

**Applicability of Supply Chain Laws to SMEs: A Critique of the Laws of the
United States, the United Kingdom and the European Union**

by Ma. Ricca Pearl S. Sulit

LL.M. SHORT THESIS

COURSE: Human Rights and Corporations

PROFESSOR: Jessica Charles Lawrence, Dr.

Central European University

1051 Budapest, Nador Utca 9.

Hungary

TABLE OF CONTENTS

INTRODUCTION.....	1
I. SUPPLY CHAIN LAWS AND SCOPE OF APPLICATION	6
A. UNITED STATES OF AMERICA.....	6
1. California Transparency in Supply Chains Act 2010	6
2. US Federal Acquisition Regulation 2015	10
3. Dodd Frank Act Section 1502	14
B. UNITED KINGDOM	17
1. UK Modern Slavery Act 2015.....	17
C. EUROPEAN UNION	24
1. EU Non-Financial Reporting Directive (Directive 2014/95).....	25
2. EU Conflict Minerals Regulation (Regulation 2017/821)	28
II. SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)	30
A. SME DEFINITION.....	30
B. IMPORTANCE OF SMES	32
1. Employment and Job Creation	33
2. Export, Production and Productivity	34
3. Innovation	35
III. AREAS OF LEGISLATION AND APPLICABILITY TO SMEs	37
A. MANDATORY TRANSPARENCY.....	37
B. DUE DILIGENCE ON CONFLICT MINERALS	39
C. PUBLIC PROCUREMENT	40
IV. CONCLUSION AND RECOMMENDATION	42
BIBLIOGRAPHY	46

Abstract

This thesis aims to identify the underlying rationale and justification as to why supply chain laws exclude small and medium-sized enterprises (SMEs) within the coverage of the law. It particularly focuses on analyzing the supply chain laws of the three most influential economies and markets in the world which includes the United States, the United Kingdom and the European Union. The set of supply chain laws will be categorized depending on the functions and objectives of each and the factors considered in setting the scope of applicability of the laws will thereafter be identified.

This paper demonstrates that it is only the mandatory transparency laws that explicitly excluded SMEs from its coverage. These laws are regarded to be too much of a burden for SMEs if they would be required to comply. Aside from the insufficiency of resources, SMEs are considered not to be in a position to exert significant economic influence compared to large businesses. With this, the mandatory transparency laws are worth revisiting in order to maximize and realize its full potential through inclusivity by also extending its reach to SMEs. Commitment to upholding human rights protection should not only be for a chosen few because every effort to do so matters. It should encompass all enterprises as part of their corporate social responsibility. All companies, regardless of size, should work together and combine their efforts in order to address any form of slavery in the supply chain and thereafter achieve a noble kind of end in mind.

Introduction

Slavery still exists today despite being sanctioned as illegal in every country in the world. Although the Atlantic slave trade ended by the 19th century when slaves were set free in Western Europe and the Americas,¹ slavery merely transformed over time and has continued to cause harm to people in every part of the world. Nowadays, many final products, such as mobile phones and clothing apparels, passes through a long chain of producers, manufacturers, distributors and retailers who have all participated in its production, delivery and sale before it becomes available in the market.² With the long line of production process, it is not surprising to know that it would be quite difficult to track a component or ingredient of an end product back to a particular manufacturer or producer (*e.g.* cocoa in a chocolate bar to a specific cocoa plantation). Given that there is complexity of supply chains, it results to difficulty in monitoring adherence to supply chain standards making it almost virtually impossible to ascertain whether a product has or has not been produced using slavery.

Evidence shows that slavery has not ceased to exist and is present in the different stages of supply chains, from the production of raw materials to the final stage of production and up until when the product reaches the market.³ As reported by the *International Labour Organization* (ILO), an estimated 40.3 million people are in modern

¹ Timeline of abolition of slavery and serfdom, (Mar. 27, 2019, 11:08AM), https://en.wikipedia.org/wiki/Timeline_of_abolition_of_slavery_and_serfdom.

² *Id.*

³ Slavery in Supply Chains, Anti-Slavery International, (Mar. 27, 2019, 11:08AM), <https://www.antislavery.org/slavery-today/slavery-in-global-supply-chains/>.

slavery,⁴ including 24.9 million in forced labor at any given time in 2016.⁵ It was also estimated that, “out of the 24.9 million people trapped in forced labor, 16 million people are exploited in the private sector such as domestic work, construction or agriculture; 4.8 million persons in forced sexual exploitation, and 4 million persons in forced labor imposed by state authorities.”⁶ Thus, the production chains of goods and services consumed globally are tainted with forced labor.⁷ Globalization has caused the prevalence of modern slavery in almost every global supply chain.⁸ The elimination of human trafficking, forced labor, and abusive child labor is an essential first step if global markets are to deliver shared prosperity and shared security.⁹

As a means of addressing this issue, and in order to curb this kind of transgressions, legislations and regulations were put in place in order to “raise expectations for the private sector to monitor and report on their efforts to mitigate human rights abuses.”¹⁰ Notably, measures used in monitoring and tracking forms of modern slavery in the supply chain, more often than not, only cover large companies and have been highly concentrated on multinational corporations. Most of these laws have set a very high amount of income threshold for a company to be considered as a covered entity. Thus, granting that values set are extremely hefty amounts, it would appear that small and medium-sized enterprises

⁴ The term used to cover a range of exploitative practices including human trafficking, slavery, forced labor, child labor, removal of organs and slavery-like practices.

⁵ International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, ILO, Geneva, (2017).

⁶ *Id.*

⁷ Business and Human Rights Resource Centre (BHRRC) and commissioned by the International Trade Union Confederation (ITUC) with support from Friedrich Ebert Stiftung, *Modern Slavery in Company Operations and Supply Chains: Mandatory transparency, mandatory due diligence and public procurement due diligence*, (2017).

⁸ *Id.*

⁹ *Id.*

¹⁰ Leland Butisbauch and Marianna Smirnova, *What Companies Need to Know About the U.S. Business Supply Chain Transparency Act*, UL LLC, (Mar. 27, 2019, 08:26 PM), <https://industries.ul.com/blog/what-companies-need-to-know-about-the-u-s-business-supply-chain-transparency-act>.

