

Modern Slavery and Supply Chain Transparency

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Abstract and Keywords

The scourge of modern slavery has led to legislation in various countries requiring firms to engage in a particular form of supply chain transparency. However, these regulatory initiatives have been widely perceived to be, by themselves, a weak response to such a serious challenge. This chapter argues that assessment of these initiatives hinges on the interpretation of modern slavery itself: Are extreme forms of labor exploitation aberrations of an otherwise blameless system, or are they intrinsic to the functioning of contemporary global capitalism? If the latter, then new types of transparency might be needed that go beyond firms reporting on their policies and efforts. The chapter introduces the idea of *interrogational transparency* as a mechanism by which civil society actors (including consumers, activists, and researchers) can develop accountability dialogues with powerful corporations. To illustrate these points, the chapter examines emergent patterns of transparency within the food giant Nestlé.

Keywords: modern slavery, transparency, forced labor, supply chain, accountability, human rights

Recent years have seen a growing awareness of modern slavery as an issue for supply chain management (Gold, Trautrim, and Trodd 2015; Nolan and Bott 2018). The term describes patterns of dehumanizing exploitation in which workers are bound to demeaning conditions of labor by threats of violence and by debt bondage. Often, but not always, modern slavery involves migrants and the socially disadvantaged (Bales, Trodd, and Williamson 2011; Crane 2013).¹

Although there are differences from the chattel slavery commonplace in earlier periods, there is no argument about the immorality and horror of modern slavery (Kara 2017). The practices that the term describes are unequivocally illegal in nearly all jurisdictions.

In this chapter I will set out some of the main threads of research in this area, and in particular I will explore the way in which *transparency* has come to be understood as a central issue in this field, especially as embodied in legislation in the United States, the Unit-

ed Kingdom, and Australia. This approach has been widely criticized, and here I develop a critique of the idea of transparency embodied in these initiatives. I argue for an alternative framing of transparency that focuses on operations and finance rather than policy and aspiration.

Supply Chains and Slavery

The supply chain is the defining feature of the modern material world. Except for subsistence agriculture and services, little is produced that is purely local. Furthermore, the relatively fluid, market-based systems labeled by economic geographers and (p. 102) development economists as *global value chains* have increasingly given way to tightly coordinated *global production networks*, where the major companies oversee the complex flow of goods (Gereffi and Rossi 2018; Barrientos, Gereffi, and Rossi 2018). Even simple products such as a pair of jeans can draw on materials from several continents. These networks have generated unprecedented material abundance for the privileged—but at what cost?

Modern slavery is astonishingly widespread within these chains (Phillips 2015; Wilshaw 2018): Jurewicz and Passoff (2018, 1) assert that it is “embedded in almost everything we consume.” Yet it is difficult to be precise about the extent of modern slavery, and many highly contested issues surround its definition and reification (Craig et al. 2019).

Reliable estimates of modern slavery’s prevalence are understandably difficult, and considerable controversy has surrounded the approach of various nongovernmental organizations (NGOs) to using ever-larger estimates to gain public and political support (Kelly 2013; Patterson and Zhuo 2018). The most widely cited—although also widely criticized—source is a collaborative effort between the International Labour Organization and the Walk Free Foundation, which produced systematic estimates for 2016 in the report *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (International Labour Organization 2017). This presents a hierarchy of terminology in which modern slavery is used as an encompassing term including forced labor and forced marriage; the forced labor component is then divided into labor in the private sector, forced prostitution, and state-imposed forced labor. The private sector estimates are then broken down by sector (see Figure 6.1 and Table 6.1), and from these estimates it is possible to make a crude estimate of the numbers that could entail participation in or contribution to conventional, commercial supply chains. This suggests—using the 2016 figures—that up to ten million people could be “modern slaves” engaged in work feeding into global supply chains. It seems likely that some of the state-imposed forced labor could also be added to this number.

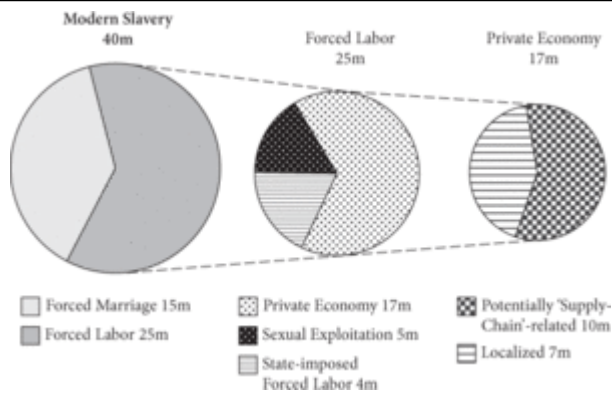


Figure 6.1. Breakdown of International Labour Organization/Walk Free 2016 estimates of modern labor. Figures are rounded to the nearest million people. Data from International Labour Organization (2017).

Table 6.1. Analysis of Estimates of Supply Chain-Relevant Modern Slavery by Sector

ILO/Walk Free estimate of estimated 16m workers in private economy forced labor		Potentially “supply chain”-related	Localized
Industry/sector	%	(millions)	(millions)
Domestic workers	24%		3.8
Construction	18%	2.9	
Manufacturing	15%	2.4	
Agriculture, forestry, and fishing	11%	1.8	
Accommodation and food service activities	10%		1.6
Wholesale and trade	9%	1.4	
Personal services	7%		1.1
Mining and quarrying	4%	0.6	
Begging	1%		0.2
Total		9.1	6.7

Source: Author’s analysis of International Labour Organization/Walk Free 2016 estimates of modern labor. Data from International Labour Organization (2017).

Clearly, these figures contain huge uncertainties and include widely disparate situations. These could include, for example, unlicensed mining operations in Ghana, shrimp fishing in Thailand, and vegetable harvesting and processing in the United Kingdom. Data seeking to establish the extent of modern slavery are often gathered by stitching together fragmentary data from news reports and surveys and undertaking bold extrapolations

from partial data. Indeed, one of the main criticisms of attempts to produce league tables of the prevalence of modern slavery by country is that in some cases countries' scores were largely based on unverified predictive models rather than direct evidence (Gallagher 2017).

By its nature, modern slavery exists in the corners of the economy that may be difficult to see. Forced labor often involves shifting migrant communities and is often associated with seasonal work; in contrast to some earlier models of chattel slavery, modern slavery can be transitional and temporary. The use of subcontract labor via agencies and gangmasters often means that the use of forced labor is obscured from view: Bayer et al. (2018) point out that—despite its prevalence—forced labor per se may represent only a tiny fraction of global gross domestic product (they estimate a figure of less than 0.07 percent).

