improve corporate image and appeal to consumers,²⁰⁴ corporations will likely not do so voluntarily.²⁰⁵ Economist Milton Friedman stated that “there is one and only one social responsibility of business[:] . . . to increase its profits so long as it stays within the rules of the game.”²⁰⁶ However, those “rules” must be changed so that corporations will no longer allow human rights abuses to go unchecked.

One explanation for corporations’ apathy is the complex nature of supply chains, which allow entities to pass on responsibility for labor abuses rather than undertaking intense due diligence.²⁰⁷ Another is that corporations that do assume an aggressive stance on forced labor may face retaliation from affected nations, which could result in a disconnect between aspirational press releases and actual procedure.²⁰⁸

201. *Id.* at 86-87.

202. Low staffing is a serious issue for CBP and results in difficulties executing investigations. See U.S. GOV’T ACCOUNTABILITY OFF., GAO-21-106, FORCED LABOR IMPORTS: DHS INCREASED RESOURCES AND ENFORCEMENT EFFORTS, BUT NEEDS TO IMPROVE WORKFORCE PLANNING AND MONITORING 1, 17 (2020). CBP formed the Forced Labor Division in 2018 to carry out § 307 objectives, but as of 2019, it only had twelve employees. *Id.* at 1; Kaplan, *supra* note 34.

203. Todres, *supra* note 56, at 86-88. One method of preventing forced labor in supply chains is for corporations to address causes of forced labor. Engelbertink & Kolk, *supra* note 39, at 83. For example, providing incentives for children to go to school, including through providing food, has reduced instances of forced child labor. *Id.*

204. See *supra* Section II.B. There is evidence that corporations protecting human rights benefit by attracting the most competitive employees and by appealing to consumers who desire to support sound ethics. Weissbrodt, *supra* note 78, at 71-72.

205. See Todres, *supra* note 56, at 90.

206. MILTON FRIEDMAN, CAPITALISM & FREEDOM 133 (1962).

207. Reuland, *supra* note 89, at 15. To demonstrate, in 2017, Apple CEO Tim Cook visited the factory of supplier O-Film, which manufactured iPhone “selfie” cameras. XU ET AL., *supra* note 15, at 21. Based off his superficial visit, Cook praised O-Film for its “humane approach towards employees” and said the workers seemed to “live happily.” *Id.* at 22. At the time of Cook’s visit, however, O-Film employed over one thousand Uyghur laborers. *Id.* While CEOs cannot be expected to police every level of a corporation’s supply chain, this visit arguably indicated a lack of due diligence regarding worker conditions at Apple supplier factories.

208. Adela Suliman, *Nike, H&M, Burberry Face Backlash and Boycotts in China Over Stance on Uyghur Treatment*, NBC NEWS (Mar. 26, 2021, 7:04 AM), <https://www.nbcnews.com/news/world/nike-h-m-face-backlash-china-over-xinjiang-cotton-concerns-n1262019> [<https://perma.cc/QZ3R-LJ9Z>]; XU ET AL., note 15, at 4, 8. Corporations are often in the difficult position of struggling not to offend nations like China, the world’s second largest economy, while also satisfying Western consumers with production practices. Suliman, *supra*. To demonstrate, when Nike made a statement denouncing forced labor abuses in Xinjiang and promised to avoid supporting suppliers in the region, Chinese consumers, urged by the Chinese government, boycotted the brand. *Id.* As a result, despite ethical rhetoric, corporations such as Nike perpetuate forced labor abuses. XU ET AL., *supra* note 15, at 4, 8. For example, although Nike has denied benefiting from forced labor, in 2020, six hundred Uyghurs worked at a factory primarily serving Nike’s production needs. *Id.* at 8;

Yet another is that extensive financial resources allow corporations to build the cost of forced labor penalties into business planning.²⁰⁹ Some corporations may even desire to improve working conditions but are restrained by the knowledge that action would advantage competing corporations.²¹⁰ Whatever the cause, corporations will not address forced labor until those abuses are bad for business.²¹¹

C. Proposed Supplements to Withhold Release Order Procedures

By supplementing existing WRO procedures to motivate corporations to act, CBP can create measures which address forced labor before shipments leave source countries. CBP should not wait until after receiving a petition to activate its procedures. Rather, as detailed below, forced labor can and should be addressed before it occurs.

To facilitate this objective, and in light of the agency's minimal resources,²¹² corporations should be subject to pre-embarkation procedures. These procedures should combine mechanisms from the Uyghur Forced Labor Prevention Act, California's Transparency in Supply Chains Act, and CBP's use of the ILO indicators of forced labor. There

Ana Swanson, *Nike and Coca Cola Lobby Against Xinjiang Forced Labor Bill*, N.Y. TIMES (Jan. 21, 2021), <https://www.nytimes.com/2020/11/29/business/economy/nike-coca-cola-xinjiang-forced-labor-bill.html> [<https://perma.cc/YT5W-HFBQ>]. While producing more than seven million pairs of shoes for the corporation that year, Uyghurs at the factory appear to have been surveilled from watch towers and surrounded by barbed wire fences and police guards. XU ET AL., *supra* note 15, at 4, 8.

209. For example, in 2003, an activist sued Nike for making false statements about its working conditions. See *Nike, Inc. v. Kasky*, 539 U.S. 654, 656 (2003) (Stevens, J., concurring). Although the Supreme Court dismissed the writ of certiorari as improvidently granted, Nike settled with the activist for \$1.5 million. *Id.* at 655; Press Release, *Fair Labor Association Receives \$1.5 Million in Settlement of Kasky v. Nike First Amendment Case*, FAIR LAB. ASS'N (Sept. 12, 2003), https://ecommons.cornell.edu/bitstream/handle/1813/99220/FLA_Settlement_2003.pdf?sequence=1&isAllowed=y [<https://perma.cc/U9BY-ATB2>]. This settlement seems like an effective measure in deterring undesirable production practices except that Nike's total revenue that year was \$10.7 billion. Nike, Inc., Annual Report (Form 10-K) (Aug. 7, 2003). In short, the settlement was a small price to pay to profit from forced labor.

