

# COUNTER FORCED LABOR QUARTERLY JOURNAL

## VOLUME 1 | ISSUE 2

Educating corporations and corporate counsels on the business risks associated with human trafficking, forced labor, and modern slavery within supply chains, and promoting the adoption of counter-human trafficking corporate policies and adherence to human trafficking legislation and regulations.

**Counter Forced Labor Technologies** is a global compliance and advisory company that provides **on-site** assessments, improvement plans, training, research, and supply chain transparency required for corporations to combat human trafficking, forced labor, and modern slavery. We offer a wide array of services designed to help corporations understand intricate legislative policies and **mitigate risk** within their global supply chain.

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COUNTER  
FORCED LABOR  
TECHNOLOGIES



# GOVERNMENT CHANGES TO TIP RANKINGS

The U.S. Department of State's Office to Monitor and Combat Trafficking in Persons or J/TIP and its Trafficking In Persons (TIP) report is the center of a political controversy. Under the guidance of the Trafficking in Persons Victims Protection Act of 2000 and subsequent updated versions, the Trafficking in Persons report has been a comprehensive global resource for anti-human trafficking efforts shining attention on fundamental human rights worldwide. As an established international standard for trafficking victims' protection, the report holds governments accountable for their actions, or lack thereof, to support victims of human trafficking and end slavery. It has sustained diplomatic engagement, and foreign assistance programs by drawing public attention to the issue of human trafficking and urging foreign governments to take meaningful steps to address the crime of human trafficking. But, the recent upgrade of several countries on the 2015 TIP report has questionable political agendas and created major controversy.



Photo Courtesy of Wall Street Journal

Controversy began in July last year when the 2015 TIP report was released while the Obama Administration was negotiating the Trans Pacific Partnership (TPP) trade deal. In the report, Malaysia was issued a Tier 2 Watch List ranking, an upgrade from the Tier 3 ranking it received in 2014. A month later, in August, Malaysian authorities found 28 illegal human trafficking camps and mass graves during a trafficking crackdown. With continued rampant corruption and failures to offer adequate victim services, Malaysia's upgrade is believed to be an unjustified concession for the TPP trade deal. The Tran-Pacific Trade Partnership agreement is expected to be ratified by Congress in Spring 2016, but due to resistance from both parties, it's doubtful it will pass prior to the 2016 elections.

Other suspected politically driven upgrades that have compromised the 2015 TIP report include raising Vietnam and Cuba to Tier 2 Watch List rankings from Tier 3. As a member of the TPP agreement, Vietnam struggles with official complicity in human trafficking incidents and an appalling absence in prosecutions similar to Malaysia. In the same month the 2015 TIP report was released, the Obama Administration announced the re-establishment of diplomatic ties with Cuba, a country whose regime does not criminalize all forms of human trafficking nor does it assert any efforts to prevent forced labor.

As a result of the growing debate, Congressman Chris Smith (NJ-R) is calling for a subsequent Congressional hearing to the House Foreign Affairs Committee's Subcommittee on Africa, Global Health, Global Human Rights, and International Organizations November 2015 hearing on "Demanding Accountability: Evaluating the 2015 Trafficking in Persons Report." The previous hearing addressed current State Department ambiguities in assessing data used to rank countries and plans to remedy the "TIP reports credibility." The second hearing is scheduled for early spring 2016. According to a Reuters Exclusive from February 5th, U.S. Representative Smith is planning to draft a bill to reform human trafficking rankings in order to increase accountability and oversight for the ranking system.

Based on the Exclusive report, some of the tougher rules under consideration for the bill may include;

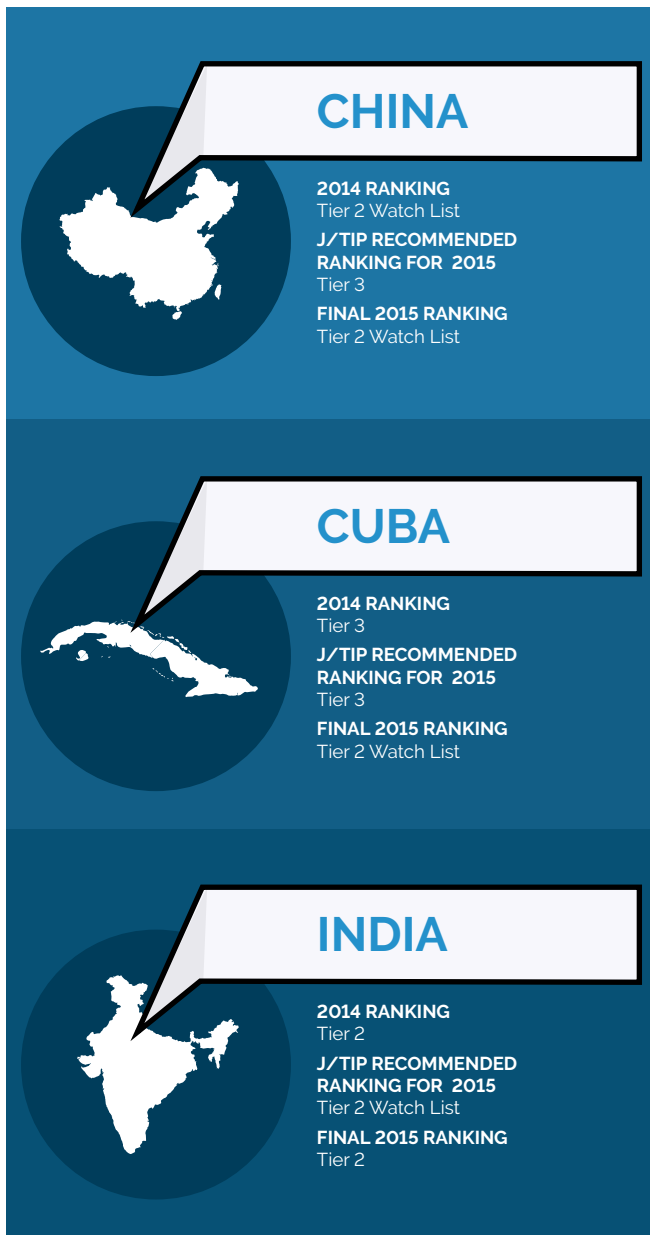
- Keep countries with an "official policy of trafficking its own people" at the lowest ranking until such practices are abolished.
- Block upgrades for countries with state-owned enterprises that engage in forced labor.
- Guidelines and term limits for countries allowed on the so-called "Watch List" before receiving an automatic downgrade.
- Countries must maintain transparency when reporting number of arrests and convictions for human trafficking to secure upgrades or avoid a downgraded status.

Exclusive: New U.S. Bill Being Drafted to Reform Human Trafficking Rankings, Reuters, 2016

State Department Watered Down Human Trafficking Report, The Washington Free Beacon, 2015  
Text Of Expressing the Sense of Congress Regarding the Upgrading of Malaysia on the 2015 Trafficking in Persons Report, Govtrack.us, 2015  
Subcommittee Hearing: Demanding Accountability: Evaluating the 2015 "Trafficking in Persons Report," House Committee on Foreign Affairs, 2015  
McConnell Warns that Trade Deal Can't Pass Congress Before 2016 Elections, The Washington Post, 2015

## DISPUTED RANKINGS

The U.S. State Department office set up to assess how well the world's nations fight human trafficking, known as J/TIP, was repeatedly overruled in this year's annual report, leading to inflated assessments of more than a dozen countries. Here is a sampling of the 17 disputed recommendations and the final outcomes. Tier 3 is the worst ranking, followed by Tier 2 Watch List, Tier 2, and Tier 1.



**Note:** J/TIP refers to the U.S. Department of State's Office to Monitor and Combat Trafficking in Persons **Sources:** Reuters; 2015 Trafficking in Persons Report C.Chan, 31/07/2015



## DEPARTMENT OF HOMELAND SECURITY LAUNCHES "KNOWN EMPLOYER" PILOT PROGRAM

The Department of Homeland Security announced in March the launch of the "Known Employer" pilot program to test a new process of pre-evaluating employers who regularly file immigrant and non-immigrant petitions for foreign national employees. The pilot program will be extended only to nine companies across a variety of industries. Participating employers will create a profile in the web-based "Known Employer Document Library (KEDL)," and upload relevant company documents. If USCIS approves the employer's predetermination request, the employer may then file petitions without resubmitting company information.

DHS Launches Known Employer Pilot Program, Homeland Security, 2016

## TRAFFICKING PREVENTION IN FOREIGN AFFAIRS CONTRACTING ACT PASSES THE HOUSE

Introduced by Chairman Royce (R-CA 39) and Ranking Member Engel (D-NY 16), the Act would require the Department of State and the U.S. Agency for International Development to develop definitions of what constitutes unreasonable "placement and recruitment fees" in order to enable compliance with the government-wide ban on charging workers recruitment fees.

H.R.400 - Trafficking Prevention in Foreign Affairs Contracting Act, Congress.gov, 2016

## THE HUMAN-TRAFFICKING RESOURCE CENTER NOTICE ACT

According to the new Illinois Compiled Statute, 775 ILCS 50/1, specific businesses or other establishments must display the National Human Trafficking Resource Center (NHTRC) hotline number conspicuously near the public entrance of the establishment in clear view of the public and employees. The Illinois Department of Human Services (IDHS) is tasked with creating the Notice and Illinois Department of Labor (IDOL) will determine if there are violations and notify the business for non-compliance.

Human Trafficking Resource Center Notice Act., Illinois General Assembly, 2016

## RECORD HIGH TRAFFICKING PROSECUTIONS IN UK

In the wake of the Modern Day Slavery Act, prosecutions for human trafficking in England and Wales have increased since July 2015. Since the Modern Slavery Act was passed, a total 183 people were taken to court between April 2015 and December 2015, "four short of the total for the previous 12 months."