(p. 103) (p. 104) The empirical question of the prevalence of modern slavery is matched by the theoretical challenge of its interpretation. A crude comparison of two (slightly exaggerated) positions serves to illustrate this point. First, consider a perspective (call it Worldview A; see Table 6.2) that sees modern slavery as a criminal aberration—deviant behavior that needs to be eliminated from an otherwise virtuous system: Stringer and Michailova (2018) refer to the idea of slavery “creeping in” to the value chain. The moral failure lies squarely at the direct point at which the worker is exploited, and so efforts must be made to eliminate the bad practices and rescue the victims. In this view, exploited people tend to be treated as passive, helpless, and devoid of agency, and once people are “saved,” they are not really of moral concern. This view leads to a particular set of approaches for companies: big buying firms need to be vigilant that unscrupulous suppliers in the chain do not “cheat”; this entails making clear statements about their abhorrence of forced labor and imposing bureaucratic systems to ensure their policies are respected by all those in the supply base. It fosters an approach in which firms might take sourcing decisions to avoid those parts of the world in which the criminality of slavery is likely to persist. A company that discovers it has slavery in its supply chain, despite its clear policies and sensible procurement processes, is itself a kind of victim. From this worldview, consumers and investors need to be cognizant of the risks of modern slavery in firms' supply chains, taking their custom and money to those firms with the best policies and the most convincing spiel about their abhorrence of exploitation.

Table 6.2. Two Worldviews of Modern Slavery

	Worldview A	Worldview B
Character of modern slavery	Criminal aberration	Inherent to capitalist system
Characterization of victims	Helpless victims who need salvation/rescue	People who need rights and reform of sociopolitical and economic contexts
Actions for governments	Regulation—hard and soft; criminal prosecution	Social and economic policies relating to development, welfare, poverty, and immigrant rights
Actions for companies	Addition of corporate social responsibility policies to normal business practice	Transformation of business models, procurement, and operations strategies
Actions for consumers	Use of market pressure to favor cleaner goods and more diligent companies	Campaigning engagement with corporations and governments
Tools for change	Audit, certification, labeling, shopping	Politics

An alternative perspective (call it Worldview B) sees slavery as inherent to the global system and—rather than being the result of deviance—as hard-wired into normal (p. 105) economics. Powerful buying companies are not the hapless victims of nastiness beyond their control; they are complicit participants in a system that makes modern slavery inevitable. This is most clearly manifested in the way in which the power of huge companies drives down prices and makes it effectively impossible for exploitation to be avoided. In this view, the efforts of companies to improve the lot of people at the far end of the supply base are often gestural, and, even when conducted in good faith, they operate against a wider economic gravity that pulls the poor back down. The system is rigged to continually drive down standards in the search for lower costs. Levent et al.'s (2018) detailed study of the hazelnut supply chain shows compelling evidence that the issues faced at the bottom of the chain result from structural issues—simply, not enough of the money flows to the workers at the end of the chain. Furthermore, in this view, companies' activities beyond their core operations are significant: powerful firms are inevitably substantial politi-

cal actors playing a role—tacitly or explicitly—in supporting oppressive regimes and discouraging legal and social improvements that could empower or protect vulnerable people. So, for example, Apple and Walmart’s involvement in efforts to improve the working conditions in supplier factories in China and elsewhere do not go as far as using their considerable influence to campaign for real collective bargaining rights. In the United States and the United Kingdom, large corporations that make a public display of their opposition to modern slavery have been complicit in supporting a political zeitgeist in which hostility to immigration has exacerbated and even encouraged modern slavery (Crane 2013; O’Connell Davidson 2015; Peksen, Blanton, and Blanton 2017). This view also takes a broader view of the agency of the exploited, allowing for a richer, more human narrative: if people are removed from conditions of slavery, then it matters what happens next.

Transparency in Supply Chains

The notion that increased transparency is a useful response to the problem of modern slavery in supply chains has achieved considerable international momentum, resulting in the introduction of a range of legislation in different jurisdictions. The discussion here focuses on three landmark initiatives: the California Transparency in Supply Chains Act (TISCA, 2010, effective from 2011; see Koekkoek, Marx, and Wouters 2017), the supply chain transparency clause (section 54) in the United Kingdom’s 2015 Modern Slavery Act (MSA; see Voss et al. 2019), and the Australian Modern Slavery Act of 2018. Although they differ in details, they share an approach that requires companies to produce accounts of their efforts to eliminate forced labor and modern slavery from their supply chains.² Table 6.3 presents a nonexhaustive comparison: there are other differences (for example, the Australian act applies to public bodies, an issue that is under review in the United Kingdom as part of a wider consultation under way at the time of writing). The UK and Australian initiatives share the same broad ambitions and underlying logic of the pioneering California act: “to ensure that large retailers and (p. 106) (p. 107) (p. 108) manufacturers provide consumers with information regarding their efforts to eradicate slavery and human trafficking from their supply chains, educate consumers on how to purchase goods produced by companies that responsibly manage their supply chains, and, thereby, improve the lives of victims of slavery and human trafficking” (Office of the Attorney General 2019).

Table 6.3. Broad Comparison of Three Major Supply Chain Transparency Initiatives

	California Transparency in Supply Chains Act (SB 657), 2010	Section 54 of UK Modern Slavery Act, 2015	Australian Modern Slavery Act, 2018
Organizations required to report	<ul style="list-style-type: none"> • Do business in California • Have annual worldwide gross receipts exceeding \$100 million • Are identified as manufacturers or retail sellers on their California state tax returns 	<ul style="list-style-type: none"> • Carry on a business, or part of a business, in the United Kingdom; • Supply goods or services; and • Have an annual turnover of £36 million or more 	<ul style="list-style-type: none"> • Has a consolidated revenue of at least AUD\$100 million over its twelve-month reporting period; • Is an Australian entity at any time in that reporting period; or • Is a foreign entity carrying on business in Australia at any time in that reporting period
Requires reporting by	Not specified	A director, member, or partner of the organization	"The principle governing body of the reporting entity"
Frequency	One-off	Annual	Annual

