

# NOTES

## Justice by Proxy: Combatting Forced Labor in the Greater Mekong Subregion by Holding U.S. Corporations Liable

### ABSTRACT

*Human trafficking in Southeast Asia is still a thriving and lucrative industry. Despite these blatant human rights violations, international and local laws have struggled to keep ahead of the rapidly growing human trafficking industry. The result is a legal system that cannot effectively combat human trafficking in this region. This Note highlights the United States' significant financial contribution to the growth of this slavery industry, particularly in the purchase of significant quantities of goods produced by forced labor in this region. This Note argues that a way to expedite change in this region should be from external, foreign law targeting the United States' economic role in this industry. Fining or blocking the trade of U.S.-based corporations whose supply chains are de facto complicit in this human trafficking model will slow the human trafficking industry in Southeast Asia, allowing the local and international legal initiatives to take better shape in the meantime.*

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## I. INTRODUCTION

“You . . . are never going home. You were sold, and no one is ever coming to rescue you.”<sup>1</sup> These were the words spoken to eighteen-year-old Myint Naing of Burma (also called Myanmar), just days after being lured away from his home and family with the promise of work in Thailand.<sup>2</sup> Instead, Myint found himself held captive on a fishing boat, forced to work tirelessly and in brutal conditions while receiving little to no food, water, or pay.<sup>3</sup> He did not know it then, but the fish he and his fellow kidnappees would dredge from the ocean, day after day, would ultimately end up on the shelves of popular American grocery chains and would be used by some of the biggest names in the American pet food industry.<sup>4</sup> After twenty-two years at sea, away from his home, Myint and other workers on his boat were finally freed by

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1 Margie Mason, *Myanmar Fisherman Goes Home After 22 Years as a Slave*, ASSOCIATED PRESS (July 1, 2015, 10:46 AM), <http://bigstory.ap.org/article/d8afe2a8447d4610b3293c119415bd4a/myanmar-fisherman-goes-home-after-22-years-slave> [<http://perma.cc/FY3M-MM7E>] (archived Nov. 13, 2015).

2 *See id.* (“The men were at sea for 15 days [when the] captain shouted that everyone on board now belonged to him, using words Myint would never forget: “You Burmese are never going home. You were sold, and no one is ever coming to rescue you.”).

3 *Id.*

4 *Id.*

the Indonesian government, and Myint was able to reunite with his mother and sister.<sup>5</sup> Myint is considered one of the lucky ones.<sup>6</sup>

From the iPhone,<sup>7</sup> to palm oil,<sup>8</sup> to the fish parts used in the pet food stocking shelves in the United States,<sup>9</sup> it is all but impossible for the average American to avoid goods produced, at least in some part, by forced labor originating from Southeast Asia.<sup>10</sup> The international community's efforts to stem such exploitation have, of course, been stalwart in the face of such egregious violations of human rights. However, the fact remains that despite the best and concerted efforts of both local state governments *and* international actors, it has become increasingly difficult to prevent this form of human trafficking from occurring, let alone to hold the perpetrators of such crimes accountable.

As has been reiterated in many global mandates, statutes, and reports, “[h]uman trafficking is not a problem to be managed; it is a *crime* to be stopped.”<sup>11</sup> Holding perpetrators criminally responsible, however, has proven difficult in a black market that deals with humans as chattel. Ultimately, the efforts in place thus far have not decreased the number of individuals forced into labor every year. Moreover, there exists no global entity with the authority to regulate states complicit in human trafficking or forced labor violations.<sup>12</sup> Thus, in the wake of the ineffectiveness of international law and supranational legal bodies in implementing immediate and impactful laws to prevent forced labor in Asia at its source, it is time to look for alternative legal means which will, if not target the weed at its roots, at the very least noticeably slow forced labor's growth.

This Note analyzes the relationship between companies based in the United States and the labor market in the Greater Mekong Sub-Region (or, the “GMS,” consisting of Lao People's Democratic Republic, China, Myanmar, Vietnam, Cambodia, and Thailand), a geographic

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5. *Id.*

6. *See id.* (noting that Myint was one of 800 current and former slaves on the islands to be rescued by the Indonesian government to date).

7. Kenneth Rapoza, *How Much of the iPhone is “Made in China”?*, FORBES (Jan. 31, 2012, 11:12 AM), <http://www.forbes.com/sites/kenrapoza/2012/01/31/how-much-of-the-iphone-is-made-in-china/> [<http://perma.cc/U23B-5JH2>] (archived Nov. 9, 2015).

8. *See List of Goods Produced by Child Labor or Forced Labor*, U.S. DEPT OF LABOR, <http://www.dol.gov/ilab/reports/child%2Dlabor/list%2Dof%2Dgoods/> (last visited Oct. 18, 2016) [<https://perma.cc/RS3Y-KTNR>] (archived Sept. 24, 2016) [hereinafter DOL, *List of Goods*] (select “Oil (palm)” from “Good” dropdown menu) (reporting on countries that use forced and child labor, and the products associated with them).

9. Mason, *supra* note 1.

10. *Id.*

11. U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT 3* (2015), <http://www.state.gov/documents/organization/245365.pdf> [<http://perma.cc/8Z9L-DXSH>] (archived Nov. 15, 2015) [hereinafter TIP REPORT 2015] (emphasis added).

12. Michael Ewing-Chow, *First Do No Harm: Myanmar Trade Sanctions and Human Rights*, 5 NW. J. INT'L HUM. RTS. 153, 153 (2007).

region fraught with trafficking and forced labor.<sup>13</sup> The Note then discusses the necessity for a more adequate form of accountability on the part of these companies such that forced labor in the GMS may founder and fail. Part II explores the trafficking and forced labor phenomenon in these countries and how this type of labor seeps its way into the United States through the products imported for American consumption and profit. Part III then describes the main options that are either already in place and available for addressing the issue or are still in the process of being finalized or executed, while explaining briefly why each “solution” has thus far been inadequate. Finally, Part IV argues that, in order to fully impact the GMS and affect the change needed, U.S. companies must be held fully accountable both legally and financially with the goal of withdrawing these companies from foreign production partnerships which rely upon the use of forced labor. Ultimately this Note contends that levying a substantial financial burden on U.S. companies that fail to legitimize their supply chain is the most effective form of legal deterrent, on behalf of non-GMS nations, to target forced labor. This, in turn, may buy the respective regulatory authorities the time they need to come together and find a more permanent solution.

## II. TRAFFICKING IN THE GMS AND U.S. INVOLVEMENT

The global supply chain is a convoluted system that often leaves little room for accountability. Whether intentionally or not, this complicated network of trade has aided U.S.-based corporations by shielding them from being held legally accountable for products in their supply chain that are tainted by forced labor.<sup>14</sup>

### *A. Background on Human Trafficking in the Greater Mekong Subregion*

Contrary to popular belief, modern-day slavery is alive and well in many parts of the world. “Forced labor” is defined by the International Labor Organization as referring to “situations in which persons are coerced to work through the use of violence or intimidation, or by more subtle means such as accumulated debt, retention of identity papers or threats of denunciation to immigration

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13. *COMMIT 4th Sub-Regional Plan of Action (COMMIT SPA IV 2015 – 2018)*, UN-ACT.ORG (June 2015) [hereinafter *COMMIT SPA IV*] <http://un-act.org/publication/view/4th-commit-sub-regional-plan-of-action/> [http://perma.cc/JTU8-PRRP] (archived Nov. 13, 2015).

14. Naomi Jiyoung Bang, *Casting a Wide Net to Catch the Big Fish: A Comprehensive Initiative to Reduce Human Trafficking in the Global Seafood Chain*, 17 U. PA. J. L. & SOC. CHANGE 221, 222–23 (2014).

authorities.”<sup>15</sup> Although forced labor and human trafficking is present in developed and developing countries alike (including, perhaps surprisingly, the United States),<sup>16</sup> in the Asiatic region the problem is especially dire.<sup>17</sup> Although steps have been taken to raise awareness across multiple platforms,<sup>18</sup> a dearth of prophylactic local law and the ineffectiveness of business transparency in the global supply chain have left millions of individuals without recourse.<sup>19</sup>

As of 2012, the International Labor Organization estimated that there were more than 20.9 million victims of forced labor around the globe.<sup>20</sup> Of this number, the Asia-Pacific region accounts for an astonishing 56 percent of the global total—11.7 million, more than three times higher than the next highest region, Africa.<sup>21</sup> In terms of economics, illegal forced labor in the private economy brings in at least \$150 billion each year.<sup>22</sup> Clearly, it is a profitable source of revenue for these countries, whose economies and industries are still in development.<sup>23</sup>

15. *The Meanings of Forced Labour*, ILO (Mar. 10, 2014), [http://www.ilo.org/global/topics/forced-labour/news/WCMS\\_237569/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/news/WCMS_237569/lang-en/index.htm) [<http://perma.cc/U449-782S>] (archived Jan. 15, 2016).

16. See, e.g., Office of Elementary and Secondary Educ., *Human Trafficking of Children in the United States*, U.S. DEP’T OF EDUC., <http://www2.ed.gov/about/offices/list/ose/osh/factsheet.html> (last updated Dec. 3, 2013) [<http://perma.cc/2APN-ZBTK>] (archived Jan. 16, 2016) (“Cases of human trafficking have been reported in all 50 states, Washington, D.C., and the U.S. territories.”).

17. See Carolin Guentert, *A Unilateral Governance Mechanism: The Influence of the U.S. TIP Report on Human Trafficking in Thailand*, 46 N.Y.U. J. INT’L L. & POL. 955, 957 (2014) (noting that Thailand is “one of the states most affected by human trafficking”).

18. See generally U.S. DEP’T OF STATE, *TRAFFICKING IN PERSONS REPORT* (2016) [hereinafter *TIP REPORT* 2016], <http://www.state.gov/documents/organization/258876.pdf> [<https://perma.cc/M2RF-5XGU>] (archived Sept. 4, 2016) (delineating efforts taken by members of Congress, various nonprofits and NGOs, and individuals to counter forced trafficking in the GMS as well as around the world). See also, e.g., RESPONSIBLE SOURCING TOOL, <http://responsiblesourcingtool.org> (last visited Sept. 4, 2016) [<https://perma.cc/WP5L-ST6T>] (archived Sept. 4, 2016) (providing information to businesses and manufacturers about potential human trafficking hidden in supply chains).

19. RESPONSIBLE SOURCING TOOL, *supra* note 18; see *TIP REPORT* 2016, *supra* note 18 (describing the ongoing challenges posed by human trafficking).

20. ILO SPECIAL ACTION PROGRAMME TO COMBAT FORCED LABOUR, ILO 2012 GLOBAL ESTIMATE OF FORCED LABOUR EXECUTIVE SUMMARY 1 (2012), [http://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---declaration/documents/publication/wcms\\_181953.pdf](http://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/publication/wcms_181953.pdf) [<https://perma.cc/8L9X-9R9X>] (archived Mar. 3, 2016) [hereinafter *ILO Global Estimate*].