Trafficking Prosecutions Rise Following New Laws, BBC, 2016

## TECH INDUSTRY AUDITS SUCCESSFULLY REDUCE CONFLICT-MINERAL EXPORT

According to the Enough Project, a human rights group, the Dodd-Frank financial reform act aided in tighter regulations and increased production of conflict-free minerals from militia groups in the Democratic Republic of Congo. Tech industry companies have successfully driven the push towards eliminating controversial mineral exports through extensive supply chain audits and Eastern Congo is exporting a record amount of conflict-free minerals. Due to tech industry demand, the trade in tin, tungsten, and tantalum can now be distinguished as certified conflict-free minerals versus funding armed conflicts.

Conflict-Free Mineral Exports on the Rise -Enough Project, The Wall Street Journal, 2016

## VERISK MAPLECROFT HUMAN RIGHTS OUTLOOK FOR 2016 IS RELEASED

*The 10 Human Rights Risks to Watch in 2016*

1. Labor Brokers
2. Supply Chains
3. Increasing Supply Chain Responsibility
4. Mandatory Reporting
5. Migration
6. Living Wage
7. Working Conditions
8. Social License to Operate
9. Gender Parity
10. COP 21

Modern slavery, migration and traceability rated as top human rights risks for business, Verisk Maplecroft, 2016

## PARTNERSHIP FOR FREEDOM ANNOUNCES CHALLENGE FINALISTS

The Challenge, Rethink Supply Chains: The Tech Challenge to Fight Labor Trafficking, is the second in a series of three Innovation Challenges sponsored by the public-private Partnership for Freedom. The mission of the second challenge called upon developers, designers, advocates, and innovators to submit concepts for technological solutions that identify and address labor trafficking in global supply chains for goods and services. The goal of the Challenge was to find a solution that addresses workers' voices, recruitment and/or traceability. The Grand Prize Winner will be announced April 2016 from among the following finalists: Good World Solutions, IST Research, GeoPoll, Sustainability Incubator and Trace Register, and Ulula.

Partnership for Freedom, Rethink Supply Chains

# LESSON OF THE QUARTER

## HUMAN TRAFFICKING 101

*What is human trafficking?*

Human trafficking is a form of modern-day slavery in which traffickers use **force, fraud, or coercion** to control victims for the purpose of engaging in commercial sex acts or labor services against his/her will.

### TWO TYPES OF SLAVERY

# 1

**FORCED LABOR** - Labor traffickers use violence, threats, lies, and other forms of coercion to force people to work against their will in many industries.

- **Bonded Labor** - The most widespread, yet least acknowledged form of slavery in the world. A person becomes a bonded laborer when their labor is required as a means of repayment for a loan. The person is then tricked or trapped into working for very little or no pay. The value of their work becomes invariably greater than the original sum of money borrowed. Often the debts are passed onto the next generations.
- **Debt Bondage Among Migrant Laborers** - The legal or illegal recruitment of laborers often with the support of labor agencies and/or employers in the destination country, can contribute to a situation of debt bondage. It is most prevalent among migrant workers in the agriculture, construction, domestic, and textile and garment industries.
- **Involuntary Domestic Servitude** - Domestic workers who perform work within their employers' households, receive little to no pay, limited freedom of movement and/or no access to travel documents.

- **Forced Child Labor** - A child can be a victim of human trafficking regardless of the location of that exploitation. Indicators of forced labor of a child include situations in which the child appears to be in the custody of a non-family member who has the child perform work that financially benefits someone outside the child's family and does not offer the child the option of leaving.
- **Child Soldiers** - A manifestation of human trafficking where it involves the unlawful recruitment or use of children—through force, fraud, or coercion—as combatants, or for labor or sexual exploitation by armed forces.

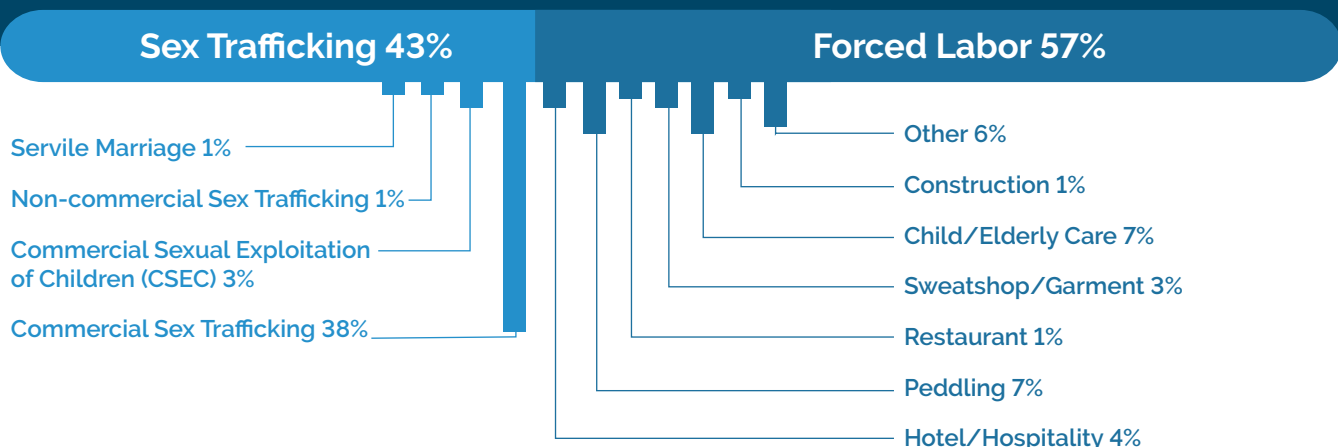
# 2

**SEX TRAFFICKING** - When an adult is coerced, forced, or deceived into prostitution – or maintained in prostitution through coercion.

**All of those involved in recruiting, transporting, harboring, receiving, or obtaining the person for that purpose have committed a trafficking crime.**

- **Child Sex Trafficking** - Minors under the age of 18 engaging in commercial sex are considered to be human trafficking victims, regardless of the use of force, fraud, or coercion.

### CHILD LABOR INDUSTRIES



U.S. Department of State, Human Trafficking Awareness Training: "TIP 101", U.S. Department of State

# LESSON OF THE QUARTER

## WHAT IS FORCE, FRAUD, AND COERCION?

### FORCE

to compel, constrain, or oblige someone to do something. In example, the victims are working or living in conditions that do not afford the freedom to leave or come and go as he/she wishes. Not in control of his/her personal documents or finances.

### FRAUD

to deliberately deceive, cheat, or trick for personal gain. In example, victims are recruited through false promises concerning the nature of his/her work. Hired for a different purpose than advertised.

### COERCION

the use of force or intimidation to obtain compliance. In example, the victims are threatened for their illegal status in country. Compelled to comply by fear.

# REWARD OVER RISK

## WHY TRAFFICKING EXISTS?

Human trafficking is a market-driven criminal industry that is based on the principles of supply and demand, like drugs or arms trafficking. The cause for human trafficking goes beyond vulnerability, it is fueled by a demand for cheap labor, services and for commercial sex. Labor trafficking and sex trafficking internationally persist and thrive for a number of reasons, including:

1. Low Risk: Human traffickers perceive there to be little risk or deterrence to affect their criminal operations. Several factors constitute low risk: lack of government and law enforcement training, low community awareness, ineffective or unused laws, and lack of law enforcement
2. High Profits: The market for commercial sex makes it profitable for traffickers to sexually exploit children and adults. In addition, the willingness of consumers to buy goods and services from industries that rely on forced labor, creates a profit incentive for labor traffickers to maximize revenue with minimal production costs.

As a result, human trafficking is a relatively low risk, high reward business, and criminal enterprises such as the Mexican cartels, who are typically known for drug trafficking, have begun to transition to human trafficking.

## MYTHS ABOUT CHILD LABOR

### Every form of child labor is human trafficking

**TRUTH** - If the work does not negatively impact the child or prevent them from attending school, it is generally considered acceptable.

### All child laborers work in factories

**TRUTH** - According to ILO estimates, the majority of international child laborers between ages 5 and 17 work in the agricultural sector.

### CHILD LABOR DISTRIBUTION

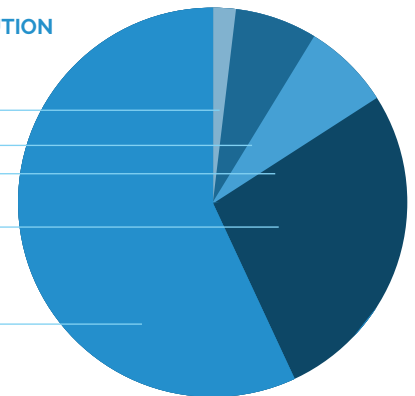
Not Defined: 1.9%

Domestic Work: 6.9%

Industry: 7.2%

Services- not domestic work: 25.4%

Agriculture: 58.6%



### Child Labor only exists in poor countries

**TRUTH** - Child Labor is a global problem.

### Child Labor is a necessary evil for growing economies

**TRUTH** - Growing economies require quality education and a skilled workforce for economic growth.

### Child Labor helps young people transition into paid work as adults

**TRUTH** - Long-term effect of child labor equates to unpaid

The Guardian, Five myths about child labour

# BRAZIL: TIER 2

A Trafficking in Persons Feature

**BACKGROUND:** During a time of political and economic turmoil caused by economic recession and corruption scandals surrounding some of the country's major companies and members of the political establishment, Brazil is preparing to host the Games of the XXXI Olympiad later this summer. It is estimated that Brazil will spend \$25 billion on infrastructure improvements for the Summer Olympics in an effort to increase the nation's prosperity. The uncertain monetary return on the investment may come at an excessive humanitarian cost.

## WHAT IS THE TIP REPORT?

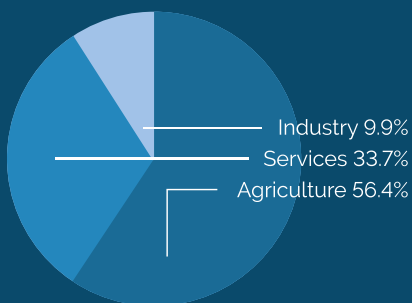
The Trafficking in Persons (TIP) Report is the U.S. Government's principal diplomatic tool to engage foreign governments on human trafficking. The U.S. Government uses the TIP Report to engage foreign governments in dialogues to advance anti-trafficking reforms and to combat trafficking and to target resources on prevention, protection and prosecution programs.

