

COUNTER FORCED LABOR QUARTERLY JOURNAL

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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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TECHNOLOGIES

EDITOR'S NOTE

SUMMER 2017

The gaining interest in corporate supply chain transparency is becoming more than just a checklist or an online disclosure statement. Consumers are demanding clear evidence of third-party transparency and with documented improvements to laborers.

Even the entertainment industry has delved into the concept of forced labor. In the third season of ABC's recently cancelled anthology series, *American Crime*, a story unfolds emanating from undocumented field workers toiling in forced labor conditions. The following sequence of episodes reveals the silence enveloping this common crime. The timely and raw depiction of forced labor in American agriculture provides an opening for improvements in supply chain transparency.

As an introduction to an alternate and proven improvement to forced labor in the agricultural supply chain, this edition of the Counter Forced Labor Technologies' Summer/Fall Journal is highlighting the successful work of the Coalition of Immokalee Workers (CIW) and their transparent Fair Food Program (FFP).

With more than twenty years of steady growth and success, the CIW model has led the industry in social responsibility, anti-human trafficking and fighting gender-based violence at work through the voices of field-workers. The paragon for the best workplace-monitoring program, the ground-breaking model for Worker-driven Social Responsibility (WSR) is gaining world-wide attention with the Fair Food Program (FFP).

The CIW Program and its staff are mentors in a heady, long road against forced labor in the supply chain. I challenge our readers to adapt their supply chain transparency by way of the WSR model and explore the CIW methods to a healthier code of conduct.

Saying you want to do the *right* thing is very different than doing the *right* thing.

Respectfully,

JESSICA VINCENT

Director of Intelligence & Editor

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CLEAN SUPPLY CHAINS **ARE** POSSIBLE

THE FAIR FOOD PROGRAM APPROACH

Authored by: Greg Asbed, Co-Founder of CIW
Steven Hitov, General Counsel of CIW



Greg Asbed is a Co-Founder of the Coalition of Immokalee Workers (CIW) and the Fair Food Program (FFP), and is also a principal architect of the Worker-driven Social Responsibility (WSR) model. He oversees the development of the FFP's innovative market-based enforcement mechanisms, rights standards, and worker-education processes, as well as relations amongst transnational corporate buyers, industry suppliers, and farmworkers. He also consults with other industries and sectors, both nationally and internationally, on the adaptation of the FFP to other contexts.

Steven Hitov has devoted his 40-year career to representing low income clients, having served as a staff attorney, managing attorney or litigation director in legal services programs in New York, Massachusetts, Florida and Washington, D.C. Since 1994, Mr. Hitov has represented the Coalition of Immokalee Workers in their effort to modernize the work environment in Florida agriculture. Originally, Mr. Hitov represented the Coalition on a pro bono basis before eventually assuming his current position as their full-time General Counsel.

In 2011, growers representing over 90% of the Florida tomato industry signed an agreement with the **Coalition of Immokalee Workers (CIW)** to join in partnership with farmworkers and ten of the world's largest retail food corporations to launch the **Fair Food Program (FFP)**. The FFP is an ethical sourcing program designed to eliminate longstanding farm labor poverty and human rights abuses while simultaneously providing state of the art risk management and brand protection for participating suppliers and buyers. Today, fifteen total retail food corporations have joined the Program, and the FFP operates in seven states and three crops.

2011



2017



OPERATING PROCEDURES

The business advantages of participation in the Fair Food Program could not be clearer. Before signing with the CIW, the Florida tomato industry was facing spiraling labor problems in the fields, an ever-worsening image problem in the press due to the discovery of multiple slavery operations over the course of the previous ten years, and a growing competition in the marketplace from cheap Mexican tomatoes.

Since partnering in the Program, the Florida tomato industry has assumed control of its labor issues, established a public image as the produce industry sector with the highest human rights standards in the nation, and created a differentiated product — a *fairly* grown tomato — in what for years was considered an interchangeable commodity market. It is a product with which its main competitor, Mexico, sinking every day deeper into violence and chaosⁱ, will not be able to compete for years to come.

And the participating buyers in the Program, along with knowing that they are doing the right thing, also no longer have to worry about a constant drumbeat of bad publicity being associated with their brands. In fact, since the inception of the FFP, **there have been no significant Department of Labor actions, Equal Employment Opportunity Commission complaints or private law suits initiated by legal aid lawyers related to the employment practices of any of the participating growers.** All has been quiet on the Fair Food Program front for participating retailers in terms of the typical supply chain worries facing corporate buyers of U.S. produce.

Instead, the Fair Food Program has helped the Florida tomato industry find its way out of a dead-end business approach and toward a sustainable future. That the Program is good for workers has been repeatedly documented and proven by concrete field results, including the virtual elimination of deeply-rooted human rights abuses, from sexual assault and systemic wage theft to forced labor. That the FFP is good for business — both for growers and retail purchasers alike, who both benefit from the unequaled supply chain risk mitigation the program provides — is now equally clear, even if less reported.

In this article, we will take a closer look at the Fair Food Program, from its origins in a farmworker-led human rights movement based in the agricultural town of Immokalee, Florida, to the unique mix of monitoring and enforcement tools that today make the FFP the most widely-recognized and acclaimed social responsibility program in US agriculture.ⁱⁱ We will conclude with an analysis of the new paradigm for protecting both the human rights of workers and the brands of corporate purchasers — known as Worker-driven Social Responsibility (WSR) — to which the success of the Fair Food Program has given birth.

“When I first visited Immokalee,
I heard appalling stories of
abuse and modern slavery.
But now the tomato fields
in Immokalee are probably
the best working environment
in American agriculture.
In the past three years,
they've gone from being
the worst to the best.”

Susan L. Marquis, Dean of the Pardee RAND
Graduate School, a public policy institution
in Santa Monica, Calif. (NY Times)

ⁱ See, e.g., the thorough four-part series in the LA Times (2014) entitled “Harsh Harvest: Hardship on Mexican Farms, a Bounty for American Tables.”

ⁱⁱ Among its many awards and accolades, the FFP has been described in the New York Times as “the best workplace monitoring program” in the United States, and as “one of the great human rights success stories of our day” in a Washington Post op/ed. The United Nations Working Group on Business and Human Rights has said “We are eager to see the Fair Food Program serve as a model elsewhere in the world.” The Program received a Presidential Medal for Extraordinary Efforts in Combatting Modern-Day Slavery in 2015, the Clinton Global Citizen Award in 2014, and the Roosevelt Institute’s 2013 Freedom from Want Medal, and been cited variously by the EEOC, the US Department of Justice and the US Department of Labor and for its uniquely successful efforts to combat workplace discrimination, human trafficking, and violence against women in the workplace. The FFP has also collaborated with public bodies of the European Union and Organization for Security and Cooperation in Europe in public/private partnership efforts with their member states.

THE FAIR FOOD PROGRAM:

Worker-driven social responsibility as a new approach to clean corporate supply chainsⁱⁱⁱ

A New Analysis of Supply Chain Problems

The Coalition of Immokalee Workers (CIW) is a human rights organization composed primarily of farmworkers, most of whom work at least part of the year in Florida's \$400 million tomato industry. Located in Immokalee, Florida, in the heart of the state's tomato production, CIW and its members for many years confronted the state's growers over historically low wages and abusive working conditions. While some progress was made during those early years, it eventually became apparent that the potential for real change in such conflict was severely limited.

While reflecting on a possible new approach in 2000, CIW members came upon an article in a produce industry journal that helped signal the strategic path forward. The article highlighted the direct connection between the fast-food brand Taco Bell and Florida's largest tomato grower. It underscored the massive volume of sales a buyer like Taco Bell represented to its Florida suppliers and the influence that volume purchasing power gave the multibillion dollar fast-food brands and supermarket chains over how tomatoes are grown, from the varieties planted and sizes harvested to the price at the farm gate. As CIW continued to investigate the dynamic between the growers and the large retail buyers of Florida tomatoes, it became increasingly clear that *the growers' share of the profits generated from the labor of farmworkers, while obviously much larger than that of the farmworkers themselves, was not only minuscule compared to that of the retail brands at the top, but was in fact shrinking.*^{iv}

This led to a recognition that the huge multinational corporations at the top of the food system not only bore some responsibility for the human rights abuses occurring in their supply chains, but that their purchasing practices were in fact a significant contributing factor. What CIW realized was that the massive retail food chains were leveraging their volume purchases to demand ever lower prices from their Florida tomato suppliers, and that the downward pressure on prices was in turn translated, year after year, into a concomitant downward pressure on wages and working conditions for farmworkers. This new analysis placed responsibility for farmworker poverty and abuse not only at the feet of the farm bosses and growers whom the CIW had been battling for a decade, but also squarely within the corporate suites of major food retailers.

In short, CIW identified the twin drivers of human rights abuses in modern day supply chains as, (1) the ability of the mega-corporations at the top to demand ever lower prices from their suppliers and the inexorable downward pressure which that placed on growers' profits, workers' wages and the overall workplace environment, and (2) the lack of any requirement or sufficient will on the part of those same corporations to put their purchasing power behind their desire for a responsible supply system. Having thus identified the purchasing power of corporations as a principal contributor to the human rights abuses suffered on a daily basis by its members, CIW envisioned a world in which that same power, if corporations were properly motivated, could also be the solution.