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Publication by	Prominent display on website	Prominent display on website	Submission to official register
	<p>Verification: To what extent the firm engages in verification of product supply chains to evaluate and address risks of human trafficking and slavery (specifying if verification is not conducted by a third party)</p> <p>Audits: To what extent the firm conducts audits of suppliers to evaluate compliance with company standards for trafficking and slavery in supply chains, specifying if the verification was not an independent, unannounced audit</p>	<p>The statement must give an explanation of steps the organization has or has not taken to ensure that slavery and human trafficking are not taking place:</p> <ul style="list-style-type: none"> • in any of its supply chains • in any part of its own business <p>This may cover:</p> <ul style="list-style-type: none"> • the organization's structure, its business, and its supply chains; • its policies in relation to slavery and human trafficking; • its due diligence processes in relation to slavery and human trafficking in its business and supply chains; 	<ul style="list-style-type: none"> • Identify the reporting entity • Describe the reporting entity's structure, operations, and supply chains • Describe the risks of modern slavery practices in the operations and supply chains of the reporting entity and any entities it owns or controls • Describe the actions taken by the reporting entity and any entities it owns or controls to assess and address these risks, including due diligence and remediation processes

	<p>Certification: To what extent, if any, the firm requires direct suppliers to certify that materials incorporated into the product comply with slavery and human trafficking of the countries in which they are doing business</p> <p>Internal accountability: To what extent the firm maintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking</p>	<ul style="list-style-type: none"> • the parts of its business and supply chains where there is a risk of slavery and human trafficking taking place and the steps it has taken to assess and manage that risk; • its effectiveness in ensuring that slavery and human trafficking are not taking place in its business or supply chains, measured against such performance indicators as it considers appropriate; • the training and capacity building about slavery and human trafficking available to its staff 	<ul style="list-style-type: none"> • Describe how the reporting entity assesses the effectiveness of these actions • Describe the process of consultation with any entities the reporting entity owns or controls (a joint statement must also describe consultation with the entity giving the statement) • Any other relevant information
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	Training: To what extent, if any, the retail seller or manufacturer provides company employees and management who have direct responsibility for supply chain management training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products		
<i>Sources:</i> Information from Harris (2015); UK Home Office (2018); Australian Department of Home Affairs (2019); von Spiegel (2019).			

In the debates leading up to the introduction of these initiatives, it was assumed that the desired process of improvement would be driven not just by the direct decision-making of consumers, but also by more complex processes involving civil society and the financial system: “Government was clear that it would be for consumers, investors and Non-Governmental Organizations (NGOs) to monitor compliance and apply pressure on businesses” (UK Secretary of State 2019, 39). Transparency has come to be seen as an important means of controlling companies: a vast literature has explored the ways in which the transparency can provoke interactions between organizations and activists to lead to beneficial change (see Tapscott and Ticoll 2003; New 2010). The idea is central to the idea of the private regulation of supply chain practice (Locke and Romis 2007; Vogel 2010) in which NGOs and journalists become pivotal in holding corporations to account. Firms make claims and promises to virtue and are held to account by those who can bring failures to public attention, a line of thinking epitomized in Louis Brandeis’s famous (1913) dictum, “sunlight is the best disinfectant and electric light the best policeman.” In this way, governments “subcontract” the regulation of firms; rather than dealing with the

messy and complicated business of direct oversight, the state merely legislates that firms release specified information on which the “market” can act (Mayer and Phillips 2017). For governments, mandated transparency can appear as “a kind of magical minimalism that delivers significant rewards at little cost” (Estlund 2010, 354).

The initiatives in Table 6.3 have received much criticism (the Australian version has not yet been in place long enough for substantial analysis); the UK’s legislation is (at the time of writing) under formal review (UK Secretary of State 2019; UK Home Office 2019a, 2019b). Overall, the problems identified are that the lack of substantial sanctions for non-compliance have meant many firms have not published the statements at all (Greer and Purvis 2016; Greer 2017); the statements are of variable depth and quality, with many not meeting the formal requirements for access and availability; and even those statements that technically meet the legal requirements sometimes do not provide meaningful or useful information (Idris 2017; Bloomfield and LeBaron 2018; FLEX 2018; ICAR/FLEX 2019; New 2015; Theron 2019). In a review of 1,961 TISCA statements, Bayer and Hudson (2017) found patchy responses to the requirements, although noting some improvements since the previous year (see Figure 6.2). A CORE alliance report (CORE 2017) provides a review of leading companies’ MSA statements in regard to commodities considered particularly likely to entail forced labor, comparing these with firms’ other supply chain and transparency initiatives and policies. Stevenson and Cole (2018) reviewed 101 MSA statements in the clothing and textile sector and generated the schema shown in Table 6.4; although the numbers in this study were too small to make meaningful generalizations about the distribution in these categories, the authors observe that only a few organizations in their sample were judged to be exemplary. The more extensive report on MSA statements by Bayer et al. (2018) analyzes statements by (p. 109) (p. 110) 1,661 organizations (estimated as 38 percent of the population of organizations obliged to report). This larger study uses a systematic methodology to analyze the strengths and weaknesses of the statements and identifies four measures of quality: “legal disclosure compliance” (whether the statements meet the letter of the law); “disclosure conformance” (the extent to which the statement covers topics suggested by the government guidance); “anti-slavery/anti-human trafficking (AS/AHT) good practice” (which assesses the coverage of thirty-two specific topics considered relevant, including, for example, value chain mapping and whistleblower channels and grievance mechanisms); and “transparency indicators” (covering more detailed explanations of specific processes). Systematic scores are generated for statements under the first three of these measures, and the report contains numerous imaginative presentations of the data. However, it could be argued that the scale and rigor of the analysis eventually works against clarity. Although this type of analysis may in time be useful for showing trends across industries, the overall conclusion is essentially the same as most of the other reviews: the statements are very patchy and often fail to provide detailed information. Ras and Gregoriou (2019) take a different approach by examining in detail the language used in three UK high street retailers’ MSA reports, concluding that the reports are dominated by assumptions reflected in Worldview A in Table 6.2: “modern slavery is...conceptualised as a substance that spreads and must be fought.” Other criticisms of the TISCA/MSA approach include

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the idea that such legislation “crowds out” alternative, more rigorous alternatives that entail stricter notions of liability for firms: LeBaron and Rühmkorf (2019) outline the corporate lobbying efforts made to ensure that the MSA avoided this. Altschuller (2016) describes how TISCA can provide legal cover to companies (“safe harbour”) in that it provides a way for firms to claim that the requirements for revealing information about forced labor in supply chains are already covered by legislation, thereby sidestepping actions that might be brought under tort law.

