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### The Limitations of Supply Chain Disclosure Regimes

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# THE LIMITATIONS OF SUPPLY CHAIN DISCLOSURE REGIMES

ADAM S. CHILTON\* & GALIT A. SARFATY†

*Although the past few decades have seen numerous cases of human rights violations within corporate supply chains, companies are frequently not held accountable for the abuses because there is a significant governance gap in the regulation of corporate activity abroad. In response, governments have begun to pass mandatory disclosure laws that require companies to release detailed information on their supply chains in the hopes that these laws will either provoke companies to reform their practices themselves or create pressure from stakeholders to improve corporate accountability.*

*In this Article, we argue that supply chain disclosure regimes are unlikely to have a large effect on consumer behavior, and, as a result, their effectiveness at reducing human rights abuses will likely be limited. This is not only because scholarship on mandatory disclosure regimes in other areas has suggested that these regimes are frequently unsuccessful, but also because these problems are likely to be exacerbated in the human rights context. We argue that this is due to the fact that supply chain disclosures do not provide information on actual products, the information in the disclosures only provides weak proxies for human rights outcomes, and the risks associated with supply chains vary dramatically across industries.*

*In order to test our argument, we field a series of experiments that were designed to test how well consumers understand supply chain disclosures. In our experiments, the nationally representative sample of respondents consistently rated disclosures reporting low levels of due diligence almost as highly as disclosures that reported a high level of due diligence. Based on these results, we argue that supply chain disclosure regimes designed to change consumer behavior in order to reduce corporate human rights abuses should be reconsidered.*

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## INTRODUCTION

With the globalization of business, firms are increasingly relying on third-party suppliers in countries plagued by weak governance. Although this trend has provided economic benefits to workers in developing countries, recent tragedies—such as the collapse of the Rana Plaza garment factory in Bangladesh—have highlighted the potential of human rights violations occurring when firms outsource.<sup>1</sup> These tragedies have occurred, in part, because there is a significant governance gap with respect to the regulation of corporate activity abroad.<sup>2</sup>

In an attempt to fill this gap, international legal instruments have been created over the past several decades to address the human rights conduct of

<sup>1</sup> See Jim Yardley, *Report on Deadly Factory Collapse in Bangladesh Finds Widespread Blame*, N.Y. TIMES (May 22, 2013), <http://www.nytimes.com/2013/05/23/world/asia/report-on-bangladesh-building-collapse-finds-widespread-blame.html>.

<sup>2</sup> See, e.g., PENELOPE SIMONS & AUDREY MACKLIN, *THE GOVERNANCE GAP: EXTRACTIVE INDUSTRIES, HUMAN RIGHTS, AND THE HOME STATE ADVANTAGE* (2014) (arguing that there is a persistent governance gap in the regulation of the activities of transnational corporations acting in states with weak governments).

transnational corporations.<sup>3</sup> Most recently, the U.N. Human Rights Council unanimously endorsed the Guiding Principles on Business and Human Rights in 2011.<sup>4</sup> The Guiding Principles affirm the corporate responsibility to protect human rights and outline remedies for victims of human rights abuses. These principles, however, are voluntary and lack independent monitoring and enforcement mechanisms. As a result, despite being well intentioned, these principles and the other existing international standards have been ineffective in closing the governance gap.

Given the shortcomings of international law, domestic legislation is emerging as an alternative method for regulating the extraterritorial human rights abuses of corporations. Within this shift to domestic law, governments are specifically turning to mandated disclosure as a way of filling the governance gap. Mandated disclosure regimes have gained traction, in part, because they are an indirect method of regulation that faces less political resistance than other regulatory techniques.<sup>5</sup> These regimes aim to shape corporate behavior by using transparency as a disinfectant.<sup>6</sup> Recent disclosure regulations require companies to provide information on their global supply chains, including due diligence measures that they have undertaken to prevent human rights violations by third-party suppliers (particularly slavery and human trafficking).

Although several laws that mandate supply chain disclosures regarding human rights have been passed around the world, the first, and perhaps most important, such law is the California Transparency in Supply Chains Act (CTSCA).<sup>7</sup> The CTSCA requires companies to disclose their efforts to ensure that their supply

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<sup>3</sup> Existing standards include the OECD Guidelines for Multinational Enterprises, ILO's Tripartite Declaration of Principles concerning Multinational Enterprises and Social Policy, the Voluntary Principles on Security and Human Rights, the U.N. Global Compact, and ISO 26000. *See infra* note 24.

<sup>4</sup> *See* The U.N. Working Group on Business and Human Rights, The UN Guiding Principles on Business and Human Rights: An Introduction, 2, [http://www.ohchr.org/Documents/Issues/Business/Intro\\_Guiding\\_PrinciplesBusinessHR.pdf](http://www.ohchr.org/Documents/Issues/Business/Intro_Guiding_PrinciplesBusinessHR.pdf); *see also* Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Human Rights, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework*, U.N. Doc. A/HRC/17/31, 3 (Mar. 21, 2011) [hereinafter U.N. Guiding Principles].

<sup>5</sup> Mandated disclosure is an example of a "new governance" regulatory mechanism that relies on specific, inflexible mandates to change behavior. New governance mechanisms stand in contrast to traditional command and control methods that are state-focused. The new governance model is considered to be more flexible, participatory, and cost-efficient, and may promote more innovation and tailoring to local circumstances. *See generally* Orly Lobel, *The Renew Deal: The Fall of Regulation and the Rise of Governance in Contemporary Legal Thought*, 89 MINN. L. REV. 342 (2004) (arguing there has been a decline of the "regulation" and a rise of the "governance" model of government); Martha Minow, *Public and Private Partnerships: Accounting for the New Religion*, 116 HARV. L. REV. 1229 (2003) (discussing the impetus for the move from public to privatized institutions that provide social goods). For an application of new governance theory to international regulation, see Kenneth W. Abbott & Duncan Snidal, *Strengthening International Regulation Through Transnational New Governance: Overcoming the Orchestration Deficit*, 42 VAND. J. TRANSNAT'L L. 501, 541 (2009).

<sup>6</sup> *See* Amitai Etzioni, *Is Transparency the Best Disinfectant?*, 18 J. POL. PHIL. 389, 398 (2010).

<sup>7</sup> *See* California Transparency in Supply Chains Act, CAL. CIV. CODE § 1714.43(a)(1) (West 2012) [hereinafter CTSCA, S.B. 657]. Another prominent supply chain disclosure law currently in force is the Dodd-Frank Act's section 1502, under which companies must report to the U.S. Securities and Exchange Commission on their suppliers' use of conflict minerals. *See* Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. No. 111-203, § 1502, 124 Stat. 1376, 2213-18 (codified as amended at 15 U.S.C. § 78m (2012)) [hereinafter Dodd-Frank Act § 1502].

chains are free from slavery and human trafficking. The law affects millions of consumers, given that California represents the world's seventh largest economy and the country's largest consumer base.<sup>8</sup> It has also served as the model for recent U.K. legislation on supply chain transparency and proposals for a similar law on the federal level in the United States and Australia.<sup>9</sup>

The hope of these laws is that stakeholders will be better able to pressure companies to change their behavior if they have access to disclosed information or that being forced to provide information will prompt companies to reexamine questionable practices.<sup>10</sup> For example, customers may consider information on a company's level of due diligence when making their purchasing decisions. Activists and NGOs may use this information to exert reputational pressure as part of a campaign for better sourcing and human rights practices among companies. Investors may alter their investment choices on the basis of this information. Finally, the requirement of disclosing information may lead companies to change their behavior even without pressure being exerted by consumers, NGOs, or investors.

Although supply chain disclosure laws could theoretically influence companies through any of these mechanisms, the laws have (at least primarily) been crafted to compel companies to provide information targeted to consumers who are making purchasing decisions. For example, the CTSCA was designed with the intention that the content and format of the disclosures would be useful for consumers.<sup>11</sup> The guidance the state of California has released on the document specifically notes that "[t]he Act is expressly intended to 'educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains,' and therefore disclosures should be made in a manner that best serves this

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<sup>8</sup> See CAL. DEP'T OF JUSTICE, THE CALIFORNIA TRANSPARENCY IN SUPPLY CHAINS ACT: A RESOURCE GUIDE, i (2015), <https://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/resource-guide.pdf> [hereinafter CAL. DEP'T OF JUSTICE RESOURCE GUIDE].

<sup>9</sup> See U.K. Modern Slavery Act of 2015, <http://www.legislation.gov.uk/ukpga/2015/30/contents/enacted>; Business Supply Chain Transparency Act of 2015, H.R. 3226, <https://www.congress.gov/bill/114th-congress/house-bill/3226/text/ih?overview=closed> [hereinafter Business Supply Chain Transparency Act]. The Australian government has indicated a willingness to enact legislation similar to the CTSCA and convened a Supply Chains Working Group to assess regulatory options. See Commonwealth of Australia, Australian Government Response to the Joint Standing Committee on Foreign Affairs, Defence and Trade Committee report: Trading Lives: Modern Day Human Trafficking (Oct. 27, 2014), [http://www.aph.gov.au/parliamentary\\_business/committees/house\\_of\\_representatives\\_committees?url=jfadt/slavery\\_people\\_trafficking/report.htm](http://www.aph.gov.au/parliamentary_business/committees/house_of_representatives_committees?url=jfadt/slavery_people_trafficking/report.htm).

<sup>10</sup> See Cary Coglianese & David Lazer, *Management-Based Regulation: Prescribing Private Management to Achieve Public Goals*, 37 LAW & SOC'Y REV. 691, 695 (2003); David Hess, *Social Reporting and New Governance Regulation: The Prospects of Achieving Corporate Accountability Through Transparency*, 17 BUS. ETHICS Q. 453, 462 (2007); Bradley C. Karkkainen, *Information as Environmental Regulation: TRI and Performance Benchmarking, Precursor to a New Paradigm?*, 89 GEO. L.J. 257, 262 (2001); Douglas A. Kysar & James Salzman, *Foreword: Making Sense of Information for Environmental Protection*, 86 TEX. L. REV. 1347, 1359 (2008); Lobel, *supra* note 5, at 454–55; Abbott & Snidal, *supra* note 5, at 561.

<sup>11</sup> See CAL. DEP'T OF JUSTICE RESOURCE GUIDE, *supra* note 8, at i ("A recent law in California is poised to help California consumers make better and more informed purchasing choices. The California Transparency in Supply Chains Act (Steinberg, 2010) (the 'Act') provides consumers with critical information about the efforts that companies are undertaking to prevent and root out human trafficking and slavery in their product supply chains—whether here or overseas."). *Id.* at 1 ("The California Transparency in Supply Chains Act, which became effective on January 1, 2012, empowers California consumers to join the fight against human trafficking by giving them access to information about retailers' and manufacturers' efforts to eradicate such labor practices from their supply chains.").

public policy.”<sup>12</sup> As a result, companies are directed to design their disclosures to provide information in a concise, structured, and easy to read format. In other words, instead of providing the kind of comprehensive information that would be useful to activists or investors, the law was designed to provide information that could change consumer behavior.

In this Article, we argue that supply chain disclosure regimes are unlikely to have their intended effect of directly changing consumer behavior. Although hardly any research directly on the effectiveness of supply chain disclosure regimes has been conducted to date, supply chain practices are not the only subject that governments are compelling companies to disclose information on. Instead, supply chain laws are part of a growing body of disclosure regulations that have become ubiquitous in a variety of areas.<sup>13</sup> But as this body of disclosure regulations has grown, so has an extensive literature empirically studying their effectiveness. This literature has largely challenged the value of mandated disclosures and has particularly questioned whether consumers in fact read and understand them.<sup>14</sup>

Moreover, the problems that have limited the effectiveness of disclosure regimes are likely to be exacerbated in the context of supply chain disclosures. We argue that disclosures are not only unlikely to be read and understood generally, but there are also several specific features of human rights-related supply chain disclosure regimes that make them even less likely to be useful to consumers. Most notably, while most disclosures concern the quality of a firm’s product or service, supply chain disclosures provide information on the process by which a product was manufactured (in the case of the CTSCA, whether human trafficking and slavery may have been used in the production process). Moreover, human rights-related supply chain disclosures are likely to be uniquely difficult to interpret because they do not provide information on the actual number of human rights abuses a company has committed. They instead only provide information on the level of due diligence companies conduct to minimize the risk of human rights violations in their supply chains. Finally, it is difficult for consumers and experts alike to assess the probability of human rights abuse in a given company’s supply chain because the levels of risk vary considerably based on a company’s size, industry, the country in which it operates, the number of tiers of suppliers in its supply chain, and the total number of

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<sup>12</sup> *Id.* at 5.

<sup>13</sup> See generally OMRI BEN-SHAHAR & CARL E. SCHNEIDER, MORE THAN YOU WANTED TO KNOW: THE FAILURE OF MANDATED DISCLOSURE, 1–13 (2014). For specific examples, see, e.g., JAMES T. HAMILTON, REGULATION THROUGH REVELATION: THE ORIGIN, POLITICS, AND IMPACTS OF THE TOXICS RELEASE INVENTORY PROGRAM (2005); William M. Sage, *Regulating Through Information: Disclosure Laws and American Health Care*, 99 COLUM. L. REV. 1701, 1707 (1999).

<sup>14</sup> Some critics still see mandated disclosure as a promising tool if designed properly. See ARCHON FUNG, MARY GRAHAM & DAVID WEL, FULL DISCLOSURE: THE PERILS AND PROMISE OF TRANSPARENCY 1–15 (2007); Oren Bar-Gill & Franco Ferrari, *Informing Consumers About Themselves*, 3 ERASMUS L. REV. 93, 98 (2010); Robert A. Hillman, *Online Boilerplate: Would Mandatory Website Disclosure of E-Standard Terms Backfire?*, 104 MICH. L. REV. 837, 849–52 (2006); see also Daniel Schwarcz, *Transparently Opaque: Understanding the Lack of Transparency in Insurance Consumer Protection*, 61 UCLA L. REV. 394 (2014) (emphasizing that mandatory disclosures would promote market discipline or facilitate efforts of markets intermediaries). Yet others are more skeptical that this regulatory technique can be fixed. See Daniel E. Ho, *Fudging the Nudge: Information Disclosure and Restaurant Grading*, 122 YALE L.J. 574 (2012) (empirically analyzing effect of restaurant sanitation grading disclosures); BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 34–35; Etzioni, *supra* note 6 (analyzing effect of mandatory disclosure on corporations).

suppliers. Taken together, these features of supply chain disclosures make them likely to be even less effective than disclosures in other contexts.

In order to test our argument, we engaged a leading market research firm to recruit a nationally representative sample of respondents to complete a series of experimental tests designed to measure whether consumers are able to understand the contents of supply chain disclosures. In the primary experiment, we asked respondents to read a company's disclosure and then rate the company's likely commitment to eradicating slavery and human trafficking from its supply chain. For the experimental treatment, we also randomly varied whether the disclosure reported a high level of supply chain due diligence (indicating that the company is undertaking a comprehensive effort to eradicate human rights violations from its supply chain) versus a low level (indicating little effort by the company to manage human rights risks within its supply chain). We further randomly varied whether the disclosure only provided the basic information that the law requires, or whether the disclosure went beyond compliance by conforming to the model disclosure guidelines that have been released by the state of California. In both our primary experiment and our additional tests, the respondents consistently rated disclosures that either were completely non-compliant or reported low levels of due diligence almost as highly as disclosures that reported a high level of due diligence. These results give credence to our theory that it is unlikely that consumers will be able to differentiate between these disclosures sufficiently to pressure companies to reduce the risk of human rights abuses in their supply chains.

It is important to note that our argument and experimental results only suggest that supply chain disclosures are unlikely to be understood and used by consumers making purchasing decisions. It is admittedly still possible that, even if the disclosures may not have the effect of changing consumers' impressions of companies, being forced to produce disclosures will compel companies to reconsider their supply chain practices even without any external pressure. Additionally, the disclosures may instead provide information that can be used by advocates in public relations campaigns, lawsuits, or other forms of advocacy. In fact, consumer class action lawsuits have recently been filed against Nestlé and Costco based on claims of misleading and unfair business practices, which stem from the companies' alleged failure to ensure that their CTSCA public disclosures accurately represent their human rights practices.<sup>15</sup> Given the potential of leveraging information in CTSCA disclosures to facilitate litigation, disclosures may have an effect unrelated to the way that consumers respond to and comprehend them. If these are the primary ways that supply chain disclosures are likely to have an effect, however, it would still call into question the existing regimes because they have focused on designing short disclosures directed at consumers and not the kind of comprehensive disclosures that would be most useful for developing a lawsuit.