## What is the TIP Tier ranking?

In the TIP Report, the Department of State places each country onto one of three tiers based on the extent of their governments' efforts to comply with the "minimum standards for the elimination of trafficking" in accordance with the Trafficking Victims Protection Act.

## SLAVERY IN THE BRAZILIAN SUPPLY CHAIN:

### CHILD LABOR IN BRAZIL BY SECTOR



### CHILD LABOR (Ages 5 - 14),

while legal if the child attends school, is found both legally and illegally in the production of these goods:

Beef	Garments
Bricks	Manioc/Cassava
Cashews	Pineapples
Cattle	Rice
Ceramics	Sisal Sugarcane
Charcoal	Timber
Cotton	Tobacco
Footwear	

Heavy labor migration occurs into Brazil from neighboring Paraguay, Bolivia & Argentina and as far away as Haiti and South Korea

### U.S. TOP 10 IMPORT GOODS FROM

## BRAZIL 2014

Mineral fuels, oils, distillation products	\$6.6 B
Iron & Steel	\$3.8 B
Commodities	\$2.8 B
Aircraft/Spacecraft parts	\$2.3 B
Machinery	\$2.0 B
Coffee, tea, spices	\$1.5 B
Wood by-products	\$1.1 B
Stone, plaster, cement, etc...	\$951 M
Organic Chemicals	\$925 M
Wood & Products	\$891 M

### MINIMUM WAGE

**880 = \$219**

Real / month 44 hrs / wk

3.8% living on \$1.25 day

**21.4%** Living below the poverty line

Brazilian law defines "trabalho escravo", or slave labor, as forced labor or labor performed during exhausting work days, or degrading work conditions or limited freedom of movement.



## ANTI-TRAFFICKING LEGISLATION

Decidedly, the Brazilian government has employed strict laws and regulations to curb abusive employment practices. Over the past several years in the garment industry, Brazil's Labor Prosecutor Office has investigated third-party suppliers suspected of not meeting the minimum requirements of labor laws or otherwise violating workers' rights. Where it found violations of the law, the government rescued the workers, many of whom were illegal immigrants, and filed charges against the companies that engaged these suppliers based on its view that the supplier is simply a logistical extension of the company's main business. Many such companies

are fighting back, claiming that they cannot be required to employ everyone in the supply chain. Several Brazilian and foreign brands have been questioned about their supply chain management and were required to sign Terms of Undertakings (TACs) with the labor authorities to avoid further prosecution. Some of these TACs go far beyond the mandatory auditing of suppliers and require companies to become the actual employer of the suppliers' employees. Since Brazil has aggressively attacked both the credit and property of companies found to employ slavery-like conditions, companies should have a basic cursory knowledge of Brazil's anti-trafficking labor laws.

## BRAZILIAN PENAL CODE

The **Brazilian Penal Code** defines conditions similar to slavery as those where the employee is subject to:

- forced work,
- exhausting work hours,
- degrading work conditions, or
- limitation on their freedom of movement.

The labor law defines conditions similar to slavery as those mentioned in the Penal Code plus:

- limitation on using transportation,
- hostile monitoring, and
- retention of personal identification documents and personal items.

Usually, when quasi-slavery conditions exist, several other violations of health and safety rules are encountered. Very often, these workers are required to work at dangerous worksites, without protective equipment, in poorly ventilated or excessively hot rooms, without fire safety features, and sometimes even without basic sanitation and clean water.

- Chapter VI, Section 149 of the Brazilian Penal Code pertains to crimes against personal freedom;

The Brazilian concept of "trabalho escravo", or slave labor is defined by the various practices which cause workers to work in conditions "analogous to that of a slave", namely: subjecting a person to forced labour or to arduous working days, or subjecting such a person to degrading working conditions or restricting, in any manner whatsoever, his mobility by reason of a debt contracted in respect of the employer or a representative of that employer.

**Penalty** – two (2) to eight (8) years of imprisonment, together with a fine, on top of any sentence handed down for violence.

§1o Any persons committing the following offences shall receive the same penalties:

- retaining workers at the workplace by preventing them from using any means of transportation
- retaining workers at the workplace by confiscating their personal papers or personal property, or by maintaining manifest surveillance

§2o The prison sentence is increased by half if the crime has been committed:

- against children or adolescents
- on the basis of race, color, ethnicity, religion or origin

- Under Article 18, labour inspectors have, among other powers, the powers to: verify the compliance with legal and regulatory provisions, including related to health and safety; interview workers and employers; examine and collect data from documentation; propose the closure of the establishment, machinery or equipment, or the embargo of work, if it finds severe and imminent risk to health or physical integrity of the worker and communicate the fact immediately to the competent authority; investigate the cause of work-related accidents; draw up notices of violation for failure to comply with legal requirements; and to inform the competent authority in writing of any defects or abuses

- 231-A of the penal code respectively prohibit international and domestic sex trafficking but only if it involves movement, with violence, threats, or fraud as aggravating elements as opposed to necessary elements of the offense. These articles prescribe penalties of two to eight years' imprisonment.

Ministry of Labor and Employment (MTE) Decree No. 540/2004 created a register of names or "dirty list" of employers caught by the Special Mobile Inspection Group (GEFM) exploiting workers' conditions analogous to slavery.

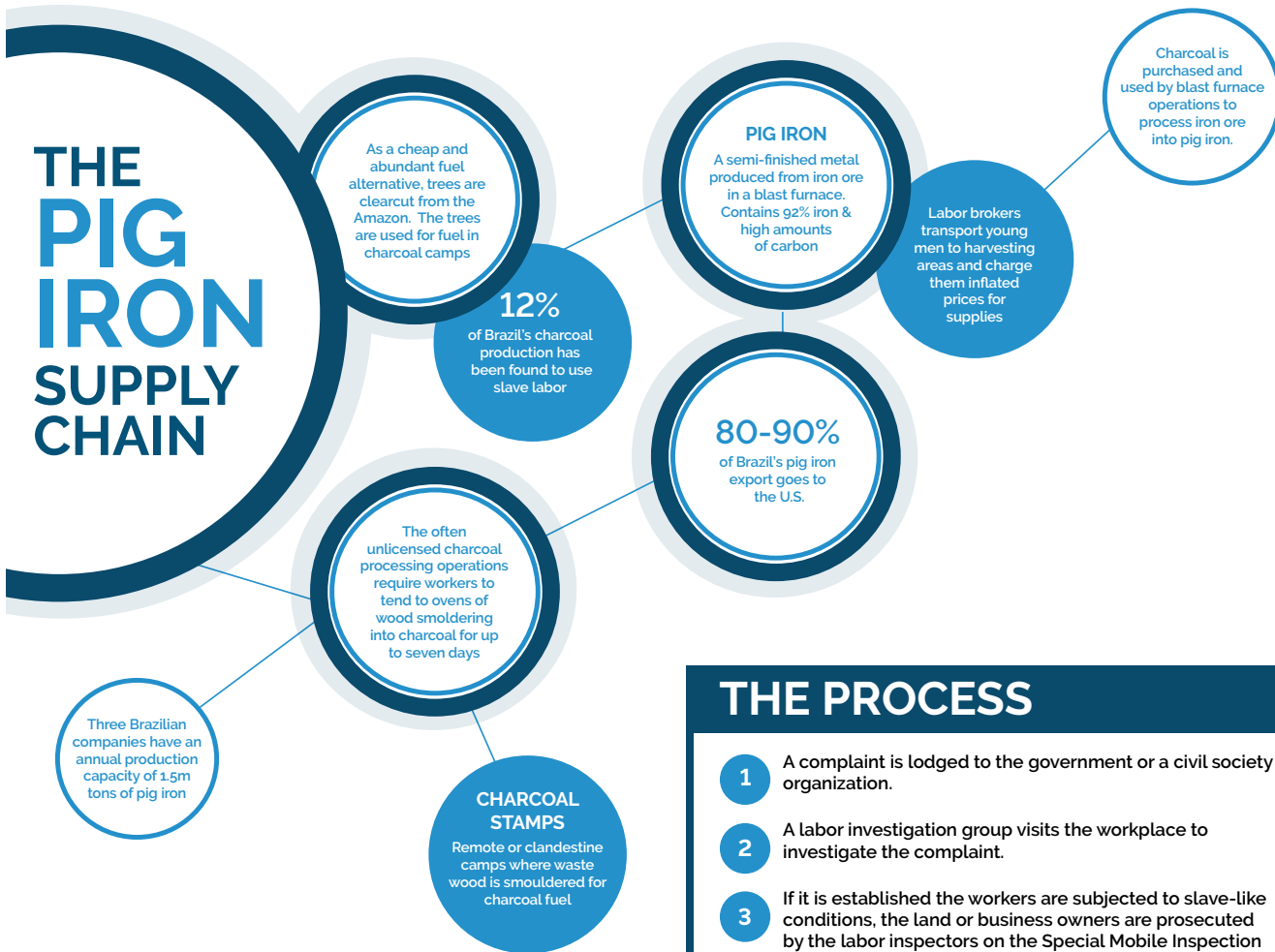
Brazilian statutes prohibiting trafficking do not align with International Labor Organization (ILO) Conventions. The Brazilian laws are inconsistent with international law and the ambiguous definition of forced labor can prompt corrupt labor practices.

Fighting Forced Labour: The Example of Brazil, International Labour Office, 2009  
Article 18 Labour Inspection Regulation (RIT) of 1965 — Updated by Decree no. 4.552 of 2002 and Decree no. 4.870 of 2003  
Brazil Garment Industry- Health and Safety Issues Overview, Assoc of Corporate Counsel, 2015  
Labor Inspection in Brazil, Adalberto Cardoso, Telma Lage, 2006

## ANTI-TRAFFICKING LEGISLATION

## SLAVERY IN YOUR STEEL

In the investigations report by Greenpeace, *Driving Destruction in the Amazon*, it is discovered Brazil's pig iron supply chain is rife with labor conditions analogous to slavery.