21. *Id.* at 2.

22. *Forced Labour, Human Trafficking and Slavery*, ILO, <http://www.ilo.org/global/topics/forced-labour/lang-en/index.htm> (last visited Oct. 3, 2015) [<http://perma.cc/BE6Y-WTJE>] (archived Jan. 16, 2016).

23. See *The World Factbook: Appendix B*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/appendix/appendix-b.html#D> (select letter “D,” then scroll to phrase “developing countries” (last visited Jan.

### B. Case Study: Thailand's Fishing Industry

Addressing this increasingly pervasive problem has been met with difficulty, and despite the concerted efforts of international organizations, particularly those of the United Nations as well as collaborative and independent regional actors, human trafficking remains all too prevalent. In Southeast Asia, these problems present themselves in the form of sex slavery and forced labor, often through coercion, kidnapping, and false promises.<sup>24</sup> For example, several investigative sources have exposed the fishing industry in this region as a source of great exploitation.<sup>25</sup> Thailand is considered one of the most egregious human rights violators in this regard.<sup>26</sup> This is compounded by the fact that the Thai gross domestic product (GDP) is essentially built upon the fishing industry.<sup>27</sup> The Thai seafood industry generates over \$7 billion and 4.2 million tons of fish per annum, supplying its labor from surrounding nations: Myanmar, Cambodia, and the People's Democratic Republic of Lao (Lao PDR).<sup>28</sup> Young men and children are promised a decent wage, an honest way to work off their debt, and the means to make money to send home to their families. For those whose options for work are limited, this is a tempting offer.<sup>29</sup>

The conditions on these fishing boats are brutal. Long hours—often seven days a week, with no break—without adequate food, water, or rest are commonplace.<sup>30</sup> The captains of the ships physically discipline their crew to maintain order and to maintain the hierarchy

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16, 2016) [<http://perma.cc/V6CU-WV8T>] (archived Jan. 16, 2016) (showing that all six countries in the GMS are included in the list of countries considered “developing”).

24. *Id.*

25. *See generally* TIP REPORT 2015, *supra* note 11 (providing country narratives that profile human trafficking in recent years).

26. *See id.* at 330 (describing the utilization of forced labor on Thai fishing boats).

27. Felicity Lawrence, *Thailand's Seafood Industry: A Case of State-Sanctioned Slavery?*, *GUARDIAN* (June 10, 2014, 6:59 AM), <http://www.theguardian.com/global-development/2014/jun/10/thailand-seafood-industry-state-sanctioned-slavery> [<http://perma.cc/G2WY-FAFQ>] (archived Jan. 15, 2016).

28. Mason, *supra* note 1; The Editorial Board, Editorial, *Slavery and the Shrimp on Your Plate Thai Seafood Is Contaminated by Human Trafficking*, *N.Y. TIMES* (June 21, 2014), <http://nyti.ms/Ti9589> (subscription required) [<https://perma.cc/SM57-UXDM>] (archived Oct. 9, 2016); *see also* Kate Hodal & Chris Kelly, *Trafficked Into Slavery on Thai Trawlers to Catch Food for Prawns*, *GUARDIAN* (June 10, 2014, 7:05 AM), <http://www.theguardian.com/global-development/2014/jun/10/sp-migrant-workers-new-life-enslaved-thai-fishing> [[perma.cc/ZE3C-N5JB](http://perma.cc/ZE3C-N5JB)] (archived Jan. 15, 2016).

29. *See, e.g.*, Mason, *supra* note 1 (“Myint was easily wooed. The agent offered \$300 for just a few months of work – enough for some families to survive on for a year.”).

30. *See id.* (“They were made to work almost nonstop for nearly no pay, with little food and unclean water. They were whipped with toxic stingray tails, shocked with Taser-like devices and locked in a cage for taking breaks or attempting to flee.”).

of captain and his subordinates, expendable slaves.<sup>31</sup> Starvation, isolations in the brig, and beatings are frequent, as are sexual assaults on the workers by their ship's officers.<sup>32</sup> Requests to return home are denied, and the sick workers, useless as laborers, are simply thrown overboard.<sup>33</sup> Those who try to escape and are caught and swiftly executed, often in public and in violent ways to deter other captives from trying to flee.<sup>34</sup> It is an unforgiving environment that often ends with the death of the kidnapped fisherman.<sup>35</sup> Unfortunately, when a worker dies, there are several more to replace him.<sup>36</sup> Myint Naing, for example, was tricked at a young age into leaving his home country of Myanmar with the promise of good pay to support his family.<sup>37</sup> Instead, he found himself in forced captivity for twenty-two years, paid less than \$10 a month if at all and kept in constant fear for his life.<sup>38</sup> In a survey conducted by the United Nations in 2009, it was revealed that as many as 59 percent of trafficked migrants tricked onto Thai fishing boats had witnessed a fellow fisherman murdered.<sup>39</sup>

Worst of all, these fishermen, some merely young boys, have no method of recourse or retaliation for the atrocities they face; local law enforcement all but explicitly condones such trafficking.<sup>40</sup> Corruption at almost every turn helps to facilitate the process from start to finish.<sup>41</sup> One anonymous Thai trafficking "broker"—a person responsible for acquiring laborers and trafficking them to various regional slaveholders—related to the Associated Press just how deep the exploitation festered.<sup>42</sup> In the journey from country of origin to the

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31. CATHY ZIMMERMAN ET AL., HEALTH AND HUMAN TRAFFICKING IN THE GREATER MEKONG SUBREGION: FINDINGS FROM A SURVEY OF MEN, WOMEN AND CHILDREN IN THAILAND, CAMBODIA AND VIET NAM 36 (2014), <http://un-act.org/publication/view/health-and-human-trafficking-in-the-greater-mekong-sub-region> [<https://perma.cc/9CU5-59NH>] (archived Oct. 9, 2016).

32. Mason, *supra* note 1; Astrid Zweynert, *After Slavery, Trafficked Fishermen Face Lonely Road to Recovery*, REUTERS (July 12, 2015, 5:41 AM), <http://www.reuters.com/article/2015/07/12/us-asia-migrants-trauma-idUSKCN0PM0BT20150712> [<http://perma.cc/UJ8R-MM59>] (archived Nov. 14, 2015).

33. Hodal & Kelly, *supra* note 28; Mason, *supra* note 1.

34. ZIMMERMAN ET AL., *supra* note 31, at 36; *see also* Hodal & Kelly, *supra* note 28 (“‘Some were shot, others were tied up with stones and thrown into the sea, and one was ripped apart,’ [according to Ei Ei Lwin, a Burmese fisherman]. ‘He hated his captain and tried to beat him to death . . . [T]hey tied up his hands and legs to four separate boats and pulled him apart.’”)

35. *See* Hodal & Kelly, *supra* note 28 (reporting that ten of the fifteen current and former slaves interviewed recounted seeing a fellow fisherman killed by his net master or boat captain).

36. *See id.*

37. Mason, *supra* note 1.

38. *Id.*

39. Lawrence, *supra* note 27.

40. *Id.*

41. *Id.*

42. Hodal & Kelly, *supra* note 28.

Thai ocean trawler, a slaver boat passes several checkpoints.<sup>43</sup> From the moment the brokers entice them from their homes, kidnapped workers are dealt with as chattel, which sadly gives them only a taste of the indignities to come. For example, an enterprising broker will call a Thai trawler owner, essentially acting as a phone-order service for human “merchandise.” If the trawler owner needs more workers, he tells the broker the number of bodies desired and how much he is willing to pay for them.<sup>44</sup> The broker then goes about his business acquiring workers, often targeting poor, young men who are tempted by the promise of fast cash and a new life in a different country.<sup>45</sup> What the brokers do not tell these young men is that not only will they likely never see their families again, but also that they are expected to repay the slaveholders what it cost to buy them in the first place. Essentially, these young men are paying for themselves to be enslaved.

Once brokers locate laborers in surrounding countries and trick them into servitude, the brokers begin the bribing process. Officials in law enforcement, belonging to several governments in the GMS, accept some form of payment in exchange for turning a blind eye to the boat owners and their human wares.<sup>46</sup> For Thailand in particular, much of this is made possible by Thai border police who profit regularly from their collusion with brokers and boat captains.<sup>47</sup> The corruption runs vertically as well: “[E]veryone’s profiting from it,” the anonymous informant’s report continued.<sup>48</sup> “These are powerful people with powerful positions – politicians.”<sup>49</sup>

It was not until the Associated Press published a report in April 2015 exposing the connection between U.S. and UK food products and the slavery in the seafood industry that local governments were spurred into action.<sup>50</sup> However, in countries like Thailand whose majority export profits come from the fishing industry, multinational companies based there, such as Charoen Pokphand (CP) Foods (which happens to be the world’s biggest harvester of prawns), have no real incentive to change such a profitable business model.<sup>51</sup> Nor is there

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43. *Id.*

44. *See id.* (“Each guy costs about . . . [£450–640] . . . . The boat owner finds the way to pay and then that debt goes to the labourers.”).

45. *Id.*

46. *Id.*

47. *Id.*

48. *Id.*

49. *Id.*

50. Mason, *supra* note 1.

51. *See* Kate Hodal et al., *Revealed: Asian slave labour producing prawns for supermarkets in US, UK*, GUARDIAN (June 10, 2014, 7:05 AM), <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour> [<http://perma.cc/GM7U-3UB3>] (archived Jan. 15, 2016) (noting that retailers often do not enforce their own supplier standards prohibiting the use of forced or child labor).

any real motivation to change the business practices of its fishing partners, refuse the fishermen payment, or hold them in any way accountable when their product likely resulted from forced labor.<sup>52</sup> Besides, even if CP Foods or other local conglomerates wished to hold their suppliers accountable, it would be difficult to do so since tracking the trafficking black market is like chasing shadows. For example, one common practice of ship captains is to own multiple “ghost boats”—replicas of original, licensed boats.<sup>53</sup> If these boats get stopped, they have a fake license that is a copy of the original.<sup>54</sup> As a result, there is currently an unknown number of fishing boats with slave fishermen trawling the Indian Ocean—just another way that this black market trade is nigh impossible to pin down and prosecute.<sup>55</sup>

### 1. Other Offenses in the GMS

The Thai fishing industry is just one of many examples which illustrate the GMS’ issues with human slavery. Many governments and international organizations consider Thailand to have the worst record of human trafficking prevention in the GMS. However, other GMS nations are also culprits of sweeping and blatant forced labor violations and similarly have struggled with prosecuting and preventing forced labor.<sup>56</sup> This is particularly evident in the breakdown of any kind of enforcement of human rights at the local law enforcement level, which is often corrupt and turns a blind eye to atrocities happening both at its borders and within it.<sup>57</sup> China, one of the contemporary economic powerhouses in the international arena, has been striving for parity with the United States for years, yet has struggled with the ubiquitous use of child labor and forced labor in factories; public officials often turn the other cheek.<sup>58</sup> Children in

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52. *Id.*

53. *Id.*

54. *Id.*

55. *Id.*

56. See, e.g., David Moll, *U.S. Gives Thailand and Malaysia Lowest Grade on Human Trafficking*, N.Y. TIMES (June 20, 2014), <http://nyti.ms/1kUabx6> (subscription required) [<https://perma.cc/TM4X-XQQZ>] (archived Oct. 18, 2016) (discussing the then-recent downgrade of Thailand to Tier 3 status, putting it in the same category as countries like North Korea).