This Article proceeds as follows. In Part I, we discuss the ineffectiveness of international law in regulating companies' human rights practices as well as the rise

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<sup>15</sup> The class action cases against Nestlé and Costco alleged forced labor in their supply chains and argued that the companies' CTSCA statements on their websites were misleading as to their labor practices. The Costco case was recently dismissed for lack of standing, while the Nestlé case was dismissed in accordance with California's "safe harbor" doctrine, which limited Nestlé's liability. However, the Nestlé case has been appealed to the 9<sup>th</sup> Circuit. *See* *Sud v. Costco Wholesale Corp.*, No. 15-3783, 2016 WL 192569 (N.D. Cal. Jan. 15, 2016); *Barber v. Nestlé USA, Inc.*, 154 F. Supp. 3d 954 (C.D. Cal. 2015).

of efforts to do so through mandated disclosure. We then describe the CTSCA and our findings of corporate compliance with and consumer awareness of this law. In Part II, we discuss the need to critically examine supply chain regulations in light of existing literature challenging the effectiveness of mandatory disclosure regimes in general. We then highlight the unique characteristics of human rights-related supply chain disclosures that suggest that they are even less likely to be effective than disclosure regimes in other contexts. In Part III, we present the results of our primary experiment designed to assess how supply chain disclosures influenced consumer confidence in corporate efforts to root out human trafficking and slavery. We then present the results of three additional tests of how respondents reacted to supply chain disclosures. These tests measured: (1) the influence of disclosures on consumer comprehension; (2) consumer views on actual disclosures; and (3) the reported influence of disclosures on potential purchasing decisions. Finally, in Part IV, we discuss the implications of our results and argue that current supply chain disclosure laws should be reconsidered.

## I. TOWARDS SUPPLY CHAIN DISCLOSURE

The tragic cases of corporate complicity in human rights violations abroad have given rise to calls for supply chain accountability. Advocates have pursued international law as a mechanism to regulate multinational corporations, thus giving rise to a host of international standards culminating in the recently approved U.N. Guiding Principles on Business and Human Rights.<sup>16</sup> Yet these voluntary standards have been ineffective in holding companies accountable for human rights abuses committed by their suppliers. Therefore, some advocates are now turning to domestic law—specifically mandated disclosure—as an alternative to international legal mechanisms. Recent legislation in the United States and United Kingdom requires companies to make disclosures on human rights due diligence conducted on their supply chains.<sup>17</sup> The first and most prominent supply chain disclosure law aimed at consumers is the 2010 California Transparency in Supply Chains Act (CTSCA), which is the subject of our study.

### A. *The Ineffectiveness of International Law*

Scholars and policymakers have identified a governance gap with respect to the prevention of extraterritorial human rights abuses by multinational corporations.<sup>18</sup> In the words of John Ruggie, U.N. Special Representative for Business and Human Rights:

The root cause of the business and human rights predicament today lies in the governance gaps created by globalization—between the scope and impact of economic forces and actors, and the capacity of societies to

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<sup>16</sup> See U.N. Guiding Principles, *supra* note 4.

<sup>17</sup> See U.K. Modern Slavery Act; Business Supply Chain Transparency Act.

<sup>18</sup> See, e.g., PENELOPE SIMONS & AUDREY MACKLIN, *THE GOVERNANCE GAP: EXTRACTIVE INDUSTRIES, HUMAN RIGHTS, AND THE HOME STATE ADVANTAGE* (2014); Kishanthi Parella, *Outsourcing Corporate Accountability*, 89 WASH. L. REV. 747, 749–50 (2014).



manage their adverse consequences. These governance gaps provide the permissive environment for wrongful acts by companies of all kinds without adequate sanctioning or reparation.<sup>19</sup>

There is a governance gap in the reach of both national and international law, thus leaving companies not legally accountable for potential human rights violations. Closing this gap is therefore a critical challenge.

The governance gap is particularly pronounced in conflict-affected areas, where host states lack the political capacity, rule of law, and/or will to enforce human rights norms and provide redress to victims of human rights violations.<sup>20</sup> Host states are primarily concerned with attracting foreign investment, which may mean turning a blind eye to domestic law violations or abstaining from passing human rights regulations that could lead companies to shift their business elsewhere (with fewer regulatory burdens).<sup>21</sup> States in so-called “weak governance zones” are usually plagued by corruption and may be unable to prevent or stop human rights violations within their borders (and may sometimes be implicated in those violations themselves).<sup>22</sup>

International law is a potential mechanism for closing the governance gap and regulating corporate human rights abuses abroad. Scholars have argued that companies have legal obligations under international law, particularly for violations of human rights, labor rights, and environmental protection.<sup>23</sup> A range of intergovernmental mechanisms have emerged over the past several decades to address the human rights conduct of transnational corporations. Existing standards include the OECD Guidelines for Multinational Enterprises, ILO’s Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy, the Voluntary Principles on Security and Human Rights, the U.N. Global Compact, and ISO 26000.<sup>24</sup> These standards have been influential in developing new norms

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<sup>19</sup> Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises, *Report of the Special Representative of the Secretary-General on the Issue of Human Rights and Transnational Corporations and Other Business Enterprises: Protect, Respect and Remedy: A Framework for Business and Human Rights*, ¶ 3, U.N. Doc. A/HRC/8/5 (Apr. 7, 2008).

<sup>20</sup> See U.N. Guiding Principles, *supra* note 4, at § 1.B.7.

<sup>21</sup> See Steven R. Ratner, *Corporations and Human Rights: A Theory of Legal Responsibility*, 111 YALE L.J. 443, 460, 463 (2001).

<sup>22</sup> See OECD, RISK AWARENESS TOOL FOR MULTINATIONAL ENTERPRISES IN WEAK GOVERNANCE ZONES 9, 27 (2006).

<sup>23</sup> See, e.g., ANDREW CLAPHAM, HUMAN RIGHTS OBLIGATIONS OF NON-STATE ACTORS 195–270 (2006); José E. Alvarez, *Are Corporations “Subjects” of International Law?*, 9 SANTA CLARA J. INT’L L. 1, 31 (2011); Andrew Clapham & Scott Jerbi, *Categories of Corporate Complicity in Human Rights Abuses*, 24 HASTINGS INT’L & COMP. L. REV. 339, 341 (2001); David Kinley & Junko Tadaki, *From Talk to Walk: The Emergence of Human Rights Responsibilities for Corporations at International Law*, 44 VA. J. INT’L L. 931, 933 (2004); Ratner, *supra* note 21, at 475–88.

<sup>24</sup> See OECD, *The OECD Guidelines For Multinational Enterprises: Text, Commentary and Clarifications*, DAF/IME/WPG(2000)15/FINAL (Oct. 31, 2001), [https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=daffe/ime/wpg\(2000\)15/final](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cote=daffe/ime/wpg(2000)15/final); International Labor Organization, *Tripartite Declaration of Principles Concerning Multinational Enterprises and Social Policy* (4th ed. 2006), [http://www.ilo.org/wcmsp5/groups/public/—ed\\_emp/—emp\\_ent/—multi/documents/publication/wcms\\_094386.pdf](http://www.ilo.org/wcmsp5/groups/public/—ed_emp/—emp_ent/—multi/documents/publication/wcms_094386.pdf); *Voluntary Principles on Security and Human Rights* (2000), <http://www.voluntaryprinciples.org/what-are-the-voluntary-principles/>; United Nations, *UN Global Compact* (2000), <http://www.unglobalcompact.org/AboutTheGC/TheTenPrinciples/index.html>;

and setting expectations for companies, many of which have responded by adopting internal codes of conduct and compliance systems on human rights.<sup>25</sup>

The most recent and highly publicized international mechanism is the U.N. Guiding Principles on Business and Human Rights (Guiding Principles), which were unanimously endorsed by the U.N. Human Rights Council in 2011.<sup>26</sup> The Guiding Principles, which are the result of extensive, multi-year consultations, have become the dominant framework for articulating the international law landscape with respect to business and human rights. The Guiding Principles rest on three pillars: (1) the state duty to protect human rights; (2) the corporate responsibility to respect human rights; and (3) the need for access to remedies for victims of human rights abuses.<sup>27</sup> While the Guiding Principles assign states the primary duty to protect against corporate human rights abuses, they also urge companies to undertake a regular process of human rights due diligence whereby human rights abuses are treated as critical business risks.

The Guiding Principles define the parameters of corporate due diligence, which is aimed at identifying, preventing, mitigating, and accounting for potential adverse human rights impacts.<sup>28</sup> According to the Guiding Principles, the process of conducting due diligence should be ongoing throughout the life of an activity, include all internationally recognized human rights as a reference point, and extend to a company's suppliers.<sup>29</sup> Companies are expected to "seek to prevent or mitigate adverse human rights impacts that are directly linked to their operations, products or services by their business relationships, even if they have not contributed to those impacts."<sup>30</sup> Business relationships are understood to include relationships with "entities in [a company's] value chain."<sup>31</sup> The Guiding Principles further call on states to encourage, or where appropriate require, reporting by companies of their due diligence measures to prevent adverse human rights impacts.<sup>32</sup>

Building on the recent approval of the Guiding Principles, the process is underway to develop a U.N. treaty on business and human rights.<sup>33</sup> According to its proponents, a treaty could provide victims with access to justice remedies that are not

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Int'l Org. for Standardization, *ISO 26000: Guidance on Social Responsibility* (2010), [http://www.iso.org/iso/catalogue\\_detail?csnumber=42546](http://www.iso.org/iso/catalogue_detail?csnumber=42546). For further discussion of these international legal mechanisms, see SIMONS & MACKLIN, *supra* note 18, at 79–177.

<sup>25</sup> See Sean D. Murphy, *Taking Multinational Corporate Codes of Conduct to the Next Level*, 43 COLUM. J. TRANSNAT'L L. 389, 400 (2004–2005); Kinley & Tadaki, *supra* note 23, at 949–60.

<sup>26</sup> See The U.N. Working Group on Business and Human Rights, *supra* note 4; U.N. Guiding Principles, *supra* note 4, at 3.

<sup>27</sup> See U.N. Guiding Principles, *supra* note 4.

<sup>28</sup> *Id.* at Principles 17–21.

<sup>29</sup> *Id.* at Principles 17, 18 cmt.

<sup>30</sup> *Id.* at Principle 13(b).

<sup>31</sup> *Id.* at Principle 13(b) cmt.

<sup>32</sup> *Id.* at Principle 3 cmt. The commentary states: "A requirement to communicate can be particularly appropriate where the nature of business operations or operating contexts pose a significant risk to human rights. Policies or laws in this area can usefully clarify what and how businesses should communicate, helping to ensure both the accessibility and accuracy of communications." *Id.*

<sup>33</sup> For a discussion of options for a new international legal instrument on business and human rights, see Int'l Comm'n of Jurists, *Needs and Options for a New International Instrument in the Field of Business and Human Rights* (June 2014), <http://icj.wpengine.netdna-cdn.com/wpcontent/uploads/2014/06/NeedsandOptionsinternationalinstlCJReportFinalelecvers.compressed.pdf>.

outlined in the Guiding Principles and create binding obligations on corporations.<sup>34</sup> There has been broad support in the NGO community for such a treaty, with more than six hundred civil society organizations having signed a joint statement in 2013 calling for a binding international legal framework to protect against corporate human rights abuses.<sup>35</sup> In July 2014, the U.N. Human Rights Council passed a resolution to create an open-ended intergovernmental working group to propose an international treaty.<sup>36</sup> A new expert legal group has been conducting consultations to inform the treaty process over a two-year period, beginning in July 2015.<sup>37</sup> The next step will be to articulate options for the treaty, including whether it would only focus on gross human rights violations, and whether it would apply to only transnational corporations or also apply to state-owned firms, national companies, joint ventures, and subsidiaries.<sup>38</sup>

Despite the development of multiple intergovernmental standards on business and human rights as well as the movement for a binding treaty, international law is currently an ineffective mechanism for regulating corporate human rights abuses abroad. Existing standards have the status of voluntary soft law and lack independent monitoring and enforcement mechanisms.<sup>39</sup> This includes the Guiding Principles, which have been criticized by many civil society organizations as deficient in many respects.<sup>40</sup> For instance, the Guiding Principles do not call on home states to enact extraterritorial legislation. The Commentary to the Guiding Principles states:

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<sup>34</sup> See Surya Deva, *Corporate Human Rights Abuses and International Law: Brief Comments*, JAMESGSTEWART.COM: BLOG (Jan. 28, 2015), <http://jamesgstewart.com/author/surya-deva/>.

<sup>35</sup> Treaty Alliance, *Joint Statement: Call for an International Legally Binding Instrument on Human Rights, Transnational Corporations and Other Business Enterprises* (2013), <http://www.treatymovement.com/statement-2013>.

<sup>36</sup> See Human Rights Council Res. 26/9, U.N. Doc. A/HRC/Res/26/9 (July 14, 2014).

<sup>37</sup> The two-year treaty initiative is led by the International Federation for Human Rights (FIDH) and The Corporate Accountability Working Group of the International Network for Economic, Social and Cultural Rights (ESCR-Net). See ESCR-Net, *New Expert Legal Group to Consult Around the world, Then Develop Content Proposals for a Treaty on Human Rights and Corporate Activities: Project Launch 2015–2016* (2015), <https://www.escr-net.org/node/365893>.

<sup>38</sup> See John G. Ruggie, *Life in the Global Public Domain: Response to Commentaries on the U.N. Guiding Principles and the Proposed Treaty on Business and Human Rights 4–6* (Jan. 23, 2015), <http://ssrn.com/abstract=2554726>.

<sup>39</sup> See John Gerard Ruggie, *Business and Human Rights: The Evolving International Agenda*, 101 AM. J. INT'L L. 819, 834 (2007); SIMONS & MACKLIN, *supra* note 18, at 79–177; Kinley & Tadaki, *supra* note 23, at 958–60.

<sup>40</sup> See Joint Civil Society, *Statement on the Draft Guiding Principles on Business and Human Rights*, (Jan. 2011), FIDH [http://www.fidh.org/IMG/pdf/Joint\\_CSJ\\_Statement\\_on\\_GPs.pdf](http://www.fidh.org/IMG/pdf/Joint_CSJ_Statement_on_GPs.pdf). For further background and critiques of the Guiding Principles, see generally Larry Catá Backer, *Moving Forward the U.N. Guiding Principles for Business and Human Rights: Between Enterprise Social Norm, State Domestic Legal Orders, and the Treaty Law That Might Bind Them All*, 38 FORDHAM INT'L L.J. 457 (2015); Robert C. Blitt, *Beyond Ruggie's Guiding Principles on Business and Human Rights: Charting an Embracive Approach to Corporate Human Rights Compliance*, 48 TEXAS INT'L L.J. 33 (2012); Anita Ramasastry, *Corporate Social Responsibility Versus Business and Human Rights: Bridging the Gap Between Responsibility and Accountability*, 14 J. HUMAN RIGHTS 237 (2015); Florian Wettstein, *CSR and the Debate on Business and Human Rights*, 22 BUS. ETHICS Q. 739 (2012); David Weissbrodt, *Human Rights Standards Concerning Transnational Corporations and Other Business Entities*, 23 MINN. J. INT'L L. 135 (2014); Cindy S. Woods, *It Isn't a State Problem: The Minas Conga Mine Controversy and the Need for Binding International Obligations on Corporate Actors*, 46 GEO. J. INT'L L. 629 (2015).

At present States are not generally required under international human rights law to regulate the extraterritorial activities of businesses domiciled in their territory and/or jurisdiction. Nor are they generally prohibited from doing so, provided there is a recognized jurisdictional basis.<sup>41</sup>

Even though the Guiding Principles recognize the “significant legal gap[s]” in home state practice with respect to regulating corporate human rights abuses, they only place a minimal burden on host states. Moreover, despite calls to articulate legal duties for corporations under international law, the Guiding Principles stop short of taking this step. As the introduction to the Guiding Principles affirms, “nothing in these Guiding Principles should be read as creating new international law obligations.”<sup>42</sup>

While the treaty process has gained momentum, it has also been subject to substantial criticism.<sup>43</sup> The aforementioned 2014 U.N. resolution, sponsored by Ecuador and South Africa, only garnered a plurality, not a majority, of votes in the Council. The opposing countries included the United States, all states in the European Union, Japan, and Korea; there were also 13 abstentions. State opposition to the resolution reflects the lack of broad political support for this endeavor.<sup>44</sup> It thus remains unclear whether the treaty process will result in an instrument that will garner approval by the U.N. Human Rights Council, and how long such a process may take. As a result, there is a risk that states will use this delay as an excuse for not implementing the Guiding Principles.<sup>45</sup> In addition, negotiations to achieve consensus on a treaty may result in an instrument that is too vague to provide effective guidance.<sup>46</sup> In the absence of a U.N. treaty, the international law landscape consists only of voluntary soft law standards, thus creating pressure for home states to address corporate human rights abuses abroad.

### *B. The Rise of Domestic Disclosure Laws*

Given the limitations of existing international legal mechanisms, domestic law is emerging as a potential tool for regulating the extraterritorial human rights abuses of multinational corporations. Home states are beginning to exert pressure on corporations to abide by international human rights norms abroad, particularly in light of the inability of host states to effectively govern companies that conduct business within their borders. Since the U.S. Supreme Court recently limited the extraterritorial application of the Alien Tort Claims Act,<sup>47</sup> advocates are pursuing

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<sup>41</sup> U.N. Guiding Principles, *supra* note 4, at 3–4.

<sup>42</sup> *Id.* at 1.

<sup>43</sup> See Backer, *supra* note 40, at 530.

<sup>44</sup> See Erika R. George, *Incorporating Rights: Making the Most of the Meantime 2* (2014), <http://ssrn.com/abstract=2560082>.

<sup>45</sup> See John Tasioulas, *Human Rights, No Dogmas: The UN Guiding Principles on Business and Human Rights 3* (Jan. 30, 2015), <http://ssrn.com/abstract=2561420>.