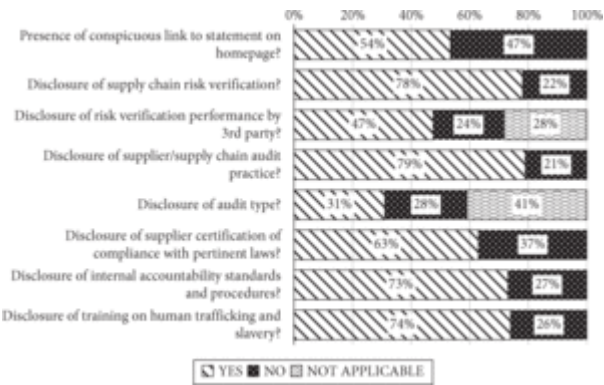


Figure 6.2. Extent of compliance with the California Transparency in Supply Chains Act from a sample of 1,961 statements in 2016.

Reproduced with permission from Chris N. Bayer and Jesse H. Hudson, *Corporate Compliance with the California Transparency in Supply Chains Act: Anti-Slavery Performance in 2016*, figure 5: Disclosure compliance indicators, page 34, © 2017 Development International.

Table 6.4. Stevenson’s and Cole’s (2018) Categorization of 101 Statements from Clothing and Textile Firms Made in Response to the UK’s Modern Slavery Act	
“Compliance only”: In a study of 101 firms in the clothing and textile sector, 35% of statements were in this category	Firms make short, often defensive statements that do little other than meet the requirements of the legislation, point to policies, or indicate a firm is committed to (not knowingly) allowing modern slavery to take place within its operations or supply chains.
“Structured compliance”	Firms go further and seek to broadly adhere to the six guidance areas outlined by the legislation.
“Transparent, soft remediation”	Firms open up more and emphasize a particular commitment to working with suppliers to address modern slavery concerns.
“Transparent, hard remediation”	Firms put a stronger emphasis on zero tolerance and relationships being terminated should serious modern slavery violations be uncovered.
“Ethical leader”: In a study of 101 firms in the clothing and textile sector, 2% of statements were in this category	Firms provide genuine leadership in the presentation of modern slavery statements and toward supply chain transparency.

Transparency in Practice

Table 6.5 describes the content of three TISCA statements selected to bring out specific points for this discussion: they are not a random sample, but they serve here to illustrate some generally applicable points. The main thrust of the discussion here will focus on Nestlé USA, the US arm of a giant Swiss-based multinational food company. An interesting contrast is provided by Krispy Kreme, a US fast food company that operates across the world in a complex mix of directly owned and franchised operations, serving doughnuts, cookies, coffee, and related products. Hillsdale Furniture is a US-based manufacturing business. Nestlé USA’s TISCA statement is substantially more comprehensive than the

other two—too long to fit into Table 6.5 or to quote in full here. This sophistication is not surprising, given the firm is part of a vast multinational corporation with over 300,000 employees³ and over 165,000 direct suppliers and that it draws on the production of 695,000 individual farmers worldwide.⁴ The US operations (p. 111) (p. 112) (p. 113) (p. 114) (which include Nestlé USA and seven other companies) include three hundred US locations across thirty-six states, including seventy-nine manufacturing plants, employing 48,000 people.⁵ In contrast, Krispy Kreme is much smaller, although the material provided by its suppliers include many commodities (for example, sugar, coffee, and chocolate) in common with Nestlé. Hillsdale is much smaller again, although like Krispy Kreme it is privately owned, and although it is relatively difficult to obtain exact turnover information for private companies, it appears that the sales of the firm are well below the threshold at which reporting under TISCA is a legal requirement; the production of the statement appears to be a voluntary act.

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Table 6.5. Three Comparisons of Three Statements from the Transparency in Supply Chains Act

	Companies must disclose on their website to what extent they do the following	Nestlé USA (https://www.nestleusa.com/about-us/supply-chains-act)	Krispy Kreme, Inc. (https://www.krispykreme.com/legal/sb-657-supply-chains-act)	Hillsdale Furniture, LLC (https://hillsdalefurniture.com/Main/Home/CaliTransparency-Act)
		Food, beverages, confectionery	Fast food (doughnuts and coffee)	Manufacturer of home furnishings products
		\$9.7 billion turnover (2014)	\$519 million turnover (2016)	\$18-\$48 million turnover (2018 estimated)^a
		Subsidiary of Nestlé SA	Privately held since 2016 by JAB Holding Company	Privately held: Brookside Equity Partners along with management^b

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1	<p>“Engage in verification of product supply chains to evaluate and address risks of human trafficking and slavery”</p>	<p>A 552-word statement that covers the link to the Nestlé Supplier Code (8-page document, dated December 2013—which itself links to an array of further documents). Discusses links to the Supplier Ethical Data Exchange and the Fair Labour Association.</p>	<p>“We do not engage in verification of product supply chains to evaluate and address risks of human trafficking and slavery...”</p>	<p>“Our products come from partners all over the world, including suppliers and manufacturers located in the United States and abroad. We require our suppliers and manufacturers to certify in writing that they do not engage in human trafficking or slavery in their employment. Our independent inspection agents visit the operations of our suppliers, and are asked to be alert to any signs of human trafficking or slavery, and to report the same to us.”</p>
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2	“Conduct audits of suppliers”	“Nestlé reserves the right to verify our Supplier’s compliance with the Nestlé Supplier Code. Nestlé confirms compliance with the Nestlé Supplier Code through either a combination of third party certifications or a Responsible Sourcing Audit conducted by a third party. In the event that Nestlé becomes aware of any actions or conditions not in compliance with the Nestlé Supplier Code, Nestlé reserves the right to demand corrective measures. Nestlé reserves the right to terminate an	“...nor conduct audits of suppliers to evaluate supplier compliance with company standards against trafficking and slavery in supply chains.”	“Hillsdale does not conduct audits itself, but from time to time audits are conducted by third parties at the request of Hillsdale’s retail customers. Our inspecting agents also inspect every shipment and visit the more than 50 factories of our vendors worldwide, and they have been asked to be aware of signs of human trafficking and slavery and to report any observed issues or violations.”
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3	<p>“Require direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the countries in which they are doing business”</p>	<p>agreement with any supplier who does not comply with the Nestlé Supplier Code.”</p>	<p>“We do not require direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.”</p>	<p>“Hillsdale’s suppliers must certify in writing that they do not engage in human trafficking or slavery, and that they are in compliance with all current and later adopted laws of the exporting country and the country in which the goods are produced governing child and involuntary labor. Hillsdale maintains these records.”</p>
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4	"Maintain accountability standards and procedures for employees or contractors that fail to meet company standards regarding slavery and human trafficking"		"We do not maintain internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking..."	"Hillsdale recognizes that it must hold our suppliers accountable for compliance with our standards, including our strict prohibition on forced labor of any kind. If suppliers are found to have engaged in human trafficking or slavery, they will be required to correct the situation. If they fail to do so, they will no longer serve as a supplier of Hillsdale."
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5	"Provide employees and management training"	Explains that the Nestlé Corporate Business Principles were provided to 280,000 by the end of 2010, accompanied by learning and training tools, and describes a further training program that was rolled out in 2011.	"...nor do we provide company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products."	"Hillsdale does not provide any specific training regarding human trafficking and slavery to our employees, suppliers, or manufacturers."
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		Additional information	The statement links to the Nestlé Corporate Business Principles document and emphasizes the firm's support for the United Nations Global Compact's guiding principles.	<p>"Krispy Kreme is in compliance with the California Transparency in Supply Chains Act (S.B. 657)."</p> <p>"As a company philosophy, Krispy Kreme strongly opposes any and all illegal and unethical treatment of people, including any acts of slavery or human trafficking."</p>	<p>"Hillsdale Furniture LLC is committed to working with suppliers and manufacturers that provide fair and ethical working conditions by upholding the human rights of all workers. We will not knowingly work with any company that does not comply with those standards."</p>
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(^a) Lower figure from <https://www.owler.com/company/hillsdalefurniture>; higher figure from <http://www.hoovers.com>.