57. *Id.*

58. See, e.g., Michael Bristow, *Slaves Rescued from China Firm*, BBC NEWS (June 8, 2007), <http://news.bbc.co.uk/2/hi/asia-pacific/6733045.stm> [[perma.cc/7JFH-7EHZ](https://perma.cc/7JFH-7EHZ)] (archived Jan. 16, 2016) (discussing the working conditions and rescue of thirty-one Chinese slave workers); Maureen Fan, *A Desperate Search for Stolen Children: Lax Protections Leave Chinese Vulnerable To Human Trafficking*, WASH. POST (Mar. 10, 2008), [http://www.washingtonpost.com/wp\\_dyn/content/article/2008/03/09/AR2008030902048.html](http://www.washingtonpost.com/wp_dyn/content/article/2008/03/09/AR2008030902048.html) [[perma.cc/C9NK-YZWT](https://perma.cc/C9NK-YZWT)] (archived Jan. 16, 2016) (examining Chinese trafficking for sexual exploitation or forced labor); *Officials Punished for Child Labor Crimes*, CHINA.ORG.CN (Oct. 22, 2007), <http://www.china.org>.

countries like Myanmar and Vietnam are trafficked in and out of countries, forced into a life of sex slavery or made to work in factories producing products that, in some form or another, may find themselves in the United States.<sup>59</sup> Countries like Lao PDR and Cambodia are also harvested like mines for their most indigent and vulnerable, as brokers kidnap and coerce men, women, and children into slavery.<sup>60</sup>

### C. Forced Labor and its Economic Influences in the GMS

Forced labor in Asia would be an easy problem for the Western world to ignore, perhaps, were it not for the pervasive insidiousness of products tainted by forced labor.<sup>61</sup> In 2014, right around the time that the Associated Press investigation took place, the U.S. Department of Labor (DOL) published the sixth edition of its “List of Goods Produced by Child Labor or Forced Labor,” reproduced in relevant part in Figure 1 *infra*.<sup>62</sup> This list enumerates products from across the globe, tallying 136 goods total, which violate international standards either by the use of child labor or forced labor.<sup>63</sup> Certain items on the list are basic items that the average American uses every day, multiple times a day, such as cotton, meats, salt, tobacco, alcohol, and manufactured garments.<sup>64</sup>

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cn/english/MATERIAL/229238.htm [http://perma.cc/7WZF-2YZZ] (archived Jan. 16, 2016) (relating the sentences imposed on government officials following the disclosure of forced labor practices in at least ten brick factories).

59. See, e.g., Helen Clark, *Children Rescued from Slave Labour in Vietnam Factory*, HERALD SUN (Sept. 30, 2011), <http://heraldsun.com.au/news/world/children-rescued-from-slave-labour-in-vietnam-factory/story-e6frf7lf-1226154262278> [http://perma.cc/7BXD-AKUC] (archived Jan. 16, 2016) (documenting twenty-three “children and young adults rescued from slave labour in a garment factory by Vietnamese authorities with the help of an Australian-run children's charity.”); *Surviving in Shadow: Widespread Militarization and the Systematic Use of Forced Labour in the Campaign for Control of Thaton District*, KAREN HUM. RTS. GROUP, <http://khr.org/2006/01/khrg0601j/surviving-shadow-widespread-militarization-and-systematic-use-forced-labour> (last visited Oct. 9, 2016) [http://perma.cc/CUG4-AM6Y] (archived Jan. 16, 2016) (examining the systematic use of forced labor in the struggle for control over the Thaton District).

60. U.S. DEPT OF STATE, *TRAFFICKING IN PERSONS REPORT* (2013), <http://www.state.gov/j/tip/rls/tiprpt/countries/2013/index.htm> [https://perma.cc/S6PP-EPHU] (archived Mar. 3, 2016).

61. See Sophia Eckert, *The Business Transparency on Trafficking and Slavery Act: Fighting Forced Labor in Complex Global Supply Chains*, 12 J. INT'L BUS. & L. 383, 383–85 (2013) (discussing how the complex nature of business supply chains obfuscates the source of products that may come from forced labor markets).

62. DOL, *List of Goods*, *supra* note 8, at 5.

63. *Id.* at 1.

64. *Id.*

<i>COUNTRY</i>	<i>PRODUCTS</i>
<i>Key: forced labor, child labor, both</i>	
<i>Cambodia</i>	<i>Alcoholic beverages, bricks, cassava, fish, meat, rubber, salt, shrimp, textiles, timber, tobacco</i>
<i>People's Republic of China</i>	<i>Artificial flowers, bricks, Christmas decorations, coal, cotton, electronics, fireworks, footwear, garments, nails, textiles, toys</i>
<i>Myanmar (Burma)</i>	<i>Bamboo, beans, bricks, jade, palm thatch, physic nuts/castor beans, rice, rubber, rubies, sesame, shrimp, sugarcane, sunflowers, teak</i>
<i>Thailand</i>	<i>Fish, garments, pornography, shrimp, sugarcane</i>
<i>Vietnam</i>	<i>Bricks, garments</i>

Figure 1: U.S. Department of Labor's List of Goods Produced by Child Labor or Forced Labor, GMS<sup>65</sup>

Important to note first about this Figure is that this product list is by no means a complete or definitive one.<sup>66</sup> The products above are only *believed* by the DOL to be products of child or forced labor, and the list is periodically updated in accordance with the Trafficking Victims Protection Reauthorization Act of 2005.<sup>67</sup> Secondly, the report is not an exhaustive list of all the nations in the world—Lao PDR is not on this list, for example.<sup>68</sup> While this might mean that Lao PDR has no products that are the result of forced or child labor, it is more likely that the DOL has not yet investigated such a possibility. Furthermore, the number of items on the list which are the product of *both* child labor and forced labor outnumbers the products in each category separately.<sup>69</sup> Finally, as pointed out by Secretary of Labor Thomas Perez, in the list's foreword and reiterated throughout the rest of the document are a wide variety of materials that are both basic and essential in the production process of myriad products in use in developed countries like the United States.<sup>70</sup>

65. *See id.* at 5.

66. *Id.*

67. *Id.* at 1.

68. *Id.* at 5.

69. *Id.*

70. *Id.* at 1.

The effect of forced labor on the economics of these GMS nations only incentivizes the growth of such practices.<sup>71</sup> Studies show there is a positive correlation between unskilled labor, supplied by trafficked laborers, and market advantage in goods that are unskilled-labor-intensive, such as basic product manufacturing or assembly, harvesting crops, or fishing work.<sup>72</sup> Such unskilled labor is typically sourced from developing countries and exported to developed countries.<sup>73</sup> The result is predictable but bleak: use of forced labor is cheap and profitable, resulting in increased demand for the supply of trafficked persons to fill the roles of unskilled labor demanded, knowingly or not, by the developed global market.<sup>74</sup>

*D. U.S. Companies and Their Involvement in the GMS  
Forced Labor Market*

The GMS, as reiterated throughout this Note, is very rich in resources.<sup>75</sup> Much of this region's substantial GDP growth in recent years is a result of exportation: goods that range from parts manufactured to create electronics devices, to the shrimp and fish parts used to feed pets and people alike in Western countries.<sup>76</sup> The United States, of course, has had a huge role to play in this steady growth.<sup>77</sup> As of 2014, the United States was the largest importer in the world, with \$2.374 trillion in merchandise imports.<sup>78</sup> Following behind was the European Union at \$2.312 trillion, and China at \$1.960 trillion.<sup>79</sup> Indeed, aside from China, the United States is often one of the largest importers of goods from countries in the GMS (see

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71. See MATTHIAS BUSSE & SEBASTIAN BRAUN, TRADE AND INVESTMENT EFFECTS OF FORCED LABOUR: AN EMPIRICAL ASSESSMENT, HAMBURGISCHES WELT-WIRTSCHAFTS-ARCHIV (2002), <http://ageconsearch.umn.edu/bitstream/26231/1/dp02020.pdf> [<http://perma.cc/3VGF-Q2PZ>] (archived Jan. 14, 2016) (interpreting the empirical data from ratified ILO conventions on forced labor to calculate the impact of such labor on international markets and trade flows, particularly in respect to unskilled labor).

72. *Id.* at 15.

73. *Id.* at 15–16.

74. See *id.*

75. See, e.g., *The World Factbook: Thailand*, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/th.html> (last updated Jan. 5, 2016) [[perma.cc/AV74-SEGN](http://perma.cc/AV74-SEGN)] (archived Jan. 15, 2016) (showing Thailand's exportation percentage of GDP to be 69.2 percent and exportation revenue to be \$224.8 billion, twenty-fifth in the entire world).

76. *Id.*

77. *Id.*

78. *The World Factbook: Country Comparison – Imports*, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/rankorder/2087rank.html#us> (last visited Jan. 16, 2016) [[perma.cc/XY23-GT65](http://perma.cc/XY23-GT65)] (archived Jan. 16, 2016).

79. *Id.*

Figure 2 for a comparison).<sup>80</sup> For two of these countries, Cambodia and Vietnam, the United States makes up 20 percent or more of the country's exportation.<sup>81</sup> In addition, the United States ranks number one for top export partners amongst three of these six countries, including Cambodia, China, and Vietnam.<sup>82</sup>

COUNTRY	PERCENT OF EXPORT TO THE U.S.	U.S. RANK AMONG EXPORT PARTNERS	RANK AS EXPORTER (WORLD)
<b>CAMBODIA</b>	24.1%	1	106
<b>CHINA</b>	16.9%	1	1
<b>MYANMAR (BURMA)</b>	[not listed]	[not listed]	99
<b>LAO PDR</b>	[not listed]	[not listed]	135
<b>THAILAND</b>	10.5%	2	25
<b>VIETNAM</b>	20%	1	32

Figure 2: Comparison of U.S. Export Percentage from GMS (Reproduced from the CIA World Factbook)<sup>83</sup>

But where do all of these exports end up? Despite international outrage as reports of this cruelty began to surface, it was not any international government actor or corporate entity that ended up uncovering the process, but rather the Associated Press' dedicated team of reporters, who published their findings after months of on-site investigation.<sup>84</sup> Tracing the origins of forced fishing laborers like Myint, the Associated Press discovered that the fish was transported to Thailand from Indonesia.<sup>85</sup> From Thailand, the fish were then exported to the United States, ending up in the supply chains of big name stores such as Kroger, Wal Mart, and Sysco.<sup>86</sup> The Associated Press also discovered that popular pet food brands like Fancy Feast,

80. See generally The World Factbook, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/> (last visited Jan. 15, 2016) [<http://perma.cc/39AM-B35J>] (archived Jan. 16, 2016).