(SMEs) were intentionally excluded from the application. As the SMEs is a steadily growing sector globally in both developed countries such as the United States, the United Kingdom and the European Union and in developing countries as well, as proven by the World Bank stating that SMEs “contribute up to 60% of total employment and up to 40% of national income (GDP) in emerging economies”,¹¹ it is only proper that business that would fall under the classification of SMEs likewise commit themselves, contribute and play their part in upholding human rights protection as a means of fulfilling their corporate social responsibility.

In view of the foregoing, this thesis will analyze and evaluate the supply chain laws of United States (U.S.), the United Kingdom (U.K.) and the European Union (E.U.), three of the most developed and influential and largest economies in the world that likewise serves as major market destinations. They were also the first few territories in the world to have supply chain laws in place that is considered as a “global-leading” piece of legislation that set the trend, having pioneered the development and implementation of a set of standards and requirements such as mandatory transparency and due diligence. This paper will focus specifically on whether or not these laws include SMEs within its coverage and the wisdom or underlying reasons for being so. The comparative analysis of this thesis concentrates on the applicability of the supply chain regulations or laws on SMEs and identification of the factors or bases that were considered and how the legislature came up with setting these thresholds.

¹¹ *Small and Medium Enterprises (SMES) Finance: Improving SMEs access to finance and finding innovative solutions to unlock sources of capital*, THE WORLD BANK, (Mar. 28, 2019 11:53 PM), <https://www.worldbank.org/en/topic/sme/finance>.

This paper is relevant considering that in the global sphere of modern commerce, protection of human rights should not only be demanded from a few selected large and multinational companies. This must also be an obligation expected to be observed by companies or business enterprises, however big or small, because every effort to do so matters. It is each company's duty to ensure that no slavery, or any kind of modern slavery for that matter, has been used in producing the products they sell and on any level of the supply chain. Each contribution and participation, taken together, would create a tremendous impact in protecting and strengthening human rights and curbing related violations worldwide. All companies should work hand-in-hand and act together with their combined efforts in order to achieve such noble kind of end in mind.

The methodology employed in this thesis is the comparison and analysis of the text or provisions of the statutes, regulations or directives relating to supply chain of each of the three abovementioned chosen jurisdictions. Furthermore, the principles, deliberations and rationale behind the scope or coverage of companies covered by supply chain laws, if any, would be examined. In addition, the main sources of the paper will consist mainly of primary and secondary sources including books, legal and business journal articles, commentaries, scholarly works and online resources discussing and analyzing existing supply chain laws, its impact and significance on human rights protection and corporate social responsibility, the role being played and importance of SMEs in the supply chain and the interplay amongst the three.

The thesis will proceed in three parts. The first part will provide an overview of the set of supply chain laws in the U.S., the U.K. and the E.U. and the scope of its application to business enterprises, identify which laws are applicable to SMEs, and explain the

grounds for each law as to why SMEs were included or excluded in its coverage. This will be followed by a thorough discussion of what SMEs are and its importance and contribution with respect to the supply chain particularly in the aspects of employment, exportation and innovation. The final part will discuss and evaluate the supply chain laws categorized into areas of legislation and break down which among the categories would be applicable to SMEs. The factors considered for a category that excludes SMEs in the coverage would be analyzed and critiqued whether or not they are valid justifications. The implication of the similarity or differences in the pattern of the categories of the laws will also be discussed.

I. Supply Chain Laws and Scope of Application

This chapter discusses the three most influential and largest economies in the world, the U.S., the U.K. and the E.U. Given that they were the first few territories in the world to have supply chain laws which served as global-leading pieces of legislation, it is of importance to identify the standards and requirements they have set and the factors they considered in formulating these laws and determining which companies the laws would cover.

A. United States of America

In alignment with the U.N. Guiding Principles on Business and Human Rights, and the OECD Due Diligence Guidance for Responsible Supply Chains, the United States, one of the first countries to enact laws that tackle supply chain, put in place policies and legislation that raise expectations for the private sector to monitor and report on their efforts mitigating human rights abuses.¹² The California Transparency in Supply Chains Act of 2010 served as the pioneering law of its kind and is said to have started the trend for legislation to address and eradicate slavery and human trafficking. Thus, it is important to start the discussion with the examination of this law.

1. California Transparency in Supply Chains Act 2010

Prior to the enactment of the California Transparency in Supply Chains Act 2010, there has been a vague and incomplete understanding of the responsibility for working

¹² Leland Butisbauch and Marianna Smirnova, *What Companies Need to Know About the U.S. Business Supply Chain Transparency Act*, UL LLC, (Mar. 27, 2019, 08:26 PM), <https://industries.ul.com/blog/what-companies-need-to-know-about-the-u-s-business-supply-chain-transparency-act>.

conditions within corporate supply chains and thus, has not been given much thought and attention by the public.¹³ Pioneering such a law in California fundamentally changed that.¹⁴

In a nutshell, the California Transparency in Supply Chains Act (SB 657) requires retail sellers and manufacturers that do business in California and have over \$100 million in gross annual receipts to publicly disclose their efforts to eradicate slavery and human trafficking from their supply chains.¹⁵ The disclosure must state “efforts to eradicate slavery and human trafficking from their direct supply chain for tangible goods offered for sale” that are related to five specific areas namely: verification, audits, certification, internal accountability, and training.¹⁶ Description of the company’s efforts shall be posted on its Internet website on the business’ homepage. If the company has no website, a written disclosure would suffice. If a covered party fails to post the mandatory disclosure, the California Attorney General can seek injunctive relief as the sole remedy for breach of the Act.¹⁷ The explicit goal of the law is to provide consumers with new information, through the simple act of disclosure that will compel corporations and consumers to truly engage in human rights issue of slavery and human trafficking, with the hopes of enabling consumers to make more educated purchasing decisions.¹⁸

It must be emphasized that under Section 1714.43(3)(a)(1) of the Act, the law applies to every retail seller and manufacturer doing business in California that has annual worldwide gross receipts that exceed one hundred million dollars (\$100,000,000). Therefore, the law does not cover a company that does not do business in California or

¹³ Know the Chain, Insights Brief, *Five Years of the California Transparency in Supply Chains Act*, (2015).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ Cal. Civ. Code, § 1714.43, subd. (a)(1).

¹⁷ Latham & Watkins, *The California Transparency in Supply Chains Act (SB 657)*, Client Alert, Number 1262 (2011).