(^b) S&P Capital IQ.

The other initial point of comparison between the statements is that Krispy Kreme's statement meets the requirements of the act by stating that the firm does not do anything in particular about modern slavery; the act demands you say what you do, and so the statement complies with the act. The interesting data point here is that the firm appears to have been unaffected by this approach; there appears to be no trace of any substantial activist response or adverse media coverage, despite the approach being discussed online by the NGO Know the Chain (Marcum 2014) and in the academic literature (New 2015).

Nestlé is interesting for this discussion because the statement needs to be read in context: the wider firm has received serious criticisms of its approach on a range of ethical issues, most notably in relation to its marketing of infant milk formula in Africa (Muller 2013). Other scandals and controversies have included demanding payment from Ethiopia in 2002 for assets nationalized twenty-five years earlier, a move widely condemned as astonishingly inept (Alsop 2006). In 2000, the chief executive officer (mis-speaking) was quoted as saying that access to water should not be treated as a human right, a comment considered insensitive given disputes about the firm's operations taking water from disadvantaged communities and also given that the firm is a major producer of bottled water (Muir 2013). The firm also has come under fire for a number of doubtful marketing claims: for example, in 2008 it was criticized for a Canadian advertising campaign that declared, "Bottled water is the most environmentally responsible consumer product in the world," a statement that appeared to rely on infeasible and incorrect assumptions about plastic recycling (Mittelstaedt 2008); also in 2008, an advertisement for Maggi noodles made unjustified claims about their health benefits (Hickman 2008). The firm's suppliers have been connected with deforestation related to the production of palm oil (Gore-Langton 2017): the firm's nonsubmission of a time-bound action plan was the main cause of Nestlé's temporary suspension from the Roundtable on Sustainable Palm Oil for a few weeks in 2018.⁶

Palm oil production in Malaysia is one of several commodities in which Nestlé has faced the issue of slave labor in their supply chain (Whoriskey 2019); other areas have included shrimp fishing in Thailand (Kelly 2016), cocoa production in Ivory Coast (Christophi 2018; Brueggemann 2019), and coffee production in Brazil (Hodal 2016). In some quarters, the way the firm has publicly acknowledged these risks has received plaudits (Sky News 2015; Askew 2017). However, the company has continued to struggle (p. 115) with reputational issues: campaigns about the firm's approach on issues raised decades earlier remain active. Forty-five years after the initial infant milk scandal, the firm is still in the midst of controversy (Save the Children 2018; Changing Market Foundation 2019). Indeed, in 2018, the activist website Ethical Consumer reported that the firm had been voted the least ethical company in the preceding twenty-five years (Hunt 2018).⁷ Boyd (2012) goes so far as to argue that the firm's culture could be intrinsically problematic. He documents how former Nestlé managers went on to be involved in a surprising number of other (non-Nestlé) corporate scandals: "viruses" in an "epidemiological process" that contaminated other organizations.

Supply Chain Transparency as Impression Management

On a superficial reading, the Nestlé USA TISCA statement provides a good example of the impressive-sounding commitments that one would expect from a sophisticated global firm. The statement says that the “Nestlé Corporate Business Principles are at the basis of our company’s culture” and that the firm “commits to foster responsible practices in the supply chain.” The statement explains that the firm follows “The Nestlé Supplier Code.” The statement discusses the firm’s membership in the Supplier Ethical Data Exchange; its partnership with the Fair Labour Association and a Fair Labour Association report that examined its cocoa supply chain in Côte d’Ivoire; and its support of the United Nations Global Compact. It goes on to discuss employee training, giving details of various programs. It concludes with the statement, “Our basic foundation is unchanged from the time of the origins of the company, and reflects the basic ideas of fairness, honesty, and a general concern for people.”

The Nestlé USA TISCA statement, then, can read as an example of a kind of corporate virtue signaling—the precise content matters less than the fact that it seems broadly impressive. However, a closer reading reveals some problems: several of the weblinks on the page do not work, and the materials referenced point to documents that are significantly out of date (see Figure 6.3). The link to the Corporate Business Principles is broken (which, given the firm’s troubled reputation, could be seen as ironic), as is the link to the Supplier Ethical Data Exchange and the action plan on cocoa. The link to the Supplier Code does work, taking the reader to an impressive five-page 2013 document that sets out four “pillars” of supplier conduct (human rights, safety and health, environmental sustainability, and business integrity) with a space at the end for the supplier to sign to show commitment to the policy. However, the document itself contains out-of-date references and provides a nonworking weblink and a nonanswering telephone number for reporting violations of the code. The link to the Fair Labour Association works but takes the reader to a much more recent study than the one mentioned in the TISCA statement. Attentive reading shows that the training courses that (p. 116) have been undertaken were conducted in 2010 and 2011—with no information about what happened in the intervening eight years. One of the features of the TISCA legislation is that it does not require the published statements to be annually updated (unlike the UK and Australian versions); it seems likely that this is the original statement posted when the legislation came into force.

