# The Ever-Changing Compliance Landscape: What is the Next Wave?

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**Abstract**

In today's global economy, multinational companies face a complex and ever-evolving legal environment. Compliance functions must continually adapt to address these challenges and be in front of the next wave of enforcement actions around the globe. This article explores the historical cycle of development of several laws in select jurisdictions, which have recently had an increasing focus upon the need for preventative measures and strong compliance structures.

The ultimate question: will the laws of a few jurisdictions become a global standard? Historical cycles suggest that when one larger or more influential jurisdiction begins to focus on a new issue, others will follow.

This article discusses what may be the next wave of mandatory compliance enhancements: supply chain integrity laws, which require companies to evaluate their supply chain to address a myriad of risks, including trafficking, child labor, and slavery. The difficulties in developing a program are many, but the need for vigilance is great; with respect to just the concerns regarding human trafficking, it is estimated that nearly 21 million people around the world are victims of human trafficking (Int'l Labour Organization 2015, p. 5; U.S. Department of State Trafficking in Persons Report 2015, p. 7).

We will explore the progression of two other areas of the law: antitrust and anti-corruption as potential predictors for how new legislation and ultimately compliance requirements within the supply chain context may emerge. The article offers an overview of why robust compliance functions are critical and standard for antitrust and anti-corruption issues and whether supply chain integrity compliance programs focusing on human trafficking risks are the next wave.

**Keywords**

supply chain integrity, anti-corruption laws, corporate compliance programs, human trafficking, corporate disclosure

## 1. Introduction

Human trafficking is a substantial global issue that world leaders have battled for many years. In the past few decades, with growing intensity in the past few years, many jurisdictions have begun to ask companies to take a stronger role in the fight against human trafficking. Although general anti-trafficking laws are not a new phenomenon, recent efforts have specifically taken aim at the existence of human trafficking within global supply chains. Companies can be confronted with human trafficking both directly (if a victim is recruited into the company) and indirectly (through the actions of suppliers, subcontractors, or business partners) (UN Human Rights Office of the High Commissioner 2012, pp. 13-14). The presence of human trafficking creates additional business risks for companies, including legal risk, threats to brand reputation, and threats to investment. Human trafficking also raises ethical and moral considerations for businesses.

This paper explores the development of laws in a few jurisdictions, including the United Kingdom, Brazil, and the United States. While not yet a global standard, the trend is certainly building that corporations must take steps to identify and disclose human trafficking risks within the supply chain. To further evaluate how corporations should respond, this paper explores the development of two other areas of the law: antitrust and anti-corruption. Although these laws developed differently and requirements vary from country to country, the basic principles of anti-corruption and antitrust laws became a global standard. In addition, the incentives for building a robust compliance program also became well-accepted. With these principles in mind, this paper explores whether a global standard for supply chain transparency will emerge and supply chain compliance will be the next compliance wave.

## 2. Antitrust Laws

Laws encouraging competition and protecting against price fixing and restraints on trade are a major category that companies must confront.

## 2.1 Development of Antitrust Laws in the United States

With a history of over a hundred years, the U.S. antitrust laws have long been considered the "bedrock of American economic policy" (Fugate 2015, §1.1). The first antitrust law, the Sherman Act (15 U.S.C. §§1-7), was passed in 1890. The purpose of the Act – and other U.S. antitrust laws that followed – was to prevent restraints on trade and monopoly and to "preserv[e] free and unfettered competition as the rule of trade" (Northern Pacific Ry v. U. S. [1958] 356 U.S. 1, pp. 4-5).

Violations of the Sherman Act occur when contracts, combinations, or conspiracies result in unreasonable or undue restraints of trade; some activities are egregious enough to be classified as per se antitrust violations (Fugate 2015, §§1.4-1.5). For example, price fixing agreements, group boycotts, divisions of market territories, and agreements to limit production or control supply, allocate customers, or divide fields of production are all considered per se antitrust violations.[1] The other principal federal antitrust laws – the Clayton Act (15 U.S.C. §§ 12-27), a civil statute prohibiting mergers, acquisitions, and other business practices that are likely to reduce competition, and the Federal Trade Commission Act (15 U.S.C. §§ 41-58), which prohibits unfair methods of competition in interstate commerce, but does not carry criminal penalties – also strive to protect competition.