¹⁸ *Supra* note 13.

does not have annual worldwide gross receipts that exceed \$100 million. It is important to note that the law would not apply to small and medium-sized businesses that are making less than one hundred million per year in profit, but which potentially may still have egregious human rights violations within their supply chains.¹⁹ The text of the legislation made no definitive explanation or reason for the exclusion of small and moderately-sized businesses from compliance with the law.²⁰

During the Assembly Committee on Judiciary Bill Analysis of Senate Bill No. 657 held on 29 June 2010, there appears to be a discussion regarding the exemption from the coverage of small business as follows:

XXX

“The Measure's Small Business Exemption: In consideration of the *reduced ability of the state's smaller manufacturers and retailers to influence human trafficking*, the author prudently has included an exemption in the bill for a retail seller or manufacturer having less than \$100,000,000 in annual sales. While this exemption naturally does not alleviate small businesses from actually complying with federal and state law on human trafficking, *it appropriately recognizes that they may not have the same type of ability or resources to exert economic influence on their suppliers as do the state's largest businesses.*

Indeed, according to materials developed by the state's Franchise Tax Board (FTB) and provided by the author to the Committee, based on total annual

¹⁹ Alexandra Prokopets, *Trafficking in Information: Evaluating the Efficacy of the California Transparency in Supply Chains Act of 2010*, 37 Hastings Int'l & Comp. L. Rev. 351 (2014).

²⁰ *Id.*

sales, this bill's disclosure requirements will impact well less than 5% (only 3.2%) of businesses operating within California's borders. Astonishingly however, this 3.2% of the state's retail sellers and manufacturers will "capture" an overwhelming majority of the economic activity in California. Again astonishingly, according to the FTB, these relatively few but giant major retailers and manufacturers account for over 87% of the total receipts for total income and cost of goods sold in California. *Since these businesses have such a disproportionate economic influence, this bill appears to appropriately target only the state's largest retailers and manufacturers in an effort to effect the most significant impact on efforts to fight human trafficking and slavery.*"²¹ (emphasis supplied)

Thus, it can be gleaned that the small businesses are recognized to not have the same type of ability or resources to exert economic influence on their suppliers compared to the state's large business enterprises. Moreover, because of large businesses' disproportionate economic influence, it was regarded that in achieving a significant impact in reducing and fighting human trafficking and slavery, it is sufficient to make the law applicable to the largest companies in California without necessarily involving the small businesses. Aside from this explanation, no other justifications were brought forth and there has been no questions relating to the analysis presented by the Assembly Committee.

²¹ SB 657 Bill Analysis (Steinberg), ASSEMBLY COMMITTEE ON JUDICIARY, Mike Feuer, Chair, pp. 9-10 (June 29, 2010).

2. US Federal Acquisition Regulation 2015

Another law in the U.S. that lays down measures to detect and eliminate human trafficking and forced labor in their supply chains is the US Federal Acquisition Regulation 2015, particularly Section 52.222-50(b). Section 52.222-50 entitled *Combating Trafficking in Persons* is the final rule amending the Federal Acquisition Regulation (FAR) that was issued on 29 January 2015 to implement Executive Order 13627, “Strengthening Protections Against Trafficking in Persons in Federal Contracts,” and Title XVII of the National Defense Authorization Act for fiscal year 2013, “Ending Trafficking in Government Contracting.”²² The new rule applies to contracts performed domestically, as well as those involving international performance. The rule took effect on 02 March 2015 and was applied to all new contracts and future orders under existing indefinite-delivery/indefinite quantity (ID/IQ) contracts.²³

Based on studies on human trafficking conducted by the Commission on Wartime Contracting and agency inspectors general, it was found that there is a need to take additional steps to prohibit trafficking in government contracting, which supports the implementation of the rule.²⁴ The rule aims to make the ban on human trafficking more effective.²⁵ The FAR rule is said to strengthen the U.S. government’s existing zero-tolerance policy on trafficking in persons that is outlined in the Trafficking Victims Protection Act (TVPA).²⁶ Prior to the implementation of the new rule, the U.S. law already prohibited all contractors and their employees from engaging in “severe forms of

²² Ernst & Young LLP, *New FAR human trafficking rules - Regulations strengthening protections against trafficking and the impact on contractors*, EY Government contract services update, (2015).

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. §§ 7101–7112 (2000).

trafficking in persons,” procuring commercial sex, or using forced labor during the performance of the contract.²⁷ The FAR rule creates new obligations and establishes significantly more specific prohibitions and requirements with which federal contractors and subcontractors must comply.²⁸

Under FAR 52.222-50(b), the rule prohibits **ALL** contractors and subcontractors, including their employees and agents, from:

1. Engaging in severe forms of trafficking in persons during the period of performance of the contract;
2. Procuring commercial sex acts during the period of performance of the contract;
3. Using forced labor in the performance of the contract;
4. Destroying, concealing, confiscating or otherwise denying access to the employee’s identity or immigration documents (e.g., passports, driver’s licenses);
5. Using misleading or fraudulent practices when recruiting employees or offering employment, as well as using recruiters that do not comply with local labor laws;
6. Charging employee recruitment fees;
7. Failing to provide return transportation or pay for the cost of return transportation upon the end of employment for an employee who is not a national of the country in which the work is taking place and who was brought into that country for the purpose of working on a US Government contract or subcontract (for portions of contracts performed outside the United States) or an employee who is not a United

²⁷ See 22 U.S.C.A. § 7104(g).

²⁸ Kristen E. Ittig and Samuel M. Witten, *Final Anti-Human Trafficking Regulations Mean Stricter Requirements for Government Contractors and Subcontractors*, Arnold & Porter LLP, (2015).

States national and who was brought into the country for the purpose of working on a US Government contract or subcontract;

8. Providing or arranging housing that fails to meet the host country housing and safety standards;
9. Failing to provide an employment contract, recruitment agreement or other required work document in writing.

