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Supply Chains: U.S. Trade Facilitation & Enforcement Act and California Transparency in Supply Chains Act

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Focus: Federal and State Laws – Enacted & Proposed.

- U.S. Trade Facilitation and Trade Enforcement Act (Federal Law)
- California Transparency in Supply Chains Act (State Law)
- Other laws will be enacted – Open Discussion

U.S. Trade Facilitation and Trade Enforcement Act (Federal Law)

Loophole on Import of Goods Made with Forced Labor under 1930 (a/k/a "Smoot-Hawley") Tariff Act Closed.

Tariff Act of 1930: "goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country" by convict, forced or indentured labor "shall not be entitled to entry . . . and the importation thereof is hereby prohibited." ("Forced Labor Statute").

But exception to Forced Labor Statue when the production domestically did not meet demand.

Exception closed with U.S. Trade Facilitation and Trade Enforcement Act in February of 2016.

Incentives for Enforcement

- "…**any** person who has a reason to believe" that merchandise is being produced with forced labor can file petitions with the U.S. Customs & Border Protection (CBP). Contrast with anti-dumping laws.
- NGOs, Religious Groups, Political Groups, etc., have an interest & avenue now. Tariff Act originally intended to protect domestic producers.
- Detailed reports on labor and human rights condition around the world readily available now.
- Press releases and guidance to the public on Forced Labor Statute now available. A roadmap for petitioners seeking to avail themselves of a remedy under the Forced Labor Statute.

California's Transparency in Supply Chains Act

Requires (1) every seller and manufacturer (2) doing business in California and (3) having annual worldwide gross receipts that exceed $100 million to…

…disclose its efforts to eradicate slavery and human trafficking from its direct supply chain for tangible goods offered for sale.

California's Transparency in Supply Chains Act

Five Disclosure requirements:

1. verification of product supply chains;
2. conducting audits to verify compliance;
3. direct suppliers must certify compliance;
4. internal accountability standards for employees and contractors; and
5. Training management and employees.

Disclosure: Conspicuous and easy to understand link to website. No website: written disclosure within 30 days of receiving a consumer request.

California's Transparency in Supply Chains Act

Exclusive Remedy: California Attorney General Can Seek Injunctive Relief

But: "nothing in this statute shall limit remedies available for a violation of any other state or federal law".

- False & Misleading Advertising, Cal. Bus. & Prof. Code Sec. 17500, *et seq*.
- Unlawful Business Practices, Cal. Bus. & Prof. Code Sec. 17200, *et. seq.*
- Consumer Remedies Act, Cal. Civ. Code Sec. 1750, *et. seq*
- Shareholder Class Action Lawsuits

Thank you

While reasonable efforts have been made to ensure the preceding slides are accurate, this presentation does not constitute legal advice.

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