## BRAZIL'S DIRTY LIST:

The "lista suja" or "dirty list" of slave labor was established in 2004 by Brazil's Ministry of Labor and Employment (MTE) with Decree No. 540/2004 as a risk management tool for the Brazilian economy. Brazil's much touted "dirty list" was suspended in December 2014 after a request by the very powerful Brazilian Association of Real Estate Developers (Abrainc). In the glow of the upcoming Olympic games this summer and under considerable international pressure, Brazil has reinforced the dirty list as an effective and creative tool against human trafficking in the supply chain. In the most recent "dirty list" published in February 2016, 340 companies from both rural and urban areas were found exploiting workers through sweatshops, farms, cattle ranches, and construction.

## THE PROCESS

- 1 A complaint is lodged to the government or a civil society organization.
- 2 A labor investigation group visits the workplace to investigate the complaint.
- 3 If it is established the workers are subjected to slave-like conditions, the land or business owners are prosecuted by the labor inspectors on the Special Mobile Inspection Group (GEFM) team.
- 4 The charges are sent to the Ministry of Labor and Employment and undergo an administrative process.
- 5 The employer may be required to pay a fine. (Criminal convictions or jail time is rare.)
- 6 Employers found guilty will have their names (or the name of their enterprise), included on the dirty list.\*
- 7 Once listed on the dirty list, the employer will be monitored for two years. If there are no recurring offenses and all fines are paid, the name may be removed from the list. \*\*

\*Public and private financial institutions may block companies from directly receiving government loans, receiving bank loans as well as choosing to place restrictions on product sales. In addition, violators cannot participate in state government auctions or receive tax benefits from the state.

\*\*In Maranhão, Brazil the penalties have a duration of five years from the inclusion of the employer.

## RANA PLAZA AFTERMATH



In 2013, the \$20 billion a year garment industry in Bangladesh suffered an unprecedented industrial accident. Due to a plethora of negligent safety discretions, the Rana Plaza building collapsed claiming over 1,100 lives and injuring thousands more. In the aftermath, it was discovered the employees had been working in a building that was illegally expanded and had sustained large structural cracks. Although employees cited safety concerns preceding the collapse, Sohel Rana, the owner of the nine-story complex on the outskirts of Dhaka, ignored their pleas. As a result, the employees were forced to work in unsafe labor conditions and literally chained inside the building with no escape during the collapse.

To date, 41 people have been charged with murder including the Rana Plaza owner, his parents, the former mayor of Savar municipality, and other government officials, 12 of whom were responsible for safety and inspections.

The collapse of Rana Plaza was a revolutionary event that had a worldwide ripple effect on consumers, western

retailers, and the Government of Bangladesh. The unprecedented public interest and media attention caused insurgent political pressure and retailers who outsourced garments to the five Rana Plaza factories were now exposed. Since the Rana Plaza tragedy, consumer demand has driven significant ground-breaking approaches to prevention as a remedy both in the government and private sectors.

Over the past two years, the Government of Bangladesh has amended its labor laws to strengthen certain aspects of freedom of association, collective bargaining, and occupational health and safety; recruited and begun training a significant number of new factory inspectors; started fire and structural safety assessments and begun posting online factory safety information; established a hotline to report labor concerns; and since January 2013, registered approximately 300 new trade unions. As a result of the new workers' right to freedom of association and collective bargaining, Bangladesh became a part of the International Labor Organization-International Finance Corporation's (ILO-IFC) Better Work Program.

## BETTER WORK PROGRAM

The Better Work Program improves working conditions in global textile and apparel supply chains. By monitoring factories' compliance with national labor laws and international labor standards, Better Work promotes better conditions for workers, develops competitiveness by providing technical assistance to factories that need to improve their compliance, and informs major brands and buyers of labor conditions in the sector. Multinational apparel brands use that information to make business decisions and help determine where to place their orders.

Better Work. Better Work Bangladesh

## RANA PLAZA AFTERMATH

A new initiative launched late last year by the ILO will enhance workplace rights and industrial relations in the Bangladesh Ready-Made Garment Sector. The Government of Sweden will finance U.S. \$5.4 million to the initiative titled "Promoting Social Dialogue and Harmonious Industrial Relations in the Bangladesh Ready-Made Garment Industry" from November 2015 to December 2020.

### PROGRAM COMPONENTS

The program has both short and long-term goals supporting vital components;

- Building and Fire Safety Assessment
- Strengthen Labor Inspection & Support Fire and Building Inspection
- Build Occupational Safety and Health (OSH) awareness, capacity and systems
- Implement the Better Work program in Bangladesh

Since the Rana Plaza collapse, the private sector has also mobilized a strong response to the tragedy through several organized pacts. Of important interest, the **Accord on Fire and Building Safety in Bangladesh** and **Alliance for Bangladesh Worker Safety**. They are now fully operational and play a key role in factory inspections and improvement of working conditions.

The Accord has been signed by over 200 apparel brands, retailers and importers from over 20 countries in Europe, North America, Asia and Australia; two global trade unions; and eight Bangladesh trade unions and four NGO witnesses. Comprised of six key components, the Accord is a legally binding agreement between the signatories. Accord signatory companies are subject to independent inspections on fire, electrical and structural safety. Once inspections are completed they are made public, and the factory enters the remediation process. As a part of the remediation process, a Corrective Action Plan (CAP) is developed and implemented using a team of case handlers who provide support to the factory. Finally, the Accord employs a worker participation program with workers and factory owners empowering them to participate and make an effective contribution to the entire process. Progress oversight is published in a quarterly report explaining the number of inspected factories, changes and corrective action plans.

### THE ACCORD'S SIX COMPONENTS

- 1 A five year legally binding agreement between brands and trade unions to ensure a safe working environment in the Bangladeshi RMG industry
- 2 An independent inspection program supported by brands in which workers and trade unions are involved
- 3 Public disclosure of all factories, inspection reports and corrective action plans (CAP)
- 4 A commitment by signatory brands to ensure sufficient funds are available for remediation and to maintain sourcing relationships
- 5 Democratically elected health and safety committees in all factories to identify and act on
- 6 Worker empowerment through an extensive training program, complaints mechanism and right to refuse unsafe work.

The Alliance is a legally binding, five-year commitment to improve safety in Bangladeshi RMG factories. The collaborative solution was developed by industry companies and stakeholders including: The United States, the Government of Bangladesh, policymakers, NGOs, members of civil society, and organized labor. Currently, 27 members have committed to the Alliance's five strategic pillars, but the members have been rebuked for their participation.

Both the Accord and Alliance have similar concepts and verbiage, but the Alliance has fewer measures protecting workers or providing workers rights making it less desirable for companies doing business in Bangladesh.

- Standards & Inspections; factory safety assessments are conducted by Independent Qualified Assessment Firms (QAFs).
- Remediation
- Worker Empowerment
- Training
- Sustainability



## RANA PLAZA AFTERMATH



Similarly, the Accord and Alliance publicly publish factory names on their websites with inspection results, but unlike the Accord where factory performance dictates future production, the Alliance holds factories accountable through unilateral business discretion. Although it is preferred Alliance members agree not to source from factories that have not been approved, it is the outsourcing company's sole discretion to terminate production with a factory.

In the almost 3 years since the Rana Plaza collapse, Bangladesh has been the center of progressive safety regulations for RMG factories in both collaborative government efforts and private industry efforts. Retailers observed an increase in consumer demand for socially responsible clothing, and they have made adjustments for business safety improvements in order to meet that demand. Even still, the current progress may not be enough.

Recently in February, a massive fire incident occurred at the Matrix Sweater Factory in Gazipur, Bangladesh. The factory is listed on the Alliance for Bangladesh Worker Safety factory list with 72 different safety hazards. The Matrix Sweater Factory failed to complete 63% of its Corrective Action Plan from May 2014. Again, business safety is reliant on due diligence, continued safety inspections and working closely

with local authorities, but all things take time to culminate into success.

The pressing concern for all parties involved are the continued improvements needed for safe operations. Additional inspectors need to be trained, recruited and able to work. Bangladesh's ability to ensure safety and health at work as well as freedom of association and collective bargaining must continue to improve. Implementing regulations need to be adopted swiftly and further amendments to the legislation are necessary in line with ILO recommendations. New legislation must be implemented effectively. Bangladeshi industry also should keep to its commitments. Working conditions must improve in practice and workers must be free to organize and exercise their right to collective bargaining without fear of anti-union discrimination, harassment, intimidation or harm.

For the interim, companies can improve business security by joining a private sector pact, collaborating with government-led programs, and working in consultation with unions and labor rights lawyers to ensure that pricing and sourcing contracts adequately reflect and incorporate the cost of labor, health, and safety compliance.



## REVIEW OF CSR BUSINESS PRACTICES WITH LESSONS LEARNED

**CAUSE:** The labor force trends of both outsourcing and offshoring are on the rise. The worldwide economic recession has forced companies to explore all options to increase efficiency and cut costs. Each year, hundreds of thousands of people from around the world are recruited to work in the United States on temporary nonimmigrant work visas. The cause for concern is the abuse of the guest worker visa programs and the implied force, fraud, or coercion involved in guest worker employment.

**WORK VISA:** Includes any visa through which the visa holder can be legally employed in the United States

A wide range of U.S. industries from low-wage jobs in agriculture and landscaping to higher-wage positions in technology, nursing, and teaching employ internationally recruited workers. Predominantly, nonimmigrant temporary work visas are used for temporary worker status in the United States. The guest workers are hired through a network of private labor recruiters either directly or indirectly depending on the industry. Direct recruiting is performed by the hiring company in the guest worker's home country. Indirect recruiting has several forms, using a loyalty program among returning workers or a combination of subcontractor third-party recruiter agencies. In all recruiting scenarios, a local recruiter makes contact via the worker's local community to present job opportunities. Usually, workers pay a lump-sum fee to the recruiter for consideration, which may include a recruiter's fee, visa, and travel expenses. The worker will often pay via a high-interest loan or personal collateral thus creating overwhelming debt. The local recruiter may refer the workers to a counterpart recruitment agency to complete the necessary paperwork and receive a formal job offer. Additional fees may be required before the worker conducts a visa interview and obtains the work visa. As of December 2015, the filing fees for a L-1A or L-1B visa (intracompany

transfer) is \$4,500 per application. This fee applies to the businesses who employ 50+ employees in the U.S. if more than 50% of these employees are in another nonimmigrant visa status. These fees are often passed along to the guest worker.