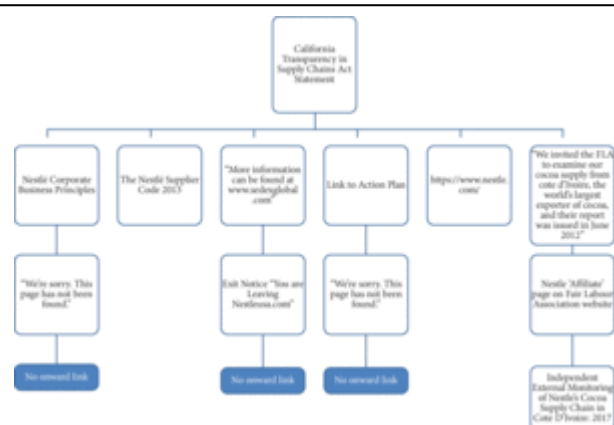


Figure 6.3. Link map of Nestlé USA's California Transparency in Supply Chains Act statement.

In contrast, examination of the Nestlé main corporate website (<https://Nestlé.com>) reveals that in recent years the global parent firm has undertaken extensive revision to its policies, with a wide range of relevant new policies, projects, and initiatives. They are discussed in many documents and web pages, the most important of which for the current discussion is the 23-page *Nestlé Responsible Sourcing Standard* (“As of July 1st 2018, it replaces previous versions of the Nestlé Supplier Code, as well as the Nestlé Responsible Sourcing Guideline and the Nestlé Commitment for the Responsible Use of Agricultural Raw Materials. Any references to these documents should be considered as references to the Standard”⁸). The range of information available on Nestlé’s policies and initiatives is very wide, and even for the most dedicated reader, it is overwhelming. For example, the 2015 report *Creating Shared Value and Meeting Our Commitments* is 351 pages. The 2018 version of the report is briefer, but still is 60 pages, with a typical page containing more than 600 words. A reader interested in modern slavery—with persistent clicking—can find the 3-page 2018 *Nestlé Action Plan on Labour Rights in Palm Oil Supply Chains*;⁹ the 22-page 2017 *Labour Rights in Agricultural Supply Chains: A Roadmap*;¹⁰ the 29-page 2017 *Tackling Child Labour Report*;¹¹ the 6-page 2015–16 (p. 117) *Responsible Sourcing of Seafood Action Plan for Thailand*¹² and the 1-page 2016 *Action Plan to Tackle Seafood Supply Chain Abuses*¹³ and its 2-page 2017 *Thailand Action Plan Update*;¹⁴ an extensive subwebsite on Nestlé’s branded “Cocoa Plan”;¹⁵ online resources for human rights training;¹⁶ specific webpages on labor conditions in Brazil’s coffee supply chain¹⁷ and human rights in the value chain;¹⁸ and documents from the industry body the Consumer Goods Forum, including the 2018 71-page *Business Actions against Forced Labour*¹⁹ and the 77-page 2018 Fair Labour Association report *Assessing Forced Labor Risks in the Palm Oil Sector in Indonesia and Malaysia*.²⁰ This list is by no means exhaustive. The firm was ranked fifth in the Know the Chain’s 2018 ranking of thirty-eight of the largest global food and beverage firms on their forced labor policies (Know the Chain 2018).

This extraordinary range of information was complemented in 2019 with the release (for the first time) of substantial information about the firm’s supply base, with the names of

suppliers and information about geographic origin being published for several categories, including dairy products²¹ and palm oil.²²

These observations present a puzzle: If the wider Nestlé organization is so active in regard to the risks of modern slavery in the supply chain, why is the Nestlé USA site so out of date? It is not likely that the differences reflect substantial variances in practice: Nestlé does not have separate supply chains for its national companies. The mystery here is about presentation. There are a number of plausible hypotheses, the most obvious being simple human error; however, the fact that this could be an error that has not been addressed over several years implies that few, if any, people, either within Nestlé or in the public at large, are particularly paying attention²³—which raises the question as to the extent to which the statements have value in the first place. It is almost as if the Nestlé USA site serves as a kind of experiment to show how creaky a presentation you can get away with.

Both the Hillsdale and the Nestlé TISCA statements use imprecise and vague language. Nestlé “reserve the right to verify our Supplier’s compliance” and if they find something bad, they “reserve the right” to do something about it. Strictly speaking, it is difficult to know what this means: it appears to be equivalent to “may verify” (i.e., Nestlé is saying, “We’ll do this if we want to, or if there are particular—but unspecified—circumstances”). It does not say they will. Because it is obvious that Nestlé is not going to audit all its 165,000 direct suppliers (let alone the vast network of firms beneath them), the crucial piece of information that would be needed would be the *extent* of the application of this vigilance. Without this information, this part of the statement is essentially empty. The Hillsdale statement has similar ambiguities: audits are carried out “from time to time.” The statement “Our independent inspection agents visit the operations of our suppliers” can be strictly true without meaning that all the suppliers, or all the operations of any given supplier, are in fact visited, and the ambiguous use of the present tense (the frequency is not explained) means that the statement is unclear. The claims made are designed to give the impression of what is normal and extensive practice, but the words could be technically correct even if very little was occurring. This seems to be an example of “strategic ambiguity” and “assertorial lightness” (Eisenberg 1984; (p. 118) Eisenberg and Witten 1987): Bennis, Goleman, and O’Toole (2008, 4) comment that firms’ public espousal of transparency can be “hollow if not Orwellian.” Although the information provided across the Nestlé.com site is vastly more detailed, the general mode of presentation is similar: “this is what we do” is presented as if it indicates something in between “this is what we do always” and “this is what we do normally,” but with sufficient linguistic flexibility to allow for it to mean “this is what we do occasionally.”