<sup>46</sup> *Id.*

<sup>47</sup> See *Kiobel v. Royal Dutch Petroleum Co.*, 133 S.Ct. 1659 (2013) (finding that the Alien Tort Claims Act presumptively does not apply extraterritorially). The Alien Tort Claims Act allows U.S. district courts to hear “any civil action by an alien for a tort only, committed in violation of the law of nations . . . .” 28 U.S.C. § 1350 (1789).

mandatory information disclosure laws as an alternative mechanism to promote corporate accountability.

Supply chain disclosure laws require companies to report on their efforts to address human rights violations in their supply chains. This “new governance” regulatory technique is less intrusive than one that imposes direct standards, and therefore faces less political resistance.<sup>48</sup> For example, a supply chain disclosure law may require companies to provide information on whether they use third party auditors to verify the labor practices of their suppliers. While failure to report under these regulations may carry penalties, information disclosure laws largely operate through non-coercive enforcement by facilitating pressure on companies by consumers, NGOs, and investors.<sup>49</sup>

One example of an issue that supply chain disclosure laws have addressed is the use of conflict minerals. The first legislation in this area was section 1502 of the Dodd-Frank Act, which imposes a new reporting requirement on publicly traded companies that manufacture or contract to manufacture products using certain conflict minerals.<sup>50</sup> The stated rationale behind the law is that it will indirectly hinder financing of the ongoing conflicts in the eastern Democratic Republic of Congo (DRC) by curbing the state and non-state armed groups’ illegitimate exploitation of natural resources.

Under section 1502, companies must disclose whether they source minerals originated in the DRC and bordering countries on a new form to be filed with the SEC (Form SD for specialized disclosures).<sup>51</sup> If a company does source minerals from the DRC and bordering countries, it must also submit a Conflict Minerals Report on due diligence measures taken to determine whether those conflict minerals directly or indirectly financed or benefited armed groups in certain countries.<sup>52</sup> The quality of the due diligence must meet nationally or internationally recognized standards, such as the Organization for Economic Cooperation and Development (OECD) Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas.<sup>53</sup>

One important feature of section 1502 is that because it requires an SEC filing, it imposes penalties on companies for not reporting or complying in good faith.<sup>54</sup> Form SD is deemed filed under the Securities Exchange Act of 1934 and subject to section 18 of the Exchange Act, which attaches liability for any false or misleading statements.<sup>55</sup> Section 1502 also has a public disclosure requirement on

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<sup>48</sup> See *supra* text accompanying note 5.

<sup>49</sup> *Id.*

<sup>50</sup> See Dodd-Frank Act § 1502. While section 1502 was passed in 2010 as part of the Dodd-Frank Act, the SEC issued a final rule in 2012 following a long public comment period.

<sup>51</sup> For an analysis of the first set of Conflict Minerals Reports filed with the SEC as well as further discussion of section 1502, see Galit A. Sarfaty, *Shining Light on Global Supply Chains*, 56 HARV. INT’L L.J. 419 (2015).

<sup>52</sup> *Id.*

<sup>53</sup> See OECD Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas (2d ed. 2013), <http://dx.doi.org/10.1787/9789264185050-en>; see also Conflict Minerals, 77 Fed. Reg. 56274, 56281–82 (Sept. 12, 2012).

<sup>54</sup> See Conflict Minerals, 77 Fed. Reg. at 56280.

<sup>55</sup> *Id.*

company websites, which facilitates third-party rankings and the leveraging of consumer, NGO, and investor pressure on companies to become conflict-free.<sup>56</sup>

It is important to note that the United States is not the only country that has begun to use supply chain disclosure laws to limit the use of conflict minerals. In February 2012, the DRC passed a law requiring all mining and mineral trading companies operating in the country to undertake due diligence on all levels of their supply chain according to the OECD Due Diligence Guidance for Responsible Supply Chains.<sup>57</sup> Similarly in Canada, a conflict minerals act that would require Canadian companies to exercise due diligence in sourcing minerals from the Great Lakes Region of Africa in accordance with the OECD Due Diligence Guidance was introduced in the House of Commons in 2013.<sup>58</sup>

Additionally, in late May 2015, the European Parliament endorsed a mandatory regulation on the responsible sourcing of minerals from conflict-affected and high-risk areas.<sup>59</sup> The proposed law, which is estimated to affect over 800,000 European companies, would require companies to disclose the steps they have taken to address risks in their supply chains for conflict minerals. As compared to section 1502, the European regulation would have a broader geographic scope, as it would apply to conflict minerals sourced in all conflict-affected or high-risk areas (not just in the DRC region). In addition, the European law would apply not only to manufacturers but also to downstream companies (those that purchase from the smelter or refiner). Finally, the regulation includes a mandatory certification program involving independent third-party audits for smelters and refiners and establishes a “European responsible importer” label for importers that comply with the regulation.<sup>60</sup> The labeling component highlights the law’s focus on consumers: “[conflict] minerals, potentially present in consumer products, link consumers to conflicts outside the [European] Union. As such, consumers are indirectly linked to

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<sup>56</sup> There are already various consumer applications that track sustainability issues such as conflict minerals policies. *See, e.g.*, RANKABRAND, [www.rankabrand.org](http://www.rankabrand.org) (last visited Mar. 8, 2015); GOODGUIDE, [www.goodguide.com](http://www.goodguide.com) (last visited Mar. 8, 2015). In addition, the Enough Project has published a ranking of electronics companies in 2010 and 2012 based on a survey of their conflict minerals policies and performance. *See* Enough Project, *2012 Conflict Minerals Company Rankings*, RAISE HOPE FOR CONGO (2012), <http://www.raisehopeforcongo.org/content/conflict-minerals-company-rankings>.

<sup>57</sup> *See* Arrêté ministériel N.0057.CAB.MIN/MINES/01/2012: Portant mise en œuvre du Mécanisme Régional de Certification de la Conférence Internationale sur la Région des Grands-Lacs « CIRGL » en République Démocratique du Congo, MINISTÈRE DES MINES DE LA REPUBLIQUE DEMOCRATIQUE DU CONGO, Article 8, [http://mines-rdc.cd/fr/documents/Arrete\\_0057\\_2012.pdf](http://mines-rdc.cd/fr/documents/Arrete_0057_2012.pdf); *see also* Press Release, Glob. Witness, Congo Government Enforces Law to Curb Conflict Mineral Trade (May 21, 2012), [http://www.globalwitness.org/sites/default/files/library/Congo\\_government\\_enforces\\_law\\_to\\_curb\\_conflict\\_minerals\\_trade.pdf](http://www.globalwitness.org/sites/default/files/library/Congo_government_enforces_law_to_curb_conflict_minerals_trade.pdf).

<sup>58</sup> Conflict Minerals Act, H.C. C-486, 41st Parl. (2013) (Can.), <http://www.parl.gc.ca/HousePublications/Publication.aspx?DocId=6062040&File=4>. The Canadian Parliament ultimately voted down the bill.

<sup>59</sup> The European Parliament had voted to reject the European Commission’s proposal for a voluntary system of self-certification and instead requested for mandatory certification. *See* Press Release, European Parliament, Conflict Minerals: MEPs Ask for Mandatory Certification of EU Importers (May 20, 2015), <http://www.europarl.europa.eu/news/en/news-room/content/20150513IPR55318/html/Conflict-minerals-MEPs-ask-for-mandatory-certification-of-EU-importers>.

<sup>60</sup> *See id.*; *see also* *European Parliament Votes for Tougher Measures on Conflict Minerals*, THE GUARDIAN (May 21, 2015), <http://www.theguardian.com/global-development/2015/may/21/european-parliament-tougher-measures-conflict-minerals>.

conflicts that have severe impacts on human rights.”<sup>61</sup> The European Parliament will next engage in negotiations with European member states on the text of the proposed regulation, which will need final approval from the European Council to become law.

### C. California Transparency in Supply Chains Act

Supply chain disclosure laws such as section 1502 of Dodd-Frank not only require companies to make disclosures to investors on conflict minerals, but also require companies to make disclosures directly to consumers on human rights more broadly. The first, and most ambitious, of these laws is the 2010 California Transparency in Supply Chains Act (CTSCA).

#### 1. Requirements

The CTSCA, which took effect January 1, 2012, is an anti-human trafficking law that targets the corporate supply chain and imposes disclosure requirements on multinational firms. Under the CTSCA, companies are required to post disclosures if they meet three criteria. The company must be a “[1] retail seller and manufacturer [2] doing business in this state [of California] and [3] having annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000).”<sup>62</sup>

The CTSCA requires companies that meet these three criteria to disclose their efforts to ensure that their supply chains are free from slavery and human trafficking.<sup>63</sup> It outlines five topics that companies must report on their websites regarding their supply chain due diligence: verification,<sup>64</sup> audits,<sup>65</sup> certification,<sup>66</sup> internal accountability,<sup>67</sup> and training.<sup>68</sup>

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<sup>61</sup> See Draft European Parliament Legislative Resolution on the Proposal for a Regulation of the European Parliament and of the Council Setting up a Union System for Supply Chain Due Diligence Self-Certification of Responsible Importers of Tin, Tantalum and Tungsten, their Ores, and Gold Originating in Conflict-Affected and High-Risk Areas, Amendment 6, Proposal for a Regulation Recital 8 (Apr. 24, 2015), <http://www.europarl.europa.eu/sides/getDoc.do?type=REPORT&reference=A8-2015-0141&language=EN#title2>.

<sup>62</sup> CTSCA, S.B. 657 § 3.

<sup>63</sup> *Id.*

<sup>64</sup> *Id.*; Verification: “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer . . . [e]ngages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.” CAL. CIV. CODE § 1714.43(c)(1).

<sup>65</sup> CTSCA, S.B. 657 § 3; Audits: “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer . . . [c]onducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.” CAL. CIV. CODE § 1714.43(c)(2).

<sup>66</sup> CTSCA, S.B. 657 § 3; Certification: “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer . . . [r]equires 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.” CAL. CIV. CODE § 1714.43(c)(3).

<sup>67</sup> CTSCA, S.B. 657 § 3; Accountability: “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer . . . [m]aintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.” CAL. CIV. CODE § 1714.43(c)(4).

<sup>68</sup> CTSCA, S.B. 657 § 3; Training: “[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer . . . [p]rovides company employees and management, who have direct

As an information disclosure law, the CTSCA does not require companies to implement any new measures or ensure that their supply chains are free from human trafficking or slavery. Rather, it simply requires disclosure on a company's website of its efforts to eradicate human rights violations in its supply chain. Corporate statements must be accessible through a "conspicuous and easily understood link," with the goal of helping consumers make informed purchasing decisions.<sup>69</sup> Third parties are already beginning to compile this information in order to more effectively reach consumers.<sup>70</sup> The only remedy for failure to comply with the law is an action brought by the Attorney General of California for injunctive relief.

## 2. Compliance

Since the Attorney General of California has not yet brought actions against companies for failing to comply with the CTSCA,<sup>71</sup> it is an open question whether companies actually have complied with the requirements of the law. In order to analyze regulatory compliance with the CTSCA, we compiled a dataset of whether companies that met the law's criteria had posted supply chain disclosures as of the summer of 2015.

To identify companies that meet these criteria, we relied on a database compiled by KnowTheChain. This non-profit organization "was initially created to encourage greater corporate understanding of the California Supply Chain Transparency Act" and continues to serve as "a resource for businesses and investors who need to understand and address forced labor abuses within their supply chains."<sup>72</sup> As part of that mission, KnowTheChain has attempted to develop a list of companies that meet the criteria to make a disclosure under the CTSCA.<sup>73</sup>

There are 501 companies on KnowTheChain's list of companies that are required to make disclosures under the CTSCA.<sup>74</sup> To build our dataset, we

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responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products." CAL. CIV. CODE § 1714.43(c)(5).

<sup>69</sup> CTSCA, S.B. 657 § 3; CAL. CIV. CODE § 1714.43(b).

<sup>70</sup> For instance, KnowTheChain has compiled a dataset that checks whether applicable companies posted statements that addressed at least three of the five statutory requirements. See *Five Years of the California Transparency in Supply Chains Act*, KNOWTHECHAIN (Sep. 30, 2015), [https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain\\_InsightsBrief\\_093015.pdf](https://knowthechain.org/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf).

<sup>71</sup> Although no actions have thus far been brought by the Attorney General of California, in April 2015, the Office of the Attorney General sent informational letters to companies that are required to comply with the legislation but had not yet posted disclosure statements on their websites. It also issued a consumer alert on the legislation and created an online form to report suspected violations. See Press Release, Office of the Attorney General of California, Attorney General Kamala D. Harris Issues Consumer Alert on California Transparency in Supply Chains Act (Apr. 13, 2015), <http://oag.ca.gov/sites/all/files/agweb/pdfs/sb657/consumer-alert.pdf?>.

<sup>72</sup> See *About Us*, KNOWTHECHAIN, <https://knowthechain.org/about-us/>.

<sup>73</sup> To develop its list of companies that are required to make a disclosure under the CTSCA, KnowTheChain used a three-wave process. First, a research team used criteria developed by an outside law firm to search the Hoovers D&B database for companies that met the CTSCA's criteria. Second, a different group of researchers used the Standard & Poor's Capital IQ database to identify additional companies that meet the CTSCA's criteria. Third, KnowTheChain also included a "small number of additional companies" that its research team discovered had already made disclosures in the list of companies required to do so. See KNOWTHECHAIN, *supra* note 70, at 12–13.

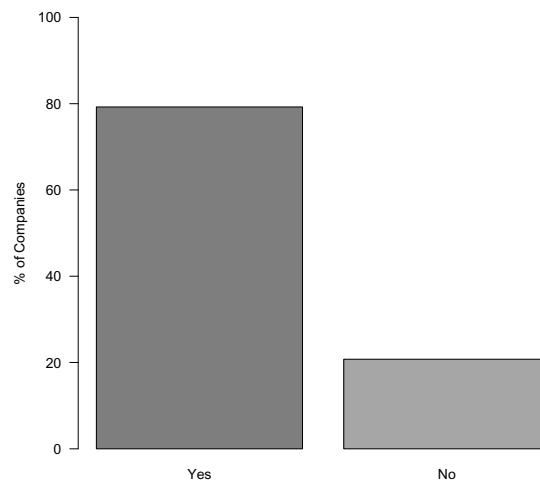
<sup>74</sup> KnowTheChain occasionally updates its database. This number is based on the number of companies included on May 1, 2015. This list, however, may be both under- and over-inclusive. The



independently collected data on each of these 501 companies. For each of these companies, we first attempted to determine whether they have posted a CTSCA disclosure. For each company that had a statement available, we then coded information about the length, content, and visibility of its statement.

Figure 1 displays the percentage of companies that have a statement on their website out of those identified by KnowTheChain as being required by the CTSCA to file a disclosure. As Figure 1 shows, 79.2% (397 out of 501) have a CTSCA disclosure posted, and 20.8% (104 out of 501) do not.

Figure 1: Companies With CTSCA Disclosures Posted



Although roughly a fifth of companies have still not complied with the CTSCA, it does appear that compliance has increased over time. KnowTheChain reports that when it launched in October 2013, 71% of required companies had posted a CTSCA disclosure.<sup>75</sup> To increase compliance, in January 2014 KnowTheChain and the Business and Human Rights Resource Center began to contact companies that had not yet made disclosures.<sup>76</sup> Of the 129 companies contacted, 44 companies responded to their communications (and 85 did not).<sup>77</sup> Although this response rate is low, the targeted communication efforts may have contributed to the increase in compliance between when KnowTheChain began checking for disclosures in 2013 and our efforts to check statements in the summer of 2015.

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list is probably under-inclusive because many companies required to make disclosures are not easily identifiable using public databases. Moreover, the list is possibly over-inclusive because there may be a few companies that voluntarily made disclosures even though they did not meet all three criteria (although we believe this to be a handful of companies at most).

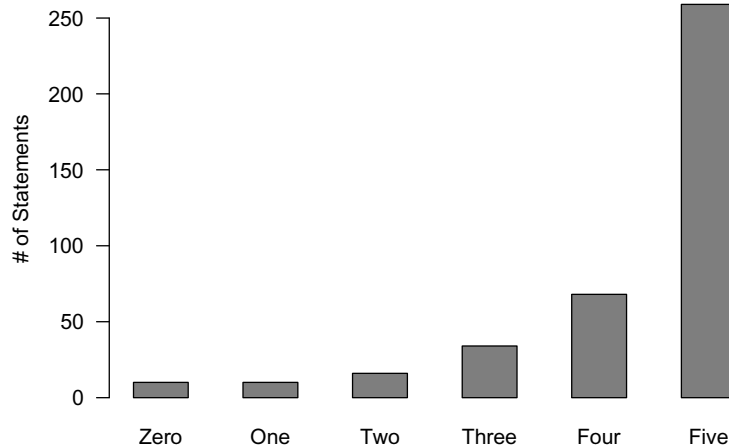
<sup>75</sup> See *KnowTheChain: Mixed Corporate Response to California's Transparency Law*, HUMANITY UNITED (Feb. 12, 2014), <https://humanityunited.org/knowthechain-mixed-corporate-response-to-californias-transparency-law/>; *Announcing KnowTheChain.org* (Oct. 21, 2013), HUMANITY UNITED, <http://archive.humanityunited.org/blog/announcing-knowthechainorg#.Vd0JSZ1Viko>.