ⁱⁱⁱ Certain sections of this article first appeared in "Preventing Forced Labor in Corporate Supply Chains: The Fair Food Program and Worker-Driven Social Responsibility", Greg Asbed and Steve Hitov, Wake Forest Law Review, Vol. 52, Number 2, Spring 2017.

^{iv} This analysis was later confirmed in a 2004 study by Oxfam America, which noted that whereas in 1990 grower/shippers received 41% of the retail price of tomatoes, by 2000 they were receiving barely one quarter. OXFAM AM., LIKE MACHINES IN THE FIELDS: WORKERS WITHOUT RIGHTS IN AMERICAN AGRICULTURE 35 (2004), <https://www.oxfamamerica.org/static/media/files/like-machines-in-the-fields.pdf>

Purchasing Power as a Force for Good

"For us, we know it's the right thing to do, and honestly, the impact on cost is nominal. What you get is greater transparency and an understanding of how your food is produced that you are offering to your customers, and the assurance that you are making life a little easier, a little better for the people who do the hard work to produce the food that we're selling."

Matt Rogers, Senior Global Produce Coordinator, Whole Foods (CNN International)

Thus, in 2001 the Campaign for Fair Food was born, which sought to have the large corporations that purchased massive amounts of Florida tomatoes do their part to end the long-standing abuses that plagued the industry, including modern-day slavery and ubiquitous sexual harassment. Initially focused on Taco Bell, the Campaign by 2011 had convinced nine corporations (listed on Pg. 1) to join in an entirely new social accountability venture known as the Fair Food Program. **The FFP is the first manifestation of the concept of Worker-driven Social Responsibility (WSR), a model that has already worked spectacularly in one of the most troubled sectors of the America economy, and which holds enormous promise for cleansing human rights abuses from supply chains around the globe.** The FFP has succeeded where so many other efforts have failed by using an approach that the United Nations Working Group on Business and Human Rights has praised for its "smart mix" of monitoring tools and enforcement strategies.⁹ That mix consists of four indispensable building blocks, which together provide a laser sharp focus on enforcement, the *sine qua non* of effectiveness.

The FFP is a market-based solution to human rights problems. It recognizes that lasting change depends on market consequences, *i.e.*, the "power of the purchase order." Without the knowledge that failure to comply with articulated standards will cost them business, suppliers will always balk at making uncomfortable but necessary modifications to their practices. If this were not the case,

they would have already made those changes. The FFP creates market consequences for suppliers through a legally binding Fair Food Agreement between CIW and each corporation that participates in the Program. These agreements have evolved over time, but each contains two core requirements.

First, each corporation pays a small **Fair Food Premium** on every pound of covered produce that it purchases from participating growers. The amount of the premium varies depending on the type of produce, but it is always paid by the corporation to the grower within the corporation's existing purchasing system.



⁹ The Enforcement Imperative at the Heart of Worker-Driven Social Responsibility, COALITION IMMOKALEE WORKERS (July 17, 2016), <http://www.ciw-online.org/blog/2016/07/the-enforcement-imperative/>.

OPERATING PROCEDURES

Once the premium reaches the grower, it is passed on to the farm's qualifying workers as a Fair Food bonus. The premium both helps address the historic poverty of farmworkers, exacerbated now by the downward pressure on wages caused by the corporations' massive purchasing power, and represents a small step in addressing the cost/price squeeze faced by growers in the increasingly monopsonistic or buyer's monopoly system that is today's retail food market.

The other requirement of every Fair Food Agreement is that the corporation only purchase covered product (not all product) from participating growers who are in good standing with the Program. The FFP oversight and remedial regime is discussed below, but if a grower is suspended from the Program for failure to abide by the human rights-based Fair Food Code of Conduct, participating corporations cannot purchase from that grower until it gains reinstatement. The fundamental social change created by the FFP is not free, and is not always easy. Only the real threat of losing sales provides the necessary motivation for suppliers to make the sometimes-difficult choices involved in modernizing their labor practices.



RISK PREVENTION & REMEDIATION

THROUGH WORKER ENGAGEMENT

The other three tools employed by the FFP fall within the category of risk prevention and remediation. To fix problems, of course, a company must know what those problems are and when and where they occur. *When the problem to be addressed is human rights violations in one's supply chain, only two groups of people possess the requisite knowledge to achieve an effective solution; workers suffering the abuses and those perpetrating them.* That is why the Fair Food Code of Conduct reflects the direct knowledge and input of the workers it is designed to protect.

WORKER EDUCATION

Similarly, the FFP invests heavily in worker education. This involves, in the first instance, imparting knowledge about the requirements of the Code of Conduct. If workers are not aware of their rights and responsibilities (whether provided by law or a code of standards), they cannot be active participants in protecting those rights. And without workers as an active part of the enforcement mechanism, it is impossible to marshal sufficient resources to keep track of what is going on with any given supplier. As such, worker education is not only essential to gaining real time insight into workplace conditions, it creates an extremely economical multiplier that effectively deputizes thousands of workers as the frontline monitors of their own rights.

In the FFP, each worker upon hire is given a "Know Your Rights and Responsibilities" pamphlet, which is also used as the basis for worker to worker education sessions, conducted by CIW staff, that take place twice a season on every participating farm. In addition, workers are shown a video highlighting the Program's protections at each grower's general orientation session. In this way, workers not only learn their rights under the FFP, but perceive the grower as supportive of the solution. Engaging the workforce in this way and, critically, then protecting it from retaliation, is the only way to enlist sufficient resources to identify and address human rights violations in a corporation's supply chain. This is not an issue of philosophy, it is simply a functional requirement for success.

COMPLAINT RESOLUTION

A corollary to educating workers about their substantive rights is the need to inform them of the mechanisms available to report instances in which they believe those rights are not being honored. In the FFP this means informing workers of the existence of the Program's 24/7 complaint resolution system, which is always answered by a person who has knowledge of the Program and the industry. Operated by the Fair Food Standards Council (FFSC) – the organization accountable to both buyers and the CIW for verifying the Code compliance of suppliers – the FFP complaint system is, as it must be, accessible to workers without fear of retaliation. Otherwise, workers would quickly learn not to complain if they want to keep their jobs.

COMPLAINT RESOLUTION

(continued)

In addition to an accessible and protected method for registering complaints, the FFP complaint process provides resolutions that are both fair and timely. The need for fair resolutions is self-evident, but fairness often has a contextual component. In the Fair Food Program, the FFSC has acquired extensive knowledge about the industry and each grower's operations through both its complaint investigations and audit functions. This in-depth knowledge allows the FFSC to weigh credibility and fashion remedies that are both restorative and realistic.

Resolutions of complaints in the FFP normally take two weeks or less. Such timeliness is an often underappreciated element of the success achieved by the Program. Timely resolutions provide prospective relief to the complaining workers within a timeframe that matters for their individual employment, a feature that is particularly important in a high-turnover context like farm work. But as importantly, they provide relief that is visible to the workforce that was present when the violation occurred, thereby reinforcing the viability of the "new standards" and encouraging other workers to defend them.

Together, the accessible complaint system and timely resolutions create what is essentially a live video feed from the workplace to the oversight agency, which moderates the behavior of those in the supplier's employ who might not be as committed to the new standards as is the buyer. *With over 1,800 complaints resolved in the FFP since its inception six seasons ago, it is fair to say that the complaint mechanism is the primary tool in the FFP's "smart mix of tools" for identifying and eliminating bad actors and bad practices from the industry.*

DEEP DIVE AUDITS

Finally, the FFP utilizes in-depth field, management and payroll audits. Audits are of course the most common enforcement mechanism, used uniformly, and almost always exclusively, in other social responsibility efforts. They are a necessary complement to the complaint system to uncover unwanted conduct that is invisible to individual workers, like tampering with minimum wage calculations where workers are paid by piece rate. They also provide an opportunity to talk to workers about their perceptions of the work environment, but such conversations only yield meaningful results if, a) the workers know their rights, b) the workers trust the auditors, c) the workers otherwise feel safe in talking to the auditors, and, d) the auditors talk to enough workers to reach conclusions that are statistically significant (and therefore fair).

All of these preconditions are met in the FFP, but study after study has shown that they are not present during most audits.^{vi} In the Fair Food Program, the FFSC conducts detailed management and payroll audits to ensure that growers have the capacity to comply with the Code and that they are doing so. During its field audits, the FFSC interviews at least half of the workers present, and conducts those interviews both in the field and at off-site locations.

But even best-practice audits like those conducted by the FFSC provide only a point-in-time snapshot of the workplace. That is why they are utilized only in conjunction with the Program's easily accessible complaint resolution system.