In some cases, employers both deliberately and inadvertently use fraud to take advantage of guest worker visa programs and the guest workers. According to the Government Accountability Office (GAO) H-2A and H-2B visa program report, businesses in need of guest worker skills may hire a subcontractor or recruiting company but fail to take the extra step to verify the subcontractor or perform due diligence. As a result, recruiting agencies typically operating in low-wage industries such as hospitality and health care set up exploitative arrangements.

Many industry-specific incidences of labor exploitation and risk factors for labor trafficking can be found in the supply chain. With a variety of visa programs to choose from, the most commonly abused guest worker programs support agriculture, restaurants, hospitality, construction jobs, and the technology industry.

Under H-2A visas, employers that are unable to find sufficient U.S. workers are able to secure foreign workers to work in the agriculture sector after paying for the worker's visa and transportation costs. Over 89,000 H-2A temporary agriculture visas were approved in the 2014 fiscal year, increasing 17% to 108,000 in the 2015 fiscal year. Through the community recruitment process, it is well-documented that fees and transportation costs are often passed on to the guest worker. The guest worker is further susceptible to forced labor conditions through geographic isolation. Under the H-2B visa, guest workers' immigration status is tied to the employer resulting in no visa portability and a lack of agency over housing options.

# 515,154

## TEMPORARY WORKER VISAS IN 2015

172,740 SPECIALTY OCCUPATION (H-1B)

108,144 AGRICULTURAL (H-2A)

69,683 SEASONAL (H-2B)

164,587 INTRACOMPANY TRANSFEREES (L)

Source: U.S. Dept of State, Bureau of Consular Affairs

Travel.State.Gov, Employment  
FY 2014 Nonimmigrant Visas Issued, Travel.State.Gov, 2014  
Sessions, Durbin Lead Bipartisan Group of Senators Demanding Federal Investigation of Social Edison, Jeff Sessions, 2015  
Senator Calls for Investigation of Questioned Work Visas, Bill Nelson, 2015

## REVIEW OF CSR BUSINESS PRACTICES WITH LESSONS LEARNED

Industry-specific factors like seasonal and fluctuating business or extended operating hours that require around-the-clock support services within the hospitality sector increase the demand for guest worker visas. Outsourcing behind-the-scene support services has been a long established practice in the travel and tourism industry. Through the H-2B visa program, employers unable to find sufficient employees are able to hire temporary or non-agricultural seasonal workers. Usually, a third-party hiring firm handles all the recruitment, interviewing, background checks, and processes the required paper work and documentation of new hires resulting in cost savings as well as convenience. Employers are required to pay employees the prevailing wage based on occupation and locality as set by the various state workforce agencies and may charge workers for housing, resulting in more cost savings. There are some disadvantages to outsourcing in the hospitality sector such as overseeing third-party sourcing relationships, constant training of guest workers, conflicts from language barriers, and assimilating staff.

Additional sectors of the American economy dependent on H-2B workers include landscaping, forestry, seafood processing, restaurants, amusements parks, and construction. Similarly, low "prevailing wages" in those sectors coupled with no requirement to provide benefits are huge cost savings for businesses and the supply chain.

In general, labor force trends of both outsourcing and offshoring are on the rise, as companies are forced to explore all other options to cut cost and improve efficiency in a time of global economic recession. The technology sector has also benefited from guest worker programs like the L-1 visa series that allows international companies with offices in the U.S. to transfer workers from an overseas office. The L-1A visa allows the transfer of executives and managers, and the L-1B visa is for workers with "specialized knowledge".

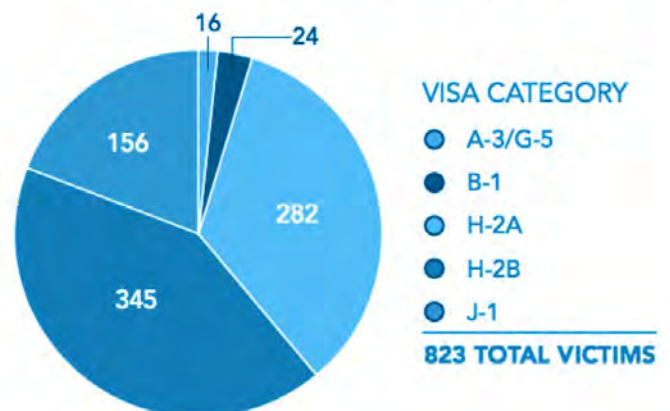
Due to varying interpretations, the recently released L-1B visa Adjudication Policy memo by the U.S. Citizenship and Immigration Services defined Specialized Knowledge as: Knowledge of the employer's product, service, research, equipment, techniques, management or other interest and its applications in international markets that is demonstrably distinct or uncommon in comparison to that generally found in the particular industry or within the petitioning employer.

L-1B Adjudications Policy, U.S. Citizenship and Immigration Services, 2015

In recent years, many L-1 visas have been used by international outsourcing companies that simply contract out functions that they may have formerly carried out themselves. Typically, the outsourcing company provides the guest worker employees to perform a service directly for the client through the L-1 visa. The L-1 visa guest worker program does not dictate a prevailing wage or require elevated pay with peers because they are paid and taxed through the foreign outsourcing company. Although the hiring process for a L-1 visa may be more traditional, the employee is restricted from seeking alternate employment and susceptible to high pay penalties for early contract termination.

Guest worker visa programs are not immune to labor trafficking nor does it only effect unskilled workers. The National Human Trafficking Resource Center (NHTRC) hotline received 823 labor trafficking reports related to guest worker visa programs between August 2014-July 2015.

### TOTAL LABOR TRAFFICKING AND LABOR EXPLOITATION VICTIMS REPORTED TO THE NHTRC AND BEFREE TEXTLINE



Polaris Projects, Labor Trafficking in the U.S.: A Closer Look at Temporary Work Visas

## REVIEW OF CSR BUSINESS PRACTICES WITH LESSONS LEARNED

In summary, the outsourcing culture has legitimate employment purposes promoted by several U.S. visa programs that positively affect the U.S. economy. The cause for change is how those guest worker visa programs directly affect corporate social responsibility practices, business operations, and supply chains.

TEMPORARY (NONIMMIGRANT) WORKER CLASSIFICATION		
Category	Description	Industry
A-3	Personal employees, attendants and servants of A visa holders (foreign diplomats)	Domestic work
B-1	Personal or domestic employees	Domestic work
EB-3	Employment - based Immigrant visas, often used by professionals and skilled workers	A wide range of professional industries
G-5	Personal employees, attendants and servants of G visa holders (foreign government representatives or employees of certain international organizations)	Domestic work
H-1B	Specialty Occupations	Architectures, engineering, mathematics, physical sciences, social sciences, biotechnology, medicine and health, education, law, accounting, business, specialties, theology and the arts
H-1C	Registered nurses in shortage areas	Nursing
H-2A	Temporary or seasonal agricultural workers	Agriculture
H-2B	Temporary or seasonal nonagricultural workers	Landscaping, forestry, seafood meat/poultry, carnivals construction, carpentry, housekeeping, and restaurant worker
J-1	Exchange visitor program	A wide range of such professional industries as higher education, research and medicine to such low wage industries as restaurants, amusement parks and dairy farms
L-1	Intracompany transferee executive or manager	Science, technology, engineering, and math
O-1	Individuals of extraordinary ability or achievement	Science, arts, education, business, athletics, television and cinema
P-3	Artists or entertainer coming to be apart of a culturally unique program	Entertainment and the Arts
TN	NAFTA professionals	The profession must appear on the list of approved NAFTA professions, which are divided into the following four categories: general; medical/ allied professional; dentist; teacher

Immigration Classifications and Legal Employment in the United States, NAFSA, 2015  
HCCFL, Immigration Classifications Chart

## REVIEW OF CSR BUSINESS PRACTICES WITH LESSONS LEARNED

**EFFECT:** The effect of outsourcing by U.S. businesses has been a lucratively streamlined process using the existing temporary worker visa programs. Human capital is important to productivity and growth of the economy as stated by President Obama at an economic development conference in reference to the L-1 visa changes, "(changes) could benefit hundreds of thousands of nonimmigrant workers and their employers; that, in turn, will benefit our entire economy and spur additional investment." Temporary worker visa programs are a venue for externally acquiring human capital which fulfills generic to specialized knowledge and skill sets important in the supply chain. The cost-efficient practice of hiring immediately available guest worker talent through recruiting services or third-party entities can alleviate a burden of the business, but without due diligence it also creates unknown variables that can be harmful to business operations. It is imperative businesses are well-informed of their temporary worker visa management because the majority of internationally recruited workers are tied to a single U.S. employer through their visas. The employer is responsible for sponsoring the guest worker and maintaining compliance. With few exceptions, a guest worker's legal immigration status is dependent on his or her continuing relationship with the employer. In most cases, a worker who resigns or is fired from employment no longer is authorized to remain in the United States. These visa regulations attempt to instill confidence in the guest workers' and business' commitment, yet they also instill an atmosphere of fear, fraud, and coercion if abused.

In reply to the growing complaints from guest workers, the Department of Labor (DOL) and the U.S. Citizenship and Immigration Services (USCIS) have expanded their U.S. site inspection programs. Typically, complaints such as whistleblower, discrimination, or harassment claims prompt visits and initiate an inspection or investigation. In general, USCIS has conducted unannounced worksite inspections of employers of H-1B and L-1 nonimmigrant visas since 2014 based on an increasing concern about the potential for fraud and abuse by employers. A business well-versed in due diligence will be prepared for an unannounced visit and have a detailed procedure in place for responding to such inspections.