The anti-trafficking regulations likewise prohibits commercial item contractors, subcontractors, and small businesses, regardless of whether the contract is performed in the United States or abroad, from engaging in the abovementioned list of trafficking-related activities.²⁹ Federal contractors and subcontractors with contracts or subcontracts performed abroad involving services or supplies exceeding \$500,000 must implement appropriate *compliance plans* targeting trafficking activities, complete a compliance certification prior to accepting an award, and publish such plans at their respective workplaces and on their websites.³⁰ However, the *compliance plan requirement* does not apply to contracts and subcontracts for commercial off-the-shelf (COTS) items or products.³¹ Accordingly, companies that hold supply contracts for commercial items that are sold in substantial quantities in the commercial marketplace and are offered to the

²⁹ Kristen E. Ittig, Samuel M. Witten, and Elizabeth T.M. Fitzpatrick, *The New Anti-Trafficking Rules and What they Mean for Government Contractors and Subcontractors*, Thomson Reuters Briefing Papers, (2015), citing FAR 22.1701, 22.1703.

³⁰ FAR 22.1703(c), 52.222-50(h); see FAR 52.222-56.

³¹ FAR 22.1703(c)(1)(i), 52.222-50(h)(1); see 41 U.S.C.A. § 103(1) (“the term ‘commercial item’ means—(1) an item, other than real property, that—(A) is of a type customarily used by the general public or by nongovernmental entities for purposes other than governmental purposes; and (B) has been sold, leased, or licensed, or offered for sale, lease, or license, to the general public”); 41 U.S.C.A. § 104 (“the term ‘commercially available off-the-shelf item’—(1) means an item that—(A) is a commercial item (as described in [41 U.S.C.A. § 103(1)]); (B) is sold in substantial quantities in the commercial marketplace; and (C) is offered to the Federal Government, without modification, in the same form in which it is sold in the commercial marketplace; but (2) does not include bulk cargo,...such as agricultural products and petroleum products”); accord FAR 2.101.

Government without modification in the same form in which they are sold in the commercial marketplace are not subject to the compliance plan requirements.³² Hence, as a significant exception to the compliance plan requirement, the compliance plan requirements do apply to non-COTS commercial item contracts.³³

Same with the mandatory disclosure rule³⁴ and other recent supply chain regulatory provisions,³⁵ the FAR provisions in effect enhance the obligation of contractors to oversee the actions of their subcontractors. Prior to award and then annually thereafter, contractors and subcontractors must *certify* that they have in place an appropriate compliance plan and that, after conducting “due diligence,” neither they nor any of their subcontractors have engaged in trafficking-related activities, or, if abuses have been found, the contractor or subcontractor has taken the appropriate remedial and referral actions.³⁶

In sum, the final rule laid down in the anti-trafficking regulations’ prohibitions on specified trafficking-related activities and the self-reporting requirements, audit and investigation obligation, and contract clause requirements apply to *all* federal contractors, subcontractors, and their employees, regardless of the size of the contract or subcontract and whether the contract are performed in the United States or abroad.³⁷ However, the new FAR *compliance plan and certification requirements* do not extend to all contractors and

³² *Supra* note 29.

³³ *Id.*

³⁴ FAR 52.203-13 (requiring a covered contractor to self-report when, among other things, it has credible evidence that a subcontractor has committed a violation of federal criminal law involving fraud, conflict of interest, bribery or gratuity violations found in 18 U.S.C.A., or a violation of federal civil False Claims Act). See generally Chierichella & Casino, “Compulsory Confession Without Absolution: Complying with the FAR Mandatory Disclosure Rule,” Briefing Papers No. 15-10 (Sept. 2015).

³⁵ See, e.g., Federal Acquisition Regulation; Fair Pay and Safe Workplaces, 80 Fed. Reg. 30,548 (May 28, 2015) (proposed rule implementing Exec. Order No. 13673, Fair Pay and Safe Workplaces (July 31, 2014), 79 Fed. Reg. 45,309 (Aug. 5, 2014)).

³⁶ FAR 22.1703(c), 52.222-50(h)(5), (i), 52.222- 56.

³⁷ See FAR 22.1703, 52.222-50.

subcontractors.³⁸ Instead, they only apply to contractors and subcontractors that perform on a non-COTS contract or subcontract in which the estimated value of the supplies acquired or services rendered outside the United States exceeds \$500,000.³⁹ Although a compliance plan is not required for companies with contracts under \$500,000 these companies must still maintain a “due diligence program” to assess and mitigate risks, and to ensure that no human trafficking and slavery is taking place in the supply chain.

It can be observed that the threshold used in determining the applicability of the requirement is the amount of supplies or services provided which is set at more than \$500,000 and not the amount of income or the size of the company or enterprise transacting with the government. As the law does not explicitly exclude SMEs from its coverage, SMEs transacting contracts amounting to beyond \$500,000 would be within the coverage of the law. Commercial small businesses are thus required to comply with the requirements of the law.

3. Dodd Frank Act Section 1502

Section 1502 of the Dodd Frank Act, commonly known as the “conflict minerals” provision was a landmark law passed by the U.S. Congress in July 2010.⁴⁰ The “conflict minerals” provision requires U.S. publicly-listed companies to check their supply chains for tin, tungsten, tantalum and gold (3TGs), if they might originate in Democratic Republic

³⁸ FAR 22.1703(c), 52.222-50(h).

³⁹ FAR 22.1703(c)(1)(i)), 52.222-50(h)(1). Moreover, the rules specify that the calculation of \$500,000 corresponds to the overarching value of the contract. See FAR 52.222-50(h)(1)(ii) (specifying the compliance plan requirement applies to contracts that have “an [overall] estimated value that exceeds \$500,000”). See Federal Acquisition Regulation; Ending Trafficking in Persons, 80 Fed. Reg. 4967, 4969 (Jan. 29, 2015) (discussing \$500,000 threshold).

⁴⁰ *Implementation of US Dodd-Frank Act rule on conflict minerals: Commentaries, guidance, company actions*, (Mar. 28, 2019, 11:53 PM), <https://www.business-humanrights.org/en/conflict-peace/conflict-minerals/implementation-of-us-dodd-frank-act-rule-on-conflict-minerals-commentaries-guidance-company-actions>.

of the Congo (DRC) or an adjoining country, take steps to address any risks they find, and to report or disclose on their efforts annually to the U.S. Securities and Exchange Commission (SEC).⁴¹ The Dodd Frank Act Section 1502, which aims to dissuade companies from continuing to engage in trade that supports regional conflicts to prevent armed groups in the DRC and surrounding regions from benefiting from the sale of these minerals, is basically intended to make transparent the financial interests that support armed groups in the DRC area by requiring companies using conflict minerals in their products to disclose the source of such minerals.⁴² Section 1502 thereof introduces supply chain transparency by requiring companies listed on U.S. stock exchanges that uses 3TGs in their production processes to declare the origin of such minerals and perform appropriate supply chain due diligence.