Recent public statements and actions brought by the U.S. Department of Justice ("DOJ") have highlighted the continued importance of the pro-competition protections embodied in U.S. antitrust laws. In Fiscal Year 2014, the DOJ's Antitrust Division obtained nearly $1.3 billion in criminal fines and penalties (U.S. Department of Justice, Division Update Spring 2015), and, from 2010-2014, the Division's enforcement actions have resulted in an average of 29 individuals sentenced to prison each year, with an average prison sentence of 25 months (U.S. Department of Justice, Division Update Spring 2015).

[1] See, e.g., U.S. v. Trenton Potteries Co. [1927] 273 U.S. 392 (price fixing agreements), Klors, Inc. v. Broadway Hale Stores, Inc. [1959] 359 U.S. 207) (group boycotts), U.S. v. Addysto Pipe & Steel Co. [1898] 85 F. 271) (divisions of market territories), Mandewille Island Farms, Inc. v. American Crystal Sugar, Co. [1948] 334 U.S. 219) (agreements to limit production or control supply), Timken Roller Bearing Co. v. U.S. [1951] 341 U.S. 593 (allocation of customers), Hartford-Empire Co. v. U.S. [1945] 323 U.S. 386 (division of fields of production).

2.2 International Standards

In the modern era, the United States had the earliest codified competition laws. Many other countries, such as the United Kingdom, had existing common laws governing regulation of monopolies or cartels, but throughout the 20th and 21st century, competition enforcement regimes have become more and more common (Terzaken 2013). Today, enforcement agencies in many countries coordinate their enforcement efforts.[2] The table below compares some of the antitrust laws that global companies today must navigate.

| Country | Antitrust Laws | Regulators | Policies | Sanctions |
|---|---|---|---|---|
| USA | • Sherman Act (1890)<br>• Clayton Act (1914)<br>• Federal Trade Commission Act (1914) | • Department of Justice<br>• Federal Trade Commission | • Protect public from market failures<br>• Prevent restraints of free competition | • Injunction<br>• Cease-and-desist order<br>• Fines and/or imprisonment in criminal cases |
| Brazil | Law 8884/94 (1994) | Administrative Council for Economic Defense | • Free enterprise<br>• Open competition<br>• Social role of property<br>• Consumer protection | • Administrative fines<br>• Restrictions on participation in public tenders<br>• Dissolution<br>• Partial divestiture |

[2] Deputy Assistant Attorney General of the Antitrust Division Brent Snyder noted in September 2014, "[m]ore and more countries are working together through Interpol to identify individual conspirators as they travel from country to country . . . . [W]ith each passing year the world gets smaller and there are fewer places to hide from international cartel enforcement" (Snyder 2014, p. 2).

| Country | Antitrust Laws | Regulators | Policies | Sanctions |
|---|---|---|---|---|
| | | | • Restraint of abuses of economic power | of assets<br>• Remedial orders |
| South Africa | Competition Act 89 (1998) | • Competition Commission<br>• Competition Tribunal<br>• Competition Appeal Court | • Promote efficiency, adaptability and development of economy<br>• Provide consumers with competitive prices and product choices<br>• Promote employment and advance social and economic welfare | • Administrative fines<br>• Divestiture order<br>• Criminal penalties against individuals |
| India | Competition Act (2002) | Competition Commission of India | • Promote and sustain competition in markets<br>• Consumer Protection<br>• Freedom of trade | • Administrative fines |

| Country | Antitrust Laws | Regulators | Policies | Sanctions |
| --- | --- | --- | --- | --- |
| China | Antimonopoly Law (2007) | • National Development and Reform Commission<br>• State Administration for Industry and Commerce | • Protect fair competition<br>• Enhance economic efficiency<br>• Safeguard interests of consumers and social public interest<br>• Promote healthy development of socialist market economy | • Cease-and-desist order<br>• Administrative fines |
| EU | Treaty on the Functioning of the European Union (2009) | • European Commission<br>• National competition authorities | • Consumer welfare<br>• Protection of structure of market<br>• Public interest | • Administrative fines |
| Russia | • Federal Law No. 135-FZ (2006)<br>• 2nd Antimonopoly Package (2009)<br>• 3rd Antimonopoly | Federal Antimonopoly Service | • Common economic area<br>• Free movement of goods<br>• Protection of | • Order to cease violation<br>• Order requiring disgorgement of illegally received |

| Country | Antitrust Laws | Regulators | Policies | Sanctions |
|---|---|---|---|---|
| | Package (2012) | | competition<br>• Freedom of economic activity<br>• Create conditions for effective functioning of goods markets | income<br>• Administrative fines on individuals and companies<br>• Criminal sanctions |