81. *The World Factbook: EAST & SOUTHEAST ASIA :: CAMBODIA*, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/cb.html> (last visited Sept. 16, 2016) [<https://perma.cc/ZN9A-D6S3>] (archived Sept. 25, 2016); *The World Factbook: EAST & SOUTHEAST ASIA :: VIETNAM*, CIA, <https://www.cia.gov/library/publications/resources/the-world-factbook/geos/vm.html> (last visited Sept. 16, 2016) [<https://perma.cc/7KVG-NNJ9>] (archived Sept. 25, 2016).

82. *The World Factbook*, *supra* note 80.

83. *Id.*

84. See Mason, *supra* note 1.

85. *Id.*

86. *Id.*

Iams, and Meow Mix contained ingredients tainted by forced labor.<sup>87</sup> Aside from fish products, U.S. corporations have been slow to account for their goods and, further still, have not provided much in the way of public transparency in their business policies, despite the existence of technologies such as radio-frequency identification (RFID) tags—which have the ability to transmit the identity of an item or product wirelessly via radio waves<sup>88</sup>—to expedite this process.<sup>89</sup> It seems that companies are content with endorsing the ethicality of their products by maintaining their ignorance about the origins of their supply chains.<sup>90</sup>

What this information serves to illustrate is that the United States is ultimately a substantial and regular consumer of goods originating from the GMS. Dozens of items make their way from these countries into American households daily and, for many of these GMS nations, the United States is their largest economic patron.<sup>91</sup> The impact of the United States on the industry cannot be ignored, and, as this Note maintains, American companies can serve a purpose in fighting forced labor in this region.

### III. THE GLOBAL RESPONSE TO FORCED LABOR IN THE GMS

Forced labor and the broader issue of human trafficking have been the target of several initiatives around the world, likely a result of the increasing interconnectivity involved in international law and commerce between nations. International collaboratives and regional state actors have attempted to create a network of legal accountability in this area. Some of these initiatives aim at establishing effective preventative measures, while others focus more on cleaning up the aftermath of forced labor through criminal law. This Part explores these initiatives and explains their successes and difficulties to illustrate the gap in solutions to this issue.

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87. *Id.*

88. Bob Violino, *What is RFID?*, *RFID JOURNAL* (Jan. 16, 2005), <http://www.rfidjournal.com/articles/view?1339> [<https://perma.cc/H8SG-7EW7>] (archived Oct. 9, 2016).

89. Steve New, *The Transparent Supply Chain*, *HARV. BUS. REV.* (Oct. 2010), <https://hbr.org/2010/10/the-transparent-supply-chain/ar/1> [[perma.cc/389M-5CFP](https://perma.cc/389M-5CFP)] (archived Jan. 16, 2016).

90. *Id.* (“[Data gathered by retailers Walmart and Tesco is] used internally, allowing the retailers to be *more confident* in making ethical claims about their products.” (emphasis added) This implies that retailers were making such claims before without actually knowing the origins of their product supply).

91. Mason, *supra* note 1; see also *The World Factbook*, *supra* note 80.

### A. International Initiatives

#### 1. The United Nations and the International Labour Organization

The United Nations is the premier intergovernmental organization that focuses on the prevention of human trafficking and forced labor. While other organizations exist, the United Nations has the most resources and manpower at its disposal.

In December 1998, the General Assembly of the United Nations (the “Assembly”) passed a resolution in which the Assembly established an *ad hoc*, intergovernmental committee to address the issue of transnational organized crime and the trafficking of persons, particularly women and children.<sup>92</sup> To supplement this, in 2000 the United Nations created a Protocol upon which several nations in the GMS based their anti-trafficking penal laws, titled “Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children.”<sup>93</sup> This “TIP Protocol” defines “trafficking in persons” and requires that each ratifying state actor establish this conduct as a criminal offense.<sup>94</sup> Additionally, it holds each state party responsible for providing its own legal protections and recovery resources for persons who are trafficked.<sup>95</sup>

There are several issues with this Protocol. The UN mandates are only as effective as the nations that adopt and enforce them. Therein lies the first hurdle: the United Nations is a body which relies on its component nations to self-regulate and act as a check on one another. As discussed next in this Part, the effectiveness of the various GMS nations’ legislation adopting this Protocol has depended on the nation and has had varying degrees of success. Overall, however, human trafficking has only grown in proportion to demand for its labor.<sup>96</sup>

The United Nations has the advantage of meting out specific tasks to certain subdivisions under its control. The International Labour Organization (ILO), for example, is a specialized arm of the United Nations that was created in 1919 and is in charge of facilitating the economic efforts and cooperation of international actors, as well as ensuring the fair and equal treatment of those nations’ workers all over the world.<sup>97</sup> As a branch of the United Nations, the ILO has no true

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92. G.A. Res. 53/111 ¶ 10 (Dec. 9, 1998).

93. G.A. Res. 55/25 (Nov. 15, 2000).

94. *Id.* at Art. 5, ¶ 2.

95. *Id.* at Art. 6, ¶¶ 4–6.

96. *See, e.g.*, TIP REPORT 2015, *supra* note 11.

97. *See Origins and History*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/history/lang-en/index.htm> (last visited Jan. 16, 2016) [<http://perma.cc/92QF-S5UZ>] (archived Jan. 16, 2016) (“The ILO was created in 1919, as part of the Treaty of

enforcement power at its disposal. Primarily, it serves as a collector and publisher of statistics that identify issues in the global work force.<sup>98</sup> The ILO also spearheads initiatives aimed at achieving its fundamental goal of “cooperation between governments and employers’ and workers’ organizations in fostering social and economic progress.”<sup>99</sup>

In regards to the subjects of human trafficking and forced labor, the ILO has undertaken several projects aimed at spreading awareness about the issues and conducting research to aid countries in strengthening their own preventative structures.<sup>100</sup> For example, the ILO is responsible for its Global Estimate of Forced Labor, the result of research and “new and improved” statistical methods, that has been periodically updated (2005 and 2012) with new research and data.<sup>101</sup> The ILO also maintains online resources to educate the public about the various issues in international labor.<sup>102</sup> This is useful to achieve the ILO’s overall goal of fighting human trafficking through educating the public with up-to-date, important information.<sup>103</sup> Perhaps most significant, however, is the ILO’s creation of the Forced Labor Convention of 1930 and its subsequent follow-ups.<sup>104</sup> The Convention prohibits all forced labor and requires that the illegal imposition of forced or compulsory labor be considered a penal offense and summarily punished.<sup>105</sup> All ratifying nation-states are responsible for adhering to the guidelines of the Convention.<sup>106</sup> The Convention has been ratified by 178 countries since 1932, including Cambodia (1969),

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Versailles that ended World War I, to reflect the belief that universal and lasting peace can be accomplished only if it is based on social justice.”).

98. *Id.*

99. *How the ILO Works*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/how-the-ilo-works/lang-en/index.htm> (last visited Jan. 16, 2016) [<http://perma.cc/P7Z7-S5AM>] (archived Jan. 16, 2016).

100. *Id.*; see also, e.g., *About*, UNITED NATIONS GLOBAL INITIATIVE TO FIGHT HUMAN TRAFFICKING (UNGIFT), <http://www.ungift.org/knowledgehub/index.html> (last visited Sept. 24, 2016) [<https://perma.cc/UP5V-D66K>] (archived Sept. 24, 2016).

101. *Summary of the ILO 2012 Global Estimate of Forced Labour*, INT’L LABOUR ORG. (June 1, 2012), [http://www.ilo.org/global/topics/forced-labour/publications/WCMS\\_181953/lang-en/index.htm](http://www.ilo.org/global/topics/forced-labour/publications/WCMS_181953/lang-en/index.htm) [<https://perma.cc/E98G-MFPV>] (archived Sept. 24, 2016).

102. *ILO Newsroom*, INT’L LABOUR ORG., <http://www.ilo.org/global/about-the-ilo/newsroom/lang-en/index.htm> (last visited Sept. 24, 2016) [<https://perma.cc/5YWD-QUCE>] (archived Sept. 24, 2016) (providing recent news and data on the ILO’s work).

103. *Id.*

104. *International Labour Standards on Forced Labour*, INT’L LABOUR ORG., <http://www.ilo.org/global/standards/subjects-covered-by-international-labour-standards/forced-labour/lang-en/index.htm> (last visited Jan. 14, 2016) [<https://perma.cc/2ZK6-XF86>] (archived Sept. 24, 2016).

105. *Id.*

106. Convention Concerning Forced or Compulsory Labor, June 28, 1930, 39 U.N.T.S. 55.

Lao PDR (1964), Thailand (1969), Vietnam (2007), and Myanmar (1955).<sup>107</sup> Notably, China and the United States are not signatories.<sup>108</sup>

In 2014, the ILO updated the Convention in a new, legally binding Protocol to intensify preventative and protective measures in a Supplementary Measures Recommendation (“Recommendation”).<sup>109</sup> The language of the Recommendation gives suggestions as to how ratifying countries should “take action to strengthen the enforcement of national laws and regulations and other measures” and work together to achieve their goals.<sup>110</sup> Overall, the content of the Recommendation is just that, a *recommendation*, and the Recommendation itself does not hold individuals legally liable for violating the prohibition.<sup>111</sup> In addition to its extreme broadness, the provisions are quite common sense and only reiterate the nebulous and lofty goals that can be found in myriad other documents from organizations and countries attempting to address this problem.<sup>112</sup> In short, the ILO has not provided anything new regarding how to end forced labor and instead is rehashing the same arguments and vague ideas proposed by others.

In addition to the ILO, the United Nations has launched cooperatives between several of its departments to employ their expertise in addressing the forced labor and human trafficking issues.<sup>113</sup> The result has been the creation of an enterprise called The United Nations Global Initiative to Fight Human Trafficking, or UN.GIFT for short.<sup>114</sup> Launched in 2007, UN.GIFT is the collaborative effort of six UN organizations: the ILO, the United Nations Children’s Fund (UNICEF), the United Nations Office on Drugs and Crime (UNODC), the Office of the United Nations High Commissioner for Human Rights (OHCHR), the Organization for Security and Cooperation in Europe (OSCE), and the United Nations Office on Drugs and Crime (UNODC).<sup>115</sup> This is an impressive list of actors;

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107. *Ratifications of CO29 – Forced Labor Convention, 1930 (No. 29)*, INT’L LABOUR ORG., [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P1\\_1300\\_INSTRUMENT\\_ID:312174](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:11300:0::NO::P1_1300_INSTRUMENT_ID:312174) (last visited Sept. 24, 2016) [<https://perma.cc/5LEE-5FNR>] (archived Sept. 24, 2016).