Aside from being the first law of its kind, this law played a significant role in bringing to the public's consciousness the idea that companies are individually responsible for the impact their business can have, anywhere along their supply chain that practically changed the way minerals are sourced globally.⁴³ The leading international standard for this kind of supply chain due diligence was developed by the Organization for Economic Cooperation and Development (OECD), which translates the UN Guiding Principles of Business and Human Rights into a practical five-step framework for all companies. The due diligence measures must conform to a nationally or internationally recognized due diligence framework such as the "OECD Due Diligence Guidance".⁴⁴

⁴¹ US Dodd-Frank Act Section 1502(A).

⁴² *What is Dodd Frank Act Section 1502?*, (Mar. 28, 2019, 11:53 PM), <https://www.ecovadis.com/dodd-frank-act-section-1502/>.

⁴³ *US Conflict Minerals Law, Section 1502 of U.S. Dodd Frank Act: the landmark US law requiring responsible minerals sourcing*, GLOBAL WITNESS, (Mar. 28, 2019, 11:53 PM), <https://www.globalwitness.org/en/campaigns/conflict-minerals/dodd-frank-act-section-1502/>.

⁴⁴ *Id.*

Under Section 1502, the rule applies to a company that uses any conflict minerals if (1) the company files reports with the SEC pursuant to Exchange Act Sections 13(a) or 15(d); and (2) the minerals are “necessary to the functionality or production” of a product manufactured by the company or contracted by the company to be manufactured.⁴⁵ Section 1502 is applicable to all SEC “issuers”, including foreign issuers, that manufacture or contract to manufacture products where “conflict minerals are necessary to the “functionality or production” of the product.⁴⁶ However, an issuer that only services, maintains or repairs a product containing conflict minerals is not affected.⁴⁷ It was projected that the industries that would most likely have been affected include electronics and communications, aerospace, automotive, jewelry and industrial products.⁴⁸

It must be emphasized that U.S. companies are not *per se* encouraged to stop sourcing from this region, instead, they are required to show they are exercising “due diligence” to make sure they are not funding armed groups or human rights abuses.⁴⁹ The U.S. Securities and Exchange Commission (SEC) issued the final rule implementing Section 1502 in August 2012 which requires companies to report publicly on their due diligence and to have their reports independently audited.⁵⁰

The Dodd Frank Act was said to affect a wide range of industries including electronics, aerospace, medical devices, jewelry, apparel, etc.⁵¹ As estimated by the U.S.

⁴⁵ US Securities and Exchange Commission (SEC), *Conflict Minerals Disclosure, A Small Entity Compliance Guide*, (Mar. 28, 2019, 11:53 PM), <https://www.sec.gov/info/smallbus/secg/conflict-minerals-disclosure-small-entity-compliance-guide.htm>.

⁴⁶ *Supra* note 42.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Supra* note 43.

⁵⁰ *Supra* note 40.

⁵¹ *What is Dodd Frank Act Section 1502?*, ECOVADIS, (Mar. 28, 2019, 09:12 PM), <https://www.ecovadis.com/dodd-frank-act-section-1502/>.

SEC, about 6,000 issuers will be directly affected and many others will be indirectly affected, including issuer and non-issuer suppliers.⁵² The European Commission estimated that 150,000-200,000 E.U. companies - mostly downstream firms – are involved in the supply chains of the 6,000 affected U.S.-listed companies.⁵³

Considering that the law explicitly includes all “issuers” and does not distinguish whether a company is of certain amount of income or size, then this law would be applicable to both big and small companies. Thus, unless the company falls under the abovementioned exception, an issuer that only provides services or maintains or repairs a product containing conflict minerals, company issuers including small and medium-sized enterprises would fall under the coverage of this law. Moreover, The U.S. SEC itself declared that, “the requirements apply equally to all reporting companies, including small entities and domestic and foreign reporting companies.”⁵⁴

B. United Kingdom

Following the California Transparency in Supply Chains Act, a bill designed to combat modern slavery in the United Kingdom and to consolidate previous offences relating to trafficking and slavery was introduced in October 2013. The United Kingdom did not wait for long before taking a step in enacting such law in the country.

1. UK Modern Slavery Act 2015

In one the news stories featured in the UK Government’s official website (gov.uk), it was stated that, “the *UK Modern Slavery Act 2015* was the first of its kind in Europe,

⁵² *Id.*

⁵³ European Commission Memo, *Frequently Asked Questions - Responsible sourcing of minerals originating conflict-affected and high-risk areas: towards an integrated EU approach*, (2014).

⁵⁴ *Supra* note 45.

and one of the first in the world, to specifically address slavery and trafficking in the 21st century.”⁵⁵ The article cited the importance of the legislation as it aims to significantly enhance support and protection for victims, affords law enforcement the tools they need to target modern day’s slave drivers, and includes a world leading provision to encourage business to take action to ensure their end-to-end supply chains are slavery free, among others.⁵⁶

The Supply Chain Clause, which came into force on 29 October 2015, provided under Chapter 30, Part 6, Section 54 entitled *Transparency in supply chains etc.* of the said Act, in essence, requires every organization carrying on a business in the UK with a total annual turnover of thirty-six million pounds (£36,000,000) or more to produce a slavery and human trafficking statement for each financial year of the organization. The Act merely requires organizations to prepare and publish a statement, rather than to take any positive steps to eradicate slavery from their supply chains.⁵⁷ Moreover, the provisions do not provide for legally binding requirements to conduct due diligence on supply chains and there are no criminal or financial penalties for non-compliance.⁵⁸

As summarized under Section 2.2 of the Practical Guide⁵⁹ issued by the UK Government, “the provision in the Act requires that any commercial organization in any sector, which supplies goods or services, and carries on a business or part of a business in

⁵⁵ *Historic law to end Modern Slavery passed, A landmark Bill to help eradicate modern slavery received Royal Assent*, Gov.UK News Story, March 26, 2015, <https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed>.