^{vi} In the disaster in Bangladesh in 2013, e.g., the factory had been inspected shortly before it collapsed, yet surviving workers reported being well aware of the building's structural flaws. HUMAN RIGHTS WATCH, "WHOEVER RAISES THEIR HEAD SUFFERS THE MOST": WORKERS' RIGHTS IN BANGLADESH'S GARMENT FACTORIES 3 (Meenakshi Ganguly ed., 2015), https://www.hrw.org/sites/default/files/report_pdf/bangladesh0415_web.pdf

RISK PREVENTION & REMEDIATION

THROUGH WORKER ENGAGEMENT

(continued)

DOING WELL BY DOING GOOD

Beyond the numerous benefits for workers, the design of the Fair Food Program provides tangible advantages for both participating suppliers and buyers.

First, of course, suppliers along with their workers benefit from the Fair Food premium paid by buyers, as suppliers are able to augment wages at only the cost of additional taxes. But there are other less obvious benefits as well. Some of these are identified by Toby Purse, Chief Administrative Officer of Lipman Family Farms, the largest tomato grower in America.

"We are very happy we decided to participate in the Fair Food Program. Participating has brought us closer to our employees than ever before."

"For example, through health and safety committee meetings we have realized several areas of improvement from the workers' perspective, which along with other advantages offered by the Program has made us an 'employer of choice' in a very tight labor

market. The FFP has helped reduce our turnover, which has increased the overall skill level of our workforce and decreased training expenses and worker compensation claims." Being an employer of choice allows a supplier to get the best workers available. And reduced turnover among those quality workers results in an experienced workforce that knows how to do their jobs. Such workers are less likely to make production errors, whether due to a lack of experience or lack of attention to detail. This, of course, is a direct benefit to the buyer.

In addition, a buyer's reputation, i.e., its brand, benefits from participating in the Fair Food Program. As Judge Laura Safer Espinoza, the Director of the FFSC points out, **"The Fair Food Standards Council receives regular inquiries from members of the public seeking to learn which buyers are participating in the Fair Food Program. The 21st century consumer is clearly interested in patronizing buyers that demonstrate concern about conditions in their supply chains."** Thus, a very small financial investment on the part of the buyer yields a significant business return beyond the psychic reward provided by having done the right thing.

THE INTERNATIONAL PROMISE OF WORKER-DRIVEN SOCIAL RESPONSIBILITY

On a macro level, WSR, of which the Fair Food Program is the first fully operative example, is a private regulatory system driven by the market, and is therefore much less dependent on the legal system of any given country. By divorcing the solution to human rights abuses from any particular country's legal system and instead harnessing the power of the market, WSR can more easily address supply-chain problems around the world, largely, although of course not entirely, without regard to international borders or differing legal norms. This reality promises a much more uniform approach to supply-chain reform around the world, for the fear of lost sales to mega-corporations is just as great, and effective, for suppliers in third-world countries as it is in the United States.

In addition, the WSR model permits cross-border solutions that are rare at best in more formal legal systems. The FFP, for example, recently entered into an agreement with Mexico that will, on Program farms, rid the U.S. H2A agricultural guest worker program of the illegal recruiting fees that are endemic in that program. Such illegal fees are often the basis for debt bondage, but the U.S. Department of Labor is

largely powerless to prevent the practice because almost all of the illegal activity takes place in Mexico, beyond the DOL's jurisdiction. In the FFP, however, CIW and the growers agreed they were not willing to import Mexico's problems into the Program. Therefore, as a predicate to using guest workers in the FFP, and based on knowledge originally provided by workers who had participated in Canada's guest worker program, the Program developed a contract-based "clean channel" recruiting process with Mexico's Ministry of Labor, and all participating growers will now use only that channel to recruit guest workers.

Finally, the market configuration that gave birth to the Fair Food Program — low-wage workers toiling at the bottom of a global supply chain dominated by consolidated, high-volume purchasers at the top — is one that is common across many sectors, from apparel to electronics. The WSR model has the ability to materially improve the lives of millions of workers, and to solve the supply chain problems of countless multinational corporations. It has only begun to scratch the surface of its potential.

CONCLUSION

"There was no question in my mind that bad things were happening in agriculture and on farms, not just my own, but farms across the country -- things that I did not know about and had no mechanism to find out about. This gave me the tool."

Jon Esformes, Chief Operating Partner, Sunripe Certified Brands (CBS Sunday Morning)

The FFP is operational proof that its WSR approach can quickly rid supply chains of deep-rooted problems like forced labor and ubiquitous problems like sexual harassment. It has also demonstrated the potential for its precepts to operate internationally, with a dexterity and cost that other approaches cannot match. For a very limited investment, companies can acquire unparalleled brand protection while greatly improving the lives of low-wage workers at the bottom of their national or global supply chains. **The Fair Food Program is proof that a penny's worth of prevention can eliminate the need for many dollars worth of cure, and demonstrates that Worker-driven Social Responsibility is a win-win-win proposition for workers, suppliers and large corporations alike.**

The --- --- WORKER-DRIVEN SOCIAL RESPONSIBILITY

Model

Authored by: Sean Sellers and Therasa Haas

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Theresa Haas is the Director of Outreach and Education at the Worker-driven Social Responsibility (WSR) Network. Prior to joining WSR Network staff, Theresa served as the Director of Communications for the Worker Rights Consortium (WRC), an independent labor rights monitoring organization, which works to protect and defend the rights of workers who make clothing and other consumer goods. While at the WRC, she helped to develop and launch the Accord on Fire and Building Safety in Bangladesh, a legally-binding agreement between workers and apparel brands to make factories safe. She is a graduate of the Schreyer Honors College at Penn State University.

and policy frameworks consistently fail to protect workers from dangerous sweatshop conditions and even severe abuses, including forced labor, sexual harassment and rape, in no small part because those suffering the abuse are largely voiceless. Where collective bargaining rights exist and are enforced, unions can provide effective workplace protections. But even when those rights exist in the law, they are ignored in practice for millions of workers, while millions more are excluded from the legal right to form a union altogether.

Corporations, of course, also bear responsibility for ensuring that human rights are respected in their suppliers' operations, but they tend to treat the discovery of abuses in their supply chains as public relations crises to be managed, rather than human rights violations to be remedied. Seeking to protect their brands from reputational harm, corporations embrace strategies that profess adherence to fundamental human rights standards but establish no effective mechanisms for enforcing those standards. This approach, known broadly as Corporate Social Responsibility (CSR), is characterized by voluntary commitments, broad standards that often merely mirror local law, ineffective or non-existent monitoring, and the absence of any commitment to or mechanisms for enforcement of the meager standards that do exist. CSR has failed to address the ongoing human rights crisis in global supply chains in large part because it does not put workers – the very people whose rights are in question and who have the most direct knowledge of the relevant environment – at the center of developing and enforcing solutions to the problem. This failure is evident at all levels of CSR – in its structure, governance, operation and allocation of resources – and it is this fundamental design flaw that makes the failure of these systems inevitable.

In a shrinking world of increasingly globalized markets, low-wage workers at the base of corporate supply chains remain isolated, vulnerable, exploited and abused. Governments, which should be responsible for protecting the rights of their citizens, often lack the resources or political will to do so. State-based enforcement agencies

In recent years, however, this bleak portrait has begun to change. Both in the US and abroad, workers and their organizations have forged effective solutions that ensure the real, verifiable protection of human rights in corporate supply chains. This new paradigm is known as Worker-driven Social Responsibility (WSR). It has been tested in some of the most stubbornly exploitative labor environments in the world today – including the agricultural fields of Florida, which were once dubbed “ground zero for modern-day slavery” by federal prosecutors, and the apparel sweatshops of Bangladesh, the locus of some of this century’s most horrific factory fires and building collapses. In these oppressive environments, WSR has proven its ability to eliminate longstanding abuses and change workers’ lives for the better every day. Consequently, interest in the model is growing from beyond these initial sectors. What does such an approach require?

ELEMENTS AND MECHANISMS

Stepping back, there are several key principles underlying the WSR model. In order to achieve meaningful and lasting improvements, labor rights programs in corporate supply chains must be worker-driven, enforcement-focused, and based on legally binding commitments that place responsibility for improving working conditions on the global corporations at the top of those supply chains:

WORKER-DRIVEN.

Workers are the only actors in the supply chain with a vital and abiding interest in ensuring that their rights are protected. As importantly, only workers are fully aware of the many manifestations of abuse that occur in their workplace. Indeed, they are the first to know about the vast majority of human rights violations. Consequently, workers are uniquely situated to be the most effective monitors of their own rights, and they and their organizations must be at the head of the table in the creation, monitoring, and enforcement of programs designed to improve their situation. Where workers are unable to participate freely because of repressive laws or practices, companies sourcing from those places should nonetheless embrace all other aspects of WSR, including, most importantly, an effective enforcement mechanism.

ENFORCEMENT-FOCUSED.

Respect for human rights in corporate supply chains cannot be optional, voluntary, or time-limited. Effective enforcement is key to the success of any social responsibility program. Worker organizations must be able to enforce the commitments of brands and retailers as a matter of contractual obligation. Among the obligations of the brands and retailers must be the imposition of meaningful, swift, and certain economic consequences for suppliers that violate their workers’ human rights, as meaningful economic consequences for suppliers have proven uniquely effective for the enforcement of those rights in the workplace. Only programs that include such economic consequences can ensure real human rights protections for workers at the base of global and domestic supply chains.