108. *Id.*

109. *International Labour Standards on Forced Labour*, *supra* note 104.

110. *Forced Labour (Supplementary Measures) Recommendation, 2014*, INT’L LABOUR ORG. (June 11, 2014), [http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100\\_ILO\\_CODE:R203:NO](http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_ILO_CODE:R203:NO) [<https://perma.cc/8XY4-KVNU>] (archived Sept. 24, 2016).

111. *Id.*

112. *Id.*

113. *See Press Conference on United Nations Global Initiative to Fight Human Trafficking*, UNITED NATIONS (June 3, 2008), [http://www.un.org/press/en/2008/080603\\_Trafficking.doc.htm](http://www.un.org/press/en/2008/080603_Trafficking.doc.htm) [<http://perma.cc/6UW7-2LCL>] (archived Jan. 16, 2016) (discussing the use of data from multiple countries in counter-trafficking efforts).

114. UNGIFT, *supra* note 100.

115. *Id.*

however, the mission of this initiative is to mobilize and educate, rather than to prosecute or rescue, which may help prevent trafficking but does nothing to address the forced labor already happening.<sup>116</sup>

## 2. Non-Governmental Organizations

Some non-governmental organizations (NGOs) and nonprofits also focus on forced labor. Amnesty International and some lesser-known organizations like ZOE International and The A21 Campaign, operate at varying levels to confront forced labor and trafficking.<sup>117</sup> However, although these NGOs compose an important part of the public education portion of trafficking prevention, it is difficult for them to make any lasting impact on the trade. As is the case with intergovernmental organizations like the United Nations, there is no accountability or enforcement authority, and there is even less here because these organizations are not affiliated with, nor beholden to, any particular government. This might be advantageous at least in part because presumably this allows for a more organic relationship to be formed between members of these organizations and members of local law enforcement and governments. GMS governments that are reluctant to be influenced by outsiders may welcome NGO aid if it appears to be without any political machinations or agendas. However, there are so many organizations that it is difficult to find a strong, shared mission statement among them, which means that resources are scattered and attentions are fragmented as each organization focuses on something slightly different or on tasks that are redundant. Additionally, many of the larger organizations with more “power to persuade” have several different issues that they work on, rather than focusing on one—such is the case with Amnesty International.<sup>118</sup> So, even with more resources at their disposal, larger NGOs would have trouble giving the individualized attention necessary to address this specific of an issue.

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116. *Id.*

117. See, e.g., A21 CAMPAIGN, <http://www.a21.org/index.php> (last visited Sept. 24, 2016) [<https://perma.cc/7A8X-P9SU>] (archived Sept. 24, 2016); *General Recommendations on the Draft European Convention Against Trafficking in Human Beings*, AMNESTY INT'L (Sept. 10, 2004), <https://www.amnesty.org/en/documents/ior61/018/2004/en/> [<https://perma.cc/W6Q3-4MD5>] (archived Mar. 1, 2016); ZOE INT'L, <http://www.gozoe.org> (last visited Oct. 18, 2016) [<https://perma.cc/8PEN-RL4K>] (archived Mar. 1, 2016).

118. See *What We Do*, AMNESTY INT'L, <https://www.amnesty.org/en/what-we-do/> (last visited Sept. 24, 2016) [<https://perma.cc/HQ2H-BCRD>] (archived Sept. 24, 2016) (listing focus areas for the organization's research and campaigns).

### B. Local State Actor Efforts

Several nations in the GMS, in response to global outcries and pressure from intergovernmental organizations like the United Nations, have promulgated their own legislation to both officially denounce human trafficking and forced labor, as well as to facilitate the prosecution of individuals caught trafficking humans.<sup>119</sup>

Thailand is considered by the DOL as well as by many international actors to be the most egregious offender of human trafficking violations in the GMS.<sup>120</sup> Despite adoption of legislation intended to prevent human trafficking and prosecute those who propagate it, Thailand's ranking in the U.S. Department of State's annual Trafficking in Persons Reports (the "TIP Report") consistently remains poor.<sup>121</sup> The TIP Report ranks countries within the following tiers: Tier 1 consists of countries that comply with the Trafficking Victims Protection Act (TVPA); Tier 2 comprises countries which do not comply fully with the TVPA but are taking extensive efforts to bring themselves up to those standards; Tier 2 Watch List includes those countries that have not been making a strong effort to get up to standard and are close to sliding into Tier 3; and Tier 3 consists of countries which do not comply with the Act and have made no effort to do so.<sup>122</sup> Thailand has never been classified as Tier 1.<sup>123</sup>

In an effort to address the worldview that Thailand was not doing enough to prevent forced labor, the Thai legislature codified its own Protocol to Prevent, Suppress and Punish Trafficking in Persons in 2008, titled The Anti-Trafficking in Persons Act.<sup>124</sup> This Act, in addition to formally defining and criminalizing trafficking in persons, also established an Anti-Trafficking in Persons Committee and gave law enforcement stronger investigative and prosecutorial powers.<sup>125</sup>

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119. See generally, TIP REPORT 2016, *supra* note 18.

120. Guentert, *supra* note 17 at 984.

121. *Id.* at 984–85.

122. Compare, e.g., U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2001 12 (2001), <http://www.state.gov/documents/organization/4107.pdf> [<http://perma.cc/4HK2-LHBB>] (archived Nov. 15, 2015) (classifying Thailand as a Tier 2 country), and U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2008 44 (2008), <http://www.state.gov/documents/organization/192587.pdf> [<http://perma.cc/64NW-TRFB>] (archived Nov. 15, 2015) (maintaining Thailand's classification as a Tier 2 country, the same year that Thailand adopts its more rigorous anti-trafficking legislation), with U.S. DEP'T OF STATE, TRAFFICKING IN PERSONS REPORT 2012 338 (2012), <http://www.state.gov/documents/organization/192598.pdf> [<http://perma.cc/46WE-KQMC>] (archived Nov. 15, 2015) [hereinafter TIP REPORT 2012] (downgrading Thailand to the Tier 2 Watch List), and TIP REPORT 2015, *supra* note 11, at 330 (showing Thailand to remain on the Tier 3 list after its 2014 downgrade).

123. TIP REPORT 2015, *supra* note 11, at 330.

124. The Anti-Trafficking in Persons Act, B.E 2551 (2008) (Thai.).

125. *Id.* at chs. 2–3.

However, such a change could not be implemented overnight, and although strides were made by simply enacting this Anti-Trafficking Act, Thailand's trafficking troubles grew worse in the meantime. In 2012, just four years later, the Department of State downgraded Thailand's status as a Tier 2 Watch List nation.<sup>126</sup> The report from July 2015, in keeping with its decision in 2014, classified Thailand as Tier 3, the lowest rating, and the one in most dire need of attention.<sup>127</sup> In June 2016, the Department of State upgraded Thailand to a Tier 2 Watch List nation once more, but acknowledged that despite Thailand's efforts, the country "[did] not fully meet the minimum standards for the elimination of trafficking."<sup>128</sup> Figure 3: "Thailand Tier Ranking" from The U.S. Department of State's 2016 *Trafficking in Persons Report* below shows the rapid descent of Thailand's rating from 2008 to 2015, despite having adopted its version of the Protocol to Prevent, Suppress and Punish Trafficking in Persons.<sup>129</sup> Thailand's 2016 upgrade to Tier 2 Watch List nonetheless indicates the nation has a long way to go.

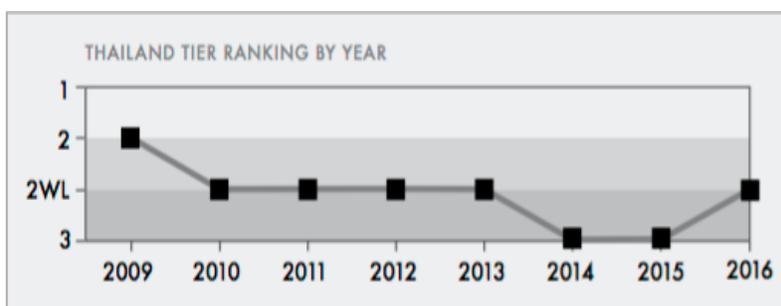


Figure 3: "Thailand Tier Ranking" from The U.S. Department of State's 2016 *Trafficking in Persons Report*<sup>130</sup>

Thailand's difficulties in implementing effective legislation to combat forced labor and trafficking are not unique. To put Thailand's ranking in perspective, and to understand the overall condition of the GMS as a whole, it is important to look to the other nations in this area whose human trafficking and forced labor industries are innately intertwined. There is no better place to commence such scrutiny than with the People's Republic of China. China is the most powerful and influential of the GMS nations, whether measured from the

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126. TIP REPORT 2012, *supra* note 122.

127. TIP REPORT 2015, *supra* note 11 at 330; *see also* Moll, *supra* note 56.

128. TIP REPORT 2016, *supra* note 18 at 364.

129. *Id.*

130. *Id.*

perspective of total population or total GDP.<sup>131</sup> In recent years, the United States and other nations have invited China to step into a more prominent international role in exchange for China's continued efforts to improve its pollution, its Tibetan community relations, its response to pandemic threats, and its human rights laws.<sup>132</sup> China has since rapidly ascended into preeminence on the world stage. However, as of 2016, China remains on the Department of State's Tier 2 Watch List.<sup>133</sup> According to the 2015 TIP Report, in addition to being both a source and a destination for sex trafficking and forced labor trafficking, China has also continued to have problems with "state-sponsored forced labor." These began as "re-education through labor" programs decades ago—programs which, until recently in 2013, continued to benefit the Chinese government.<sup>134</sup>

For the purposes of prosecution, China's laws have yet to catch up to the standards expected of it as a world leader.<sup>135</sup> Although China's criminal code imposes harsh penalties on the abduction and sale of women and children into forced labor and sex slavery,<sup>136</sup> this statute says nothing about men, leaving a gaping hole through which male victims of kidnapping and forced labor have no legal recourse.<sup>137</sup> In addition, there has been difficulty collecting data on the effectiveness of these codes, as the Chinese government has been reticent to share data with the U.S. Department of State any anti-trafficking efforts that their law enforcement has undertaken.<sup>138</sup> Since 2008, China has remained on the Tier 2 Watchlist, with the exception of 2013 when it briefly slipped to Tier 3.<sup>139</sup> Although the Chinese government claims

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131. *Compare Country Comparison: GDP*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/rankorder/2001rank.html#h> (last visited Oct. 9, 2016) [<https://perma.cc/V9A5-972V>] (archived Mar. 1, 2016) (showing China's GDP to be the largest in the world, well ahead of the next-largest GMS nation, Thailand, ranked at twenty-two), *with Country Comparison: Population*, CIA, <https://www.cia.gov/library/publications/the-world-factbook/fields/2119.html#ch> (last visited Oct. 9, 2016) [<https://perma.cc/E3UP-PUWV>] (archived Mar. 1, 2016) (estimating China's population as of July 2015 to be 1,367,485,388, compared to, for example, Vietnam, which is the next most populous country of the GMS and has a population of roughly 94,348,835 people).

