

Insights and Commentary from Dentons

On March 31, 2013, three pre-eminent law firms—Salans, Fraser Milner Casgrain, and SNR Denton—combined to form Dentons, a Top 10 global law firm with more than 2,500 lawyers and professionals worldwide.

This document was authored by representatives of one of the founding firms prior to our combination launch, and it continues to be offered to provide our clients with the information they need to do business in an increasingly complex, interconnected and competitive marketplace.

SHADY SUPPLY CHAIN: Child laborers carry wicker baskets full of hand-picked cotton after a day's labor in fields in Burkina Faso.



California's new anti-slavery law

The legislation presents challenges and opportunities for businesses with international supply chains.

BY ROD PACHECO AND MONICA RICHMAN

Human trafficking and slavery, particularly of children, has been an intractable global problem that defies an easy government solution, especially at the state and local levels. But California has just adopted a new law that could begin to make a difference, by taking aim at the economic beneficiaries of slavery—namely, manufacturers and retailers whose international supply chains perpetuate the abuse of workers in their foreign factories and facilities.

For Americans, slavery may seem a distant concern—after all, the Emancipation Proclamation was signed nearly a century and a half ago. But on the global level, slavery remains a massive moral catastrophe. The problem cannot be underestimated. The U.S. departments of State and Labor monitor conditions for foreign workers for signs of slavery or human trafficking. To date they've identified 71 countries engaged in some form of slavery, with the overwhelming majority of instances involving children. They also cited 130 goods produced in slave-like conditions in China, India,

Brazil, the Philippines and Ethiopia, to name a few locales. The products include a broad range of items made of leather, cotton, textiles, gems, precious metals, embroidery and silk.

The State Department defines slavery as any overt physical force or confinement to compel work, but also includes situations when coercion involves psychological manipulation of workers "made vulnerable by high rates of crime, unemployment, poverty, corruption, or political conflict in their native country." Slave conditions can exist even if a worker originally consented to the arrangement.

The new California Transparency in Supply Chains Act, effective as of Jan. 1, applies to any company with \$100 million in worldwide sales and some connection to California—which could be a statewide chain of stores or a single processing and distribution plant. The law commands businesses to make full disclosure about their supply chains and whether they regularly check them for possible slavery or trafficking conditions—and if so, what they do about it.

The disclosure requirement is significant. Companies must disclose whether they conduct audits that might protect workers—including children—from slavery, and whether they require suppliers to abide by standards of morality and decency. Companies must also attest to whether they conduct training on foreign worker abuses or whether they have installed any internal practices that could detect slavery in the production of their supplies.

The answers to these questions must be publicly—and prominently—displayed on a company's Web site, or in writing upon request. Companies must carefully determine how and what information to put on their Web sites.

The law will have a real impact on large businesses: It is estimated by California's state tax board that 3,200 international companies are obligated to conform to the statute.

Although the law requires public, potentially embarrassing disclosures that could subject a company to significant liability, this is just the start. Many other bills are expected to be introduced on human trafficking, with subsequent legislation likely to be more aggressive and impose even greater sanctions.

We have seen this dynamic at work many times. When the subject of regulating greenhouse gas emissions was first introduced in the California Assembly, it contained fairly modest restrictions and penalties. Those restrictions became ubiquitous and more onerous in subsequent legislation.

A trend had taken hold in the public's mind, and lawmakers were only too happy to give it expression. Most companies reacted accordingly, modifying their behavior to treat greenhouse gas as a serious corporate problem.



Choices companies make will speak of their values and their economic future.

Knowing they will be judged by lawmakers, peer competitors, business partners and, most importantly, their customers, most companies will adjust their behavior. Scrutiny, public protest and lost business will result if they don't. No matter how you felt about the Occupy Wall Street movement, the demonstrations that occurred around the country made clear there is tremendous populist concern over society's have-nots, including those who live a world away. By bringing forceful attention to the subject of human trafficking, the new law means that foreign suppliers will be held to higher standards or lose the chance to connect with one of the world's most desirable marketplaces.

The impact of the law won't be felt immediately. Some companies will either ignore their new obligation or not be aware of it. Emboldened by popular support, the attorney general is likely to deal harshly with those in noncompliance—and it's hard to think of any company that wants to be outed for even inadvertent support of slavery through its own supply chain.

Some companies may comply by duly answering the questions posed, most likely that they don't check conditions

internally or overseas. Although this may meet the barest requirements, the law's requirements that the company post this information on its Web site may well serve as a red flag to both consumers and the attorney general's office that the company doesn't care about whether it profits from slavery.

We think most companies will see the law as an opportunity to demonstrate publicly that they care about working conditions in their global supply chain, that they check randomly and often for abuses, and that their morality is vibrant. We've seen many major companies expand their businesses on this virtuous branding—touting organic ingredients and recyclable materials and use of green building techniques to reduce their carbon footprint. Affixing a company image to positive values is beneficial for all stakeholders. The contrary is true as well: Negative reputations receive negative results.

The choices companies make will speak not only of their values, but of their economic future. The physical and psychological abuse of impoverished workers is a worldwide blight. California's new law will help put companies on notice that the whole world is watching their behavior—and insisting that they do their part to eradicate the horrors of slavery.

Rod Pacheco, a litigation partner in the Los Angeles office of SNR Denton, formerly served as a California state legislator and as district attorney for Riverside County. Monica Richman, an intellectual property and technology partner in the firm's New York office, regularly represents leading retailers and fashion brands. She spent many years in the retail and wholesale industries prior to practicing law.