PLACING RESPONSIBILITY AT THE TOP OF THE CHAIN.

Increasingly consolidated corporations at the top of supply chains place constant downward price pressure on their suppliers, and this price pressure inexorably translates into downward pressure on wages and labor conditions as suppliers seek to protect often thin profit margins. In this way, the market regularly incentivizes abuse. Companies at the top of the chain must do their part to reverse this pernicious dynamic. Specifically, corporations must incentivize respect for human rights through a price premium, negotiated higher prices, and/or other financial contributions (such as licensing fees, support payments for monitoring, or direct payments for work facility improvements, etc.). With this support, suppliers can afford the additional costs associated with compliance with decent labor standards.

ELEMENTS AND MECHANISMS

Beyond these principles, social responsibility programs must include the following monitoring and enforcement mechanisms to be successful. Together, not individually, these mechanisms constitute the core of the WSR model:

▶ **WORKER-DEFINED CODES AND STANDARDS.**

Codes of conduct and workplace standards cannot be "one size fits all." Rather they must be tailored to address the particular abusive practices and actors specific to the industries in which they are operative. Unlike outside experts, only workers and their organizations have the direct experience necessary to develop industry-specific standards, making worker participation indispensable in the drafting of effective codes of conduct.

▶ **WORKER EDUCATION.**

Workers must know their rights under the code if they are to be effective frontline monitors of those rights. Further, independent audits are infinitely more valuable when coupled with worker education, which allows workers to act as partners with outside auditors, building trust in what is otherwise often a foreign and suspect process for workers. Worker education empowers workers to play their unique role in making labor rights a daily reality in the workplace.

▶ **COMPLAINT MECHANISM.**

Audits, often infrequent and perfunctory, are the exclusive monitoring mechanism in the vast majority of traditional CSR programs and have proven inadequate time and time again. The only truly effective mechanism for uncovering and fixing human rights violations is a protected, 24/7 complaint investigation and resolution process. Traditional audits are, at best, a snapshot of working conditions during a brief window of time, while an effective complaint resolution mechanism functions like a continuous video feed from the workplace, providing an open channel for workers to bring code violations to the attention of investigators without fear of retaliation.

▶ **COMPREHENSIVE AUDITS AND INSPECTIONS.**

When combined with effective worker education and a protected complaint resolution mechanism, independent audits can identify and address code violations that take place outside the workers' direct experience. To be effective, audits must go well beyond the traditional audit protocols and include interviews of a percentage of workers sufficient to establish a comprehensive picture of workplace dynamics, as well as unfettered access to management personnel and documents. Preferably, to avoid the gaming of audits that is today the norm, the auditors should have a deep understanding of the industry being audited.

▶ **MARKET CONSEQUENCES FOR SUPPLIERS THAT VIOLATE STANDARDS.**

Workers and corporate buyers must enter into legally binding contracts that establish swift and certain economic consequences for suppliers who fail to comply with the applicable code, including zero tolerance for the most egregious violations.

Finally, **transparency** is an essential component of any effective labor rights program. WSR should include public disclosure of the names and locations of participating buyers and suppliers.

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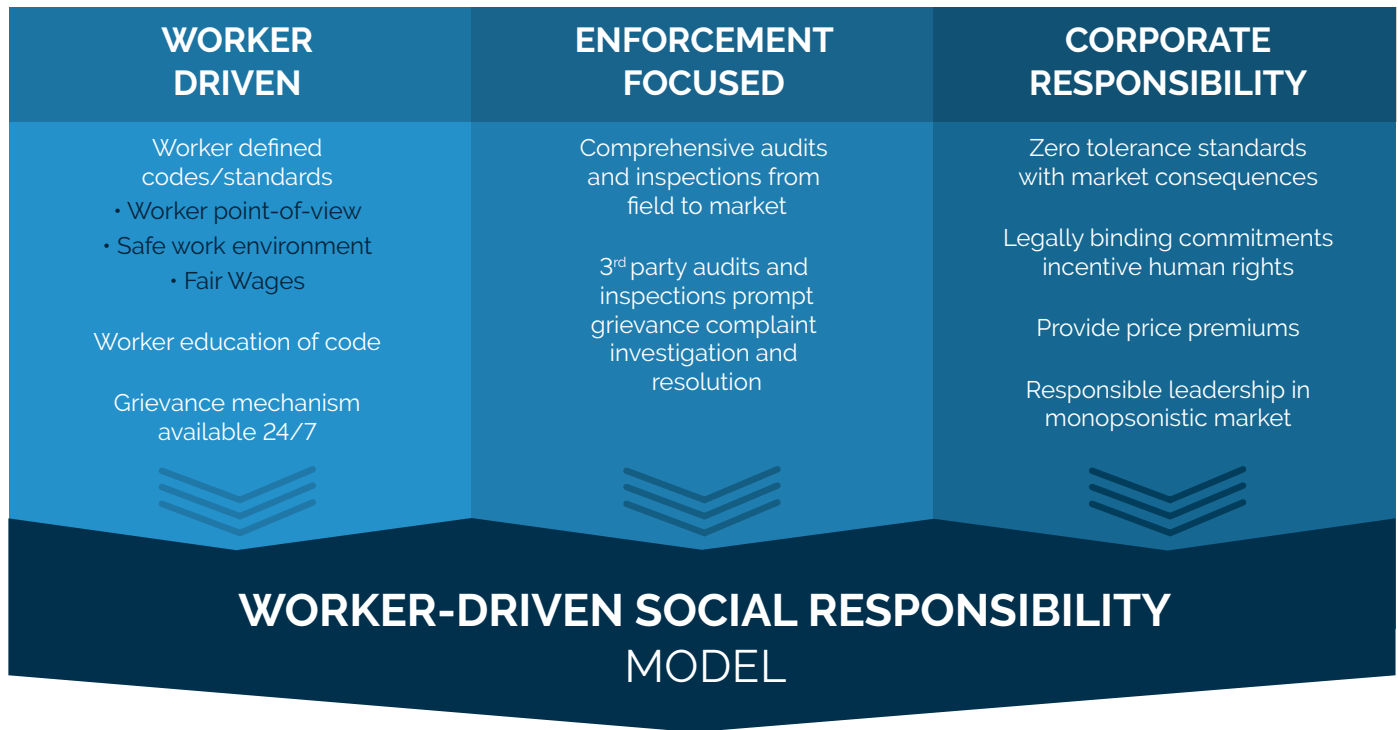
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Ali Jufikar Malik and Jim Yardley, "Bangladesh Finds Gross Negligence in Factory Fire," New York Times, December 12, 2012.

Richard Marosi, "In Mexico's Fields, Children Toil to Harvest Crops that Make it to American Tables," Los Angeles Times, December 14, 2014.

TRANSPARENCY

Public Disclosure of Names and Locations of Participating Buyers and Suppliers



PATH AHEAD

Despite decades of implementation of CSR programs in global supply chains, workers who make and harvest the products we consume are exploited on a daily basis in a variety of egregious and often hidden ways. CSR has failed to address or prevent these violations, generating little return on investment. Corporations run the very real risk that revelations of worker abuse in their supply chain will harm their brand.

In order to minimize these risks, corporations should adopt and implement the WSR model. This requires brands to sign legally binding WSR agreements with worker organizations to effectively define, monitor and enforce workplace standards in their supply chains. In addition to addressing the risks of reputational harm at its roots, WSR programs create safer workplaces and may lower employee turnover, thereby helping to control related administrative costs. WSR programs represent a rare win-win-win for workers, suppliers and brands alike.

The WSR Network was formed in 2015 by leading practitioners in this emergent field, including the Coalition of Immokalee Workers, Worker Rights Consortium, and others. The objectives of the Network are to support the development, diffusion and uptake of WSR as a practical, operational alternative to traditional CSR and MSIs. Towards this end, the Network has begun to develop a resource library for possible WSR practitioners. To date, this includes deeper analyses of the elements and mechanisms discussed above, as well as a tool for assessing the feasibility of creating WSR programs beyond where it now operates. It is hoped that these publicly available tools, as well as support from the Network itself, will be useful for worker organizations as well as aligned advocates, researchers and compliance officers who seek to create sustainable change for workers in global supply chains.

Asbed, Greg. "Measuring Achieves Little without Market-based Enforcement and Worker Participation," Measuring Business and Human Rights, October 27, 2017.

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Greenhouse, Steven. "In Florida Tomato Fields, a Penny Buys Progress," New York Times, April 24, 2014.

Accord on Fire and Building Safety in Bangladesh, "Annual Report 2015," Accord on Fire and Building Safety in Bangladesh website, January 31, 2017.

Garrett Brown, "Supply Chain Culture Changing: Real Progress, Challenges in Bangladesh's Garment Industry Safety," Industrial Safety & Hygiene News, October 2015.

INVESTING IN WORKER-DRIVEN SOCIAL RESPONSIBILITY MODELS

After 8 months of U.S. President Trump holding office, the economy has grown only an average of 2%, while the stock market has increased an average nine percentage points year-to-date. Following robust campaign promises to deliver the "best" deals for America, uneasy challenges persist for the Trump Administration affecting the U.S. economy. An imperfect China trade deal concluded after the gift horse U.S. withdrawal from the Trans-Pacific Partnership, updated changes to the North American Free Trade Agreement (NAFTA) remain unresolved, increased trade sanctions have been put in place against Iran, North Korea and Russia, and the socialist government of Venezuela continues to melt into further chaos.