<sup>76</sup> See *KnowTheChain: Mixed Corporate Response to California's Transparency Law*, HUMANITY UNITED, *supra* note 75.

<sup>77</sup> *Id.*

For each of the 397 disclosures that we were able to locate, we coded their contents for compliance with the CTSCA. We specifically coded whether each of the 397 disclosures reported on the five topics that companies are required to discuss according to the CTSCA.<sup>78</sup> Figure 2 presents data on the number of topics that were covered in our dataset of disclosures.

Figure 2: Number of Topics Covered in CTSCA Disclosures



As Figure 2 shows, there were ten companies that posted a CTSCA disclosure, but did not adequately discuss a single one of the topics the law requires for companies to disclose. Instead, these companies posted more general statements on their efforts to avoid human trafficking and slavery.<sup>79</sup> Additionally, there were a number of companies that posted disclosures, but did not address all of the required topics: ten companies addressed one topic; sixteen companies addressed two topics; thirty-four companies addressed three topics; and sixty-eight companies addressed four topics. In total, 34.8% of the companies that filed disclosures did not discuss all five required topics.

Roughly two-thirds of companies that filed disclosures, however, addressed all five of the required topics. More specifically, 259 companies—65.2% of those that posted disclosures—addressed all five required topics. However, since the law requires all five topics to be discussed, all companies that did not do so technically are not in compliance with the CTSCA. This suggests that only a bare majority of

<sup>78</sup> For a general overview of the requirements of the CTSCA, see CAL. DEP'T OF JUSTICE RESOURCE GUIDE, *supra* note 8, at 3–4.

<sup>79</sup> For example, CarMax posted the following statement on its website: “CarMax recognizes the serious nature of the crimes of human trafficking and slavery. CarMax has taken and will take every reasonable effort to ensure that its supply chain is free of products that are tainted by human trafficking. Because all of the vehicles sold by CarMax in California are used vehicles, and all of the replacement parts CarMax uses in its reconditioning process are purchased from other retailers, CarMax believes that it has taken all necessary steps to audit and reasonably mitigate the risk that its products are tainted by the crimes of human trafficking and slavery.” See CarMax Terms & Conditions, Required California Disclosure: CA Supply Chain Transparency, <http://www.carmax.com/enus/legal-notice/default.html#CA-supply-chain-transparency> (last visited Jan. 2017).

companies that KnowTheChain identified as being required to file a disclosure in compliance with the CTSCA: just 52% of companies (259 out of 501) have posted a disclosure that discusses all five of the topics required by the CTSCA.<sup>80</sup>

### 3. Awareness

One notable feature of the CTSCA is that it is designed to present information directly to potential consumers. As a result, it is worth evaluating potential consumer awareness and interest in CTSCA disclosures. In an effort to do so, we administered a survey to a nationally representative sample of respondents in order to explore consumer awareness of the CTSCA. In the survey, we asked respondents two questions designed to measure their familiarity with the CTSCA: (1) whether respondents were aware of the CTSCA<sup>81</sup> and (2) whether they could correctly identify the purpose of the CTSCA.<sup>82</sup>

Figure 3 reports the results of these questions. As the left panel reveals, a reasonably large percentage of our respondents claimed to have heard of the CTSCA. More specifically, 25% of respondents reported that they had heard of the CTSCA. As the right panel reveals, however, only 10% of respondents correctly answered that the purpose of the CTSCA is to provide information on efforts to prevent and root out human trafficking and slavery.<sup>83</sup> To put this in to perspective, if the respondents were guessing between the seven answer choices randomly, they should have guessed the correct answer 14% of the time.

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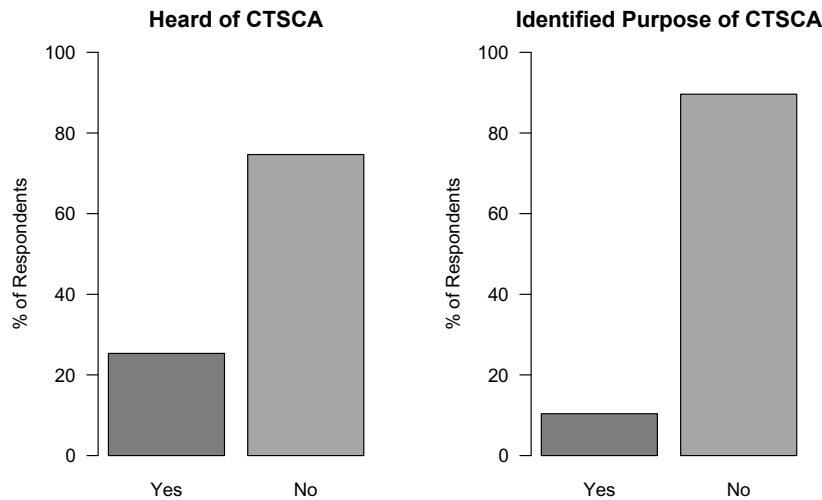
<sup>80</sup> It is worth noting that instead of requiring all five topics to be discussed, KnowTheChain has elected to identify companies as compliant with the requirements of the CTSCA if they discuss 3 out of 5 of the required topics.

<sup>81</sup> We specifically asked: "Have you heard of the 'California Transparency in Supply Chains Act?'"

<sup>82</sup> We specifically asked: "Which of the following pieces of information do you think the California Transparency in Supply Chains Act requires companies to disclose?" We then offered respondents seven answers to choose from: (1) How the company is ensuring that all of its suppliers comply with safety standards; (2) efforts the company is undertaking to prevent human trafficking in its supply chain; (3) whether the company uses conflict minerals in its supply chain; (4) steps the company is taking to reduce its carbon emissions; (5) none of the above; (6) all of the above; and (7) not sure. To reduce the influence of ordering effects, the order of the first four options was randomized.

<sup>83</sup> These answers are comparable for respondents from California: 27% of respondents reported that they had heard of the CTSCA and 8% correctly identified its purpose.

Figure 3: Reported Awareness of the CTSCA



That said, these results likely overstate levels of awareness of the CTSCA for three reasons. First, our survey was administered online, and respondents could have taken the time to Google the CTSCA in another window. Second, many of the respondents that correctly answered the question about the purpose of the CTSCA had also reported having previously not heard of the CTSCA. In fact, only 6% of our respondents reported having heard of the CTSCA and could correctly identify its purpose (which is comparable to the 7% of respondents that would have been expected to have selected that combination of responses if randomly answering).<sup>84</sup>

#### 4. *Other Examples*

The CTSCA has served as a model for the transparency in supply chains provision of the U.K.'s Modern Slavery Act (which was enacted in March 2015 and took effect in October 2015), as well as the proposed U.S. Business Supply Chain Transparency on Trafficking and Slavery Act of 2015.<sup>85</sup> The United Kingdom's disclosure requirement is broadly applicable to all companies that supply goods or services to any part of the country and have turnover of at least £36 million.<sup>86</sup> Thus, it is not limited to U.K. entities or entities with their primary place of business in the country. Companies subject to the U.K. Modern Slavery Act have to prepare a slavery and human trafficking statement each financial year describing efforts they have taken to ensure that slavery and human trafficking are not taking place in their supply chains. As in the CTSCA, the Act does not impose any affirmative obligation on companies to rid their supply chains of slavery and human trafficking; it only

<sup>84</sup> To be exact, 89 out of 1,421 respondents reported having heard of the CTSCA and could correctly identify its purpose. For respondents in California, 9 of 169 (5%) respondents reported having heard of the CTSCA and could correctly identify its purpose.

<sup>85</sup> See U.K. Modern Slavery Act; Business Supply Chain Transparency Act.

<sup>86</sup> See U.K. Modern Slavery Act (Transparency in Supply Chains) Regulations 2015, SI 2015/1833, § 2 (UK).

requires disclosure of any supply chain due diligence that were undertaken.<sup>87</sup> Companies must post their statements on a prominent place on their websites, thus highlighting the law's intended goal of generating consumer pressure to motivate corporate performance.<sup>88</sup>

While the United States has yet to pass a similar law, a proposed bill has been introduced several times in Congress: in 2011, 2014, and most recently in July 2015. If passed, this bill would apply to all publicly traded and private companies currently required to submit annual reports to the U.S. Securities and Exchange Commission (SEC) (not just retailers and manufacturers doing business in California), as long as those companies have annual worldwide gross receipts exceeding \$100 million.<sup>89</sup> These companies would be required to disclose their efforts to identify and address specific human rights risks in their supply chains: forced labor, slavery, human trafficking, and the worst forms of child labor.<sup>90</sup> Companies would have to disclose the required information on their websites ("through a conspicuous and easily understandable link").<sup>91</sup> The proposed bill would also require companies to file annual reports with the SEC, as is currently required under the conflict minerals provision in the Dodd-Frank Act's section 1502.<sup>92</sup>

## II. THE LIMITS OF DISCLOSURE REGIMES

Disclosure laws operate under the assumption that transparency will lead to accountability. In the case of supply chain disclosure regimes, the primary goal of these laws is to pressure companies to conduct a high level of due diligence on their suppliers, with the ultimate aim of preventing labor rights violations abroad. In an ideal world, supply chain disclosures would lead to consumers making more informed decisions that would drive companies to change their behavior.<sup>93</sup> Yet is that what happens in practice?

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<sup>87</sup> Additionally, as in the CTSCA, the U.K. Modern Slavery Bill does not contain penalties but leaves open the possibility for the Secretary of State to bring civil proceedings in the High Court for an injunction or, in Scotland, for specific performance of a statutory duty to ensure compliance. *Id.* The U.K. government has released guidance on its transparency in supply chains provision in response to consultations with a wide range of stakeholders. See U.K. HOME OFFICE, TRANSPARENCY IN SUPPLY CHAINS ETC.: A PRACTICE GUIDE (2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/471996/Transparency\\_in\\_Supply\\_Chains\\_etc\\_\\_A\\_practical\\_guide\\_final\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/471996/Transparency_in_Supply_Chains_etc__A_practical_guide_final_.pdf); see also U.K. HOME OFFICE, MODERN SLAVERY AND SUPPLY CHAINS GOVERNMENT RESPONSE: SUMMARY OF CONSULTATION RESPONSES AND NEXT STEPS (2015), [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448200/Consultation\\_Government\\_Response\\_\\_final\\_\\_2\\_.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448200/Consultation_Government_Response__final__2_.pdf).

<sup>88</sup> According to the act, "if the organization does not have a website, it must provide a copy of the slavery and human trafficking statement to anyone who makes a written request for one, and must do so before the end of the period of 30 days beginning with the day on which the request is received." U.K. Modern Slavery Act § 54(8).

<sup>89</sup> Business Supply Chain Transparency Act § 3(3)(A).

<sup>90</sup> *Id.* § 3(1).

<sup>91</sup> *Id.* § 3(2)(A).

<sup>92</sup> See *id.* § 3(1); Dodd-Frank Act § 1502.

<sup>93</sup> Richard Craswell distinguishes between "static" and "dynamic" purposes of disclosures. Static disclosures aim "to improve a consumer's choice from among the existing choice set," while dynamic disclosures "seek to improve the existing choice set by creating incentives for sellers to improve the quality of their offerings." See Richard Craswell, *Static Versus Dynamic Disclosures, and How Not To Judge Their Success or Failure*, 88 WASH. L. REV. 333, 334 (2013).

Although there is little research on supply chain disclosures directed at consumers,<sup>94</sup> scholars have analyzed the value of mandated disclosure in a variety of other regulatory areas. Existing literature has largely called into question the value of this regulatory tool and suggested a limited set of conditions under which more “targeted transparency” initiatives could work.<sup>95</sup> Given the unique characteristics that distinguish human rights-related supply chain disclosures, we argue that they are even less likely to be effective than disclosure regimes in other contexts.

### A. *Scholarship on the Effectiveness of Disclosures*

Mandated disclosure has become ubiquitous in a variety of regulatory areas, including privacy policies, informed consent in health care, and consumer protection in banking.<sup>96</sup> Given the relative ease of enacting mandated disclosure as compared to more direct and intrusive techniques, this tool has become “the principal regulatory answer to some of the principal policy questions of recent decades.”<sup>97</sup> Yet a growing academic literature has questioned the effectiveness of disclosure regimes given their reported failures to achieve their purported goals.<sup>98</sup> The most acute criticisms are aimed at the perspective of consumers.<sup>99</sup> A significant body of literature has focused on whether the public reads, understands, or trusts disclosures, and whether the public uses disclosures to enhance their decision-making.

In fact, scholars have demonstrated that consumers frequently do not read disclosures, or at best only skim them.<sup>100</sup> For instance, one study found that only one or two out of every thousand retail software shoppers actually read end user license agreements (“the fine print”) online.<sup>101</sup> In other words, almost all online shoppers have not read the terms that they have agreed to. Aside from issues of illiteracy, disclosures may be unreadable because of an “overload problem” from disclosures

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<sup>94</sup> *But see* Sarfaty, *supra* note 51 (empirically studying compliance with section 1502 of the Dodd-Frank Act).

<sup>95</sup> *See, e.g.*, sources cited *supra* note 14.

<sup>96</sup> Omri Ben-Shahar and Carl Schneider discuss the reasons for the ubiquity of mandated disclosure—it appeals to lawmakers because it looks cheap, easy, and effective despite empirical evidence that may suggest otherwise. *See* BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 5–6.

<sup>97</sup> BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 4.

<sup>98</sup> Critics have also highlighted limitations of disclosure regimes from the perspective of the firms that disclose. For instance, it is unclear whether disclosers can accurately ascertain what information they need to reveal under regulations, can locate and assemble the requisite data, and can effectively present that information to best reach consumers. *See id.* at 3–13.

<sup>99</sup> *See* Omri Ben-Shahar & Carl Schneider, *The Failure of Mandated Disclosure*, 159 U. PA. L. REV. 647, 691–98 (2011).

<sup>100</sup> *See, e.g.*, Ian Ayres & Alan Schwartz, *The No-Reading Problem in Consumer Contract Law*, 66 STAN. L. REV. 545 (2014); Omri Ben-Shahar, *The Myth of the “Opportunity to Read” in Contract Law*, 5 EUR. REV. CONT. L. 1 (2009); Florencia Marotta-Wurgler, *Does Contract Disclosure Matter?*, 168 J. INSTITUTIONAL & THEORETICAL ECON. 94 (2012).

<sup>101</sup> *See* Yannis Bakos, Florencia Marotta-Wurgler, & David R. Trossen, *Does Anyone Read the Fine Print? Consumer Attention to Standard-Form Contracts*, 43 J. LEGAL STUD. 1 (2014). As a result of the low readership among buyers, there is a concern that sellers will impose unfair and one-sided terms in contracts. *See* Marotta-Wurgler, *supra* note 100; *see also* Alan Schwartz & Louis L. Wilde, *Intervening in Markets on the Basis of Imperfect Information: A Legal and Economic Analysis*, 127 U. PA. L. REV. 630 (1979) (discussing when imperfect information justifies intervention in consumer markets).

being too complex and copious for consumers to handle.<sup>102</sup> Another reason that the public may not read disclosures is because of an “accumulation problem” from consumers being confronted with so much information from so many disclosures that it is difficult for them to remember, interpret, and apply that information.<sup>103</sup> In other words, more information is not always better.

Even if consumers do read disclosures, critics contend that the public frequently does not understand them and incorporates little (if any) of the information into decisions. Disclosures are generally written at a college level and often fail to describe complex information in simple terms.<sup>104</sup> Moreover, consumers’ psychological biases may shape how they perceive disclosures and ultimately how those disclosures shape their activity.<sup>105</sup> For instance, a study of credit card disclosures revealed that consumers often have imperfect self-control and underestimate the likelihood of future adverse events, which makes them unable to factor in all of the relevant costs of credit card borrowing in disclosed terms.<sup>106</sup> Because people often misperceive, misinterpret, and misuse disclosures, it is difficult for policymakers to predict whether disclosures will be used appropriately. Finally, the public may not trust the disclosers that release information. There is a fear among some consumers that a company disclosing information “has managed to exploit imperfections in the measuring system, thus making its own brand look better than it really is.”<sup>107</sup>

Yet these limitations do not necessarily mean that mandated disclosure is a completely ineffective regulatory technique or, worse, harmful given the costs it imposes on firms that disclose. Scholars have emphasized that a key factor for determining success is how disclosures are designed and executed, keeping in mind the distinctive goals of each disclosure law.<sup>108</sup> For the purpose of our study of the CTSCA, success is defined as changing firms’ behavior by impacting their decision-

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<sup>102</sup> See BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 8–9.

<sup>103</sup> See OREN BAR-GILL, SEDUCTION BY CONTRACT: LAW, ECONOMICS AND PSYCHOLOGY IN CONSUMER MARKETS 36-37 (2012); Eugene G. Chewning, Jr. & Adrian M. Harrell, *The Effect of Information Load on Decision Makers’ Cue Utilization Levels and Decision Quality in a Financial Distress Decision Task*, 15 ACCT. ORG. & SOC’Y 527, 539–40 (1990); Kevin Lane Keller & Richard Staelin, *Effects of Quality and Quantity of Information on Decision Effectiveness*, 14 J. CONSUMER RES. 200, 211–12 (1987); Troy A. Paredes, *Blinded by the Light: Information Overload and Its Consequences for Securities Regulation*, 81 WASH. U. L. Q. 417 (2003); BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 8–9.