The effects of being associated with noncompliance of a temporary work visa or forced labor conditions can be detrimental to future business operations. Beginning from the recruitment to the fulfillment of the contract, businesses could protect guest workers and themselves by having due diligence and implementing a grievance mechanism for reporting labor complaints or concerns. The development of a grievance mechanism would

protect H-1B guest workers who are outsourced by labor broker agencies or "body shops" as depicted in the award winning Techsploitation graphic novel by the Center for Investigative Reporting. The novel depicts the common "body shop" practice of hiring workers in India with a H-1B visa and not having employment available in the United States. In the interim, the guest workers are forced to illegally find employment on their own. The guest workers have no recourse upon arrival to the United States or money to return home. A competent grievance mechanism would assist authorities in identifying victims and alleviate any wrong doing on the behalf of the employer.

The most poignant and overlooked effect of outsourcing on business is the evaluation of potential data breaches in result of hiring temporary skilled workers. Without due diligence and security assessment practices in place, the risk and liabilities presented when contracted employees access internally protected information should outweigh any cost-savings. Depending on a guest worker's "specialized knowledge", the supply chain of human capital may cost more in the long run.

Out of the over 515,000 temporary work visas approved in 2015, the majority are hardworking employees with little interest of losing their employment status. As a result, very few measures have been implemented to identify abuses of guest workers or protect them from illegal hiring schemes. With over 14 million total visa applications processed by USCIS last year, the government cannot be responsible to identify all abuses. As a member of the work contract and sponsor for the work visa, the employer is affected whether complicit or not to the abuse of U.S. guest worker visa programs.



### "THE ICE CREAM MAN"

The Labor Department's Wage and Hour Division recently awarded Orialli Daniel Jimenez, the paletero or ice cream man, over \$3000 as partial payment for back wages. Jimenez, a Mexican citizen, was employed by Oasis Paleteria via the H-2B temporary foreign nonagricultural worker program. In a common scheme surrounding temporary work visas, Oasis Paleteria falsified payroll records to make it appear the workers were being paid the H-2B program amount of \$11.14. Instead, Jimenez and 73 other workers only received an average of \$6/hour, below the federal minimum wage. Through force and fraud, the Oasis Paleteria provided paychecks at the \$11.14 an hour rate to the workers, but required the workers to return the money after they had cashed the checks. The employer, Oasis Paleteria was indicted on multiple counts of visa and mail fraud.

The American Dream Up for Sale: A Blueprint for Ending International Labor Recruitment Abuse, Fair Labor Recruitment, 2013  
 Infosys. Statement: U.S. Department of Labor concludes investigation, no violations by Infosys found  
 Techsploitation: a True Story of Labor Trafficking in the US, The Guardian, 2014  
 The Ice Cream (or 'Paletero') Man Deserves Fair Pay, Too, U.S. Department of Labor Blog, 2016

## CLOSING THE “CONSUMPTIVE DEMAND LOOPHOLE”

As of March 10, 2016, the “consumptive demand loophole” found in the United States Tariff Act of 1930 or the Hawley-Smoot Tariff Act is officially closed. After passing with bipartisan support from the House and Senate, the Trade Facilitation and Trade Enforcement Act of 2015, H.R. 644 was signed into law by President Obama in February. The Act addresses a number of key trade issues, including import-related intellectual property rights, currency manipulation, and import health and safety, but the highlight of the Act is the closing of the so-called “consumptive demand loophole.” Eliminating the loophole will directly affect goods commonly known to be at high risk of being produced with forced labor, including cocoa from West Africa, palm oil from Malaysia, and seafood from Thailand, which are now open to challenge for exclusion from the U.S. market under Section 307 of the Tariff Act.

The Tariff Act of 1930 was designed to provide import revenue, regulate commerce with foreign countries, and encourage U.S. industries while protecting American labor. For the last 85 years, Section 307 of the Tariff Act was not intended to address human rights issues. The “principle of the legislation is that the free labor of America shall not be subjected to the burden of competition with non-free labor abroad.” This language indicates that Congress did not want cheaply produced forced labor goods competing with U.S. products. In the wake of more recent forced labor concerns highlighted by a six-month investigation in 2014 conducted by the Guardian, four top global supermarket retailers were exposed as benefactors of importing slave labor products from Thailand’s seafood industry. With the continued consumer interest in supply chain compliance, the closure of the “consumptive demand loophole” may have immediate and severe consequences on high risk imports and associated U.S. businesses.

### TARIFF ACT OF 1930 SECTION 307

All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision. The provisions of this section relating to goods, wares, articles, and merchandise mined, produced, or manufactured by forced labor or/and indentured labor, shall take effect on January 1, 1932; **but in no case shall such provisions be applicable to goods, wares, articles, or merchandise so mined, produced, or manufactured which are not mined, produced, or manufactured in such quantities in the United States as to meet the “consumptive demands” of the United States.**

Previous attempts to close the loophole and maintain congruency with the Trafficking in Persons Victims Protection Reauthorization Act (TVPPRA) have failed. In 2010, the Baucus-Grassley customs bill was reintroduced with bipartisan support to promote new jobs but did not pass through Senate. Business groups were concerned over the potential effects of provisions to ban all imported foods made with convict, forced, or indentured child labor. There was not any coordinated lobbying against the issue, but the ramifications of the perception of forced labor in U.S. business supply chains was considered reckless. Today, with the successful loophole closure and first reauthorization for the Customs and Border Protection (CBP) division under the Department of Homeland Security (DHS), businesses remain concerned about the future turmoil of effects on import trade while maintaining good social compliance. In fact, since the loophole has been closed, U.S. Customs and Border Patrol has begun to seize material imported by the Chinese corporation, the Tangshan Sanyou Group, for utilizing convict labor in the production of its merchandise. This seizure was the first of its kind since 2001.

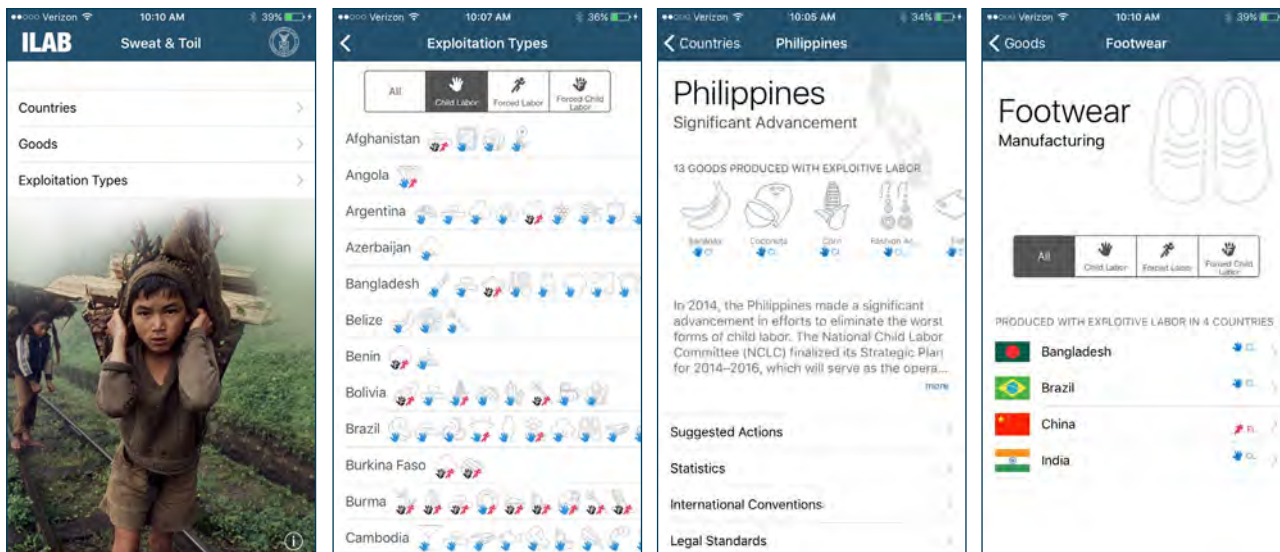
The Trade Facilitation and Trade Enforcement Act of 2015 signed into law on February 26th authorizes CBP to seize shipments where forced labor is suspected and block further imports. The enforcement and management of inquiries will begin with Customs receiving a petition from a business, an agency, or even a non-citizen. Very little substantial evidence is required for a petition, instead only showing “reasonably but not conclusively” that imports were made in part with forced labor. If the importer is unable to establish the admissibility of the merchandise, CBP advises the importer that the merchandise is excluded from entry.

As part of the preliminary investigations, Customs enforcement branch officials will likely turn to the existing Department of Labor’s Worst Forms of Child Labor findings for guidance. The list is compiled and made public as required by the TVPPRA of 2005 and subsequent reauthorizations. The Bureau of International Labor Affairs (ILAB) maintains the list of goods and their source countries that are believed to be produced by child labor or forced labor in violation of international standards. The findings are easily accessible through the ILAB SWEAT & TOIL app, available on iTunes, the App Store, or the Android marketplace.

With New Law, U.S. Takes on Slavery by Banning Forced Labor Imports, Thomas Reuters Foundation, 2016  
ABC News, Obama Bans U.S. Imports Slave Produced Goods  
Revealed: Asian Slave Labour Producing Prawns for Supermarkets in US, UK, The Guardian, 2014  
Trade Facilitation and Trade Enforcement Act of 2015, Congress.gov, 2016  
Importing Prison Labor Products from the People’s Republic of China: Re-Examining U.S. Enforcement of Section 307 of the Trade and Tariff Act of 1930, University of Washington, 1991



## CLOSING THE “CONSUMPTIVE DEMAND LOOPHOLE”



## ILAB'S SWEAT & TOIL APPLICATION

The key for U.S. companies under the Trade Facilitation and Trade Enforcement Act will be determining the true origin of their critical supplies and components and working with their foreign suppliers to ensure they can show that the products at issue are not made using forced or child labor. Audit and verification programs can be established to satisfy this inquiry, but of course any such programs must be shown to be valid and robust – particularly for at-risk products. The implementation of this new law also provides a good opportunity for U.S. companies to review their supplier codes of conduct – and revise them if necessary – to ensure that needed goods will not be rejected at Customs.