But last April, preceding the release of President Trump's Executive Order – Promoting Agriculture and Rural Prosperity in America, Ray Starling, the Special Assistant to the President of Agriculture, Trade and Food Assistance disclosed the administrations agenda to grow the economy through agriculture. According

to Starling's press briefing, the agricultural community is actively engaged as "a net contributor to lessening the trade deficit...growing more food than we can eat in the United States." Bi-lateral negotiations involving agriculture are anticipated to improve the economy and job growth.

The following day, President Trump's Executive Order replaced former-President Obama's informal House Rural Council which did not specifically address economic growth with the Interagency Task Force on Agriculture and Rural Prosperity. The Task Force will identify legislative, regulatory, and policy changes to promote rural America, agriculture, economic development, job growth, and other quality of life issues. Specifically, the Task Force will address changes that ensure access to reliable workforce and increase employment opportunities in agriculture-related and rural-focused business.



"We do believe that in these rural communities the best thing we can do to make them grow quickly and economically is to focus on agriculture because it is the number one driver in these rural communities."

Ray Starling, Special Asst to the President of Agriculture

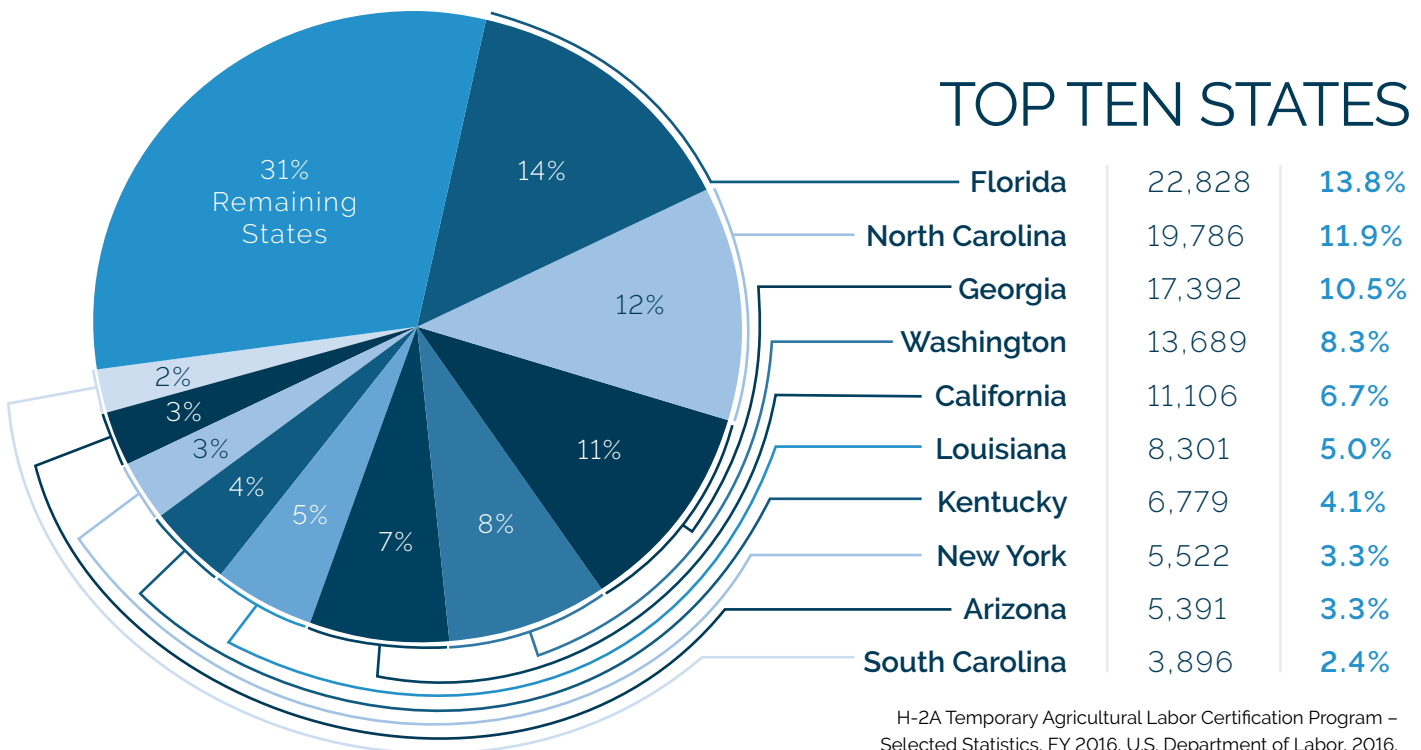
On-the-Record Press Briefing on the President's Executive Order Promoting Agriculture and Rural Prosperity, The White House, April 24, 2017.

Although the Task Force findings won't ensure job growth it may very well recognize that not only the running theme of skilled-labor shortages is hindering business growth but also agricultural-labor shortages are negatively effecting the economy. The struggles with farm labor have been a growing concern for agricultural producers across the U.S. where thousands of farm jobs go unfilled each year. For the last five years in San Luis Obispo County, CA, labor shortages have increased from 15 to 26 percent. In an independent survey by the Grower-Shipper Association of Central California for the 2015 calendar year, an estimated gross revenue loss of \$13.5 million (an 300% increase from 2010) was reported due to a lack of sufficient number of field workers. Expectantly, the Task Force will reveal their findings in October or November this year highlighting the field worker shortage.

Several factors contribute to the shortage, from a lack of immigration reform to low pay to a higher attrition rate of generational field workers. As a result, the agricultural industry has achieved a point where a surplus of jobs exceeds available workers. With immigration playing a major role in last year's presidential election, it is not surprising President Trump's tough immigration policies have been blamed, but in truth, growers are experiencing a long-term residual effect from restrictive immigration laws enacted since before 2013. For instance, after Georgia Governor Nathan Deal signed into law the Illegal Immigration Reform and Enforcement Act of 2011, requiring employees to use E-Verify - an employment verification program - a survey conducted by the Georgia Department of Agriculture revealed the Georgia farmers had a shortage of more than 11,000 farm workers during the spring harvest. Some farmers reported up to 20% labor shortages, leaving unharvested crops. **A subsequent report from the University of Georgia for Agribusiness and Economic Development estimated the labor shortage cost Georgia's agriculture industry almost \$140 million.**

Due to illegal immigration reform in recent years, growers have turned to the H-2A temporary or seasonal agricultural worker visa program, but the program still hasn't been able to meet labor demands. In 2016, a total of 165,741 jobs were certified for H-2A visa applicants (a 14% increase from 2015) but only 134,368 H-2A visas were issued to workers, revealing a 31,000-worker deficit. Plus, the H-2A visa program isn't without its problems as detailed in the "Cause and Effect" article of the Counter Forced Labor Journal Volume I, Issue 2. Guest workers using the H-2A visas are highly susceptible to forced labor conditions through a community recruitment process that often passes on recruitment and transportation fees to the guest worker. The guest worker is further susceptible to forced labor conditions through geographic isolation, no visa portability and a lack of agency over housing options. Although demands for more H-2A visas have been met by the federal government, an agricultural labor shortage continues.

REVIEW OF H2-A POSITIONS CERTIFIED FY (% of total certified FY 2016) **2016**



The compounding issue of low wages is a contributing factor to both attrition of traditionally generational field workers and the inability of growers to maintain a consistent number of workers. Under the H-2A guest worker program, growers must pay workers the highest Adverse Effect Wage Rate (AEWR) prevailing hourly wage, a collective bargaining wage if applicable or the state or federal minimum wage. Oregon and Washington state have the highest AEWR at \$13.38 per hour.

2017 H-2A FIELD WORKER WAGES FOR STATE OF ARIZONA	
\$10.95 / hr	AEWR Wage
N/A	Union Wage
\$10 / hr	State Minimum Wage
\$7.25 / hr	Federal Minimum Wage
\$12.15 / hr	Average National Field Worker Wage

FY 2017 Adverse Effect Wage Rates, U.S. Department of Labor, 2017.

Farm Labor: April Hired Workers Down 4 Percent, Wage Rates Increases 4 Percent From Previous Year, U.S Department of Agriculture, May 2017.

Non-H-2A field workers concede to much lower wages, even dipping below minimum wage levels when incorporating overtime. A combination of varying market prices or market demand for certain crops and weather dependent yields make the agricultural industry a volatile business with little profit guarantee. The typical agricultural worker is paid via a piecework basis rather than an hourly basis usually as contract workers by season or predetermined period. Under the Fair Labor Standards Act (updated in 1966), growers employing more than seven workers in a calendar quarter are required to pay their agricultural workers at least the equivalent to the federal minimum wage (\$7.25). Growers may maneuver around the minimum wage claiming workers are autonomous independent contractors, declaring less than 7 employees or charging for shoddy unsafe housing.