<sup>104</sup> See BEN-SHAHAR & SCHNEIDER, *supra* note 13, at 8.

<sup>105</sup> See OREN BAR-GILL, SEDUCTION BY CONTRACT: LAW, ECONOMICS AND PSYCHOLOGY IN CONSUMER MARKETS (2012) (explaining how consumer contracts are a product of both market forces and consumer psychology); Oren Bar-Gill, *Bundling and Consumer Misperception*, 73 U. CHI. L. REV. 33, 33–45 (2006); Jill E. Fisch & Tess Wilkinson-Ryan, *Why Do Retail Investors Make Costly Mistakes? An Experiment on Mutual Fund Choice*, 162 U. PA. L. REV. 605 (2014) (finding that investors seek and assimilate information in decision-making); Xavier Gabaix & David Laibson, *Shrouded Attributes, Consumer Myopia, and Information Suppression in Competitive Markets*, 121 Q. J. ECON. 505 (2006) (showing that information “shrouding” can be common in even highly competitive markets); Tess Wilkinson-Ryan, *A Psychological Account of Consent to Fine Print*, 99 IOWA L. REV. 1745 (2014) (exploring the psychological processes and biases that shape how consumers understand consent to fine print).

<sup>106</sup> See Oren Bar-Gill, *Seduction by Plastic*, 98 NW. U. L. REV. 1373 (2004).

<sup>107</sup> Craswell, *supra* note 93, at 368.

<sup>108</sup> See Bar-Gill & Oliver Board, *Product-Use Information and the Limits of Voluntary Disclosure*, 14 AM. L. & ECON. REV. 235 (2012); Craswell, *supra* note 93; FUNG, GRAHAM, & WEL, *supra* note 14; Schwarz, *supra* note 14.

making calculus through, for instance, consumer, investor, or NGO pressure. The effectiveness of a disclosure in achieving this success thus may depend on “the length, format, and type of terms that are disclosed, as well as the setting in which it is presented.”<sup>109</sup>

### *B. The Unique Difficulties of Human Rights Disclosures*

While there is an extensive literature on the effectiveness of mandated disclosure in other areas, little research has addressed the growing body of laws that require companies to disclose information about their supply chain in the hopes of improving human rights outcomes. It is our argument that, even if companies complied with these regulations, there are at least three features of human rights-related supply chain disclosures that suggest that they are less likely to be effective than disclosure regimes in other contexts: (1) the disclosures discuss production processes and not product characteristics; (2) the information they provide is difficult to interpret because they are only proxies for the probability of human rights abuses; and (3) the regimes ignore the considerable heterogeneity among companies with regard to the probability of risk, which complicates comparisons across disclosures.

First, although mandatory disclosures typically require companies to provide information on features of their products or services, human rights-related disclosures are unique in that they require companies to provide information on the process by which a product was made. For instance, a law may mandate credit card companies to disclose information about the quality of their products, such as the interest rates they charge. In contrast, supply chain disclosure regimes do not require companies to provide information about their products’ characteristics; they instead require companies to disclose whether the processes used to manufacture their products are likely to allow for human rights abuses.

In other words, if a consumer were deciding whether to buy a pair of jeans manufactured by Company A or Company B, a human rights-related supply chain disclosure would not tell the consumer anything about the durability of the fabric or the quality of the stitching. Instead, the disclosure would inform the consumer, for instance, as to whether Company A or B hired third party auditors to assess potential human rights violations in the factory where the jeans had been sown. Since the physical characteristics of the two pairs of jeans would remain the same even if one product were made without using child labor while another product was manufactured using child labor,<sup>110</sup> the disclosure regime would only be effective if consumers were willing to change their purchasing decisions on the basis of an intangible benefit (e.g., supporting the human rights of employees who manufactured that product).

Of course, supply chain disclosure regimes are not the only regulations that require companies to provide information on their production methods. For example, other disclosure regulations that cover non-product characteristics include

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<sup>109</sup> Joshua Mitts, *How Much Mandatory Disclosure Is Effective?* 9 (Oct. 4, 2014), <http://ssrn.com/abstract=2404526>.

<sup>110</sup> In international trade, this characteristic is referred to as a “non-product-related process and production method,” which does not render products as “unlike.” In addition to the issue of human rights in a product’s supply chain, another characteristic that falls under this category is the environmental footprint of a product.



environmental disclosures relating to the sustainability of the production process (but that do not affect their safety) and those that describe animal well-being in the production process. Since existing literature on the limits of mandated disclosure has largely focused on disclosures that *do* affect the quality of a firm's product or service, human rights disclosures represent largely uncharted territory where we believe the effects are going to be even more attenuated.

Second, human rights-related supply chain disclosures are likely to be less effective than other disclosures because they are uniquely difficult to interpret. Supply chain disclosures do not provide information on the actual number of human rights abuses a company has committed. Instead, they provide information on the level of due diligence conducted by companies to minimize the risk of human rights violations in their supply chains. These disclosure regimes thus operate under the assumption that due diligence efforts are reliable proxies for human rights outcomes.

The disclosures are difficult for consumers to interpret, however, because it is unclear to what extent these proxies actually reveal the probability that a company's suppliers will actually conduct human rights abuses. In fact, it is unclear whether even experts can make reliable conclusions about the risk of human rights violations in corporate supply chains based on their disclosures. In the case of disclosures under the CTSCA, do consumers have the expertise to extract an overall risk profile for a company based on information on verification, audits, certification, internal accountability, and training? Is a company that uses third party auditors but does not have human rights training more or less likely to use suppliers that commit human rights abuses than a company that uses internal audits but does provide human rights training? Therefore, even if companies post supply chain disclosures and consumers take the time to read them, it is not clear that consumers will know how to interpret the information.

Third, when assessing the probability of human rights abuses in a given company's supply chain, one must recognize that the levels of risk vary considerably based on a company's size, industry, the country in which it operates, the number of tiers of suppliers in its supply chain, and the total number of suppliers. Existing scholarship has empirically demonstrated that repeated audits are not the key predictor of workplace compliance with labor standards; rather, other factors such as the local institutional context (in particular, the strength of state regulatory institutions and the strength of local civil society) are more directly linked to effective compliance.<sup>111</sup> Consumers are typically unaware of the multiple variables that impact a company's risk profile, particularly given that supply chain laws such as the CTSCA impose the same requirements for companies that operate in different industries and geographic areas. Therefore, it is difficult for consumers to rely solely

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<sup>111</sup> See Greg Distelhorst et al., *Production Goes Global, Compliance Stays Local: Private Regulation in the Global Electronics Industry*, 9 REG. & GOV. 224 (2015); see also RICHARD M. LOCKE, *THE PROMISE AND LIMITS OF PRIVATE POWER: PROMOTING LABOR STANDARDS IN A GLOBAL ECONOMY* (2013); GAY W. SEIDMAN, *BEYOND THE BOYCOTT: LABOR RIGHTS, HUMAN RIGHTS, AND TRANSNATIONAL ACTIVISM* (2007); Daniel Berliner et al., *Governing Global Supply Chains: What We Know (and Don't) About Improving Labor Rights and Working Conditions*, 11 ANN. REV. L. & SOC. SCI. 193 (2015); Richard M. Locke & Monica Romis, *The Promise and Perils of Private Voluntary Regulation: Labor Standards and Work Organization in Two Mexican Garment Factories*, 17 REV. INT'L POL. ECON. 45 (2010); Richard M. Locke, Fei Qin & Alberto Brause, *Does Monitoring Improve Labor Standards? Lessons from Nike*, 61 INDUS. & LAB. REL. REV. 3 (2007).

on these disclosures to draw conclusions about the underlying human rights risks within a company's supply chain.

### *C. Assessing the Effectiveness of Supply Chain Disclosures*

Taken together, we believe that the three issues raised in the last section are likely to limit the effectiveness of laws that seek to reduce human rights violations by requiring companies to post information about their supply chain due diligence efforts. However, we are unaware of any efforts to date to empirically test the effectiveness of these regimes. Although academics and NGOs have evaluated whether companies have complied with disclosure requirements, these studies have not tested the effect that these disclosures have on either consumer or corporate behavior.<sup>112</sup>

Obviously, policy makers, scholars, and advocates are eager to know whether these laws will ultimately lead to fewer violations of human rights. Unfortunately, though, directly testing the effectiveness of these laws in producing positive human rights outcomes is complicated—if not impossible—for a number of reasons. First, a great deal of the data that would be required for this analysis is not publicly available. For example, data on the web traffic to companies' disclosures are not publically available, and, most importantly, the kind of micro-level data of human rights abuses that would be required to conduct such a study is currently not available. Second, since companies are not forced to post supply chain disclosures (even though they are legally required to do so), it is likely the case that the decision to post the disclosures is endogenous to human rights practices. In other words, if only those companies that prioritize eradicating human rights abuses post disclosures, even research that found companies that post supply chain disclosures to be less likely to use suppliers that engage in human rights abuses would not demonstrate that it was due to the disclosure.

Despite these obstacles, it is worth trying to find alternative ways to empirically assess the effectiveness of these regimes. Given the difficulty of using observational research methods, one can use experimental methods to empirically assess whether the policy in question can lead to reductions in human rights abuses.<sup>113</sup> For corporate supply chain disclosures, the primary justification for requiring companies to post disclosures is to provide consumers with information that can shape their purchasing decisions, and in doing so, pressure companies to change their behavior.<sup>114</sup> It is thus possible to gain some traction on the question of whether these laws are effective by studying whether consumers understand and change their opinions based on the information provided in supply chain disclosures.

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<sup>112</sup> See, e.g., Chris N. Bayer, Corporate Compliance with the Transparency in Supply Chains Act of 2010 (Nov. 2, 2015), [http://media.wix.com/ugd/f0f801\\_0276d7c94ebe453f8648b91dd35898ba.pdf](http://media.wix.com/ugd/f0f801_0276d7c94ebe453f8648b91dd35898ba.pdf); *Five Years of the California Transparency in Supply Chains Act*, KNOWTHECHAIN (Sept. 30, 2015), [https://www.knowthechain.org/wp-content/uploads/2015/10/KnowTheChain\\_InsightsBrief\\_093015.pdf](https://www.knowthechain.org/wp-content/uploads/2015/10/KnowTheChain_InsightsBrief_093015.pdf).

<sup>113</sup> For a defense of using experimental methods to test the effectiveness of laws aimed at improving human rights, see Adam Chilton & Dustin Tingley, *Why The Study of International Law Needs Experiments*, 52 COLUM. J. TRANSNAT'L L. 172 (2013).

<sup>114</sup> See *supra* note 11.

In an effort to assess the potential effectiveness of supply chain disclosure regimes, we designed a series of experimental tests to evaluate how consumers understand and interpret supply chain disclosures. We designed our experiments to specifically test the effectiveness of the recently passed California Transparency in Supply Chains Act (CTSCA). We chose to do so because it is the first supply chain disclosure law around human rights that was directed at consumers. Given that California represents the world's seventh largest economy and the country's largest consumer base, this law has the potential to have a significant impact.<sup>115</sup> Moreover, scholars have found a "California effect" whereby other state regulations and eventually federal law have ratcheted up standards to match stricter California laws.<sup>116</sup> Since disclosures are posted to company websites, consumers across the country (and the world) now have access to information on corporate human rights practices and can make purchasing decisions that do not "inadvertently promote the crime of trafficking."<sup>117</sup>

### III. EXPERIMENTAL ASSESSMENTS

To better understand how individuals process and understand supply chain disclosures, we embedded several experiments in a survey administered to a nationally representative sample of respondents.<sup>118</sup> In this Part, we first discuss the motivation behind our experimental assessment of supply chain disclosure regimes. Second, we discuss the sample that we recruited for our study. Third, we present the results of our primary experiment designed to assess how supply chain disclosures influenced consumer confidence in corporate efforts to root out human trafficking and slavery. Finally, we present the results of three additional tests of how respondents reacted to supply chain disclosures: (1) the influence of disclosures on comprehension; (2) consumer views on actual disclosures; and (3) the reported influence of disclosures on potential purchasing decisions.

#### A. Motivation

We designed our experiments to test several aspects of how consumers understand and respond to the kind of supply chain disclosures that are required by the CTSCA. First, we designed our experiments to test whether information on the topics required to be disclosed improves consumer confidence in corporate efforts to root out human trafficking and slavery. As previously noted, the CTSCA requires companies to discuss five specific topics in their disclosures.<sup>119</sup> It is not obvious, however, that consumers equipped with information on these five topics have greater

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<sup>115</sup> See CAL. DEP'T OF JUSTICE RESOURCE GUIDE, *supra* note 8, at i. California's Franchise Tax Board estimates that approximately 1,700 companies are likely subject to the law. *Id.* at 3.

<sup>116</sup> For a discussion of the "California effect" as applied to the history of American automobile emission standards, see DAVID VOGEL, TRADING UP: CONSUMER AND ENVIRONMENTAL REGULATION IN A GLOBAL ECONOMY 248–70 (1995). See also Brian Greenhill, Layna Mosley & Aseem Prakash, *Trade-Based Diffusion of Labor Rights: A Panel Study, 1986–2002*, 103 AM. POL. SCI. REV. 669 (2009) (investigating the nature of the linkages between trade and labor rights in developing countries).

<sup>117</sup> CAL. ATT'Y GEN., THE STATE OF HUMAN TRAFFICKING IN CALIFORNIA: 2012 (2012), at 90.

<sup>118</sup> Appendix A provides a figure illustrating the flow of our survey.

<sup>119</sup> See *supra* text accompanying notes 64–68.

confidence in corporate efforts to root out human rights violations as compared to consumers that are provided general statements on a company's commitment to human rights.

Second, we designed our experiments to test whether consumers have greater confidence in disclosures that report a high level of due diligence among companies (indicating a comprehensive effort to eradicate human rights violations from its supply chain), as compared to disclosures that report a low level of supply chain due diligence. Although the CTSCA requires companies to reveal their practices on five specific topics, it does not require companies to actually adopt specific policies on those topics. For example, the CTSCA requires companies to discuss whether a third party verifies their supply chains, but it does not require companies to have a third party verify their supply chains. Thus, the CTSCA aims to shape corporate behavior by providing information to consumers so that they can reward companies that take efforts to eradicate slavery and human trafficking from their supply chain and punish companies that fail to do so. In light of this goal, it is important to test whether consumers can in fact tell the difference between disclosures that make optimal versus minimal efforts to mitigate human rights risks within their supply chains.

Third, we designed our experiments to test the effectiveness of "best practice" disclosures. Although the CTSCA requires companies to make disclosures on five topics, the amount of information that companies are required to provide on each of these topics is fairly minimal. That said, the California Attorney General's office encourages companies to make "best practice" disclosures that provide more comprehensive information on each topic.<sup>120</sup> In order to facilitate this goal, the California Attorney General's office has released guidelines outlining the additional information that it recommends companies provide.<sup>121</sup> Our experiment was designed to test whether following these guidelines (1) improves consumer confidence and (2) makes it easier for consumers to distinguish between companies that report comprehensive efforts to eradicate slavery and human trafficking and those that report only minimal efforts.

Fourth, we designed our experiments to test how well consumers comprehend the relevant information contained within supply chain disclosures. The CTSCA attempts to motivate companies to release disclosures that will be easy for consumers to understand. It is not clear, however, that the format that the CTSCA requires of companies improves consumers' ability to understand the content of the disclosures. It is instead possible that the required format of the disclosures obscures the relevant information, and in doing so, makes it difficult for consumers to evaluate the due diligence practices and policies of a given company.

Finally, we designed our experiments to test the reported effect that the supply chain disclosures would have on potential future purchasing decisions. Of course, what we would ideally like to know is whether consumers are more (or less) likely to buy products from companies with supply chain disclosures that report better (or worse) due diligence practices. Since we are unable to directly observe future

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<sup>120</sup> See CAL. DEP'T OF JUSTICE RESOURCE GUIDE, *supra* note 8.

<sup>121</sup> *Id.*

purchasing decisions, however, we can only evaluate the effect that the quality of disclosures has on claimed willingness to pay for products or services.<sup>122</sup>

### B. Subject Recruitment

Our sample was recruited by Survey Sampling International (SSI).<sup>123</sup> SSI is a leading market research firm that primarily conducts research for corporate clients, but that also works with academic researchers. We specifically engaged SSI to recruit a nationally representative sample of respondents to complete a survey that we designed. The sample SSI recruited was nationally representative of the U.S. adult population based on gender, age, race/ethnicity, and census region. Our survey was administered online to 1,421 respondents during the week of February 15–19, 2016. Table 1 provides a demographic breakdown of our sample compared to the U.S. adult population.