⁵⁶ *Id.*

⁵⁷ Ernst & Young LLP, *The UK Modern Slavery Act 2015- What are the requirements and how should businesses respond?*, (2017).

⁵⁸ Sharon Benning-Prince, *A Guide to the Modern Slavery Act for Your Business*", Contract Store Legal Business Blog, (31 July 2015), <https://www.contractstore.com/blog/uk-law/a-guide-to-the-modern-slavery-act-your-business-could-be-affected/>.

⁵⁹ U.K. Government, *Transparency in Supply Chains etc. A practical guide*, (2017).

the U.K., and is above a specified total turnover, must produce a slavery and human trafficking statement for each financial year of the organization. For the purposes of this requirement, ‘supply chain’ has its everyday meaning. Regulations have set the total turnover threshold at thirty-six million pounds, (£36,000,000). The statement must set out what steps they have taken during the financial year to ensure that modern slavery is not occurring in their supply chains and in their own organization.” Section 2.4 of the same Guide likewise mentions that, “the provision requires an organization to be transparent about what is happening within its business.” This means that if an organization has taken no steps to ensure slavery and human trafficking is not taking place they must still publish a statement stating this to be the case.⁶⁰

Under Section 54, the following are the guidelines in determining who are covered or required to comply with the said provision:

- a) Any organization in any part of a group structure will be required to comply with the provision and produce a statement if they:
 - are a body corporate or a partnership (described as an “organization” in this document), wherever incorporated;
 - carry on a business, or part of a business, in the U.K.;
 - supply goods or services; and
 - have an annual turnover of £36m or more.
- b) Total turnover is calculated as:
 - the turnover of that organization; and
 - the turnover of any of its subsidiary undertakings (including those operating

⁶⁰ *Id.*

wholly outside the U.K.).

c) “Turnover” means the amount derived from the provision of goods and services falling within the ordinary activities of the commercial organization or subsidiary undertaking, after deduction of—

- trade discounts;
- value added tax; and
- any other taxes based on the amounts so derived.

It was estimated that the Act would apply to over 12,000 businesses, however, there is currently no mechanism to check which companies are required to report and the transparency requirement applies to any incorporated company or partnership, including limited liability partnerships, that carries on its business, or part of its business, in the United Kingdom.⁶¹ Regardless of the company’s geographic location, the requirement would still be applicable, thus, the obligations also apply to overseas businesses providing goods or services within the United Kingdom.⁶² In the same way, the, organizations that pursue primarily charitable or educational aims or purely public functions are also covered under the Modern Slavery Act.⁶³ The Government refers to applying a “common sense approach” to organizations that have a ‘demonstrable business presence in the U.K.’ being caught by the provision.⁶⁴ However, it is still ultimately the courts that will be the final arbiter of applicability, taking into account the particular facts.⁶⁵

⁶¹ *Supra* note 57.

⁶² *Id.*

⁶³ *Id.*

⁶⁴ *Supra* note 59.

⁶⁵ *Supra* note 57.

Before the law was enacted, the Government of the United Kingdom launched a consultation on 11 February seeking views in relation to the transparency in supply chains provision in the Modern Slavery Act 2015. The consultation took place over a twelve week period from 12 February 2015 to 7 May 2015, held at the Home Office to which a wide range of partners and stakeholders were invited. The purpose of the consultation was to seek the views of interested parties on what level the turnover threshold should be set at and the content of the statutory guidance. The consultation document was summarized with the title *Modern Slavery and Supply Chains Government Response Summary of consultation responses and next steps* which contained the following salient provisions:⁶⁶

xxx

“8.4 We believe that £36m is the right turnover threshold for a number of reasons. *£36m is one of thresholds set out in the Companies Act 2006 for determining the size of a large company. This will simplify the nonfinancial reporting requirements for large businesses over £36m who are already obliged to report on non-financial matters.*

8.5 Secondly, we want to *ensure that there is a level playing field*. All businesses should be aware of the potential for modern slavery to infiltrate their supply chains and businesses. We think it would be unreasonable to expect only a few businesses with significant turnover to be subject to the requirement to publish a statement.

8.6 *Setting the threshold at £36m will also ensure that small and medium-sized businesses, that do not have the same resources as larger businesses*

⁶⁶ U.K. Government, *Modern Slavery and Supply Chains Government Response - Summary of consultation responses and next steps*, (2015).

are not caught by the requirements of the transparency provision.”

(emphasis supplied)

Based on the consultation report, “several respondents who opted for the £36m threshold commented that they would also like to see the lowering of the threshold over time to accord with the definition of a small to medium-sized business in accordance with the Companies Act 2006.”⁶⁷ As discussed in the next paragraph, “many of the respondents who opted for the £36m threshold suggested that, in order for this requirement to be effective there should be a way that small and medium sized businesses, non-governmental organizations, and other international companies who are not required to report within the legislation can opt in as early adopters of the requirements of the Act.”⁶⁸ The respondents considered that with these organizations opting in, it would be of great help in outlining the specific alterations that might need to be made to the reporting framework that would best fit the operational structures and resources of smaller businesses prior to any future consideration of whether the threshold should be lowered.⁶⁹ This goes to show that early on, part of the considerations made was to actually include small and medium-sized business in setting the turnover threshold in determining those that would fall within the coverage of the provision. SMEs were not entirely meant to be excluded and left out of the picture. Although, the main consideration is actually excluding SMEs within the coverage of the Act is the assumption that they do not have ample and the same amount of resources that large companies have. It was also mentioned that they are trying to prevent SMEs from being caught up by the requirements of the transparency provision which means that

⁶⁷ *Id.* Par. 6.5, Determining the Turnover Threshold

⁶⁸ *Id.* Par. 6.6

⁶⁹ *Supra* note 66.

imposing transparency requirements on SMEs would appear to be an unnecessary burden on its part.