Most field workers are paid by the piece rate pricing model, a pay method that compensates workers based on a set amount for each unit or piece of work completed. For instance, a field worker receives a set monetary amount for each 32-pound bucket of tomatoes he or she picks.

RATE X PIECES = EARNINGS

HOURS = WAGES

THE FLORIDA TOMATO INDUSTRY

**BEFORE
FAIR FOOD PROGRAM**

{.45 X 142* = 63.90}

**7
= \$9.13[^]**

**DURING
FAIR FOOD PROGRAM**

{.65 X 142* = 92.30}

**7
= \$13.19[^]**

*1x piece = 32lb bucket of tomatoes (4, 544lbs of tomatoes or 2.5 tons)

[^] FY 2017 Adverse Effect Wage Rate for Florida = \$11.12

The drought of field worker availability has become a drain on the U.S. economy and is anticipated to worsen if the Trump Administration continues its campaign promises to build a wall along the southern U.S.-Mexico border and aggressively prosecute illegal immigrants. Inadvertently, the continued immigration measures may improve wages and working conditions for future field workers. The unsettling nationwide field worker shortages have pressed growers to compete for laborers. Although a variety of schemes are offered like higher wages, subsidized housing, and retirement benefits, gaining long-term loyalty of verifiable field workers is not a guarantee. **This environment has opened a door for the worker-driven social responsibility (WSR) model demonstrated by the Fair Food Program (FFP).**

Contrary to the nationwide field worker shortages, the Florida tomato industry is less threatened by a dwindling labor force. As exhibited since 2011, major consumer brands (see ticker chart) have agreed to pay premium prices for tomatoes sold by growers abiding by the FFP Code of Conduct. This social responsibility model begins by humanely investing in the workers, educating them and protecting them from forced labor conditions, wage fraud, physical abuse, sexual harassment, and harsh working conditions. In turn, workers have a voice, are paid fairly, are respected, and provide dependable piecework. Under the FFP, labor hiring concerns surrounding the H-2A guest worker program are alleviated by a strict due diligence employment program mirroring Canada's temporary worker program. Fair wages are improved by requiring growers to hire ALL workers as employees thus providing certain FLSA wage guarantees plus a small FFP bonus wage. Overall, the Fair Food Standards Council (FFSC), the third-party assessment arm of the FFP, operates at each stage of production consequently determining if growers should be black listed, potentially causing large profit losses for growers. The reliable and proven resolve of the FFP Code of Conduct by FFP growers has fostered loyalty among field workers and most importantly trust. Workers trust, they will work in safe conditions and get paid with all grievances quickly remedied.

Surprisingly, even the WSR model, and other employment perks haven't increased the workforce pool nationwide, but a precedence of healthy working conditions and higher wages have improved the available migrant workforce.

Determinately, recruiting the nation's remaining unskilled workforce to fulfill the labor demand will require even higher overall wages. As demonstrated by piecework wages, field workers can make up to \$18/hr plus certain benefits, but the work is seasonal under harsh environmental conditions and has lasting health concerns. Unfortunately, the agricultural industry is behind the Fair Food Program curve and buyers continue to drive field worker wages down comparatively to the increased cost of living. Until this dynamic is upended, the growers remain in competition for each other's labor.

Enticing non-skilled, non-immigrant workers to the fields will be a daunting task for President Trump's Interagency Task Force on Agriculture and Rural Prosperity and its goal to improve the economy through agriculture. Whether it is legislative action, ethical investing through WSR programs like the Fair Food Program or supply/demand raised wages it is evident there is a need for improved ethical, fair and humane labor force solutions in the U.S. agricultural industry.

Publicly traded buyers who **ethically invest** in the Fair Food Program

COMPANY NAME	TICKER SYMBOL
Ahold Delhaise	AD
Aramark	ARMK
Chipotle	CMG
Fresh Market	TFM
McDonald's	MCD
QSR (Burger King)	QSR
Sodexo	SDXAY
Walmart	WMT
Whole Foods	WFM
YUM Brands!	YUM

INTERVIEW WITH THE FAIR FOOD STANDARDS COUNCIL

Every successful supply chain program has a designated third-party assessor providing due diligence to both the supplier and the buyer. In the case of the Fair Food Program (FFP), the Fair Food Standards Council (FFSC) is charged with monitoring participating growers' operations for compliance with the Fair Food Code of Conduct. Unlike other social responsibility programs however, FFSC operates in the unique structure created by the Coalition of Immokalee Worker Fair Food Program agreements, with their emphasis on worker participation and effective market consequences for non-compliance.

In a face-to-face interview, Counter Forced Labor Technologies discussed the cause and effect of FFSC's role in the supply chain with the Executive Director Judge Laura Safer-Espinoza (retired), Director of Development Lindsay Adams and Associate Director Matthew Wooten.

Judge Laura Safer Espinoza is a retired New York State Supreme Court Justice who served in New York and Bronx Counties for twenty years. She was Deputy Supervising Judge for five years. Justice Safer Espinoza helped to design, and became the first presiding judge of, the Bronx Treatment Court, an innovative alternative to incarceration for non-violent offenders. She currently serves as the Executive Director of the FFSC.

Lindsay Adams is a Senior Investigator/Analyst and Director of Development at the Fair Food Standards Council. At FFSC, Ms. Adams has led field investigations of forced labor, systemic wage theft, violence and sexual assault, illegal recruitment and extortion within the H-2A federal guest-worker program, and pesticide poisoning.

Matthew Wooten is the Associate Director of the Fair Food Standards Council. He joined the FFSC with an extensive background in applied research and program operations in the United States and Latin America, with a focus on economic development and human rights. He was a Fulbright Scholar and holds an MA from the University of Texas at Austin.

Was the Coalition of Immokalee Workers (CIW) and the Fair Food Standards Council (FFSC) originally designated to combat human trafficking?

Justice Safer Espinoza (JSE): The Coalition of Immokalee Workers (CIW) was established in the early 1990s. At that time, farmworkers in Florida, many of whom were from Mexico, Guatemala or Haiti, were subjected to extremely degraded working conditions. Physical violence was common in the fields, and workers who stopped harvesting to rest and/or drink water in the 100-degree heat, or those who contested underpayment of wages, was routinely beaten and fired. Sexual harassment and sexual assault against female workers were rampant. That period of time also saw the arrival in Immokalee of immigrant workers who had participated in movements for human rights in their home countries. They brought that experience and those organizing skills with them to the situations they encountered in the fields of Florida.

Although they are now nationally and internationally recognized for their work against modern day slavery - and were the recipients of a Presidential Medal for Extraordinary Efforts to Combat Human Trafficking in 2015, as well as being the first domestic organization to win the U.S. State Department's TIP Heroes Acting to End Modern Day Slavery award in 2010 - they (the founders of CIW) did not set out to become an anti-slavery organization. Rather they were seeking very basic improvements in wages that had remained stagnant for thirty years and sub-standard working conditions. In the beginning they used traditional organizing methods including work stoppages and strikes, as well as marches and boycotts against the most abusive labor contractors. Over the course of their organizing, however, and at the far end of the spectrum of abusive work conditions in Immokalee, they found forced labor. CIW really developed and pioneered the worker-centered approach to the investigation and prosecution of slavery cases. Their members investigated these cases from the inside out, by either having people embedded in those operations or extracting people from those situations to eventually support 9 major slavery cases. Luis C. deBaca was a federal prosecutor at the Dept. of Justice (DOJ) at that time. Some of the investigations involved hundreds of workers and multi-state operations controlled by extremely

violent people. Based on the trust CIW had established in the farmworker community and their dedication to pursuing these cases in multiple states, across borders, and over several years, they were able to successfully bring these cases to the attention of law enforcement and DOJ prosecutors. At that time, the DOJ had no framework for modern day slavery/forced labor prosecutions. The cases CIW worked on gave impetus to the passage of the Trafficking Victims Protection Act in 2000. Through this work CIW became a pioneering anti-slavery organization, whose expertise and training is now sought by local, state, national and international law enforcement, government agencies and NGOs.

Why aren't buyers and growers using existing labor laws to protect against trafficking in their supply chains?

JSE: The problem with labor laws and the reason why this creative program grew up here (Florida) is that farmworkers are excluded from much of the national legislation and protections extended to other workers, including collective bargaining rights. As your readers probably know, when the National Labor Relations Act and the Fair Labor Standards Act were being considered, President Roosevelt needed the votes of southern senators, who would not support those rights for a workforce that was largely African American. Therefore, agricultural workers and domestic workers were, and remain, excluded. To date, the only FLSA protection that applies to agricultural workers is that requiring payment of minimum wage. Even the minimal protections for wages and working conditions that do exist are enforced by a very under resourced federal department of labor. And on the state level, in Florida, there is no Department of Labor.

The history here (in FL) is that CIW members initially went straight to the farm gate – the growers – seeking improvements. They did have some success with a handful of grievances. For example, when a young worker was beaten bloody for asking for water, a group of hundreds of workers gathered at the crew boss's house as a form of public shaming and a boycott of that labor contractor. They (CIW) also gained traction with some improvements, like fighting against reductions in piece-rate wages, but nothing major in overall conditions was giving or changing.