With the elimination of the “consumptive demand loophole”, companies will likely face even greater scrutiny with regard to their product supply chains. Companies should certainly expect that petitions filed with U.S. customs authorities will involve publicity efforts aimed at highlighting the use of forced labor in connection with the production of goods currently sold in the United States. As of March 10th, businesses should be implementing the following concerns and applying immediate remediation to meet compliance

standards against exploitative labor in their supply chain.

1. Peruse ILAB's SWEAT & TOIL app to assess the extent to which their current supply chains may include goods produced with forced labor. Assessment should be structured in order to prioritize higher-risk products and sourcing locations.
2. Develop a contingency plan should any current reliance on goods be linked to forced labor.
3. Review current Corporate Social Responsibility protocols and prohibitions against forced labor to include suppliers. Evaluate or identify current oversight or monitoring functions in support of CSR standards.
4. Prepare to address concerns of external stakeholders.

The long-term solution for businesses is to develop a practice of due diligence, a routine of internal and third-party assessment, and open communication with employees throughout the supply chain.

## NATIONAL ACTION PLANS FOR BUSINESS AND HUMAN RIGHTS

The practical progress of human rights and business is usually best solved through consortiums, alliances, and initiatives that involve public-private partnerships. The intricate balance of communicating requires a model of advancement inclusive to all participants. Combating human trafficking requires a cross cultural, trans-industry global effort and cannot be accomplished through one solution alone. In an effort to support a capacity building effort to combat human trafficking, the **United Nations Human Rights Council (UNHCR)** unanimously endorsed the UN Guiding Principles on Business and Human Rights in June 2011. The Guiding Principles' three pillar framework: Protect, Respect, and Remedy is a concept that applies to all States and to all business enterprises, both transnational and others, regardless of their size, sector, location, ownership and structure.

### THE GUIDING PRINCIPLES

#### STATE DUTY TO **PROTECT** HUMAN RIGHTS

The state's duty to protect against human rights abuses by third parties, including business enterprises, through regulation, policy making, investigation, and enforcement.

#### CORPORATE RESPONSIBILITY TO **RESPECT** HUMAN RIGHTS

Corporate responsibility to respect human rights indicates that businesses must act with due diligence to avoid infringing on the rights of others and to address negative impacts with which they are involved.

#### ACCESS TO **REMEDY**

Both the state's responsibility to provide access to remedy through judicial, administrative, and legislative means, and the corporate responsibility to prevent and remediate any infringement of rights that they contribute to.

In June 2014, three years after adopting the Guiding Principles, the UNHRC called upon all Member States to develop **National Action Plans (NAP)** to promote the implementation of the Guiding Principles within their respective national contexts. The UN's reliance on NAPs as a policy approach and governance tool is not exclusive to the areas of business and human rights, but also provide direction and scope to the difficult task of measuring success of human rights policies. The supporting National Action Plans will become policy documents in which a Member State articulates priorities and actions that it will adopt to support the implementation of international, regional, or national obligations and commitments such as the Guiding Principles for Business and Human Rights.

Currently only eight Member States have existing National Action Plans in support of the Guiding Principles; **Colombia, Denmark, Finland, Lithuania, Netherlands, Norway, Sweden, and United Kingdom (UK)**. In the UK, the action plan sets out the Government's responsibilities and the Government's expectations of business following the Protect, Respect, and Remedy framework. Aside from promoting the Guiding Principles while maintaining consistency with existing government policies, the UK Government's obligations under the NAP include continued protection of human rights abuse within UK authority involving business enterprises, supporting UK businesses to meet their responsibility to respect human rights both at home and abroad, and support access to effective remedy for victims of human rights abuse. The UK Government's expectations of businesses require an overall recognition of human rights and compliance with an emphasis on transparency of business operations affording effective engagement with employees, grievance mechanisms, and supply chain operations. The UK's NAP has been a first step in developing policy in support of business operations and human rights. The recent enactment of the UK's Modern Slavery Act is a sign of major progress for human rights due diligence of businesses to tackle slavery in their supply chains. With the Modern Day Slavery Act, the UK Government is fulfilling its action plan and successfully implementing the Guiding Principles.

In September 2014, the United States formerly announced the intention to develop a national action plan on Responsible Business Conduct based on the Guiding Principles. The U.S. is among 24 other Member States that have announced a commitment to the development of a NAP. The U.S. approach to developing the NAP will be to include a broad range of areas in which corporate conduct impacts society including human rights, labor rights, anticorruption, trade and investment, land tenure and agriculture, and transparency issues.

Guiding Principles on Business and Human Rights: Implementing the United Nations "Protect, Respect and Remedy" Framework

National Action Plans on Business and Human Rights, International Corporate Accountability Roundtable, 2014

Inter-American Commission on Human Rights, International Corporate Accountability Roundtable, 2014

Declaration of the Committee of Ministers on the UN Guiding Principles on business and human rights, Council of Europe, 2014

UK First to Launch Action Plan on Business and Human Rights, 2013, GOV.UK

USG National Action Plan on Responsible Business Conduct, 2015, HumanRight.gov

## NATIONAL ACTION PLANS FOR BUSINESS AND HUMAN RIGHTS

Using the term **Responsible Business Conduct** (RBC) also known as Corporate Social Responsibility (CSR), the NAP will address two aspects of the business-society relationship: **1)** the positive contribution businesses can make to economic, environmental, and social progress with a view to achieving sustainable development, and **2)** avoiding adverse impacts and addressing them when they do occur.

As part of the process, the U.S. has been working with various entities to include the UN Working Group on Business and Human Rights and organizations like the International Corporate Accountability Roundtable (ICAR) and Danish Institute for Human Rights to establish a national baseline assessment. The ICAR, a coalition of approximately 35 human rights, environmental, labor, and development organizations based across the Americas, has been conducting a “shadow” baseline assessment of the U.S. implementation of the Guiding Principles. In the “shadow” baseline, the ICAR identifies protection and enforcement gaps with recommendations categorized as either government-wide or as falling under the purview of specific executive departments, independent agencies, government corporations, or Congress. So far, the “shadow” baseline addressed only one of the three pillars, Protect, within the framework of the Guiding Principles. According to the U.S. Government, the future NAP will address the other pillars by providing clear, consistent, and predictable expectations for U.S. firms in the global operations facilitate internal U.S. government communication and coordination; strengthen communication among stakeholders; identify U.S. commitments and steps to assist in creating a rights-respecting, enabling environment for businesses operating abroad; and further promote responsible investment and responsible business conduct.

Additional stakeholder entities like the European Commission and its 28 Member States also support the Guiding Principles on Business and Human Rights through a CSR action plan. As part of a collaborative strategy to create sustainable growth, the EU Strategy of 2011-2014 for Corporate Social Responsibility and its follow-up CSR strategy 2015-2019 implemented several market enhancement or reward strategies for businesses that adopt socially a responsible course of action as outlined in the EU CSR strategies. For many enterprises their impact on human rights is determined by their capacity to create new opportunities that generate decent jobs and improve sustainable living conditions in low-resource settings. The Commission plans to reward businesses through increased public awareness and promotion, growing public procurement opportunities, and making regulatory proposals for a more responsible and transparent financial system that will encourage increased investor contributions. For the EU, business and human rights or CSR is regarded as a key driver for job creation, skills development, and reduction of inequalities.

### MULTI-STAKEHOLDER INITIATIVES

*A number of multi-stakeholder initiatives have also focused on the human rights impacts of businesses, providing foundational frameworks from which NAPs on business and human rights should be built.*

#### THE GLOBAL NETWORK INITIATIVE (GNI)

The Global Network Initiative (GNI) is a multi-stakeholder initiative focused on the information and communications technology (ICT) sector.

#### THE ISO STANDARD 26000

The ISO Standard 26000 for Social Responsibility reflects the best-practice standard to assist businesses in contributing to sustainable development through socially responsible business practices.

#### INTERNATIONAL CODE OF CONDUCT FOR PRIVATE SECURITY SERVICE PROVIDERS (ICOC)

The International Code of Conduct for Private Security Service Providers (ICoC) is a Swiss government-convened, multi-stakeholder initiative, the aim of which is to clarify international standards for the private security industry operating in complex environments, as well as to improve oversight and accountability of these companies

#### VOLUNTARY PRINCIPLES ON SECURITY AND HUMAN RIGHTS (VPS)

The Voluntary Principles on Security and Human Rights (VPS) are non-binding principles that offer guidance to oil, gas, and mining companies in maintaining the safety and security of their operations while ensuring respect for human rights and humanitarian law..

Increasingly, Member States publish national actions plans on business and human rights setting out their strategies for implementing the UN Guiding Principles on Business and Human Rights. It is important that the business community stays well-informed of these developments to be prepared for any governmental or regulatory changes, to take advantage of support offered by States in relation to companies' implementation of their responsibilities and to contribute to the development of NAPs. Of the nine existing NAPs, each one has variances in policies and legislative action; expectations of businesses; reporting and transparency; overseas investments; Member States' commercial transactions and procurement making; and access to remedy. With additional NAPs in development, the need for business operations to maintain adherence to guidelines is an expectation set by the Member State. Only through training guidance, toolkits and stakeholder discussions do businesses remain apprised and participatory.