132. *See U.S. Relations with China*, U.S. DEP'T OF STATE (Jan. 21, 2015), <http://www.state.gov/r/pa/ei/bgn/18902.htm> [<http://perma.cc/TY8Y-SRGW>] (archived Mar. 1, 2016) (discussing the State Department's cooperation and relationship with China).

133. TIP REPORT 2016, *supra* note 18, at 56.

134. *Id.* at 130.

135. *Id.* at 131.

136. For example, Article 244 of China's criminal code punishes forced labor by up to ten years' imprisonment and a fine. *See id.* at 131–32, for more examples of aptly harsh, yet poorly implemented and enforced anti-trafficking and forced labor sections of the criminal code.

137. *Id.*

138. *Id.*

139. *Id.* at 131.

to have made efforts to prevent trafficking and forced labor, it is clear by examining the laws in place versus the difficulty in improving its trafficking situation that China's laws are not enough to cure the country of such pervasive human rights violations.<sup>140</sup>

Cambodia, Lao PDR, and Myanmar all adopted more formalized and stringent penalties for human trafficking by either introducing new subsections into their penal code, which defined and criminalized human trafficking (Lao PDR), or by adopting an entirely separate statute intent on exacting quicker, harsher punishments for trafficking violations (Cambodia and Myanmar).<sup>141</sup> However, given these three countries' respective TIP tiers, it is unclear whether these laws have had any sort of effect on the forced labor conditions within their own borders.<sup>142</sup> And some laws exclude an entire group from protection; in the case of Lao PDR, men do not have a cause of action under Lao statute.<sup>143</sup> According to the TIP Report, all three of these countries experienced difficulties being proactive in investigations and enforcing their own laws.<sup>144</sup>

As for Vietnam, which is the highest-rated GMS nation at Tier 2, corruption and complicity in trafficking, as well as lack of inter-agency cohesion, have kept Vietnam from fully realizing its anti-trafficking goals.<sup>145</sup> Vietnam was one of the last GMS nations to adopt an updated anti-trafficking law, doing so in 2012.<sup>146</sup> This law expanded the scope of its penal code to include sex trafficking and labor trafficking and to impose sufficiently harsh punishments including imprisonment

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140. *Id.* at 130–32.

141. *See generally*, Decree of the President of the Lao People's Democratic Republic on the Promulgation of the Law on Development and Protection of Women, No. 70/PO (Nov. 15, 2004) (Laos), <http://www.ilo.org/dyn/travail/docs/1425/Law%20on%20the%20Development%20and%20Protection%20of%20Women%202004.pdf> [https://perma.cc/EA7L-M2Y6] (archived Oct. 12, 2016) [hereinafter Lao President Decree 2004]; Law on Suppression of Human Trafficking and Sexual Exploitation, NS/RKM/0208/005 (July 15, 2004) (Cambodia), [http://www.nottrafficking.org/content/Laws\\_Agreement/cambodia%20new%20law%20on%20trafficking%20&%20sexual%20exploitation%20-%20english.pdf](http://www.nottrafficking.org/content/Laws_Agreement/cambodia%20new%20law%20on%20trafficking%20&%20sexual%20exploitation%20-%20english.pdf) [https://perma.cc/QH99-PN64] (archived Mar. 2, 2016); The State Peace and Development Council, The Anti Trafficking in Persons Law, No. 5/2005 (Sept. 13, 2005) (Myan.), [http://www.burmalibrary.org/docs15/2005-SPDC\\_Law2005-05-Anti\\_Trafficking\\_in\\_Persons\\_Law-en.pdf](http://www.burmalibrary.org/docs15/2005-SPDC_Law2005-05-Anti_Trafficking_in_Persons_Law-en.pdf) [https://perma.cc/8FM5-P246] (archived Mar. 2, 2016).

142. Lao PDR has oscillated between Tier 2 and Tier 2 Watchlist ratings for the past several years. Currently it remains at Tier 2 Watchlist. Cambodia also is a member of the Tier 2 Watchlist, having gone back and forth between this tier and Tier 2 as well. As for Myanmar, one of the worst offenders, its rating has actually improved from the lowest rating at Tier 3 to the Tier 2 Watchlist, where it has remained since 2012. For the full breakdown of recommendations and protections for each respective country, see generally TIP REPORT 2015, *supra* note 11 at 104, 110, 215.

143. *See* Lao President Decree 2004, *supra* note 141.

144. *Id.*

145. *Id.* at 362–63.

146. *Id.* at 363.

ranging from two to twenty-five years depending on the nature of the crime.<sup>147</sup> From 2014 to 2015, the Vietnam government developed a four-year nationwide initiative aimed at future anti-trafficking methods.<sup>148</sup> The government also began an awareness campaign in 2014 to publish news stories and information on trafficking.<sup>149</sup> Although Vietnam is a source country for forced labor and other types of trafficking,<sup>150</sup> it appears that Vietnam's government has been making the most effort at instigating internal changes as compared to other countries in this region. These changes are both legal and policy-driven and thankfully have seen some success thus far.<sup>151</sup> That being said, the legal measures in play seem at odds with the corruption amongst the officials administering these penal codes, as well as the budgetary constraints, which have prevented victims from attaining justice through the Vietnamese legal system.<sup>152</sup>

### C. Regional Inter-State Collaborations: COMMIT SPA

In addition to individual state actors taking steps to combat the human trafficking dilemma, within the past decade a collaborative initiative between the member states of the GMS has come into being: the Coordinated Mekong Ministerial Initiative Against Trafficking, or COMMIT.<sup>153</sup> In October 2004, an Inter-Ministerial Meeting (IMM 1), the first of its kind, took place.<sup>154</sup> The importance of this initiative cannot be overstated; for the first time, these countries agreed to come together to form individual, bilateral, and multilateral governance to combat human trafficking, forced labor and sex slavery.<sup>155</sup> A collaborative effort between the leaders of China, Cambodia, Lao PDR, Vietnam, Thailand, and Myanmar, IMM 1 culminated in the COMMIT Memorandum of Understanding (MOU), which was signed by six GMS ministers.<sup>156</sup> The MOU is divided into five sections, cumulatively containing thirty-four articles, which discussed the various elements involved in addressing human trafficking: "Policy and cooperation; Legal frameworks, law enforcement and justice; Protection recovery

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147. *Id.* at 363–64.

148. *Id.* at 364.

149. *Id.*

150. *Id.* at 362.

151. *Id.*

152. *See id.* at 364 (noting the absence of a specific allotment in the government's budget).

153. *COMMIT SPA IV*, *supra* note 13, at 2.

154. *Id.*

155. *See COMMIT: The Coordinated Mekong Ministerial Initiative Against Trafficking*, UNIAP, <http://www.no-trafficking.org/commit.html> (last visited Mar. 2, 2016) [<https://perma.cc/JFU7-GL5T>] (archived Mar. 2, 2016) (defining COMMIT and summarizing its goals and implementation strategy).

156. *COMMIT SPA IV*, *supra* note 13, at 2.

and reintegration; Preventive measures; and Mechanisms for implementing, monitoring and evaluation.”<sup>157</sup> In acknowledging the gravity of the situation and endeavoring to craft a responsive policy, the GMS nations have undertaken legal responsibility for what goes on within their own borders, as well as between their borders, without relying on external forces to regulate such crimes.

As articulated in the MOU, the COMMIT Process included creating and modifying a “Sub-regional Plan of Action (SPA),” which would serve to guide the MOU in its endeavors to combat trafficking, effectively translating the goals of the Memorandum into action.<sup>158</sup> This Plan, and its successors in later years, are perhaps the most important and defining feature of the COMMIT Process. The SPA was not intended to supersede any individual national law, but instead to act as a reinforcing, complementary net of support to any national measures.<sup>159</sup> Formulated from the collective inputs of the six COMMIT governments, NGOs, and the UN, SPA I was executed from 2005 to 2007.<sup>160</sup> The Plan initially contained eleven areas of intervention and a management component.<sup>161</sup> However, as time wore on and the various parties realized that they would not be able to implement everything in the time span allotted, they modified the SPA I criteria to be more forgiving.<sup>162</sup>

The GMS nations executed SPA II from 2008 to 2010 and SPA III from 2011 to 2013.<sup>163</sup> These two plans did not contain many new developments; instead, they reworked previous plans into more comprehensive means to enforce anti-trafficking policies.<sup>164</sup> For example, during SPA III’s implementation, several member states introduced new legislation or revised old legislation to improve their

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157. *Id.*

158. *Id.* at 3; *The COMMIT Sub-Regional Plan of Action (COMMIT SPA): Achievements in Combating Human Trafficking in the Greater Mekong Sub-Region, 2005-2007*, UNIAP (Dec. 2007), [http://www.no-trafficking.org/reports\\_docs/commit/commit\\_spa1\\_achievements.pdf](http://www.no-trafficking.org/reports_docs/commit/commit_spa1_achievements.pdf) (last visited Nov. 13, 2015) [<http://perma.cc/ZGV8-NC6R>] (archived Nov. 13, 2015) [hereinafter *COMMIT Achievements*].

159. *COMMIT Achievements*, *supra* note 158, at 5.

160. *COMMIT SPA IV*, *supra* note 13, at 3.

161. *COMMIT Achievements*, *supra* note 158, at 5.

162. *See id.* (explaining the revised plan).

163. *COMMIT Sub-Regional Plan of Action (SPA II 2008-2010)*, UN-ACT.ORG (Dec. 2010), <http://un-act.org/publication/view/commit-spaii-2008-2010/> (last visited Mar. 2, 2016) [<https://perma.cc/GBC5-8D3X>] (archived Mar. 2, 2016) [hereinafter *COMMIT SPA II*]; *Final Report on the Implementation of the COMMIT Sub-Regional Plan of Action III*, UN-ACT (Dec. 2010), <http://un-act.org/publication/view/commit-spa-iii-final-report/> (last visited Mar. 2, 2016) [hereinafter *COMMIT SPA III*] [<https://perma.cc/3VQR-WAEC>] (archived Mar. 2, 2016).