2.3 Incentives for Compliance Programs

In recent years DOJ has stressed the importance of compliance programs that prevent, detect, and mitigate antitrust violations. In separate speeches in September 2014, Deputy Assistant Attorney General of the Antitrust Division Brent Snyder and Assistant Attorney General of the Antitrust Division Bill Baer both expressed the Division's focus on corporate compliance programs and willingness to aggressively prosecute antitrust violators, particularly those who do not take compliance obligations seriously (Snyder 2014; Baer 2014). Snyder later delivered a similar theme at the Sixth Annual Chicago Forum on International Antitrust in June 2015 (Snyder 2015). The DOJ's message is clear: companies that fail to implement effective compliance programs risk significant penalties. Indeed, recent fines for Sherman Act violations have been tens and hundreds of millions of dollars, with two companies, AU Optronics Corporation of Taiwan and F. Hoffmann-La Roche, Ltd. of Switzerland, each receiving fines of $500 million (U.S. Department of Justice, Sherman Act Violations Yielding a Corporate Fine of $10 Million or More 2016).

In his September 2014 message, Snyder noted that there is no "one size fits all" approach to compliance programs and that they must "account for the nature of a company's business and for the

markets in which it operates," but provided factors the Division considers when evaluating compliance programs (Snyder 2014, p. 4):

- Senior executives and the board of directors "must fully support and engage with the company's compliance efforts." (Snyder 2014, p. 4)
- The entire company, "especially those with sales and pricing responsibilities," must be committed to compliance efforts and participate in them (Snyder 2014, p. 6). All members of the organization must also have the opportunity to report anonymously (Snyder 2014, p. 6).
- Compliance programs must be "proactive" and include training, a forum for feedback, regular auditing and monitoring of at-risk activities, and program evaluation (Snyder 2014, p. 6).
- Companies should willingly discipline employees who commit antitrust crimes or "fail to take the reasonable steps necessary to stop the criminal conduct (Snyder 2014, p. 6). Retention of culpable employees "raises serious questions and concerns" about the company's commitment to effective antitrust compliance (Snyder 2014, p. 7).
- Companies that discover criminal antitrust conduct must take steps to prevent the misconduct from reoccurring (Snyder 2014, p. 7).

Companies that develop antitrust compliance programs that conform to the requirements above can earn a number of benefits. The Division considers compliance programs a central factor when deciding whether to request corporate probation and may be less likely to require corporate monitors (Snyder 2014, p. 7; *see also* Comprehensive Crime Control Act 1984, 18 U.S.C. § 3561(a)1 U.S.S.G. § 8D1.1 and U.S.S.G. § 8D1.2(a)).[3] Avoiding the need for independent monitors may become particularly important because the Division has said it will request corporate monitors "more frequently in the future" (Snyder 2014, p. 10). The Division is also looking into ways to credit companies that "proactively adopt or strengthen compliance programs after coming under

[3] U.S. sentencing laws allowing a company to be placed on probation for up to five years as part of a final sentence.

investigation" (Snyder 2014, p. 9). Additionally, Snyder noted that "[t]he Antitrust Division is willing to consider compliance efforts in reaching a fine recommendation in cases where a company makes extraordinary efforts not just to put a compliance program in place but to change the corporate culture that allowed a cartel offense to occur" (Snyder 2015, p. 3). Companies will thus maximize their chances of reducing penalties related to antitrust violations by implementing effective compliance programs and creating genuine cultures of compliance.

## 3. Anti-Corruption Laws

Although the international anti-corruption landscape varies substantially, a general standard that corruption is not tolerated in corporate dealings has emerged. The Foreign Corrupt Practices Act ("FCPA") emerged first as a codified anti-bribery regime, but eventually many other countries adopted similar laws. As will be discussed further below, these laws in many of the world's largest economies differ in terms of the scope of prohibited conduct, the presence of affirmative compliance obligations and the severity of penalties.