In rationalizing the exclusion of small and medium-sized businesses, paragraph 6.13, emphasizing that there would be very little or no benefit at all in setting a higher threshold and reducing it over time, states:

xxx

“6.13) 36% of respondents disagreed or strongly disagreed with question 3 which sought views on introducing a higher threshold initially and then reducing it over time. Respondents felt that there would be very little or no benefit to taking this approach as *the smaller businesses may pass this information on to the larger businesses anyway as part of the larger businesses reporting requirements*. Almost half of the 36% of respondents who disagreed or strongly disagreed with reducing the threshold over time instead recommended that a more far-reaching approach should be taken from the outset, by applying the provision to all businesses regardless of their turnover.” (*emphasis supplied*)

Despite the exclusion of the small business from the coverage, part of United Kingdom’s issued guide inserted a discussion on how these entities can go about in helping curb slavery and trafficking, to wit:

“Smaller Organizations 3.14 Organizations which do not meet the requirements in the Act, for example by having a turnover below £36m, *can still choose to voluntarily produce a ‘slavery and human trafficking statement’*. Smaller organizations may be asked by those they are supplying

goods or services to if they have a statement or policy setting out their approach to tackling modern slavery, especially if they are bidding for contracts with larger businesses above the threshold. Therefore, smaller organizations may find it helpful to voluntarily produce a statement as a means of managing these requests and providing a level of assurance to their customers. *Even if the legislation does not apply, we would encourage all businesses to be open and transparent about their recruitment practices, policies and procedures in relation to modern slavery and to take steps that are consistent and proportionate with their sector, size and operational reach.*⁷⁰ (emphasis supplied)

Hence, although small businesses were exempt from the coverage, they are still highly encouraged to be transparent on their practices, policies and procedures on a voluntary basis and on their own, take measures within their capacity to help fight slavery and trafficking, as a means of their contribution and cooperation.

C. European Union

It cannot be denied that the EU is considered as the world's largest economic bloc, and its legislation could influence business practices across the world.⁷¹ Thus, in order to address a worldwide and systemic problem, such as slavery, it would require supply chain regulations that will create a common standard for all businesses trading in the E.U.,

⁷⁰ *Supra* note 59.

⁷¹ Louise Eldridge and Klara Skrivankova, *Why we need EU legislation to tackle slavery in supply chains*, ANTI-SLAVERY INTERNATIONAL, (Mar. 27, 2019, 02:18PM), <https://www.antislavery.org/eu-legislation-slavery-supply-chains/>.

whatever industry or country they operate in.⁷² Below are the regulations adopted and put in place by the E.U. to promote sustainable and responsible supply chain.

1. EU Non-Financial Reporting Directive (Directive 2014/95)

In September 2014, the Council of the European Union adopted Directive 2014/95, the directive on disclosure of non-financial and diversity information by certain large companies. This directive amended the accounting directive 2013/34/EU. Under the new directive, companies based in the E.U. with more than 500 employees have to publish reports on the policies they implement in relation to environmental protection, social responsibility and treatment of employees, respect for human rights, anti-corruption and bribery, and diversity on company boards in terms of age, gender, educational, and professional background. Companies are required to include non-financial statements in their annual reports from 2018 onwards.

As explained by the European Commission, this law requires large companies to disclose certain information on the way they operate and manage social and environmental challenges in order to help investors, consumers, policy makers and other stakeholders to evaluate the non-financial performance of large companies and encourage these companies to develop a responsible approach to business.⁷³ The objective is to increase E.U. companies' transparency and performance on environmental and social matters and, therefore, to contribute effectively to long-term economic growth and employment.

⁷² *Id.*

⁷³ European Commission, *Non-financial reporting – EU rules require large companies to publish regular reports on the social and environmental impacts of their activities*, (Mar. 27, 2019, 02:18PM), https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

E.U. rules on non-financial reporting only apply to large public-interest companies with more than 500 employees.⁷⁴ This covers approximately 6,000 large companies and groups across the E.U., including listed companies, banks, insurance companies and other companies designated by national authorities as public-interest entities⁷⁵ The European Member States were given two years to transpose the E.U. Directive into national legislation.

With respect to the non-applicability of the Directive to small and medium-sized enterprises, it has explicitly laid down the basis in Paragraph 13, viz:

xxx

“(13) The European Council, in its conclusions of 24 and 25 March 2011, called for the *overall regulatory burden, in particular for small and medium-sized enterprises (‘SMEs’), to be reduced at both European and national levels*, and suggested measures to increase productivity, while the Europe 2020 Strategy for smart, sustainable and inclusive growth aims to improve the business environment for SMEs and to promote their internationalisation. Thus, in accordance with the *‘think small first’ principle, the new disclosure requirements should apply only to certain large undertakings and groups.*” (emphasis supplied)

This has been properly supplemented by clearly setting forth that SMEs should be exempted from the requirements of the Directive as follows:

⁷⁴ Directive 2014/95/EU, Par. 1, Article 19a, Non-financial statement

⁷⁵ European Commission, *Non-financial reporting, EU rules require large companies to publish regular reports on the social and environmental impacts of their activities*, (Mar. 27, 2019, 02:18PM), https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en; European Commission, *Improving corporate governance: Europe’s largest companies will have to be more transparent about how they operate*, (Mar. 27, 2019, 02:18PM), http://europa.eu/rapid/press-release_STATEMENT-14-124_en.htm.

“Paragraph (14) The scope of those non-financial disclosure requirements should be defined by reference to the average number of employees, balance sheet total and net turnover. *SMEs should be exempted from additional requirements, and the obligation to disclose a non-financial statement should apply only to those large undertakings which are public-interest entities and to those public-interest entities which are parent undertakings of a large group, in each case having an average number of employees in excess of 500, in the case of a group on a consolidated basis.* This should not prevent Member States from requiring disclosure of non-financial information from undertakings and groups other than undertakings which are subject to this Directive.” (*emphasis supplied*)

Based on the foregoing provisions, the Directive wants to avoid undue administrative burden on SMEs by not requiring them to disclose environmental and social information. It was recognized that SMEs may lack appropriate human resources and information handling costs may be said to be proportionately higher which in turn would make the overall burden disproportionately high.⁷⁶ The Directive in itself will not result in a direct administrative burden for smaller companies.⁷⁷ Thus, the new rule will only apply to large companies with more than 500 employees, as the costs for requiring small and medium-sized enterprises to apply them could outweigh the benefits.⁷⁸ The European

⁷⁶ European Commission, *Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions*, (Mar. 27, 2019, 02:18PM), http://europa.eu/rapid/press-release_MEMO-14-301_en.htm

⁷⁷ *Id.*

⁷⁸ *Supra* note 75.