164. *See generally COMMIT SPA II*, *supra* note 163 (explaining the conditions after past plans and new objectives).

human trafficking laws.<sup>165</sup> SPA IV, taking place from 2015 to 2018, is the newest iteration of the COMMIT SPA initiative.<sup>166</sup> This newest iteration evaluates—more deeply than its predecessors—the effectiveness of the COMMIT Plan through an analysis of goals versus outcomes.<sup>167</sup>

The COMMIT initiative seems to have fostered a dialogue between GMS nations, which has resulted in some changed legislation and a far more comprehensive understanding of the problems these countries face. Unfortunately, such an initiative can only take anti-trafficking laws so far. Much like the United Nations, COMMIT SPA only gives participating countries a framework within which they may or may not choose to work, both independently and collaboratively with other member nations, to combat human trafficking through policy and legislation. None of it is mandatory or compulsory. And although the COMMIT collaborative is an admirable effort by the nations of the GMS to come together and address human trafficking and forced labor in an effective way, like most comprehensive plans, carrying out these efforts is a long-term plan whose drawn-out implementation does not immediately address the atrocities taking place. For these reasons, the COMMIT Process is not an adequate immediate solution to the forced labor plaguing Southeast Asians—there needs to be more than just local law, especially in its infancy, to drive change in the human trafficking market.

#### D. *The United States: Current and Proposed Solutions*

##### 1. Domestic Initiatives

As discussed *supra* in this Part, the U.S. Department of State has crafted a Trafficking in Persons report that collects data on each country's efforts to combat this problem.<sup>168</sup> This report is not a binding piece of law and only serves the purpose of raising awareness and potentially shaming certain countries into amplifying their anti-trafficking efforts.<sup>169</sup> Of course, it would be hypocritical of the United States to compose an annual report on human trafficking without

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165. See *COMMIT SPA III*, *supra* note 163, at 8–10 (describing new legislation in eight countries). For more information on some of the legislation enacted between SPA II and SPA III's respective implementations, see *supra* Section II.B.

166. See generally *COMMIT SPA IV*, *supra* note 13 (detailing SPA IV).

167. See *id.* at 4 (explaining the structure of the SPA IV).

168. See, e.g., TIP REPORT 2015, *supra* note 11 (publishing the most recent information collected on human trafficking and ranking each nation according to effectiveness of efforts, legal and otherwise).

169. As seen, for example, with Thailand and its efforts to clean up its public image in response to TIP Reports by enacting laws to come down harder on human trafficking violations. See The Anti-Trafficking in Persons Act, *supra* note 124 (enacting stricter human trafficking laws).

imposing its own domestic anti-trafficking laws, especially given the pervasiveness of trafficking both domestically and internationally. Although forced labor is not as glaring of an issue in the United States as relative to the GMS, the United States has worked both at the federal and state level to enact appropriate legislation. However, as of yet, there is no federal consensus for addressing the issue of forced labor from a regulatory perspective.

This is not to say that the United States has been silent on the matter of trafficking entirely. The Trafficking Victims Protection Act, of which there have been several reauthorizations since 2000, was ultimately attached as an amendment to the Violence Against Women Reauthorization Act of 2013.<sup>170</sup> This act, also known as the TVPA, emphasizes cooperation between the United States and foreign governments listed in the TIP Reports, as well as between the United States and actors in the private sector.<sup>171</sup> The goal of these partnerships is to foster a collaborative relationship between the government and companies in the private sector to ensure that: “(1) United States citizens do not use any item, product, or material produced or extracted with the use and labor from victims of severe forms of trafficking; and (2) such entities do not contribute to trafficking in persons involving sexual exploitation.”<sup>172</sup> Perhaps predictably, however, there are no specifics contained in this section or others in the TPVA that identify the means with which the government plans on implementing this business transparency goal.<sup>173</sup>

The TVPA also has guidelines for funding state and NGO anti-human trafficking efforts.<sup>174</sup> Several other sections create various prophylactic frameworks, such as establishing a task force and setting about regulatory guidelines for how to monitor global human trafficking.<sup>175</sup> Section 106, part (a) of the TVPA, titled simply “Prevention of Trafficking,” enumerates several “Economic Alternatives to Prevent and Deter Trafficking.”<sup>176</sup> These alternatives provide a supposedly effective way to combat human trafficking by providing economic incentives and opportunities to potential victims of

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170. *U.S. Laws on Trafficking in Persons*, U.S. DEPT OF STATE, <http://www.state.gov/j/tip/laws/> (last visited Mar. 2, 2016) [<https://perma.cc/N6WD-ZNFP>] (archived Mar. 2, 2016); see also Trafficking Victims Protection Act (TVPA), 22 U.S.C.A. § 7101 (2000) [hereinafter TVPA]; Violence Against Women Reauthorization Act of 2013 § 1201, 127 Stat. 54, 136 (2013).

171. See generally TVPA, *supra* note 170 (emphasizing the need for the United States to work with other nations to combat the trafficking industry).

172. Violence Against Women Reauthorization Act of 2013 at § 105A.

173. TVPA § 7101.

174. Violence Against Women Reauthorization Act of 2013 at § 105–05A.

175. *Id.* at §§ 104–05.

176. *Id.* at § 106.

these crimes.<sup>177</sup> However, these “international initiatives” are not preventive measures or even a solution, but open-ended suggestions.<sup>178</sup>

Besides the TVPA, individual states have also enacted laws of their own to supplement the more generic federal provisions in place. For example, California enacted a version of the TVPA, the AB 22 California Trafficking Victims Protection Act.<sup>179</sup> However, this piece of legislation is likely more concerned with dealing with domestic forced labor connections, rather than anything specific to the GMS.<sup>180</sup>

## 2. Proposed Legislation: The Business Supply Chain Transparency Act

There is proposed legislation which some may argue addresses, at least in part, the issue of human trafficking in the GMS. The goal of the Business Supply Chain Transparency Act (BTA) is “[t]o amend the Securities Exchange Act of 1934 to require certain companies to disclose information describing any measures . . . taken to identify and address conditions of forced labor . . . within the company’s supply chains.”<sup>181</sup> Beyond merely condemning the use of products coming from child and forced labor, the Act would make some serious amendments to the Securities Exchange Act of 1934.<sup>182</sup> Mainly, the Act would require businesses to publicly disclose the sources of all of their products.<sup>183</sup> Those within companies who are responsible for supply chains would need special training to understand the issues related to forced labor and trafficking.<sup>184</sup> Ultimately, the measures that the BTA proposes do not actually address forced labor because there is no punishment mechanism that holds complicit corporations liable beyond potentially being held accountable by their consumers.<sup>185</sup>

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177. *Id.*

178. *Id.*

179. *Current Laws on Human Trafficking*, CASEACT, <http://www.caseact.org/wp-content/uploads/2012/07/Prop-35-Current-Laws-Against-Human-Trafficking-Fact-Sheet.pdf> (last visited Mar. 2, 2016) [<https://perma.cc/AX2G-MTL5>] (archived Mar. 2, 2016).

180. Studies show that a majority of human trafficking in California is domestic-based, meaning most trafficked persons are U.S. citizens or lawful permanent residents (those who have received their green card). *See California*, NAT’L HUM. TRAFFICKING RESOURCE CENTER, <https://traffickingresourcecenter.org/state/california> (last visited Oct. 18, 2016) [<https://perma.cc/23XL-NEJT>] (archived Oct. 12, 2016) (breaking down statistics, by year, of individuals trafficked based on factors like citizenship, gender, and age, as well as quantifying the types of trafficking and the top venues for both labor and sex trafficking).

181. H.R. 3226, 114th Cong. (2015).

182. *See generally id.* (detailing promulgated changes).

183. *Id.* at 10–11.

184. *Id.* at 8–9.

185. Eckert, *supra* note 61, at 394; *See also* Maria Ellinikos, *American MNCs Continue to Profit from the Use of Forced and Slave Labor Begging the Question: Should America Take a Cue from Germany?*, 35 COLUM. J.L. & SOC. PROBS. 1, 26–27 (2001) (explaining the limits of current legislation on multinational corporations).

Being held accountable by consumers is not enough of a deterrent for multinational corporations to discontinue using forced labor products in their supply chain, otherwise a sizeable impact on the forced labor industry would have likely occurred already.

#### IV. RECOMMENDATION: HOLDING U.S. CORPORATIONS ACCOUNTABLE

There is no instantaneous solution to human trafficking in Southeast Asia that will act as an overnight cure-all. If the various global initiatives are proof of anything, they would show that this is a long-term endeavor that requires extensive research, strategy, and collaboration. And, as with all complicated legal matters, to strike at the heart of this problem the solution must be exhaustive. Exhaustive is rarely expedient or feasible, and this Note does not propose to reinvent the wheel in that sense. However, at the same time, smaller-scale, immediate measures can aid in the overall action by weakening the source of the issue.

Were the United States to undertake one of these measures, it could realistically make an impact that is immediate and long-lasting. Specifically, this Part proposes that the United States go beyond merely requiring corporations to disclose the sources of their supply chain. On behalf of the American people, the government should sue companies discovered to have utilized coercive labor practices or products of such labor at any stage in their product supply chain. Enforcement will primarily be a financial burden, in the form of a harsh fine or ultimate expulsion from the U.S. market, which will be placed on those companies in noncompliance. For reasons enumerated below in this Part, this will effectively create a chain reaction in which U.S. corporations will withdraw their financial support from forced labor sources in Southeast Asia, which would likely strike a devastating fiscal blow to the human trafficking industry.

##### *A. Eliminating Forced Labor U.S. Supply Chains*

In order for the United States to operate responsibly and ethically in the international business market, the government should hold American-based multinational corporations—both homegrown companies and any that choose to operate a U.S.-based branch—responsible for their supply chains from beginning to end. This could be implemented in a three-stage, graduated system, with the first stage taking as little as one year to implement. Depending on the realities and setbacks of the other two stages, and how quickly they can be completed to satisfaction, certain steps may be accelerated or slowed down as needed; however, due to the time-sensitive nature of the underlying problem this is trying to solve, this system should be executed as quickly and practically as possible. Ideally, this entire

process will take somewhere between five and seven years to implement, thus laying the groundwork for future legal redress.

### 1. Stage One: Investigate

First, presuming a bill would be passed that would marry the accountability measures of the BTA with the strict liability ban on using products that come from forced labor in the GMS, the government should give corporations a window within which they must work to trace their sources of products and investigate their own supply chains. Short-term federal subsidies might be useful during this stage of the transition to offset the costs of man hours involved in such investigations. This may receive pushback from those uncomfortable with the burden placed on taxpayers to fund this endeavor. However, this is a necessary step which will ensure clean supply chains for generations to come—a reward which is not without cost. Additionally, this subsidy model will fund this research only as long as is necessary. It might not be as difficult as one might think to track down such leads. Associated Press members, who connected Thai fishing boats with slaves to CP Foods by actually witnessing a supply run, did all this in little under a year and that was only with a handful of investigative reporters and limited resources.<sup>186</sup> With the cooperation of the U.S. government and U.S.-based multinational corporations, some real headway should be made in far less time, so subsidizing such efforts will be a short-term dip into taxpayer dollars. Furthermore, as explained later in this Part, a mechanism will be in place to generate subsidy funds outside of taxpayer money.