Table 1: Demographic Characteristics of Our Sample

	# in Sample	% of Sample	% of U.S. Population
<b>Gender</b>			
Male	685	48%	48%
Female	736	52%	52%
<b>Age</b>			
18-24	206	14%	13%
25-34	264	19%	18%
35-44	254	18%	18%
45-54	239	17%	19%
55-64	241	17%	16%
65+	216	15%	17%
<b>Race/Ethnicity</b>			
White	1,030	72%	69%
Hispanic	129	13%	9%
Black	166	12%	11%
Asian	67	5%	4%
Other	27	2%	2%
<b>Region</b>			
Northeast	265	19%	18%
Midwest	312	22%	22%
South	527	37%	37%
West	313	22%	23%

<sup>122</sup> For examples of studies that also focus on willingness to pay, see, for example, Lior Jacob Strahilevitz & Matthew B. Kugler, *Is Privacy Policy Language Irrelevant to Consumers?*, 45 J. LEGAL STUD. S69 (forthcoming 2016).

<sup>123</sup> For more information, see SURVEY SAMPLING INTERNATIONAL, <https://www.surveysampling.com/> (last visited Feb. 27, 2015).

*C. Primary Experiment**1. Research Design*

For our primary experiment, we asked each of our respondents to read one disclosure. We began by informing our respondents that “[t]he following questions are about company disclosures. We will describe one disclosure posted on a company’s website. We will then ask for your thoughts on the disclosure. Thank you for taking the time to answer these carefully!” After being displayed this prompt, on the following screen the respondents were randomly presented with one of five different supply chain disclosures.<sup>124</sup> Those five disclosures are summarized in Table 2.

Table 2: Summary of the Five Treatment Groups

#	Name	Description
1	General Statement	A general statement on the company’s commitment to human rights that did not discuss the five topics required by the CTSCA.
2	Basic – Optimal	A <u>basic disclosure</u> that suggested that the company was engaging in <u>optimal efforts</u> for each of the five topics required by the CTSCA.
3	Basic – Minimal	A <u>basic disclosure</u> that suggested that the company was engaging in <u>minimal efforts</u> for each of the five topics required by the CTSCA.
4	Best Practice – Optimal	A <u>best practice disclosure</u> that suggested that the company was engaging in <u>optimal efforts</u> for each of the five topics required by the CTSCA.
4	Best Practice – Minimal	A <u>best practice disclosure</u> that suggested that the company was engaging in <u>minimal efforts</u> for each of the five topics required by the CTSCA.

<sup>124</sup> Appendix B provides the exact text of the five disclosures used in our experiment.

The General Statement was taken from the CTSCA Resource Guide produced by the California Attorney General's office (the "resource guide").<sup>125</sup> The resource guide specifically notes that "a general statement opposing human rights violations, while well-intentioned, does not suffice because it does not address the five areas outlined in the statute."<sup>126</sup> The general statement that we used was included in the resource guide as an example of such an inadequate general statement. The statement that we used as an experimental treatment reads:

Our company is committed to respecting the human rights of our employees. Our Code of Ethics and company policies adhere to the principles of free choice of employment, nondiscrimination, and humane treatment. We ensure compliance with regulations governing child labor, minimum wage, and maximum working hour limitations.<sup>127</sup>

The templates for the Basic and Best Practice disclosures used in our other four treatments were also based on materials in the resource guide. For each of the five topics required by the CTSCA, the resource guide offers examples of basic disclosures that provide the minimum information required for compliance, and best practice disclosures that provide more detailed information with "depth and context" to better educate consumers on corporate activities.<sup>128</sup> Our two basic disclosures and our two best practice disclosures were drawn from examples for all five topics from the resource guide. As an illustration, Table 3 provides the text of the basic and best practice disclosures that we used for the "Certification" topic. According to the resource guide, a best practice disclosure under the "Certification" topic "explain[s] any additional efforts [companies] make to encourage their direct suppliers to comply with labor and anti-trafficking laws."<sup>129</sup> Such additional efforts that should be reported in best practice disclosures include "what records [a company] requires suppliers to maintain to support their certification."

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<sup>125</sup> See CAL. DEP'T OF JUSTICE RESOURCE GUIDE, *supra* note 8, at 22.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.*

<sup>128</sup> *Id.* at ii.

<sup>129</sup> *Id.* at 17.

Table 3: Example Disclosures on Supply Chain “Certification”

Basic Disclosure	We require our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business.
Best Practice Disclosure	We require our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business. Our partners must produce records to our company. Such records include: (1) proof of age for every worker; (2) every employee’s payroll records and timesheets; (3) written documentation of terms and conditions of employment; (4) local health and safety evaluations or documentation of exemption from law; and (5) records of employee grievances and suggestions, and any employer responses.

In addition to randomly varying whether the disclosures we presented to readers were basic or best practice, we also randomly varied whether the disclosures reported the use of optimal efforts or minimal efforts to mitigate human rights risks within supply chains. For example, for the “Certification” topic, companies must disclose if they require 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.”<sup>130</sup> By implication, an optimal effort is one that requires suppliers to certify that they comply with the anti-trafficking laws of the countries in which they do business, while a minimal effort is one that does not require suppliers to certify that they comply with these laws. For each of the five topics, similar requirements exist. For our “optimal” disclosures, the companies reported engaging in optimal efforts for each of the five topics. For our minimal disclosures, the companies reported engaging in minimal efforts for each of the five topics. Table 4 presents the policies reported in the optimal and minimal disclosures. On the left-hand column is the area or areas of differentiation within each topic.

After being randomly presented with one of the five supply chain disclosures, we asked each respondent the following question: “On a scale of 0 (not at all committed) to 100 (extremely committed), how confident do you feel that this company is making an effort to prevent and root out slavery and human trafficking in its supply chain?”

<sup>130</sup> CAL. CIV. CODE § 1714.43(c)(3).



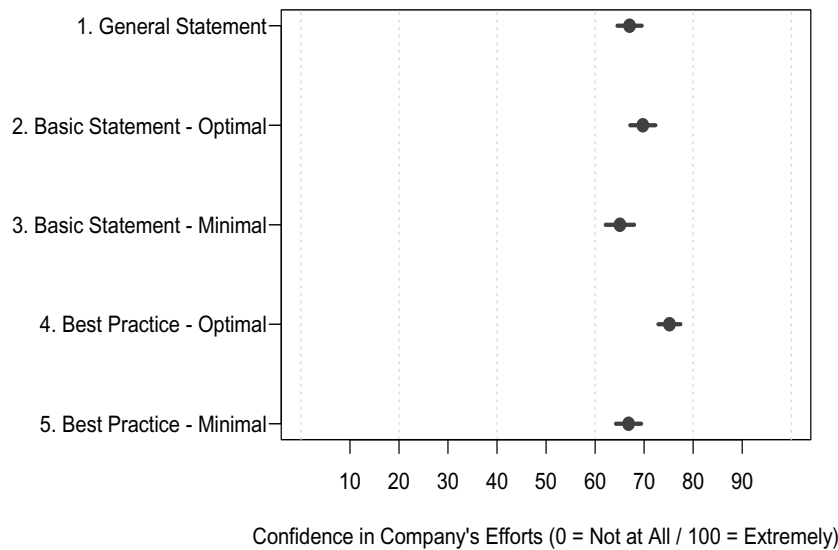
Table 4: Differences between Optimal and Minimal Policies

	Optimal	Minimal
<b>Verification</b>		
– # of Suppliers Audited	• all direct suppliers	• a sample of direct suppliers
– Frequency of Audits	• once a year	• (no mention)
– Use of a Third Party	• third-party auditors	• internal auditors
<b>Supplier Audits</b>		
– Frequency of Audits	• third-party auditors	• internal auditors
– Announcement of Audits	• unannounced audits	• announced audits
– Number of Suppliers	• all direct suppliers	• a sample of direct suppliers
<b>Certification</b>		
– Policy on Certification	• require suppliers to certify	• request suppliers to certify
<b>Internal Accountability</b>		
– Result of a Supplier's Failure to Take Action on Non-Compliance	• termination of relationship with supplier	• (no mention of consequence)
<b>Training</b>		
– Topic of Training	• mitigating risks of human trafficking and slavery within the company's supply chains	• importance of respecting human rights

## 2. Results

Figure 4 reports the results of our primary experiment.<sup>131</sup> The dots represent the mean response and the lines represent the 95% confidence interval for each of the five treatment groups. Dots further to the left (or right) represent less (or more) confidence in the hypothetical company's efforts to eradicate slavery and human trafficking in its supply chain.

Figure 4: Primary Experimental Results



The results in Figure 4 produce several important insights. First, and most notably, the average responses for all of the disclosures fell in a narrow range. On a scale of 0 to 100, all five disclosures scored within a 10-point range: the (4) **Best Practice – Optimal** disclosure received an average score of 75, and the (3) **Basic – Minimal** disclosure received an average score of 65. Moreover, the disclosure that was completely non-compliant—the **General Statement**—received the median average score of 67.<sup>132</sup>

Second, our experiment was designed to evaluate whether the mandated format of CTSCA disclosures—that is, including the five required topics—improves consumer confidence compared to more general disclosures that report a company's broad commitment to human rights. To test this, one of the disclosures used as a treatment was a general statement that the California Attorney General's office specifically indicated as not covering the topics required by the CTSCA. The mean response for respondents given the **General Statement** was 67 (95% CI: 65, 70).

<sup>131</sup> Appendix C provides tables that report the results presented in Figures 4–7. Because our treatment was randomized (and balance testing does not reveal any imbalance across the treatment groups), we simply report the differences in means for the five treatment groups. In regression results reported in Appendix D, we estimate an OLS regression while controlling for the demographic variables in Table 1. The results when doing so are substantively the same as the results in Figure 4.

<sup>132</sup> The Basic Practice – Optimal Disclosure received an average score of 69, and the Best Practice – Minimal received a 67.

The mean responses for both groups that were given the basic compliant statements were comparable. The mean response for the participants that were given the **Basic – Optimal** disclosure was 69 (95% CI: 67, 72) and the mean response for the **Basic – Minimal** disclosure was 65 (95% CI: 62, 68). The difference between the General Statement and these two treatments was not statistically significant. These results illustrate that a company that minimally complies with the CTSCA does not garner more confidence from consumers than a company that issues a general (non-compliant) statement on its commitment to respecting the human rights of its employees.

Third, our experiment was designed to evaluate whether consumers are likely to have greater confidence in companies that make optimal efforts to eradicate slavery and human trafficking in their supply chains, as compared to those that make minimal efforts to do so. To test this, our treatments included examples of disclosures reporting that companies were engaging in optimal and minimal efforts for each of the topics required by the CTSCA. The results in Figure 4 reveal that for both the basic and best practice disclosures, the participants reported higher levels of confidence in response to the “optimal” disclosures. For the basic disclosure, however, the difference is substantively small and far from statistically significant. This suggests that companies that report comprehensive efforts to mitigate human rights risks within their supply chains are not necessarily perceived better by consumers as compared to companies that report only minimal efforts.

Fourth, our experiment was designed to evaluate whether disclosures following the best practice guidelines promulgated by the State of California: (1) improve consumer confidence, and (2) make it easier for consumers to tell the difference between a company that reports that it undertakes comprehensive supply due diligence and one that reports minimal efforts to mitigate human rights risks in its supply chain. The results presented in Figure 4 suggest that the respondents that are given the **Best Practice – Optimal** disclosure report a higher level of confidence as compared to all the other treatments in a statistically significant way. Moreover, the gap between the **Best Practice – Optimal** treatment and the **Best Practice – Minimal** treatment is greater than the gap between the two basic treatments. That said, it is slightly troubling that the **Basic – Optimal** and **Best Practice – Minimal** disclosures score almost exactly the same (69 and 67, respectively) on a 100-point scale. In other words, if a company conducting a low level of due diligence simply frames its policies in the best practice format, it would potentially receive as much credit from consumers as a company with a high level of due diligence that does not adhere to the best practice (longer and more detailed) model.

### *C. Additional Tests*

In addition to the primary experiment reported in the previous section, our survey also included three other tests of how respondents reacted to supply chain disclosures. In this section, we report the results of each of these tests.

### 1. *Influence of Disclosures on Comprehension*

In addition to testing how the disclosures influenced consumer confidence, we also wanted to know how well the respondents comprehended the disclosures. As a result, after the respondents were asked a few unrelated demographic questions, we then asked the respondents five questions about the content of the disclosures.

Table 5: Comprehension Questions

<b>Auditor Identity</b>	Who did it say conducted the audits?
<b>Audit Frequency</b>	How often are the audits conducted?
<b>Notice</b>	How much warning are suppliers given before the audits occur?
<b>Training</b>	What did it say the company provides training on?
<b>Conflict Minerals</b>	What did it say the company is doing to make sure conflict minerals are not used in its supply chain?

Table 5 lists the five comprehension questions that we posed to our respondents. To eliminate the possibility of any ordering effects, these five questions were presented in random order. For each of the five questions, we presented respondents with four answer choices. One of the four answer choices for each question was that the disclosure did not mention the topic.

It is important to note that the correct answer was not the same for all of the treatment groups. For example, for the respondents that received the General Statement, it was correct to answer all five questions by saying that the disclosure did not mention the topic. As another example, for the respondents that received the Optimal treatments it was correct to say that “A Third Party” conducted the audits, but for the respondents that received the Minimal treatments it was correct to say that “An Internal Team of Auditors” conducted the audits.

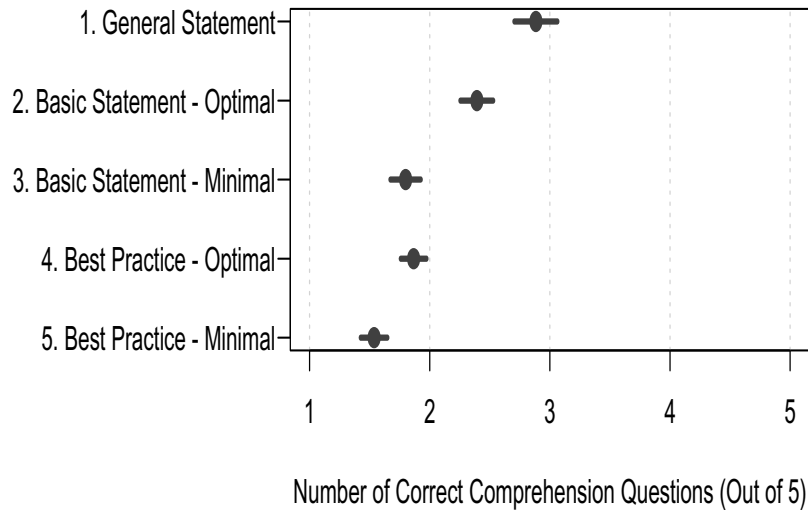
Figure 5 presents the mean number (and 95% confidence interval) of comprehension questions that the respondents in each of the treatment groups answered correctly. The results are noteworthy in two particular ways.

First, the respondents that received the General Statement disclosure correctly answered the most questions: 2.88 (95% CI: 2.70, 3.60). As previously noted, this is perhaps unsurprising because the correct answer for each question for respondents that received this treatment was that the disclosure did not mention the topic. Notice, however, that respondents that were presented with just this short statement still provided on average an incorrect answer 2 out of 5 times.

Second, the respondents that received the Basic Statement – Optimal disclosure answered more questions correctly than the respondents that received either of the Best Practice treatments. These differences were both highly statistically significant ( $p < 0.001$ ). The respondents that received this treatment answered 2.39 (95% CI: 2.25, 2.53) questions correct, compared to 1.87 (90% CI: 1.76, 1.97) for the Best Practice – Optimal treatment and 1.54 (90% CI: 1.42, 1.65) for respondents that received the Best Practice – Minimal treatment. In other words, the recipients of the Best Practice treatment knew less about the content of the treatments than respondents that received a basic disclosure. This result suggests that the best

practice guidance promulgated by the California government is not achieving its intended result of enhancing consumer comprehension.

Figure 5: Comprehension Questions Correctly Answered



## 2. Views on Actual Disclosures

One concern with our primary experiment is that we asked respondents to evaluate artificial disclosures that we designed for our study. It would be reasonable to be concerned that the disclosures we designed might not accurately reflect the kind of language and claims that actual companies report. As a result, we also used real disclosures to test how confident respondents were in the efforts that companies were taking to eradicate human rights abuses.

More specifically, we conducted two additional tests that used real CTSCA disclosures: Half of our respondents were randomly presented with the test we discuss in this section, and the other half of the respondents were presented with the test presented in the next section (Part III.D.3).<sup>133</sup>

For these additional tests, we identified two large apparel companies operating in the United States that have made disclosures under the CTSCA. We specifically selected two companies that sell similar clothing and are frequently identified as direct competitors. Since our goal was to test whether consumers were able to identify the company with the better disclosure, we also specifically selected one company—which we refer to as “Mystery Corp.”—that has a “bad” disclosure and one company—that we refer to as “Anonymous Corp.”—that has a “good”

<sup>133</sup> See Appendix A for a graphic illustration of the survey flow. We presented the respondents with only one of these two additional tests for two reasons. First, both tests asked respondents to evaluate the same set of real CTSCA disclosures, so it would not be possible to complete both tests. Second, we did not want our survey to be excessively long.

disclosure. Our categorization of the two companies was based on several factors including: (1) Mystery primarily relies on internal auditors while Anonymous uses third-party auditors; (2) Mystery's audits are both announced and unannounced while those by Anonymous are only unannounced (within a broad window of time); and (3) there is no indication of the frequency of Mystery's audits while those by Anonymous occur once per year.