### 3.1 Origin of the First Extraterritorial Anti-Bribery law – The Foreign Corrupt Practices Act in the United States

The United States' focus on foreign corruption began with a scandal close to home: Watergate. In the mid-1970s, investigations into irregularities in President Nixon's infamous re-election campaign discovered that hundreds of American companies maintained secretive slush funds. As the Securities and Exchange Commission ("SEC") and Senate Subcommittee on Multinational Corporations dug deeper, they uncovered that American companies were not just using these off-the-books accounts for illegal domestic campaign contributions; they were bribing foreign officials (Koehler 2012, pp. 929-1013; U.S. Securities & Exchange Commission 1976).

In response to these stunning revelations, Congress enacted the FCPA in 1977 (15 U.S.C. § 78dd-1, 1977). The FCPA prohibited, for the first time, a wide range of entities subject to U.S. jurisdiction from making—or even offering—corrupt payments to foreign officials to obtain or retain business.

The law also established accounting provisions requiring companies to develop internal controls and prohibited subject entities from knowingly falsifying books and records (15 U.S.C. § 78dd-1, 1977).

### 3.2 International Response

At the time, and for years after the passage of the FCPA, bribery was considered a legitimate cost of doing business in many parts of the world. Some developed countries openly allowed companies to take tax deductions to offset the cost of overseas bribes (as if the bribe was a normal business expense). As a result, U.S. companies lobbied Congress that the FCPA placed them at a disadvantage to foreign companies when conducting business abroad. Congress responded by passing minor amendments to the FCPA in 1988 (Omnibus Trade and Competitive Act 1988). But, rather than substantially weaken the regulatory scheme, Congress sought to level the playing field by directing the President to negotiate an international treaty on foreign corruption.

Successive administrations worked through the auspices of the OECD to reach a semblance of international consensus on the prevention of bribery. The negotiations culminated in the December 17, 1997 Convention on Combating Bribery of Foreign Officials in International Business Transactions (the "Anti-Bribery Convention"), which aspired to "deter, prevent and combat the bribery of foreign public officials in connection with international business transactions" (OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 2011). All parties to the Anti-Bribery Convention committed themselves to, among other things, pass legislation necessary to ratify and implement the Convention's provisions. To date, all thirty-four members of the OECD and seven non-OECD countries (notably including Brazil and South Africa) have signed the Anti-Bribery Convention (OECD, Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 2011, Ratification Status 2014).

In large part due to the Anti-Bribery Convention, anti-corruption laws modeled after the FCPA have proliferated around the globe during the first decade-and-a-half of the 21$^{st}$ century. Even non-signatory countries such as China and India have developed—or are in the process of developing—anti-bribery laws. While their lofty goal of combating corruption mirrors the FCPA, in practice each

law has its own nuances, penalty schemes (some of which are far more severe than the FCPA), and compliance and reporting requirements. The following chart provides a brief overview of anti-corruption efforts in the United Kingdom, Europe, and the BRICS.

| Country | Anti-corruption Laws | Notable Provisions | Sanctions |
|---|---|---|---|
| UK | Bribery Act (2010) | • Contains safe-harbors for organizations with compliance programs<br>• Prohibits "facilitation" payments | • Civil penalties for companies<br>• Up to 10 years imprisonment for individuals |
| Germany | • Law for Combating Corruption (2015)<br>• Administrative Offenses Act (2013) | • Companies may be held responsible for failure to supervise | • Civil penalties for companies<br>• Potential criminal liability for individuals |
| India | • Prevention of Corruption Act (1988)<br>• Lokpal Act (2013)<br>• Prevention of Corruption Act Amendment (*proposed*) | • Not extra-territorial<br>• Under current law, offering a bribe is not a specific offense, it is only charged as abetment | • There are few examples of punishment under the PCA |
| Russia | • Law for Combating Corruption (2015)<br>• Administrative Offenses Act (2013) | • Requires companies to have a compliance program<br>• Companies may be held strictly liable for | • Civil penalties for companies<br>• Potential criminal liability for individuals |