The conclusion to be drawn from this part of the discussion is that the TISCA statements here do not appear to be working along the lines of the ostensible first-order purpose—to give consumers or other stakeholders meaningful information about how the firms are managing the risk of modern slavery in their chains. Firms with nothing positive to say on the matter can publish empty statements with impunity; firms with (perhaps) a lot to say can choose not to bother to keep their statements up to date and no one notices. Firms

can use vague language and the fact that they exercise some vigilance as a way of avoiding spelling out how much. Although this discussion has focused on TISCA statements, the same issues can be found in responses to the MSA. The legislation has failed to produce a mechanism by which the statements can be used to meaningfully differentiate firms. However, this is not the only potential mechanism at work; can the statements be a way in which civil society can hold firms to account? The most crucial weakness of the construction of transparency in the TISCA and MSA legislation is that it originates from—or at least reflects—the approach represented as Worldview A in Table 6.2. The requirement for firms to report on their own policies and procedures is essentially a *transparency of intent*. This makes sense if the fundamental premise is of noble organizations striving to eliminate criminal aberrations from normal practice, but is likely to make little headway in regard to the systemic issues reflected in Worldview B. To develop an approach to transparency that might be more effective, it is necessary to consider what is being revealed and how.

Different Perspectives—Different Transparencies

Instead of policies to promote potentially contentless virtue signaling, firms should be steered toward a type of transparency that enables civil society actors (activists, trades unions, researchers, journalists) to understand the detail of firms' operations and to challenge them on what they actually do. This approach—which I label *interrogational transparency*—would demand enough information for firms' supply chains to be analyzed in a systemic way. This means major firms would reveal not just their broad plans and intentions, but also detailed information about operations and finances. To illustrate, rather than vague aspirations to eliminate exploitation, firms would be required to spell out exactly what people at the bottom of the chain are paid and what freedoms for collective action they have.

This approach would allow an understanding of a firm's supply chain that would, for example, reveal how value and reward are distributed among supply chain actors. It would enable trends to be tracked, for firms to be held accountable against promises and targets, and for comparison to be made horizontally between similar firms. The early stages of what may be a shift toward this type of transparency is already under way and (p. 119) can be seen by the recent public disclosure of partial supplier lists by major firms (including Nestlé). However, to be workable, at least three obstacles to interrogational transparency need to be addressed.

Defining the Chain

First, regulations need to specify with precision what is meant by a *supply chain* and to spell out clear principles for allocating responsibility to supply chain actors. This opportunity for obfuscation or even deceit is exacerbated by the lack of any coherent definition of what a supply chain is or what is meant by *suppliers*. The US, UK, and Australian legisla-

tion all shies away from any kind of technical definition, and much of the public discourse in this area works on what seems to be a tacit agreement that hard questions about what is actually being talked about will be politely brushed aside. The idea that the idea of the supply chain can be strategically deployed and is a socially constructed (and therefore malleable) concept is examined in my earlier work (New 2004a, 2004b). In particular, despite the bald injunctions that as a first step to eliminating modern slavery firms should “map their supply chains,” it is not clear what this means. There are two main problems when this is understood in the context of modern slavery: What chain are we talking about, and to what extent is a firm responsible?

Firms often have many suppliers providing many types of goods and services: in many discussions of supply chains, the complexity of this is ignored, because there is a narrow focus on suppliers that are “significant” to the firm for a specific question (New 2004a). Supply chains can be construed as the flow of material or web of commercial relationships (Borgatti and Li 2009), but even within the “material flow” view there is a tendency to focus only on a subset of the full story. Thus, in a discussion of the car industry, suppliers who provide production parts are likely to be the focus of attention, but other types of suppliers (for example, those who provide capital equipment, maintenance repair and operating supplies, energy, or information or facilities services) may not be paid much attention. For food companies like Nestlé, there is a natural focus on the food ingredients themselves, even though an examination of the cost structure of the products concerned means that, say, the cocoa in a chocolate bar is a relatively tiny component compared to, say, the total, which includes packaging, marketing, and logistics costs. Buying coffee at a Krispy Kreme outlet may lead us to reflect on the “coffee supply chain”—but this (wrongly) valorizes the production of the coffee itself over the cup, sugar, milk, plastic stirrer, napkin and water, and associated packaging (Hellström and Saghir 2007). It may be that, for certain purposes, the focus on a single, easy-to-visualize commodity is sensible, but it does not necessarily reflect the real chain of impact that can be traced from a given product or service. This is significant in the context of modern slavery, because the particular supply chains that may be of strategic significance to the firm (for example, in relation to cost and quality management) may not be the ones in which forced labor is the most likely. For example, Nestlé’s concerns on forced labor risks (as reflected in their various initiatives and (p. 120) documents) appear to be prioritized on developing countries where there are clear risks; relatively little attention is paid to the idea of “hidden” modern slavery, which can occur in developed countries (for example, in the context of distribution, office cleaning, and construction; Danish Centre against Human Trafficking 2014). Similarly, in Nestlé’s published material, modern slavery and human rights issues are framed as issues to do with some food supply chains, but not, for example, packaging—even though there are substantial concerns about risks in that industry (including, but not limited to, recycling; Edie 2017; Williams 2019).

Another aspect of the same basic point is that the use of “the supply chain” in public (or even academic) discourse frequently brushes aside the question of just how many steps down (or upstream, depending on the metaphor in use) the chain it is sensible to consider. For simple agricultural goods, it is common to find some version of the idea of “from

farm to fork”: this sounds like an appealingly simple idea, but it is logically flawed. Why stop at the farm? Why not continue to the fertilizer manufacturer or the animal feed or the veterinary pharmaceuticals? In many situations, each supplier will have hundreds of suppliers themselves, and so on: At what point in this ever-expanding web does a firm’s responsibility peter out? In those situations where even distant suppliers remain dependent on a specific end customer (for example, a collection of cocoa farmers whose output is entirely taken by Nestlé), then it may be sensible to attribute some element of moral sensibility to that firm. Most situations, however, are not clear cut, and so the social attribution of responsibility ends up being based not on objective criteria, but on relatively arbitrary routines: when concerned about slavery in electronics supply chains, it becomes more of an issue for, say, Apple, rather than Walmart (which sells iPhones), even though Apple’s suppliers (for example, Samsung) might be the source of the relevant components.

For modern slavery, the “What supply chain are we talking about” question is significant: because the exploitation is criminal and morally repugnant, firms have a strong incentive to look the wrong way. Because it often occurs in the neglected parts of supplier firms’ suppliers’ operations (for example, migrant, contract, and seasonal labor), it is relatively easy to ensure that the information reported focuses on the favorable, or at least where a favorable narrative of improvement can be spun. Furthermore, there is an incentive for firms to configure their supply chain arrangements such that exploitative arrangements can be veiled from view through, for example, subcontracting arrangements (Weil 2014; LeBaron et al. 2018).