During this transitional window, U.S.-based companies would need to identify any problematic sources of products. Tainted supply chains should be “quarantined” until the next stage of the process. This initial stage should be closely supervised and aided by the DOL to ensure both the compliance of the corporation with the new regulation and the thoroughness of the supply chain investigation. Depending on the product, during this stage it might also be helpful for the DOL to start to revise its List of Goods Produced by Child Labor or Forced Labor. Because the Federal Trade Commission (FTC) monitors the quality of imports and exports in the United States, it would be wise to engage the FTC as well. As an independent regulatory agency, the FTC’s goal of “prevent[ing] business practices that are . . . deceptive or unfair to consumers,” combined with its “competiti[ve] jurisdiction in broad sectors of the economy,” makes the FTC a prime agency to work

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186. See, e.g., Mason, *supra* note 1 (detailing one man’s experience as a slave in the fishing industry).

alongside the DOL on this matter.<sup>187</sup> Therefore, the “thoroughness metric” by which a company’s compliance should be measured would be satisfied by companies disclosing their supply chains to the FTC/DOL for evaluation. This step-by-step report trailing a company’s product components should be traceable by a third party if need be. Ideally, this report would include records of on-site interactions with foreign suppliers. However, this may not be feasible for every company, so companies must demonstrate absolute understanding and transparency when it comes to their own supply chains.

This stage might seem like the most difficult to implement because of the tediousness of such a test. Tediousness is inevitable here—in order to be thorough and absolutely certain that tainted supply chains are isolated and broken free from, many man-hours must be invested. However, there are several factors to consider. First, as stated above, businesses likely have more resources at their disposal than a group of Associated Press reporters exposing a corrupt supply chain and are much more familiar with their supply chains than an outsider. Presumably, there are auditors and merchandisers responsible for a company’s acquisition of product. These individuals will at least be familiar enough with their company’s supply model to know where to begin researching the origins of their product lines. Second, with such an endeavor being initiated by a prominent international player like the United States, there might be an incentive for not only peer countries like the United Kingdom to follow suit, but such prominence might also persuade local governments to cooperate to ensure that supply chains remain relatively uninterrupted, as this would substantially impact their GDPs. Third, refusing forced labor products might actually be profitable for non-slave suppliers. This might raise the value of their product as slavers are caught or lose buyers.

## 2. Stage Two: Replace

The second phase in this plan would be for all the tainted supply sources to be replaced with reputable sources of product. This phase should be staggered as well, permitting a certain months-long period for corporations to withdraw from their business relationships with suppliers of tainted goods. These companies need not be held accountable during this time for continuing to use tainted products, so long as they were making an honest effort to find viable alternatives, as demonstrated through documentation of communication with reputable suppliers. This echoes some of the language of the BTA, in which efforts to identify supply sources must be undertaken even if no

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187. *About the FTC*, FED. TRADE COMM’N, <https://www.ftc.gov/about-ftc> (last visited Sept. 25, 2016) [<https://perma.cc/N5Y8-E444>] (archived Sept. 25, 2016).

action would result.<sup>188</sup> Again, the DOL or the FTC should supervise, perhaps a little less closely than in the first phase.

This stage would certainly receive the most backlash from large corporations, which would argue that finding a legal source for every piece that goes into every product is simply impossible, impractical, and most importantly too expensive. Both manufacturers and consumers may also be concerned with passing on the costs to the buyer, thus raising prices and making access to cheap mass-produced wares practically impossible. However, though daunting a task, it is certainly not impossible, as clothing retailer H&M has demonstrated.<sup>189</sup>

Of course, federal grants may need to supplement this transition to offset the costs that otherwise would be borne by consumers on the front end, for example in stores. Another option is to use the money generated from fines (elaborated upon in Stage Three) from noncomplying companies to subsidize the transitional costs. Whatever the case, the government would likely need to step in to offset these costs through some mechanism.

Some companies might also decide to retreat from the market rather than go through the hassle of transitioning over. The United States does risk making some companies want to move their headquarters to a different country rather than comply or otherwise suffer noncompliance fees down the line should the company fail in any aspect. The government must emphasize the willingness to work with these corporations to transition their supply chains as seamlessly as possible, while still remaining firm about the new laws. Should any U.S.-based companies decide to headquarter overseas, the government could charge an exit tax so as to disincentivize such behavior. This would also go back into the government's transition subsidy.

### 3. Stage Three: Prevent

This final stage—prevention—would be the easiest to implement simply because all the resources and research have already been underway for many years. The information is plentiful: annual TIP Report studies conducted by state actors and international organizations like the United Nations, and investigations launched by countries like the United States (which has the resources to do so where perhaps GMS nations may have trouble). Thus, the research and the legal statutory language is already available to reference when

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188. See H.R. 3226, 114th Cong. (2015) at 5 (requiring only public disclosure, leaving action in the hands of consumers).

189. H&M has claimed that it “strives to improve labor practices and minimize the adverse environmental effects of not only its suppliers, but its suppliers’ suppliers, right back along the chain.” See New, *supra* note 89.

constructing a statute to hold companies legally liable. The effort would nicely complement the BTA and give it the teeth needed to spur U.S. businesses into action. Once businesses across the board have met the requisite anti-trafficking standards, prevention becomes a matter of maintenance.

That being said, substantial monetary fines should be the main component of any statute to prevent forced labor products from entering the U.S. market. If companies who have been given adequate time to transition their products over to non-forced labor sources either show no effort or otherwise take an unreasonably long time to do so, the United States should sue them on behalf of the American people and levy a sizeable fine. This fine, as mentioned earlier, would go back into the subsidy for transitioning companies' product supplies to legal sources. The FTC, as an agency, can sue these companies for violating consumer trust, or the DOL can sue the companies for being complicit in the tainted supply chain.

Either way, two possible fine structures are most plausible for this situation. The first option is to charge a flat fine of a certain million-dollar amount for every infraction a company gains. However, this disadvantages some companies while it gives other companies an advantage; if some companies make more of a profit than others, then a fine might not be an effective deterrent because they can more easily pay. On the other hand, if a smaller company is fined the same amount, it may bankrupt them or otherwise severely burden their business. The government must balance the incentive to transition with the desire for all U.S.-based companies to use legal supply sources. Therefore, the second fine option, a percentage-based model, seems to be a more reasonable fine structure than a flat amount. The fine would be a certain percentage of the company's year-to-date revenue from the tainted supply chains. This would allow both large and small companies to pay the fine, whilst still dealing a sizeable punishment to noncompliant companies.

Finally, should a company repeatedly ignore the regulations and continuously demonstrate an unwillingness to eliminate GMS-sourced forced labor products, a drastic measure is needed. This punishment would need to serve as both an effective response to the company, as well as a deterrent for any future noncompliance. As a last resort, the government should bar the company from importing their products into the United States, effectively cutting off its access to the entire market. Although perhaps a harsh ultimatum, if fines are the worst penalty in place, some companies may choose to simply pay the fines rather than take responsibility for their own supply chains. This would be an unacceptable workaround that bypasses the purpose of the proposed solution: to target forced labor in the GMS by preventing U.S. companies from financially supporting such an industry.

## V. CONCLUSION

Modern slavery truly exists—and thrives—in the unskilled labor market in the GMS.<sup>190</sup> Forced labor is a lucrative black market industry that deals in peddling human beings as goods.<sup>191</sup> It is especially pronounced in Southeast Asia, which alone accounts for over half of the global total of forced laborers.<sup>192</sup> It is only within the past decade or so that comprehensive efforts have been made by local governments to address this grave problem, on an individual and regional basis.<sup>193</sup> Unfortunately, these endeavors have proven complicated and extensive affairs—they will likely take years, if not decades, to implement fully. More immediate, yet still impactful, measures are needed.

As the world's largest importer, the United States is arguably the country with the strongest impact on global trade.<sup>194</sup> It is imperative that U.S.-based corporations be held accountable to the same standards that the country has endeavored to cultivate as a whole when concerning human trafficking and forced labor. Efforts to address this issue have been made. In addition, other pieces of legislation, such as the newest version of the proposed BTA would attempt to have U.S.-based corporations be held more accountable to consumers by publicly disclosing their foreign supply chains.<sup>195</sup> Although an admirable effort to make business production transparent and perhaps force companies to take a much closer look at their supply chains sourced from foreign labor, there is ultimately no means articulated in this or any other piece of legislation which would hold U.S. companies civilly liable for their own production processes.<sup>196</sup>

To address this problem, in addition to publicly publishing their supply chains, U.S.-based corporations need to be held strictly liable under statute for any instances in which their product supply chain is tainted by forced labor. Although many would argue that this would place an undue investigatory burden on corporations to sort through a convoluted and impenetrable global supply chain to track down the source of each of their products, this is a standard that should have

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190. See *ILO Global Estimate*, *supra* note 20, at 1–2 (detailing the estimated number of forced laborers by region).

191. *Id.*

192. *Id.* at 2.

193. See *COMMIT Achievements*, *supra* note 158, at 52–53 (detailing the history of COMMIT).

194. See H.R. 3226, 114th Cong. (2015) at § 2 (“The United States is the world’s largest importer.”); *The World Factbook: Country Comparison – Imports*, *supra* note 78 (listing the United States as the country importing the most merchandise).

195. See H.R. 3226, 114th Cong. (2015).

196. See *id.*

been upheld in the industry to begin with, especially when dealing with such a gross violation of human rights. Some proponents of these companies might also argue that punishing U.S.-based corporations by proxy is not a sufficient means to address the issue of human trafficking in Southeast Asia because it does not hold those responsible criminally or financially accountable in any way.

However, since the United States is such a substantial financial contributor to the GMS, forcing these companies to remove their monetary support from the forced labor industry could very well cripple it.<sup>197</sup> Like most things concerning a wide scale issue like forced labor, this would not be an endeavor that would succeed overnight. However, it is likely the most immediately impactful of the options enumerated, as U.S.-based companies would probably scramble to comply in order to avoid being prosecuted.<sup>198</sup> Even those companies whose supply chains are already transparent would strive to maintain a supply chain free from the taint of forced labor. Therefore, the solution proposed in this Note is the promptest and most sustainable means to attack forced labor in Southeast Asia: when supplementing the efforts already in place, it could serve as an enforcement mechanism by proxy.

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197. See generally *The World Factbook*, *supra* note 80.

198. See H.R. 3226, 114th Cong. (2015) (acknowledging the need for more legislation).

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