| Country | Anti-corruption Laws | Notable Provisions | Sanctions |
|---|---|---|---|
| | | employees | |
| Brazil | Clean Companies Act (2014) | • Presence of compliance program is not a defense<br>• Companies may be held strictly liable for employees | • Fines of 20% of prior year gross revenue<br>• Disqualification from government contracts/support<br>• Court-ordered dissolution |
| China | • Application of the Law in Handling of Criminal Bribe-Giving Cases (2013)<br>• Ninth Amendment to Criminal Law (2015) | • Prohibits "facilitation" payments<br>• The 2015 revision created a new offense for bribery of individuals that have a close relationship to "State Work Personnel" | • Fines<br>• Lengthy penal terms |
| South Africa | Prevention and Combating of Corrupt Activities Act (2004) | • Requires individuals in "positions of authority" to report suspected violations<br>• Presence of robust compliance program may mitigate the penalty | • Monetary fines ranging from two to five times the bribe |

### 3.4 Incentives for Compliance Programs

Anti-corruption laws in the U.S., U.K., Europe, and the BRICS incentivize companies to craft robust compliance programs. Russia, for example, affirmatively requires companies to develop such procedures, while Britain's Bribery Act creates a safe-harbor for companies with compliance programs. Even where laws do not explicitly recognize a "compliance program defense," companies may point to the existence of a robust compliance program in seeking less severe penalties. For example, in the U.S., an effective compliance program may reduce potential fines (Federal Sentencing Guidelines Manual 2010, §8B2.1). More importantly, a robust compliance program is critical to preventing the very issues that may lead to adverse press, significant financial penalties, and, increasingly, individual liability for corporate executives.

Compliance programs benefit the companies and the individuals who work there. The trend in the second decade of the 21st century has been towards holding individuals accountable in addition to corporations. For example, since assuming office in early 2013, Chinese President Xi Jingping has overseen a massive anti-corruption effort targeting domestic and foreign nationals. Chinese government officials, Chinese nationals, and foreign business executives have been charged and convicted. Brazil is likewise investigating individuals under the new Clean Companies Act; in early March 2016, the former CEO of South America's largest construction company, Odebrecht, S.A., was sentenced to nineteen years in prison for his involvement in the Petrobras scandal (*See, e.g.,* Sreeharsha 2015). The U.S. has also signaled a new (or renewed) focus on individual culpability. In September 2015, the Deputy Attorney General of the United States, Sally Yates, issued a memorandum announcing renewed emphasis on "individual accountability for corporate wrongdoing" (Yates Memorandum 2015). As the potential penalties for anti-corruption violations increase for corporations and individuals, the sufficiency of a compliance program becomes even more critical.

## 4. Supply Chain Integrity

Laws governing anti-trafficking in global supply chains have so far taken the form of transparency and disclosure requirements to shed light on human trafficking risks within the supply chain. Newly-

emerging laws require companies to disclose a number of things, including efforts to: identify conditions of human trafficking, evaluate risk of human trafficking though audits and other monitoring activities, and mechanisms within the organization to train employees and internal accountability and reporting procedures.

## 4.2 Development of Laws Globally

The development of laws governing anti-trafficking in global supply chains is gaining traction globally. Jurisdictions that have adopted laws and regulations aimed at combating human trafficking in supply chains are emerging as leaders paving the legal landscape in this emerging area of law.

### 4.2.1 Brazil

The Brazilian government was one of the pioneers of developing a legal framework for combating human trafficking in private sector supply chains (UN Human Rights Office of the High Commissioner 2012, p. 8). The government formed coalitions to coordinate efforts to eradicate forced labor within the country and instituted a National Plan for the Eradication of Forced Labour and, in 2004, a law created a registry of names of employers caught using forced labor in their supply chains. The registry, known as the Lista Suja, or "Dirty List," included the company's name, the owner's name, the location of the offense, the product sourced, and the estimated number of workers subjected to forced labor conditions (Répórter Brasil 2016). Companies that landed on the Lista Suja were publicly shamed and risked denial of government funding and tax subsidies (UN Human Rights Office of the High Commissioner 2012, p. 8).