210. See *Tomato War Ends at Taco Bell*, CBS NEWS (Mar. 9, 2005, 3:05 AM) [hereinafter CBS, *Tomato War*], <https://www.cbsnews.com/news/tomato-war-ends-at-taco-bell/> [<https://perma.cc/7HD5-V4BQ>]. In 2002, Yum! Brands, at the time the world's largest restaurant corporation, ignored calls from activist groups, including the Coalition of Immokalee Workers, to improve conditions for its tomato suppliers' workers. Duncan Campbell, *Farmworkers Win Historic Deal After Boycotting Taco Bell*, GUARDIAN (Mar. 11, 2005, 7:05 PM), <https://www.theguardian.com/world/2005/mar/12/usa.duncancampbell> [<https://perma.cc/R9QH-55UH>]. Eventually, after a three-year boycott, activism on college campuses, and hunger strikes outside its headquarters, Yum! agreed to a penny per pound increase in tomato prices, which resulted in \$100,000.00 more per year to the farm workers. *Id.*; CBS, *Tomato War*, *supra*. In explaining the corporation's resistance, Yum! stated that it desired assurance that other industry players would be held to the same standard. CBS, *Tomato War*, *supra*.

211. Reuland, *supra* note 89, at 11.

212. See *supra* Section III.B.

is already a low evidentiary standard for issuing WROs,²¹³ so requiring corporations to address these concerns before attempting to bring products into the United States is sensible.

Specifically, CBP should assign to all corporations the UFLPA rebuttable presumption that forced labor was involved in the production of a good. Because there are millions of forced labor victims globally,²¹⁴ this requirement is not overly broad. To establish that forced labor was not involved in supply chains, before granting corporations permission to dispatch cargo to the United States, CBP should also require corporations to address each of the ILO indicators and the provisions of the Supply Chains Act. These supplemental measures would create the inverse effect of current WRO procedures: rather than detaining goods only once there is a reasonable suspicion of forced labor, goods will not be allowed into the United States until there is a reasonable conclusion of no forced labor. In short, if a corporation has not proactively addressed forced labor concerns, it cannot import into the United States.

Many corporations buy the cheapest materials and rely on the market to determine how those materials are produced.²¹⁵ Indeed, the “bottom line” drives slavery.²¹⁶ Yet it may also stop slavery. If corporations are not allowed to import into the United States for lack of proactive forced labor procedures, the cost of being denied access to the U.S. market will far outweigh the savings created by utilizing forced labor.²¹⁷ Further, slavery itself is a business.²¹⁸ If corporations aiming to import into the United States take measures to ensure no forced labor touches supply chains, demand for slavery will be reduced, slavery will be less profitable, and slaveholders may willingly abandon their exploitive enterprises.²¹⁹ Rather than being incentivized to perpetuate forced labor, entities at the lower tiers of supply chains will be incentivized to ensure proper working conditions.

Subjecting all corporations wishing to import goods into the United States to the same proposed measures solves many of the issues with current WRO procedures. First, it addresses forced labor proactively, rather than reactively, which more effectively prevents abuses. Second, universal application ensures that the repeal of the consumptive demand exception is truly effectuated. Third, supplementing WRO procedures will create a nuanced assessment mechanism to avoid

213. Findings of Commissioner of CBP, 19 C.F.R. § 12.42(d)-(e) (2022). For CBP to issue a WRO, evidence must only be sufficient for a reasonable person to conclude forced labor was involved in the production of a good. *See id.*

214. *See supra* Part I.

215. *See* BALES, *supra* note 17, at 235-36.

216. *Id.* at 10.

217. *See* Business Transparency on Trafficking and Slavery Act, H.R. 2759, 112th Cong. § 1(b)(2) (2011). The United States is the largest importer of goods in the world. *Id.*

218. BALES, *supra* note 17, at 33.

219. *Id.* at 31-33, 240.

detrimental boycotts. Fourth, while increasing the burden on corporations, this recommendation is ultimately business-friendly in that corporations will be affirmatively on notice about requirements. By demanding corporate due diligence *ex ante*, CBP will no longer detain shipments of corporations oblivious to forced labor, avoiding unnecessary lawsuits. This proactive self-policing will also enable corporations to respond effectively to CBP inquiries if the agency issues WROs despite pre-importation guidance.

CONCLUSION

It is critical to address forced labor in supply chains as the number of victims continues to grow.²²⁰ Supplementing existing CBP procedures as this Note's recommends will proactively address forced labor in a way that prevents abuses rather than merely penalizing corporations after the fact. Subjecting corporations to additional requirements is not overly demanding, but even if it was, the burden is justified, as corporations are the entities most effectively positioned to address forced labor in supply chains. The recommendations detailed above only concern forced labor connected to U.S. supply chains. Yet, because of the scope of U.S. importation, requiring suppliers to comply with these measures may also result in forced labor being reduced in supply chains connected to other nations. Ultimately, albeit through administrative requirements, these recommendations could enable corporations to be the "heroes of Anti-Slavery in the 21st century."²²¹

220. *See id.* at 4.

221. Free the Slaves, *Becoming a Slave-Free Business: Removing Slavery from Product Supply Chains*, VIMEO (Feb. 28, 2012), <https://vimeo.com/37626566> [<https://perma.cc/4GV7-6QQU>].