Systematic Revelation

Second, regulations need to specify in more detail exactly what information needs to be presented and in what format. In the current approach to supply chain transparency, the choice of what information to present is entirely chosen by the firm. It therefore becomes difficult for the reader to draw robust conclusions. Hess (2019) emphasizes how selective disclosure undermines transparency, regardless of the amount of data presented. (p. 121) Indeed, in Nestlé’s case there is a sense in which the volume of data presented on its main corporate site acts to dazzle rather than illuminate (Paredes 2003; Brunton and Nissenbaum 2013), following what Marshall et al. (2016) describe as a “distraction strategy” and what Stohl, Stohl, and Leonardi (2016) cast as “strategic opacity.” However laudable, the processes deployed to avoid slavery in the chain are reported selectively, and the measures chosen to indicate success of these processes are arbitrary and open to manipulation. Even the involvement of respected NGOs such as the Fair Labour Association to generate reports does not really address this problem; firms normally engage these external parties in ways that focus their reporting along tightly controlled lines. There is a complex political process in which NGO involvement, although potentially helpful in terms of transparency (Islam and Van Staden 2016), necessarily involves some element of “capture” (Soederberg 2007). The lack of consistency and standards in supply chain

transparency makes the task of interpretation difficult and leaves considerable scope for firms to dissemble.

Changing Notions of Corporate Secrecy

Third, interrogational transparency requires a substantial shift in the mindset of firms about the idea of secrecy and competition: if details of their operations are available to civil society, then they will also be available for competitors. This presents a significant challenge, and certain sectors (for example, defense) may require regulation to be carefully constructed so that operational transparency does not compromise security. However, in general, traditional concerns are made less important by the way in which new technologies have opened up information: if a competitor wanted to know the identity of your suppliers, they could probably find out; if regulation was applied even-handedly, then openness provides no competitive disadvantage to any one company. If citizens and consumers are the subject of “surveillance capitalism” (Zuboff 2019), then why not companies?

Conclusion

The challenge of modern slavery is political. It will not be solved by modest additions to corporate reporting or by ethical shopping by occasionally attentive consumers. But there is a chance that new approaches to corporate transparency—of operations, not intent—may play a part in tackling this problem. This must be seen as part of a broader story about how society finds ways of regulating emerging forms of global capitalism. The challenge, however, is not just to force firms to reveal information, but also to strengthen the institutional mechanisms (including activism, journalism, and academic research) that can use it to hold firms to account.

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Notes:

(1.) A useful definition is provided by Phung and Crane (2018: 181): "Modern slavery in the context of business exists when an individual or organization exercises (1) control over a human being via (2) coercion and menace of penalty to extract work or services for the purpose of (3) economic exploitation and results in (4) the dehumanization of said human being and (5) the deprivation or restriction of their freedom."

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- (2.) Some organizations, such as Coty, provide a single document to address both the UK and the California acts. https://www.coty.com/sites/default/files/California_Transparency_in_Supply_Chains_Act_of_2010_disclosure_and_United_Kingdom:Modern_Slavery_Policy.pdf
- (3.) <https://www.nestle.com/ask-nestle/our-company/answers/how-many-people-work-at-nestle>.
- (4.) <https://www.nestle.com/aboutus/suppliers>.
- (5.) <https://www.nestleusa.com/about-us>. The other companies are Nestlé Waters North America, Nestlé Purina, Gerber, Nestlé Health Science, Nestlé Professional, Nestlé Skin Health, and Nespresso. However, the statement under discussion here declares that it relates to Nestlé USA, Inc., Nestlé Prepared Foods Company, and Nestlé Dreyer's Ice Cream Company.
- (6.) <https://rspo.org/news-and-events/announcements/suspension-of-nestle-sa-rspo-membership-no-400550900000-due-to-breach-of-the-code-of-conduct-for-members-of-the-rspo>.
- (7.) Paradoxically, the firm also appears on lists of the world's "most reputable companies" (e.g., Smith 2013), although these rankings typically relate to consumer awareness and affinity with products rather than approval of business practices.
- (8.) <https://www.nestle.com/aboutus/suppliers>.
- (9.) <https://www.nestle.com/sites/default/files/asset-library/documents/creating-shared-value/responsible-sourcing/palm-oil-action-plan-2018.pdf>.
- (10.) <https://www.nestle.com/sites/default/files/asset-library/documents/creating-shared-value/labour-rights-roadmap.pdf>.
- (11.) <https://www.nestle.com/sites/default/files/asset-library/documents/creating-shared-value/responsible-sourcing/nestle-cocoa-plan-child-labour-2017-report.pdf>.
- (12.) https://www.nestle.com/sites/default/files/asset-library/documents/library/documents/corporate_social_responsibility/nestle-seafood-action-plan-thailand-2015-2016.pdf.
- (13.) <https://www.nestle.com/sites/default/files/asset-library/documents/creating-shared-value/responsible-sourcing/thai-seafood-action-plan-update-announcement-november-2016.pdf>.
- (14.) <https://www.nestle.com/sites/default/files/asset-library/documents/creating-shared-value/responsible-sourcing/seafood-responsible-sourcing-update-2017.pdf>.
- (15.) <https://www.nestlecocoaplan.com>.
- (16.) <https://www.prologio.com/courses/nestle/Human-Rights-and-Business-Nestlé%20>.
- (17.) <https://www.nestle.com/ask-nestle/human-rights/answers/labour-conditions-coffee-supply-chain-brazil>.

(18.) <https://www.nestle.com/csv/impact/respecting-human-rights/human-rights-impacts>.

(19.) <https://www.theconsumergoodsforum.com/wp-content/uploads/2018/03/Human-Rights-booklet-2020-web.pdf>.

(20.) https://www.theconsumergoodsforum.com/wp-content/uploads/2018/11/201811-CGF-FLA-Palm-Oil-Report-Malaysia-and-Indonesia_web.pdf.

(21.) <https://www.nestle.com/sites/default/files/2019-07/supply-chain-disclosure-dairy-ingredients.pdf>.

(22.) <https://www.nestle.com/sites/default/files/2019-08/supply-chain-disclosure-palm-oil.pdf>.

(23.) An interesting coda to this part of the discussion is that despite the impressive modernization of its documents, the nonworking web address and phone number for the Nestlé violations hotline in the 2013 document are replicated in the end of the 2018 Responsible Sourcing Standard.

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