Efforts to eradicate human trafficking in Brazilian supply chains suffered a major setback in 2015 when the Brazilian Supreme Court ordered the Labor Ministry to suspend publication of the Lista Suja. The loss of the list has resulted in growing concerns of labor exploitation ahead of the 2016 Olympic Games (Douglas 2016).

In contrast to Brazil's early efforts, other BRICS countries have not yet adapted or expanded existing anti-trafficking laws to address human trafficking within supply chains. Some of these countries face

distinctive challenges in fighting human trafficking and could lag behind other countries that are focusing anti-trafficking efforts within the supply chains of companies who do business within their borders (*See, e.g.,* U.S. Department of State Trafficking in Persons Report 2015, p. 122).

4.2.2 United States

California was the first jurisdiction within the United States to pass a law specifically aimed at taking steps to address human trafficking in company supply chains. The California Transparency in Supply Chains Act of 2010 ("California Act") (Cal. Civ. Code § 1714.43) requires all retail sellers and manufacturers doing business in California with gross receipts over $100 million to disclose efforts to eradicate slavery and human trafficking from its supply chains. The California Act requires corporate disclosures on a company's website but does not criminalize the sale of goods produced through forced labor.

The California Act requires covered retailer sellers or manufacturers to disclose the extent to which the company:

1) verifies supply chains to evaluate and address risks of human trafficking and slavery, specifying whether the verification was conducted by a third party;

2) audits suppliers to evaluate compliance with company standards for trafficking and slavery in supply chains, specifying whether the verification was not independent and unannounced;

3) 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;

4) maintains internal accountability for employees and contractors who fail to meet company standards regarding slavery and trafficking; and

5) provides company employees and management with direct responsibility for supply chain management (CAL. CIV. CODE § 1714.43; *see also* California Department of Justice, 2015).

The exclusive legal remedy for violating the California Act is injunctive relief sought by the California Attorney General. However, private individuals have attempted to use the California Act as a vehicle for holding companies liable under state consumer protection laws. Courts have thus far rejected these legal theories (*See, e.g.,* Barber v. Nestlé USA, Inc. [2015] U.S. Dist. LEXIS 170608, C.D. Cal. Dec. 9, 2015). In Barber v. Nestlé, the plaintiffs argued that Nestlé violated California's consumer protection laws by failing to disclose that "some proportion of its cat food products may include seafood [that] was sourced from forced labor." Nestlé argued that the claims were barred by the safe harbor doctrine because the state legislature considered the extent of the disclosures required by the California Act and elected to not require the level of disclosures sought by the plaintiffs. *Id.* at *9. The court agreed with Nestlé, concluding that the state legislature had determined that "businesses' responsibilities to inform consumers about the presence of forced labor in supply chains begin and end with the required disclosures in [the California Act]." *Id.* at *18.

The United States Congress has attempted to pass nation-wide supply chain disclosure legislation, but its efforts to enact a law have so far been unsuccessful. The Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, (Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, H.R. 3226, S. 1968), a bill that closely mirrors the California Act, would amend the Securities Exchange Act of 1934 to require certain issuers that make disclosures to the SEC to include a disclosure addressing whether and how the covered issuer has taken measures to identify conditions of forced labor, slavery, human trafficking, and the worst forms of child labor within the covered issuer's supply chain (Business Supply Chain Transparency on Trafficking and Slavery Act of 2015, § 3).[4] Like the California Act, the bill would require covered issuers to disclose the related measures on the company's and SEC's websites.

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[4] There are other supply-chain related disclosures that are required under law. The SEC was recently tasked with policing supply chain disclosures related to conflict minerals sourced from the Democratic Republic of Congo. The Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act") § 1502 requires covered issuers to disclose annually whether any conflict minerals necessary to the functionality or production of a product originated in the Democratic Republic of Congo or an adjoining country and, if so, provide a report describing due diligence measures undertaken regarding the source and chain of custody of those minerals.

Although federal legislation has not yet been enacted, the U.S. Government, which is the largest purchaser of goods and services in the world, has taken steps to address and eliminate human trafficking from federal government contractors' supply chains. On September 25, 2012, President Barack Obama signed Executive Order No. 13627, Strengthening Protections Against Trafficking in Persons in Federal Contracts. President Obama signed the Executive Order to strengthen efforts related to the United States Government's zero-tolerance policy on human trafficking and bolster protections against human trafficking in federal contracts (The White House, Office of the Press Secretary 2012).