Ultimately, the seed of truly transformational change was planted in the early 2000s, when CIW began an economic analysis of the corporate supply chain. They found that large corporate retail food buyers were driving prices

down, placing pressure on their suppliers – the growers of produce. This in turn led growers to economize in the one area they have power over, as opposed to the cost of fertilizer or seed, which is the cost of labor. The genius of CIW's analysis was to look at the top of the supply chain to determine who was contracting for, and benefiting from, the product that farmworkers harvest, and then to make them part of the solution. With the initial slogan, "Taco Bell Makes Farmworkers Poor" in 2001, the Campaign for Fair Food was born. The campaign against Taco Bell successfully appealed to students, faith communities and other consumers of conscience. Four years after the Campaign for Fair Food began – and after Taco Bell stores had been removed from dozens of campuses – Yum Brands signed its Fair Food Program agreement with CIW. Now, in 2017, there are 14 major corporate buyers – from fast food chains, to supermarkets and food services – that have signed Fair Food Program agreements. Their participation – including the commitment to source only from FFP growers who are properly implementing the Code of Conduct on their farms – makes enforcement of human rights for farmworkers possible.

What motivated subsequent buyers and growers to participate in the FFP?

JSE: Initially, growers were motivated by the market share represented by buyers that had signed Fair Food Program agreements. Many growers signed because they felt they needed the ability to sell to those buyers. However, after several seasons of implementation, many growers have pointed out multiple ways in which their operations have been improved. Management tell us how they have become better companies with improved systems and a channel through which to receive information from their workforce about issues in their operations. They are now employers of choice for workers, with greatly reduced turnover, fewer accidents and reduced potential liability.

Matthew Wooten (MW): The legal fees and judgments associated with a worker's compensation or sexual harassment case can be extremely costly to a grower's operation. The Fair Food Program's Code of Conduct mandates improvements that help prevent these issues from arising in the first place.

JSE: As you heard, the first buyer joined as a result of a consumer boycott. In the early years, others were also motivated by campaigns against them, or the fear of those consumer campaigns and the accompanying bad publicity.

INTERVIEW WITH THE FAIR FOOD STANDARDS COUNCIL

The very positive benefit for the participating buyers, however, is better transparency in their supply chains. The Fair Food Program provides insurance against horrendous tragedies and their accompanying business damaging headlines. If there had been a program like the Fair Food Program at Rana Plaza in Bangladesh, where the workers knew that the building they worked in was unstable, that exits were inadequate and blocked, if those workers had had a trusted complaint line, an FFSC equivalent would have been in there looking at those conditions, fixing them and demanding corrective action long before the building fell killing over a thousand workers.

That is the business case for the buyers - those disasters don't have to happen in your supply chain if workers, who are the best front-line monitors of conditions at your suppliers' operations, have the mechanisms in place to report issues, without retaliation. The best risk preventers are the men and women who are in the workplace every day.

Similarly, for the Florida tomato industry, in 2008 there were front-page stories about slavery in the tomato fields when a case of workers who were chained up in a truck at night and forced to work in the fields by day was discovered. After implementation of the FFP in 2011, by 2014 a front-page story appeared in *The New York Times* describing the Florida tomato fields as the best work environment in U.S. agriculture

What makes the FFP grievance mechanism superior to other programs?

Lindsay Adams (LA): First, you can't have a grievance mechanism without a comprehensive education program for the workers. Workers are provided with the FFSC hotline number in booklets received at the time of hire, during CIW worker-to-worker training on the farms each season and on their paycheck stubs. They also view a video at the time of hire, which emphasizes their right to make complaints under the Code, free of retaliation. Workers receive hotline cards from FFSC staff during our audit visits to the field. In these ways, the FFP ensures every single worker has access to this number.

Second, when a worker calls the hotline, a bilingual investigator always picks up 24/7. Investigators are on-call 7 days a week and must be ready to intake complaints at any point. These are the same investigators who carry out our audits, so they are very aware of and familiar with the conditions and grower staff that callers are describing.

Third, protections against retaliation for raising complaints are foundational to the program. As auditors, if you can't say to people "trust us", you get nowhere.

JSE: If we failed to protect people from retaliation our hotline would have gone quiet in the first 6 months. Workers will tell us if they are experiencing retaliation. Typically, the program's complaint resolution process is a non-adversarial or alternative dispute resolution process. No formal hearings are required, unless there is an appeal that goes to arbitration. Growers in the FFP have now committed not to bring lawsuits, but rather to submit appeals of complaint resolutions and corrective actions to arbitration. Thus far, however, there has been only one such appeal; the program's collaborative and reasonable corrective action process has ensured agreement on resolutions in the overwhelming majority of cases.

What this means is that workers' concerns receive prompt resolutions. Particularly for migrant workers, justice delayed is justice denied. The vast majority of our cases are resolved in under one month; most are resolved in two weeks or less.

MW: Our only real currency both with workers, buyers and growers is our credibility.

What is the growth for FFP outside the Florida tomato industry?

JSE: The program has already expanded to six additional states - Georgia, North and South Carolina, Virginia, Maryland and New Jersey and two additional crops grown by some participating growers -strawberries and peppers. Additionally, a number of participating buyers have agreed to pay the premium on their purchases from Fair Food Program growers outside Florida. Spreading the model further requires buyers that are willing to put commitment

CAUSE AND EFFECT

behind it. As the program began gaining momentum and recognition, buyers started coming to the table on their own, without a public campaign - Walmart is a good example of that - seeking real change in their supply chain. Some participating buyers are willing to pay the Fair Food Program Premium for their products and to introduce the FFP to their suppliers. Making participation mandatory for their grower-suppliers requires sufficient leverage.

As we speak, there are confidential negotiations ongoing between CIW, buyers, and funders interested in bringing the program to other geographic regions and crops. We all want this program with its incredible gains for all partners to grow. CIW and FFSC also receive many inquiries from outside the US - from buyers, suppliers, governments and NGOs - that are interested in this work-driven social responsibility model. At this time, however, resources limit our ability pursue all of them.

How does FFP compare to other "certified" labels?

MW: One of the challenges at the grocery store is that there are a lot of stickers on the produce you buy. However, there are very few examples - we argue no other examples

- that do what we do in effectively guaranteeing that when abusive working conditions are found in the buyer's supply chain, they are resolved without retaliation against workers. The Fair Food is a tremendous risk-prevention program that has virtually eradicated forced labor (modern day slavery), sexual violence, systemic wage theft, severe health and safety violations, and a series of other abuses.

Most consumers just want the label and don't know how to differentiate the standards and enforcement behind those labels. Shouldn't the standard differentiate between voluntary and self-assessed certifications and between programs that impose serious consequences - namely an inability of suppliers who violate human rights standards to sell to participating buyers - and those programs that do not impose those consequences?

LA: Even if they were not self-assessed certifications, the consequence of failure to comply in most other programs is that you don't get to use the label; it's not that you are cut out of the market. Equating the Fair Food Program with these other programs assumes that the economic consequences of removing a label are as strong as having sourcing restrictions, which is an unproven and dangerous assumption.

FAIR FOOD STANDARDS COUNCIL FIGHTS FORCED LABOR: A CASE STUDY

In January 2017, subsequent of the first forced labor violation in the history of the Fair Food Program (FFP) on a participating farm, two unlicensed labor subcontractors were sentenced to six years in federal prison for conspiracy to provide and obtain forced labor, in violation of Title 18, United States Code, Section 1594(b).

Initially Agustin Mendez-Vazquez, 44, and his son, Ever Mendez-Perez, 24, both originally of Mexico, were listed on the Fair Food Standards Council's (FFSC) website prohibited list and publicized to all Participating Growers as ineligible for hire on FFP farms. Despite the ban, the perpetrators were hired as unlicensed labor subcontractors for a tomato farm in the Homestead, Florida area. Within three weeks of hire, workers and witnesses called the FFSC complaint hotline alleging the father and son had utilized physical force, threats of

physical force, threats of deportation, and debt bondage to maintain control over the other migrant workers.

Immediately in response, a team of FFSC investigators was dispatched to perform an on-the-ground investigation collecting sufficient evidence to meet with the U.S. Attorney's office. Within a month of the initial calls to FFSC's complaint line, arrests were made and an indictment for charges related to forced labor was filed.

The forced labor victims have since received legal assistance and counseling through VIDA Legal Assistance, as well as job referrals to safe situations at other FFP farms. The grower who violated the FFP Code was suspended based on the FFP's zero tolerance provisions for forced labor, and FFSC's decision to suspend was affirmed by an arbitrator following appeal.