For the first additional test, we presented respondents with both disclosures.<sup>134</sup> To avoid any ordering effects, we randomized the order that the disclosures were presented. After being shown both disclosures, the respondents were asked: "How confident do you feel that both of these companies are making the best effort to prevent and root out slavery and human trafficking in their supply chain?" They were then asked to rank both companies on a scale from 0 (not at all confident) to 100 (extremely confident).

Figure 6: Confidence After Reading Actual Disclosures

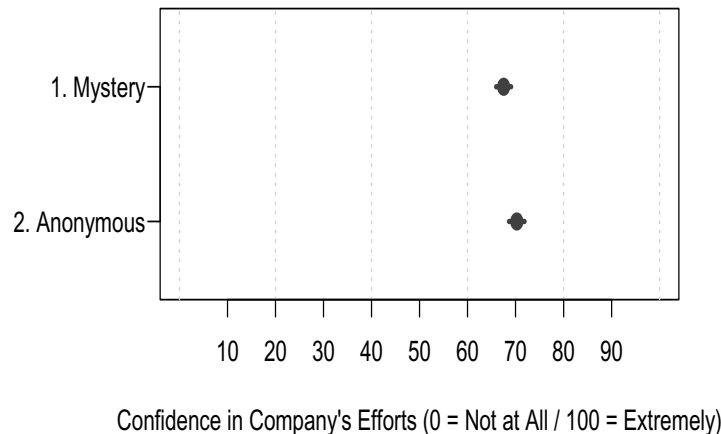


Figure 6 presents the results of this experimental test. The respondents rated the statement from Mystery Corp. with an average score of 67.52 (90% CI: 65.90, 69.14) and the statement from Anonymous Corp. with an average score of 70.26 (90% CI: 68.60, 71.92). Although this difference is statistically significant at the 0.05 level ( $p = 0.02$ ), substantively it is quite small. On a scale of 0 to 100, respondents rated the "good" statement only three points better than the bad statement. This is despite the fact that the good statement exhibits more comprehensive supply chain due diligence, particularly its use of unannounced, third-party audits. As a result, although it is reassuring that the respondents agreed with our assessment regarding which statement is better, the narrow gap between the two statements suggests that consumers did not identify a dramatic difference between the two—despite the fact that one company reported a much lower level of due diligence as compared to the other company.

<sup>134</sup> Half of the respondents were shown versions of these disclosures with the company's names replaced with "Mystery" and "Anonymous"; the other half of the respondents were shown versions of these disclosures that included the company's name. This is because our next experiment required disclosing the company name, and we wanted to be sure the relative responses to the disclosures were consistent (which they were) regardless of whether the consumers knew the identity of the companies.

### 3. *Reported Influence on Purchasing Decisions*

As previously noted, one of the things we would ideally like to know is whether consumers change their purchasing decisions as a consequence of supply chain disclosures. Although we are not able to directly test this with a survey experiment, we did try to test the effect that supply chain disclosures have on self-reported purchasing decisions.

To do so, the half of respondents that were given this experimental test were asked how likely they were to purchase a product from either Mystery Corp. or Anonymous Corp. in the next year on a scale of 0 to 100.<sup>135</sup> To be clear, each respondent given this additional test was only asked about one company. After providing an answer, we then presented the respondents with the disclosure from the company they were asked about, and asked them again how likely they were to purchase a product from the company in the next year. This allowed us to measure whether respondents claimed to be more or less interested in purchasing a product from the company after seeing the quality of its supply chain disclosure.

#### 7. Reported Influence on Purchasing Decisions

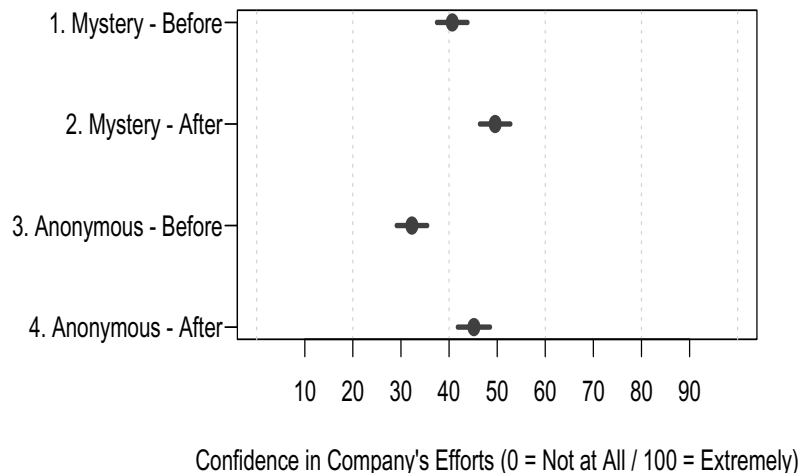


Figure 7 presents the results of this test. There are two points worth noting about the results. First, the respondents that were asked about both companies claimed to be more likely to buy products from the companies after having been presented with the disclosures. What is interesting about this result, however, is that the disclosure for Mystery Corp. did not reveal a high level of due diligence. In other words, even when shown a disclosure reporting minimal efforts by a company to root out human rights abuses within its supply chain, the respondents nevertheless had a positive reaction to the statement.

Second, the respondents shown the Anonymous Corp. statement—which reports higher levels of due diligence as compared to the Mystery Corp. statement—did exhibit a larger increase in their stated willingness to buy the product after being

<sup>135</sup> The respondents were presented with the actual names of the companies.

shown the statement. Respondents shown the Mystery Corp. statement reported being nine percentage points more likely to buy a product after having read the statement, whereas respondents shown the Anonymous Corp. statement reported being thirteen percentage points more likely. This difference is statistically significant at the 0.05 level ( $p = 0.01$ ). This provides some additional evidence that respondents react moderately more positively to supply chain disclosures that report higher levels of due diligence.

#### IV. IMPLICATIONS

Given the growing use of disclosure laws as a mechanism to hold companies accountable for human rights abuses abroad, our examination of the first such law aimed at consumers offers lessons for future policymaking and contributes to the disclosure regulation literature.

##### *A. Summary of Results*

Taken together, our experimental tests of supply chain disclosures produced several clear findings. The result that should be most reassuring for advocates of supply chain disclosure regimes is that respondents did consistently have the most confidence in disclosures that reported the highest levels of due diligence. In the primary experiment, the Best Practice – Optimal disclosure was rated the highest by respondents. In addition, in the two experimental tests where respondents were asked to evaluate real disclosures, the disclosure we had previously identified as reporting higher levels of due diligence (the “Anonymous Corp.” disclosure) performed better. This gives some confidence that consumers may be able to interpret the relative value of supply chain disclosures.

There were two other results, however, that paint a less optimistic picture. First, the respondents consistently rated disclosures that either contained no information<sup>136</sup> or reported low levels of due diligence<sup>137</sup> almost as highly as disclosures that reported a high level of due diligence. The substantive effects of the treatments were small in these experimental tests, which suggests that companies may receive little benefit from consumers for engaging in expensive and time-consuming due diligence.

Second, the respondents that were presented with Best Practice disclosures correctly answered fewer comprehension questions. This suggests that the consumers may not be responding to the content of the disclosures, but simply responding to the fact that the Best Practice disclosures were longer (similarly, the Anonymous Corp. disclosure was slightly longer than the Mystery Corp. disclosure). If the respondents do not understand the content of the best practice disclosures any better, it may call into question the value of pushing companies to adopt these regimes.

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<sup>136</sup> For example, the “General Statement” treatment in the primary experiment.

<sup>137</sup> For example, the minimal disclosures in the primary experiment or the Mystery Corp. disclosure in the additional tests.



### *B. Limitations of Our Research*

Before discussing the implications of our research, however, it is important to acknowledge that our method has several limitations. First, it is possible that the respondents that completed our survey and experiment are different than the consumers that supply chain disclosures are directed at. This could be true if supply chain disclosures are aimed at communicating information to a select core of interested consumers and not the overall population.

Second, the respondents that completed our survey and experiment were presented with information in an artificial environment. If consumers were to encounter supply chain disclosures while researching companies and products, they might behave differently than respondents who were presented the information during an academic survey.

Third, we should note that our empirical study of the CTSCA does not measure the actual effectiveness of supply chain disclosure laws in influencing the purchasing decisions of consumers and changing corporate behavior. Since the law only recently went into effect, more time is needed before researchers can evaluate its implementation.

Fourth, although our results provide some reasons to be pessimistic about consumers' ability to interpret the information provided in CTSCA disclosures, those disclosures still may have an effect. For example, it is possible that non-profit organizations like KnowTheChain may be able to present the information in ways that consumers are better able to understand. Additionally, even if consumers have difficulty assessing companies' efforts to mitigate human rights risks in corporate supply chains, the requirement to post a disclosure may compel companies to examine and eventually improve their practices.

### *C. Implications & Agenda for Future Research*

Despite these limitations, our research suggests several important policy implications and directions for future research. First, our data suggest that simply passing a law does not ensure that companies will comply. Our analysis of the observational data we collected revealed that 52% of companies fully complied with their obligation to post CTSCA disclosures. This suggests that if policy makers want companies to comply with disclosure requirements, enforcement efforts likely need to be strengthened in order to incentivize companies to comply. For example, the remedy for failure to comply with the CTSCA is an action brought by the Attorney General of California for injunctive relief. However, the Attorney General of California has thus far not brought any actions.<sup>138</sup> If government officials feel that formally bringing an action against companies is not desirable policy, the government could alternatively publicly shame companies by publicizing a list of firms that fail to post disclosures or report on all five required topics in their disclosures.

Additionally, a key finding from our experiment reveals that government-issued best practice guidelines may not make it easier for consumers to tell the difference between companies that are making optimal and minimal efforts to

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<sup>138</sup> See *supra* text accompanying note 71.

eradicate risks to human rights within their supply chains. In the case of the CTSCA, the Office of the California Attorney General issued a resource guide in 2015 that “intended to help covered companies by offering recommendations about model disclosures and best practices for developing such disclosures.”<sup>139</sup> According to the resource guide, companies using best practice disclosures are going beyond compliance to “more fully educate the public about the integrity of their supply chains.”<sup>140</sup> Model disclosures thus aim to enhance consumers’ understanding of companies’ anti-trafficking efforts.

However, our research demonstrates that the best practice disclosures do not in fact enhance consumers’ understanding of company activities. In fact, among respondents presented with Basic and Best Practice disclosures, there was not a statistically significant difference between their reactions to the Basic – Optimal disclosure and the Best Practice – Minimal disclosure. While consumers do care if a company violates human rights and are concerned about the human rights of employees in corporate supply chains, it appears that they may simply use length of disclosures as a proxy for quality. They may assume that a long disclosure that follows best practice recommendations necessarily reflects that a company is making an optimal effort to mitigate human rights risks within its supply chain. What may be most striking is that the one non-compliant disclosure, simply including a brief general statement of the company’s support of human rights, fared as well as the Best Practice – Minimal disclosure and almost as well as the Basic – Optimal disclosure. This result suggests that consumers are not able to appropriately differentiate between the quality of the efforts a company is undertaking, or even whether a company is being compliant or not.

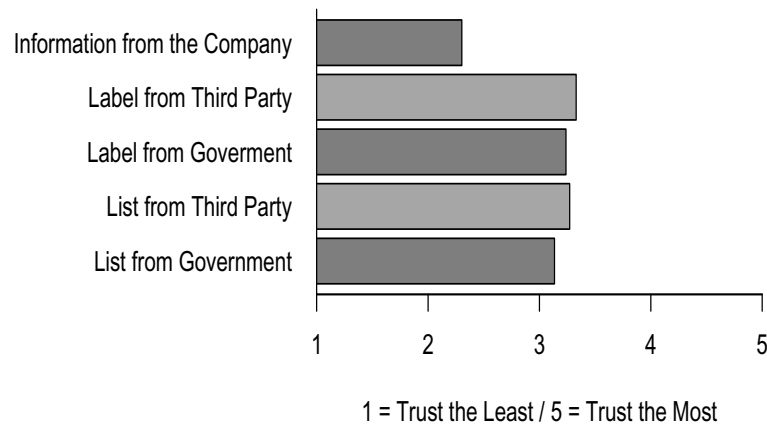
In addition to these two issues—that is, a low level of compliance and the fact that the best practice guidelines do not seem to improve consumer understanding—our research also calls into question the wisdom of trusting companies to disclose information about their own activities. As part of our survey, we also asked respondents to rate how much they would trust different sources of information about a company’s supply chain. The results of this question are presented in Figure 8.

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<sup>139</sup> CAL. DEP’T OF JUSTICE RESOURCE GUIDE, *supra* note 8, at i.

<sup>140</sup> *Id.* at 1.

Figure 8: Reported Trust in Potential Sources of Information



As Figure 8 clearly shows, the source of information considered least trustworthy by the public is information disclosed by companies. This suggests that although asking companies to disclose information may be the cheapest form of regulation, it is also perhaps the least likely to improve consumer confidence (assuming that the information disclosed by the company is not independently verified by a third party).

Given the limitations in the CTSCA that our research reveals, is there any hope in targeting human rights-related supply chain disclosures at consumers? Scholars have claimed that there is in fact consumer demand for ethical products,<sup>141</sup> and our research seems to support this. Empirical studies have demonstrated a positive relationship between observed sales and/or prices of goods, and their ethical characteristics.<sup>142</sup> For instance, a field experiment on eBay found

<sup>141</sup> A 1999 poll by the National Bureau of Economic Research found that about 80% of individuals said they were willing to pay more for an item if assured it was made under good working conditions. See KIMBERLY ANN ELLIOTT & RICHARD B. FREEMAN, CAN LABOR STANDARDS IMPROVE UNDER GLOBALIZATION? 28 (2003); Pat Auger et al., *What Will Consumers Pay for Social Product Features?*, 42 J. BUS. ETHICS 281 (2003); Patrick De Pelsmacker et al., *Do Consumers Care about Ethics? Willingness to Pay for Fair-Trade Coffee*, 39 J. CONSUMER AFFAIRS 361 (2005); Marsha A. Dickson, *Utility of No Sweat Labels for Apparel Consumers: Profiling Label Users and Predicting Their Purchase*, 35 J. CONSUMER AFFAIRS 96 (2001); Shareen Hertel et al., *Human Rights and Public Opinion: From Attitudes to Action*, 124 POL. SCI. Q. 443 (2009); Michael J. Hiscox & Nicholas F.B. Smyth, *Is There Consumer Demand for Improved Labor Standards? Evidence from Field Experiments in Social Product Labeling* (Apr. 22, 2011), <http://ssrn.com/abstract=1820642>; Maria L. Loureiro & Justus Lotade, *Do Fair Trade and Eco-Labels in Coffee Wake Up the Consumer Conscience?*, 53 ECOLOGICAL ECON. 129 (2005); Lois A. Mohr & Deborah J. Webb, *The Effects of Corporate Social Responsibility and Price on Consumer Responses*, 39 J. CONSUMER AFF. 121 (2005).

<sup>142</sup> Teisl et al. examined scanner data on U.S. retail sales of canned tuna and found that market share (relative to other canned seafood and meat) rose substantially after the introduction of the “dolphin-safe” label in April 1990. Mario F. Teisl et al., *Can Eco-Labels Tune a Market? Evidence from Dolphin-Safe Labeling*, 43 J. ENVTL ECON. & MGMT. 339 (2002).

that shoppers paid a 23% premium for Fair Trade labeled versus unlabeled coffees.<sup>143</sup> Thus, there is evidence that some consumers have displayed a preference for information about the ethical practices of companies, and have used that information to shape their buying behavior. Given that backdrop, supply chain disclosure regimes provide information that a subset of consumers reportedly care about, as our own research demonstrates as well.

Figure 9: Concern About Aspects of Products



Figure 9 reports the results of our question that asked respondents how much they care about different factors when buying a product. Specifically, we asked respondents: “How much do you care about the following factors when buying a product?” We then asked respondents to rate five items on a scale from 1 to 5, where 1 represents the least amount of care and 5 is a high degree of care. The respondents reported caring a significant amount about the price of the product and the quality of the product. The mean score for the price of the product is 3.52 and the mean score for the quality of the product is 3.89. Out of the remaining factors, respondents reported caring most about the human rights of the employees making the product (the mean score is 3.13), as compared to the environmental impact of the product (the mean score is 2.66) and where the product was made (the mean score is 2.47).

In light of potential consumer demand for human rights-related information on products, future research is needed to determine how supply chain disclosure laws can be improved. There are a variety of possible options that could be considered. For instance, instead of issuing model disclosures, governments can design and test a uniform template that companies would be required to use.<sup>144</sup> A standard form could include a limited number of questions—for instance, “do you use unannounced

<sup>143</sup> Michael J. Hiscox et al., *Consumer Demand for Fair Trade: New Evidence from a Field Experiment Using eBay Auctions of Fresh Roasted Coffee 1* (Mar. 16, 2011), <http://ssrn.com/abstract=1811783>.

<sup>144</sup> See Schwarcz, *supra* note 14, at 404.

audits?” and “do you use a third-party verifier?” A uniform template could aid consumer comprehension and facilitate comparison across companies.