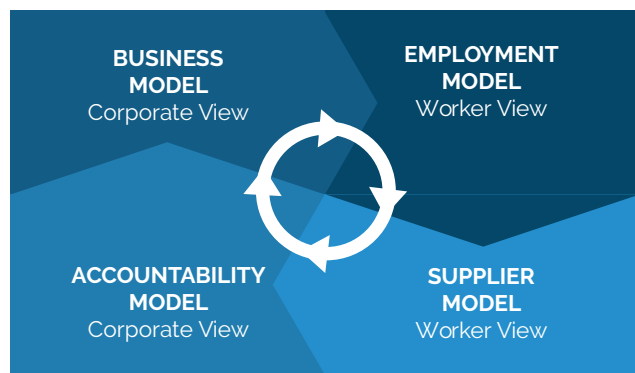
## CSR CHECK

DOES YOUR COMPANY CURRENTLY ASSESS HUMAN TRAFFICKING RISKS? ☐

DOES YOUR ASSESSMENT ADDRESS THE FOLLOWING TEN CATEGORIES? ☐

1. Risks associated in under-developed/undeveloped corporate CSR-HT programs ☐
2. Risks increased by scope & size of business operations ☐
3. Risks identifiable through analysis of Worker Compensation/disparities/systems of pay ☐
4. Risks inherent in/highlighted by the Age composition of a Workforce ☐
5. Risk inherent to certain Geographies ☐
6. Risks Inherent in Unregulated "personal services" ☐
7. Risks associated with the Level of Worker self Governance ☐
8. Risks experienced by Displaced Workforces ☐
9. Risks assumed by heightened Workforce Control Behaviors ☐
10. Risks associated with failed reporting, under-reporting, or no reporting of supplier behavior ☐

## COUNTER FORCED LABOR TECHNOLOGIES' SOLUTION



Counter Forced Labor Technologies is currently developing a counter human trafficking Global Risk Assessment™ (GRA) tool allowing for "proactive" risk assessments at multiple levels from multiple dynamic perspectives. The GRA tool is a global assessment engine that will allow corporations and government agencies to preemptively quantify human trafficking risk to solve the crisis of human trafficking, ensure compliance, and maximize business decisions. GRA is the only tool that predicts the risk of human trafficking instead of waiting for human trafficking.



This tool will offer a basic online risk assessment for businesses with multiple vendors in their supply chain and can also include in-depth assessments via the paid offering.

Counter Forced Labor Technologies' Human Trafficking Risk Assessment Protocol can serve as a vital tool for moving your CSR strategy from reactionary management to proactive management of human rights issues.



## MARITIME INDUSTRY SECURITY CHALLENGES

Demand-driven supply chains, new customer service models, and Omni-channel or free delivery are all driving up the cost of maritime transportation. This demand for more technology, more compliance, and more security by customers is increasingly effecting the shipping industry. Rising costs associated with ship operating expenses such as certain risk and compliance costs, insurance premiums, ship management fees, and crew wages are prompting maritime security concerns. The unusual market trends pose a conundrum for the shipping industry who must maintain competitive pricing while safely delivering US \$4 trillion worth of goods annually.



According to the results of an annual survey OpCost for 2015 by the accounting and advisory firm Moore Stephen, operating costs are predicted to increase. Crew wages, a main sector of operating costs, were expected to increase by 2.4% in 2015 and by 2.3% in 2016. The predicted overall cost increases for 2015 were highest in the offshore sector, where they averaged 3.4% against the overall survey increase of 2.8%. For 2016, the container ship sector was second at 3.3% behind the tanker sector at 3.4%. Exorbitant cost increases due to redundancy in electronic navigation and communication equipment, and increased port dues

most likely related to increased security measures were among other issues causing an increase in operating costs. The anticipated increase of shipping operating costs has several unpredictable variables lying under the water's surface. Traditionally, international shipping has been a wild and ungoverned domain. No worldwide entity controls or regulates the oceans. With over 90% of the global trade transported by sea, increased international security concerns surprisingly remain opaque enabling any vessel to take advantage of failed regulatory standards.

Because the economic contribution of the liner shipping industry directly contributes to the global economy and facilitates economic growth for other industries, maritime safety and compliance concerns directly affect every supply chain. The operating environment is tenuous. Vessels may avert safety and security to save in operating costs by changing identities to avoid fees, make ship-to-ship transfers of goods mid-voyage, or dangerously overload the container ship. Increased threats such as piracy, international terrorism, or other criminal elements operating in the transport of illegal contraband, people, drugs, or smuggled oil also create a dangerous and volatile operating environment.

As justified insurance costs continue to rise, entities like the International Maritime Organization (IMO), a UN agency tasked with ensuring the safety and security of international shipping have released a series of global mandates and regulation guidelines in an effort to improve safety and security at sea. A ship operating under a Member State is required to follow the mandates, but the widespread use of flags of convenience, a practice similar to registering companies offshore, has become an easy way for ships to hide their origins and reduce regulation and scrutiny. Few solutions offer effective maritime information-sharing programs to provide transparency during open sea operations. In result, vessels must operate proactively to mitigate any safety or security risks or depend on government solutions.

### JUST THE FACTS

**13.5 MILLION** people are in need of humanitarian assistance in Syria – UNHCR

**4.4 MILLION** Syrians are registered refugees, equivalent to half of Syria's pre-crisis population - World Bank

**3.5 MILLION** Syrian child refugees - UNHCR

**1,321,560** European Union new asylum applications were received in 2015. – BBC News

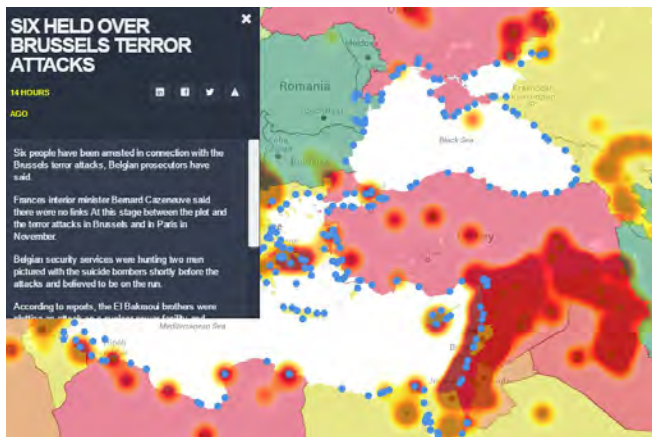
**700,000** migrants arrived to Europe by sea in 2015 – United Nations

**A one-way boat trip to Europe costs Syrian refugees \$3000** – Transnational Crime



## MARITIME INDUSTRY SECURITY CHALLENGES

Technology offers various low to high-cost solutions like the RiskMap Intelligence tool, developed by The Marshalls Group (TMG), a free platform that provides ship owners and managers security insight into ports and shipping lines using a live interactive map.



Heat map of high threat reports courtesy of RiskMap.com

The more expensive marine Automatic Identification System (AIS) capability was implemented as a navigational safety tool for tracking vessels, but its use has transformed into a liability for some allowing pirates to view navigational data online. Under the threat of a pirate attack, ships either turn off their AIS or fake their data to avoid conflict. Technology has also compromised maritime cyber security through GPS, marine AIS, and a digital nautical chart program called Electronic Chart Display and Information System (ECDIS). Few cases of cyber-crimes are reported for fear of alarming investors, regulators, or insurers.

The increasingly complex framework of established and evolving legislation and civil, criminal, and regulatory risk is evident in the shipping industry. Thus, government solutions are expected although they lose authority in international waters. Even the United States government has implemented several global platforms in an effort to secure the shipping industry. The Megaport Initiative, a radiation detection system employed in 27 international ports worldwide, has proven to be limited and very costly. The volunteer anti-terror partnership program, Customs-Trade Partnership Against Terrorism (C-TPAT), further extends the United States' zone of security to the point of the supply chain origin. Each program protects the supply chain against risk but neither mandates shipping vessel participation.

In another extension of U.S. authority, the government realized that shipping companies have significant security risk exposure related to violations of the Foreign Corrupt Practices Act (FCPA). Every U.S. company that does business outside the country is vulnerable when exposed to corruption and is impacted by the FCPA and its two provisions; Anti-Bribery and Accounting. Anti-Bribery Provisions make it a crime for any U.S. individual,

business entity, or employee of a U.S. business entity to offer or provide, directly or through a 3rd party, anything of value to a foreign government official with corrupt intent to influence an award or continuation of business or to gain an unfair advantage. The Accounting Provisions basically make it illegal for a company that reports to the SEC to have false or inaccurate books or records or to fail to maintain a system of internal accounting controls.

The tactic of government compliance as a security measure like FCPA is nothing new, but with growing operational costs and continued currency manipulation it will become important to many small and mid-size U.S. shipping companies to maintain FCPA compliance. Investigation, prosecution, and punishment under the FCPA is common and requires minimal proof of intent and knowledge. The Department of Justice has been working in concert with foreign regulators to pursue allegations of both companies and their individual company managers and employees. Although a culture of corruption in international business is anticipated in certain countries, compliance is not optional for any industry under FCPA guidance. The best proactive approach for shipping companies to maintain compliance is to have a standalone international anti-corruption compliance policy. The policy requires understanding the company's risk of potential involvement in bribery, a level of due diligence of intermediaries, training for employees from the board to 3rd parties, and a set of internal controls.

### ARE YOU AT RISK OF BEING INVOLVED IN INTERNATIONAL BRIBERY?

- What kind of business does your company do outside the US?
- Do you conduct foreign business through your own employees, through agents, distributors and intermediaries, through joint ventures- all of the above?
- Do you need to get permits or qualify products for sale in foreign countries?
- Do you ship through freight forwarders and use customs agents?

The challenges of today's maritime shipping industry are swelling operating costs, expanding security risks, fluctuating supply chains, and expanding compliance measures. Fulfilling the needs of the global shipping industry and solving those challenges will not be remedied with technology alone. In some cases, physical security measures may be required or basic company compliance training to reduce liabilities. In all cases, a supply chain risk assessment and due diligence measures would begin to provide most companies a solution to today's challenges. For the interim, the maritime industry is responsible for leading themselves and continuing proactive responsible measures until a global governing body can be established.



# KNOW WHO YOU DO BUSINESS WITH

The Counter Forced Labor Journal is published by the Counter Forced Labor Technologies Intel Team, which is composed of tenured military and business analysts with intimate knowledge and direct experience dealing with human trafficking, forced labor and modern slavery.

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We welcome feedback and suggestions for articles in future issues.

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