JUST THE FACTS

COALITION OF IMMOKALEE WORKERS (CIW)

- ◀ Founded in **1994**
- ◀ **35,000+** Seasonal Worker Members
- ◀ **400+** Face-to-Face Education Sessions
- ◀ **24** Separate Boycott Campaign Actions
- ◀ **1** Presidential Medal for Extraordinary Efforts Combatting Modern-Day Slavery

Learn More at www.ciw-online.org

FAIR FOOD PROGRAM (FFP)

- ◀ Official Program Launched in **2011**
- ◀ **3 Kinds of Crops:** Tomatoes, Strawberries & Green Bell Peppers
- ◀ **Operates in 7 Different States:** Florida, Georgia, Virginia, Maryland, New Jersey, South Carolina, & North Carolina
- ◀ **14** Participating Buyers
- ◀ **20** Participating Growers

Learn More at www.fairfoodstandards.com

FAIR FOOD STANDARDS COUNCIL (FFSC)

- ◀ **8 Grower Audit Categories:** Management Audits, Payroll & Fair Food Premium Audits, Operations Audits, Worker interviews, Crew leader Interviews, Farm Locations, Company Housing, & Corrective Action Plans
- ◀ **4,850** Grower Audit Monitoring Actions Conducted in Season Four (2014-2015)
- ◀ **443** Worker Complaints Investigated in Season Four (2014-2015)
- ◀ **15** Fair Food Standards Council Employees
- ◀ **7** Grower Suspensions (blacklisted) Since Program Launched in 2011
- ◀ Toll-free Complaint Line Open **24 hours, 7 Days a Week**, Servicing Numerous Languages

Learn More at www.fairfoodstandards.com

COMPARE YOUR CODE OF CONDUCT WITH THE

FAIR FOOD PROGRAM (FFP) CODE OF CONDUCT

The Fair Food Code of Conduct has been shaped over time through detailed negotiation and ongoing dialogue among workers, growers and buyers.

Y	N	Does your company ensure it is hiring Qualifying Workers?
Y	N	Are all your Qualifying Workers hired as direct employees?
Y	N	Does your company use a system for maintaining accurate hours?
Y	N	Do all Qualifying Workers have access to such a time system and control their own access?
Y	N	Does your company pay above or below the industry standard salary, hour rate or piece rate?
Y	N	Does your company pay wages and benefits directly go to the Qualifying Worker not through a third-party?
Y	N	Are all Qualifying Workers educated on the work standards?
Y	N	Does your company provide health and safety education to all Qualifying Workers?
Y	N	Does your company provide sexual harassment education and reporting procedures to all Qualifying Workers?
Y	N	Has your company developed and implemented a complaint resolution process?
Y	N	Does your company provide open opportunity for advancement and clearly communicate these opportunities?
Y	N	Does your company verify and provide transparency of operations with third party monitoring entities?

Last July, the House of Representatives approved two bills, H.R. 2200, the *Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act of 2017* and H.R. 2664, *Enhancing Detection of Human Trafficking Act*. Both influential anti-trafficking bills enhance efforts by the U.S. government in preventing human trafficking, protecting trafficking victims and prosecuting traffickers and have great potential to directly affect your supply chain.

Without opposition in the House, the *Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act* was passed to reauthorize funding for programs within the Department of Justice, Health and Human Services, Homeland Security, Labor, and State, and the U.S. Agency for International Development, highlighting the importance of inter-agency involvement. This bill stresses the prevention of trafficking through education that increases the identification of trafficking victims. In contrast, the 4-time reauthorized *2000 Trafficking Victims Protection Act* sought to protect predominantly women and underage victims and ensure effective punishment of traffickers.

The major education measures will focus on enhanced preventative measures for child trafficking to prevent future exploitation and more comprehensive training for travel and hospitality industries. Teaching warning signs to children who are most vulnerable to trafficking and promoting self-esteem will help empower at-risk youth from falling prey to traffickers while mandatory workforce training will be required in the airline, hotel and trucking industries.

Section 307 of the Tariff Act of 1930 (19 U.S.C. § 1307) provides in relevant part that “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.”

In 2016, Former President Obama closed the “consumptive demand loophole” of section 307 which formerly allowed forced labor goods in high demand or low availability into U.S. ports (read more in the Vol I Issue 2 of the Counter Forced Labor Journal, “Government Guidance”).

Most importantly, the *Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act* addresses supply chains by enforcing section 307 of the Tariff act of 1930 in Subtitle D – Monitoring child, forced and slave labor. In general, the Comptroller General of the United States (CG) is required to provide a report describing any obstacles or challenges to enforcing the Tariff Act of 1930 which does not allow entry of any goods manufactured with forced labor into U.S. ports. **The report will address goods made with “inputs that are produced with forced labor or child labor” requiring importers of goods to know the secondary and tertiary origination of goods in their supply chain.**

ANTICIPATED CG REPORT FINDINGS

1. Describe the role and best practices of private-sector employers in the United States in complying with the provisions of section 307 of the Tariff Act of 1930
2. Describe any efforts or programs undertaken by relevant Federal, State, or Local government agencies to encourage employers, directly or indirectly, to comply with such provisions
3. Describe the roles of the relevant Federal departments and agencies in overseeing and regulating such provisions, and the oversight and enforcement mechanisms used by such departments or agencies
4. Provide concrete, actual case studies or examples of how such provisions are enforced
5. Identify the number of petitions received and cases initiated (whether by petition or otherwise) or investigated by each relevant Federal department or agency charged with implementing and enforcing such provisions, as well as the dates petitions were received or investigations were initiated, and their current statuses
6. Identify any enforcement actions, including, but not limited to, the issuance of Withhold Release Orders, the detention of shipments, the issuance of civil penalties, and the formal charging with criminal charges relating to the forced labor scheme, taken because of these petitions and investigations by type of action, date of action, commodity, and country of origin in the past 10 years

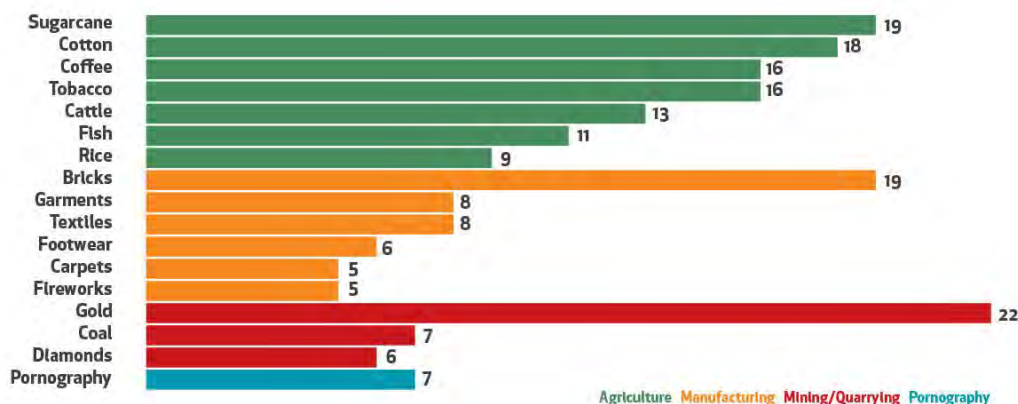
7. With respect to any relevant petition filed during the 10-year period prior to the date of the enactment of this Act with the relevant Federal departments and agencies tasked with implementing such provisions, list the specific products, country of origin, manufacturer, importer, end-user or retailer, and outcomes of any investigation
8. Identify any gaps that may exist in enforcement of such provisions
9. Describe the engagement of the relevant Federal departments and agencies with stakeholders, including the engagement of importers, forced labor experts, and nongovernmental organizations
10. Based on the information required by paragraphs (1) through (9), identify any regulatory obstacles or challenges to enforcement of such provisions and provide recommendations for actions that could be taken by the relevant Federal departments and agencies to overcome these obstacles

In a continued focus on education for identifying human trafficking, the House passed H.R. 2664, Enhancing Detection of Human Trafficking Act. The bill directs the Secretary of Labor to train certain Department of Labor (DOL) personnel in effectively identifying human trafficking and assisting law enforcement in preventing human trafficking during their primary roles and responsibilities. The DOL has an important role to combat trafficking in

persons through civil enforcement of federal labor laws. Through the Wage and Hour Division¹, civil enforcement efforts focus on industries where labor law violation rates are high and vulnerable wage workers are often reluctant to assert their rights and raise their voices. It can be anticipated that improved education efforts will identify increased abuses among non-resident and temporary worker visas. With better education and awareness for all DOL agencies, employment through temporary worker visas should become less susceptible to forced labor conditions.

The *Enhancing Detection of Human Trafficking Act* hand-in-hand with the *Frederick Douglass Trafficking Victims Prevention and Protection Reauthorization Act* will most importantly provide improved tools and education to the DOL's Bureau of International Labor Affairs (ILAB) who's current mission is to improve working conditions, raise living standards, protect workers' ability to exercise their rights, and address the workplace exploitation of children. ILAB is already investigating forced labor in the supply chain and imparting effective social compliance. As part of the Better Work program, ILAB monitors factories' compliance with national labor laws and international labor standards providing invaluable data for better informed business decisions. The ILAB also offers a Child Labor and Forced Labor Toolkit for businesses to assist in reducing the chances of products, from raw materials to manufactured, of having been produced using child or forced labor.

Goods with MOST Child Labor and Forced Labor Listings by Number of Countries and Production Sector



Both bills are pending a vote at the Senate Committee with a quick authorization anticipated by President Trump as combating human trafficking is a priority of his administration. A precedence has been set by these bills that companies whose existing systems may need strengthening, particularly in the areas of child labor and forced labor, will need to address their supply chain in detail and soon.

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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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