Another option is to present disclosures at the point of sale, rather than rely on consumers to seek out the information on corporate websites. These types of disclosures, referred to as “targeted transparency,” mandate information at the time of decision-making in order to “nudge” consumer behavior.<sup>145</sup> Targeted disclosures may necessitate a rating system whereby the government or a third party converts disclosed information into a grade or label (e.g., a trafficking-free label) that is presented to consumers at the time of purchase.<sup>146</sup> This information could also be available to consumers through apps, several of which already provide information on companies’ ethical practices.<sup>147</sup> In fact, the G7 recently released a statement in support of responsible supply chains that calls for the development of “impartial tools [such as relevant apps] to help consumers and public procurers . . . compare information on the validity and credibility of social and environmental product labels.”<sup>148</sup>

In considering whether to add a labeling requirement to disclosure laws, policymakers need to tread carefully given the D.C. Circuit Court’s recent conflict minerals ruling. In August 2015, the U.S. Court of Appeals for the District of Columbia held that the labeling requirement in section 1502 of the Dodd-Frank Act (whereby companies must report on whether or not their products are “conflict-free”) was considered “compelled speech” in violation of the First Amendment.<sup>149</sup> The ruling, however, upheld the remainder of the disclosure requirements within the conflict minerals due diligence and reporting regime.

Governments can also develop and release a list of “slave-free” companies or “dirty” companies, which could influence not only consumers but also governments’ own contracting decisions. A similar mechanism has been used by the Brazilian government, which updates a “dirty list” of companies that use slave labor.<sup>150</sup> Firms on this list pay a series of fines and cannot obtain credit from the government or private banks.<sup>151</sup> They are also boycotted by those who have signed up to a National Pact for the Eradication of Slave Labor.<sup>152</sup> Companies on the “dirty list” have two years to clean up their supply chains before being given the opportunity to get off the list.

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<sup>145</sup> See RICHARD M. THALER & CASS R. SUNSTEIN, *NUDGE: IMPROVING DECISIONS ABOUT HEALTH, WEALTH, AND HAPPINESS* (2008); FUNG, GRAHAM & WEL, *supra* note 14, at 39–46.

<sup>146</sup> For an analysis of rating systems based on an empirical study of restaurant sanitation grading, see Ho, *supra* note 14.

<sup>147</sup> Existing apps that monitor human rights within corporate supply chains include Free2Work ([www.free2work.org](http://www.free2work.org)), GoodGuide ([www.goodguide.com](http://www.goodguide.com)), and Slavery Footprint ([www.slaveryfootprint.org](http://www.slaveryfootprint.org)).

<sup>148</sup> Press Release, The White House Office of the Press Secretary, G-7 Leaders’ Declaration in Schloss Emau, Germany (June 8, 2015), <https://www.whitehouse.gov/the-press-office/2015/06/08/g-7-leaders-declaration>.

<sup>149</sup> *Nat’l Ass’n of Mfrs. v. Sec. & Exch. Comm’n*, 800 F.3d 518 (D.C. Cir. 2015).

<sup>150</sup> See Annie Kelly, *Brazil’s “Dirty List” Names and Shames Companies Involved in Slave Labour*, THE GUARDIAN (July 24, 2013), <http://www.theguardian.com/sustainable-business/brazil-dirty-list-names-shames-slave-labour>.

<sup>151</sup> *Id.*

<sup>152</sup> See *National Pact for the Eradication of Slave Labor*, INT’L LABOR ORG. (2005), [http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms\\_189835.pdf](http://www.ilo.org/wcmsp5/groups/public/---dgreports/---ilo-washington/documents/genericdocument/wcms_189835.pdf).

Finally, it may be worth entirely reconsidering the wisdom of trying to reduce slavery and human trafficking through the use of mandatory disclosure regimes. As previously noted, research in other areas has questioned the value of disclosure regimes.<sup>153</sup> Our research suggests that, although consumers may care about human rights, it is not clear that supply chain disclosures will help them make more informed decisions. After all, simply posting information about supply chain audits on company websites does not necessarily lead to changes in consumer behavior.

The one thing that is clear from our study is that further research is needed to test the effectiveness of these options before designing future supply chain regulations. Disclosure requirements and best practice guidelines should be drafted based on empirical evidence of what would most effectively communicate relevant information to consumers. It is important to keep in mind that providing more information may have the unintended consequence of inhibiting consumer comprehension. In addition, given the difficulty of interpreting human rights disclosures, more research is also needed on: (1) which factors (e.g., a company's industry, the country in which it operates, or the number of its suppliers) have the largest impact on the risk of human rights violations in corporate supply chains; (2) the relationship between these factors and actual human rights outcomes; (3) which aspects of due diligence are most likely to minimize potential human rights risks; and (4) the likelihood that such information would in fact shape consumer purchasing decisions in the field. Such research is necessary before more countries follow in the steps of the United Kingdom in passing supply chain disclosure laws that model the flawed CTSCA.

## CONCLUSION

In response to growing concern over corporate complicity in human rights abuses, laws have been adopted—and are currently being proposed—that require companies to disclose their efforts to mitigate human rights risks in their supply chains. To date, however, these laws have been subject to little empirical scrutiny. In this Article, we argued that the effectiveness of supply chain disclosure regimes is likely to be limited. This is not only because disclosure regimes in other contexts have been shown to be frequently ineffective, but also because unique features of supply chain disclosures make them especially difficult to interpret. In order to test our argument, we administered a series of experimental tests designed to measure consumers' confidence and comprehension of supply chain disclosures to a nationally representative sample of respondents. Although there were some positive findings for advocates of supply chain disclosure regimes, the respondents consistently rated disclosures reporting low levels of due diligence almost as highly as disclosures that reported a high level of due diligence. In other words, our experimental results are broadly consistent with our theory.

We believe that the evidence presented in this study suggests that it may be time to reconsider the design of current supply chain disclosure laws, especially given the recently passed U.K. law modeled after the CTSCA and current efforts to pass

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<sup>153</sup> See, e.g., BEN-SHAHAR & SCHNEIDER, *supra* note 13.

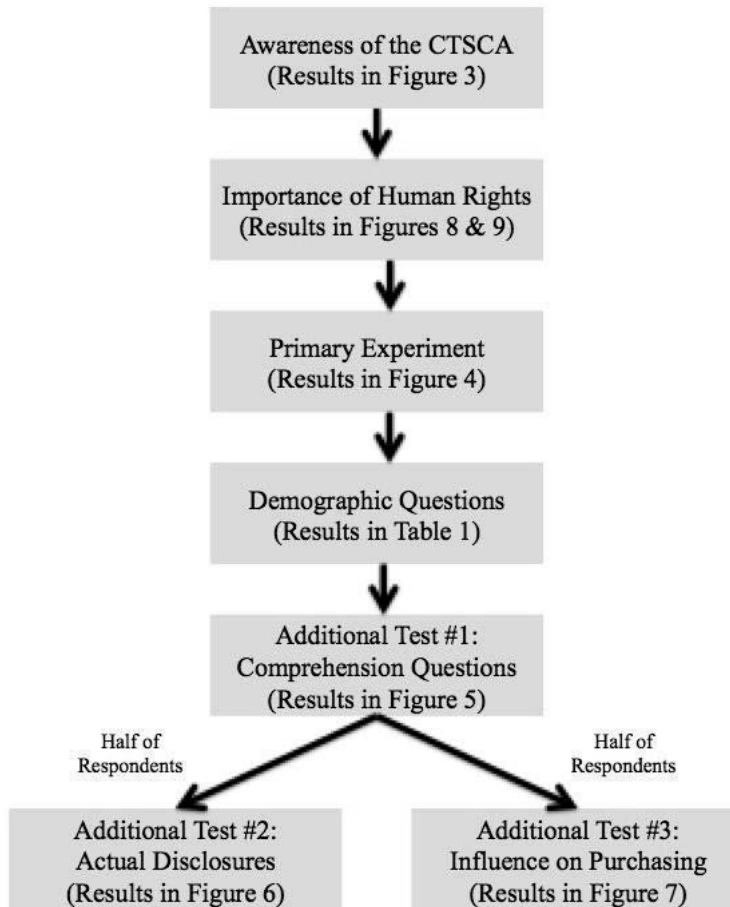
similar laws on the federal level and in Australia.<sup>154</sup> Although consumers may be interested in whether a company's supply chain is free from human rights abuses, current corporate disclosures do not help consumers determine which companies are making comprehensive efforts to achieve that goal. Taken together, our results thus suggest that the current disclosure regimes have serious limitations. Although the goal of improving corporate human rights practices is admirable, the current disclosure regimes are not a well-designed way to achieve it.

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<sup>154</sup> See sources cited *supra* note 9.

## APPENDIX A – FLOW OF THE SURVEY

Figure: Illustration of the Flow of the Survey Experiment





## APPENDIX B – TEXT OF THE EXPERIMENTAL TREATMENTS

*1. General Statement*

Our company is committed to respecting the human rights of our employees. Our Code of Ethics and company policies adhere to the principles of free choice of employment, nondiscrimination, and humane treatment. We ensure compliance with regulations governing child labor, minimum wage, and maximum working hour limitations.

*2. Basic – Optimal Disclosure***Verification**

We conduct assessments of all of our direct suppliers once a year to verify that they are not at risk for violating anti-slavery and human trafficking laws. Third party auditors spearhead the verification process using a multi-level process to identify and evaluate potential risks.

**Supplier Audits**

Third party auditors conduct unannounced audits of all of our direct suppliers once a year to evaluate their compliance with our anti-slavery and human trafficking company standards.

**Certification**

We require our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business.

**Internal Accountability**

We have developed internal accountability standards and procedures for employees and contractors failing to meet our company standards regarding slavery and trafficking. If and when our company uncovers employee or contractor compliance problems, we provide written notice and a specified period of time to take corrective action. Failure to take action results in termination of the relationship.

**Training**

Our company provides employees with training on mitigating the risks of human trafficking and slavery within our company's supply chains of products.

*3. Basic – Minimal Disclosure***Verification**

We conduct assessments of a sample of our direct suppliers to verify that they are not at risk for violating anti-slavery and human trafficking laws. Our internal auditors spearhead the verification process using a multi-level process to identify and evaluate potential risks.

**Supplier Audits**

Our internal auditors conduct announced audits of a sample of our direct suppliers to evaluate their compliance with our anti-slavery and human trafficking company standards.

**Certification**

We request our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business.

**Internal Accountability**

We have developed internal accountability standards and procedures for employees and contractors failing to meet our company standards regarding slavery and trafficking. If and when our company uncovers employee or contractor compliance problems, we provide written notice and suggest corrective actions.

**Training**

Our company provides employees with training on the importance of respecting the human rights.

*4. Best Practice – Optimal Disclosure***Verification**

We conduct assessments of all of our direct suppliers twice a year to verify that they are not at risk for violating anti-slavery and human trafficking laws. Third party auditors spearhead the verification process using a multi-level process to identify and evaluate potential risks. Prior to partnering with any new suppliers, and twice a year thereafter, our monitor conducts an initial screening of those suppliers. During the next level of review, our monitor requires prospective and current suppliers to respond in writing to questions regarding areas of concern raised during the initial screening process. The monitor then assesses which suppliers pose the highest risk in human trafficking, and reports these findings to our executive management team.

**Supplier Audits**

Third party auditors conduct unannounced audits of all of our direct suppliers twice a year to evaluate their compliance with our anti-slavery and human trafficking company standards. Audits consist of individual and group interviews with supervisors and management, as well as exhaustive facility tours. We monitor supplier behavior and compliance through the use of a professional third-party auditing firm, which performs extensive unannounced investigations.

**Certification**

We require our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business. Our partners must produce records to our company. Such records include: (1) proof of age for every worker; (2) every employee's payroll records and timesheets; (3) written documentation of terms and conditions of employment; (4) local health and safety evaluations or documentation of exemption from law; and (5) records of employee grievances and suggestions, and any employer responses.

**Internal Accountability**

We have developed internal accountability standards and procedures for employees and contractors failing to meet our company standards regarding slavery and trafficking. In the last year, our team conducted visits to all of our supplier factories to audit internal grievance mechanisms. We evaluated the existing communication channels in these factories and assessed their adequacy, reviewing the frequency of grievances reported and resolved. Auditors work with employees and contractors to develop action plans to resolve any such instances of non-compliance. If and when our company uncovers employee or contractor compliance problems, we provide written notice and a specified period of time to take corrective action. Failure to take action results in termination of the relationship.

**Training**

Our company provides employees with training on mitigating the risks of human trafficking and slavery within our company's supply chains of products. Last summer, we conducted a three-day annual seminar for our employees and managers who are directly responsible for selecting and overseeing our suppliers. Our supply chain management staff consists of two vice-presidents and one operations manager.

*5. Best Practice – Minimal Disclosure***Verification**

We conduct assessments of a sample of our direct suppliers to verify that they are not at risk for violating anti-slavery and human trafficking laws. Our internal auditors spearhead the verification process using a multi-level process to identify and evaluate potential risks. Prior to partnering with any new suppliers, our monitor conducts an initial screening of those suppliers. During the next level of review, our monitor requests prospective and current suppliers to respond in writing to questions regarding areas of concern raised during the initial screening process. The monitor then assesses which suppliers pose the highest risk in human trafficking, and reports these findings to our executive management team.

**Supplier Audits**

Our internal auditors conduct announced audits of a sample of our direct suppliers to evaluate their compliance with our anti-slavery and human trafficking company standards. Audits consist of individual and group interviews with supervisors and management, as well as exhaustive facility tours. We monitor supplier behavior and compliance through the use of our own internal auditing team, which performs announced investigations.

**Certification**

We request our direct suppliers to certify that they comply with anti-slavery and human trafficking laws in the country or countries in which they do business. Our partners are asked to produce records to our company. Such records include: (1) proof of age for every worker; (2) every employee's payroll records and timesheets; (3) written documentation of terms and conditions of employment; (4) local health

and safety evaluations or documentation of exemption from law; and (5) records of employee grievances and suggestions, and any employer responses.

**Internal Accountability**

We have developed internal accountability standards and procedures for employees and contractors failing to meet our company standards regarding slavery and trafficking. Our team has conducted visits to a sample of our supplier factories to audit internal grievance mechanisms. We evaluated the existing communication channels in these factories and assessed their adequacy, reviewing the frequency of grievances reported and resolved. Auditors work with employees and contractors to develop action plans to resolve any such instances of non-compliance. If and when our company uncovers employee or contractor compliance problems, we provide written notice and suggest corrective actions.

**Training**

Our company provides employees with training on the importance of respecting the human rights. Last summer, we conducted a one-day annual seminar for our employees and managers who are directly responsible for selecting and overseeing our suppliers.

APPENDIX C – TABLES OF THE RESULTS FROM THE EXPERIMENTS

Figure 4 - Mean Responses and 95% Confidence Intervals

General Statement	Basic – Optimal Disclosure	Basic – Minimal Disclosure	Best Practice – Optimal Disclosure	Best Practice – Minimal Disclosure
67.04 (64.53, 69.55)	69.73 (67.14, 72.33)	65.06 (62.14, 67.99)	75.16 (72.87, 77.46)	66.84 (64.23, 69.44)

Figure 5 - Mean Responses and 95% Confidence Intervals

General Statement	Basic – Optimal Disclosure	Basic – Minimal Disclosure	Best Practice – Optimal Disclosure	Best Practice – Minimal Disclosure
2.88 (2.70, 3.06)	2.39 (2.25, 2.53)	1.80 (1.67, 1.93)	1.87 (1.76, 1.97)	1.54 (1.43, 1.65)

Figure 6 - Mean Responses and 95% Confidence Intervals

Mystery Corp.	Anonymous Corp.
67.52 (65.90, 69.14)	70.26 (68.60, 71.92)

Figure 7 - Mean Responses and 95% Confidence Intervals

Mystery Corp. -- Before	Mystery Corp. -- After	Anonymous Corp. -- Before	Anonymous Corp. -- After
40.66 (37.44, 43.88)	49.58 (46.37, 52.79)	32.27 (29.05, 35.50)	45.17 (41.77, 48.57)

## APPENDIX D – OLS MODEL FOR THE PRIMARY EXPERIMENT

	<b>Model 1</b>	<b>Model 2</b>
Constant	67.268*** (1.267)	65.546*** (2.396)
Basic - Optimal	2.466 (1.832)	2.306 (1.837)
Basic - Minimal	-1.720 (1.830)	-1.378 (1.836)
Best Practice - Optimal	8.1615*** (1.803)	8.265*** (1.807)
Best Practice - Minimal	0.247 (1.786)	0.468 (1.796)
Gender - Male		1.096 (1.172)
Age - 25-34		0.530 (2.034)
Age - 35-44		2.111 (2.061)
Age - 45-54		2.396 (2.094)
Age - 55-64		-1.007 (2.107)
Age - 65+		0.229 (2.162)
Race/Ethnicity - Hispanic		-5.365* (2.101)
Race/Ethnicity - Black		0.133 (1.850)
Race/Ethnicity - Asian		-4.281 (2.803)
Race/Ethnicity - Other		-8.764* (4.229)

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Region - Midwest		1.290
		(1.822)
Region - South		0.888
		(1.656)
Region - West		2.453
		(1.836)
Observations	1405	1401

-- Standard errors in parentheses.

-- \*\*\* p <0.01, \*\* p <0.05, \* p <0.1.