Executive Order 13627 prohibits federal government contractors, subcontractors, and their employees from engaging in trafficking-related activities, identified as: (1) using misleading or fraudulent recruitment practices; (2) charging employees recruitment fees; and (3) destroying, concealing, confiscating, or otherwise denying an employee access to their identity documents, such as passports or drivers' licenses (Exec. Order No. 13627, 2012).

#### 4.2.3 United Kingdom & Europe

The United Kingdom was the latest country to enact wide-ranging legislation whose primary purpose is to criminalize slavery, servitude, forced labor, and human trafficking (referred to as "modern slavery") under the Modern Slavery Act 2015 ("Modern Slavery Act"). Section 54 of the Modern Slavery Act squarely addresses transparency in supply chains and contains provisions that are strikingly similar to the California Act. Notably, the Modern Slavery Act requires sellers of goods or services with global annual turnover of £36 million per year with a business presence in the U.K. to file a Section 54 statement on an annual basis describing "the steps the organisation has taken during the financial year to ensure that slavery and human trafficking is not taking place (i) in any of its supply chains, and (ii) in any part of its own business, or a statement that the organisation has taken no such steps." Covered companies must publish the Section 54 statement on their website.

Although the Modern Slavery Act is the first law of its kind in Europe, a growing number of European countries are considering similar legislation. European Union organizations have also

created initiatives to address human trafficking in supply chains (European Commission 2012-2016), a sign that other European countries will adopt transparency laws similar to the California and UK model.[5]

## 5. Legal Compliance for the Multinational Company

What can a company do to address the growing supply chain integrity requirements while addressing the compliance requirements for the other laws mentioned herein?

Companies should consider leveraging existing compliance frameworks within the corporate social responsibility and anti-bribery context to get ahead of future anti-trafficking laws (UN Human Rights Office of the High Commissioner 2012, p. 10).

The term "compliance" can refer to a program that addresses many different areas, such as anti-corruption, sanctions, banking regulation, antitrust, and privacy. Compliance programs that are tailored to effectively prevent, detect, and monitor conduct related to antitrust law or anti-corruption law issues can be broadened to incorporate supply chain integrity issues. For example:

- Global policies and procedures that provide clear standards
- Knowledge and oversight by senior management and board of directors
- Robust and ongoing training, as well as efforts to implement standards and protocols throughout company
- Monitoring and audits to ensure adherence to compliance program
- Creation of a system that allows reporting of potential illegal conduct without fear of retaliation, such as an anonymous hotline
- Consistent enforcement and appropriate discipline procedures
- Protocols for responding to illegal conduct when detected

[5] For example, a French bill, Devoir de Vigilance would have required covered companies to disclose anti-trafficking efforts and hold corporations liable for violating the law. *See* http://www.assemblee-nationale.fr/14/ta/ta0501.asp. The law was rejected by the Senate in November 2015. *See* http://www.senat.fr/les_actus_en_detail/article/vigilance-des-societes-meres.html.

Companies can play a key role in fighting human trafficking in supply chains by instituting policies, due diligence and compliance programs, and training for employees. Companies that address human trafficking in supply chains have an opportunity to demonstrate leadership and influence, increase brand value, and engage stakeholders.

Many companies are already taking measures to combat human trafficking in their supply chains. A recent study found that over 50 percent of United States Fortune 100 companies have already instituted policies addressing human trafficking (ABA, The McCain Institute, ASU 2014, p. 1). Research indicates that companies are already aware of the human trafficking risks within their supply chains and are strengthening their commitment to preventing human trafficking within their global supply chains (ABA, The McCain Institute, ASU 2014, pp. 2-4). The trend of developing compliance programs and disclosure programs will likely continue as laws governing supply chain integrity continue to emerge. Given the likelihood of global expansion of laws such as the Modern Slavery Act and California Act, companies that do business internationally will benefit from taking a proactive approach to developing a compliance program to prevent and detect human trafficking violations in their supply chains. Given the trends in antitrust and anti-corruption, which both incentivize compliance programs, companies would be well-served to begin developing supply chain compliance programs now.

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