Commission upholds its belief that “SMEs need simpler and less burdensome conditions for doing business across the E.U. and has remained to be its clear priority to take concrete measures in this regard” and thus excluding SMEs within the Directive’s coverage.⁷⁹

2. EU Conflict Minerals Regulation (Regulation 2017/821)

The EU Parliament and EU Council adopted new import regulations on “conflict minerals” on 17 May 2017 that will take effect on 1 January 2021. As the US Dodd-Frank Act of 2010 was a major source of inspiration for the EU Conflict Minerals Regulation, the EU regulation will directly apply to companies that import tin, tungsten, tantalum and gold minerals and metals into the EU regardless of where these 3TGs originated.⁸⁰ The regulation applies directly to between 600 and 1,000 EU importers and it will indirectly affect about 500 smelters and refiners of tin, tantalum, tungsten and gold, whether they are based inside the EU or not.⁸¹

The EU Regulation applies to EU-established importers of the targeted materials, while Non-E.U. companies will also be affected since EU companies will have to ensure that they source from responsible smelters and refiners.⁸² An estimate of European Commission revealed that approximately 880,000 EU-based companies are operating in manufacturing sectors and potentially working with 3TGs.⁸³ However, importers that do not reach the volume thresholds set out in *Annex I* of the regulation will be exempt from

⁷⁹ Par. 4.4, Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0740>, (2012).

⁸⁰ Deloitte Touche Tohmatsu Limited, *New EU Conflict minerals regulation Implications and lessons learnt from the Dodd-Frank Act in the US*, (2018).

⁸¹ European Commission, *The Regulation Explained*, (Mar. 27, 2019, 06:23 PM), <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#affected>.

⁸² *Supra* note 80.

⁸³ *Id.*

due diligence obligations. Furthermore, transporters and other intermediaries, investors and end-users in the sector are outside the scope of the regulation.⁸⁴

Based on a study undertaken on behalf of the European Commission, it was found that various small and medium-sized enterprises are directly affected by this law, while other SMEs face commercial pressures to implement due diligence (e.g. from customer policies).⁸⁵ Thus, it can be inferred that Regulation 2017/821 are made applicable to SMEs.

Chapter 1 Conclusion

Although supply chain laws in these three different jurisdictions operate to achieve a common objective with respect to supply chain, there have been variations with respect to the scope of the laws applicability to businesses. Some laws depend on the size or amount of income or turnover of the company, while others do not distinguish as to income and size of the company as long as it involves certain types of goods or commodities, or it involves a certain amount of goods or services to be supplied to the contracting party, in the case of government procurement. Moreover, not all laws offer an exhaustive explanation as to why and how they were able to come up with such thresholds or justification. A careful reading and perusal of each law is needed in order to identify whether or not it would only be applicable to large companies or to SMEs as well.

⁸⁴ *Id.*

⁸⁵ Levin Sources and RINA Consulting, *Study on the Support System for SME Supply Chain Due Diligence: Final Report*, (2017).

II. Small and Medium-Sized Enterprises (SMEs)

A. SME Definition

The term “small and medium-sized enterprises” or “SMEs” has no single standard or universally accepted definition. Although from the word itself, it can be understood to mean business enterprises that do not qualify as large companies that operate with multi-million dollar funds or capital and nor does it generate multi-million dollar revenues. Thus, SMEs are commonly understood not to include multinational corporations (MNCs) that have facilities and other assets in other countries other than its home country that caters to the global market.⁸⁶ SMEs are generally considered to be “non-subsidiary, independent firms that employ fewer than a given number of employees” and this number varies across countries.⁸⁷ In a sense, size serves as its measuring denominator, which can be relative in nature. As the basic classification criteria, it is the entity’s size that defines SMEs.⁸⁸ This size is measured either by the number of employees or annual enterprise revenue.⁸⁹

Under the E.U. law, small and medium-sized enterprises (SMEs) are defined in the EU recommendation 2003/361⁹⁰ where the main factors determining whether an enterprise is an SME are staff headcount and either turnover or balance sheet total, to wit:

“Article 2

Staff headcount and financial ceilings determining enterprise categories

⁸⁶ James Chen, *Multinational Corporation – MNC*, (Mar. 27, 2019, 06:23 PM), <https://www.investopedia.com/terms/m/multinationalcorporation.asp>.

⁸⁷ OECD SME and Entrepreneurship Outlook, 2005 Ed.

⁸⁸ OECD, A qualitative definition of SME Mr. Hauser, Institute für Mittelstandsforschung, Bonn, Germany, *SBS Expert Meeting “Towards better Structural Business and SME Statistics”* Statistics Directorate 3-4 (2005).

⁸⁹ *Id.*

⁹⁰ European Commission, *Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C (2003) 1422)*, Official Journal L 124 , 20/05/2003 P. 0036 – 0041, (Mar. 29, 2019 11:19 AM), <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>.

1. The category of micro, small and medium-sized enterprises (SMEs) is made up of enterprises which employ fewer than 250 persons and which have an annual turnover not exceeding EUR 50 million, and/or an annual balance sheet total not exceeding EUR 43 million.
2. Within the SME category, a small enterprise is defined as an enterprise which employs fewer than 50 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 10 million.
3. Within the SME category, a microenterprise is defined as an enterprise which employs fewer than 10 persons and whose annual turnover and/or annual balance sheet total does not exceed EUR 2 million.”

Thus, an enterprise’s qualification either as micro, small or medium-sized enterprises depends on fulfilling the maximum ceilings for staff headcount which is at 250 and either a turnover ceiling and/or a balance sheet ceiling of less than EUR 50 million or EUR 43 million, respectively. By 2003, up to 23 million enterprises in the E.U. is said to fall within the scope of the definition.⁹¹

Same with the E.U., the U.K. follows the usual definition of SMEs as any business with fewer than 250 employees. In 2018, there were around 5.7 million SMEs in the U.K. which was over 99% of all the businesses.⁹²

In the U.S., there are thresholds established by U.S. government institutions, including those of the Department of Commerce, the Small Business Administration

⁹¹ European Commission, *Commission Staff Working Document, on the implementation of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*, Brussels, (2009).

⁹² Chris Rhodes, *Briefing Paper Number 06152, Business statistics*, UK Parliament, HOUSE OF COMMONS LIBRARY, (2018).

(SBA), and the Department of Agriculture in defining an SME.⁹³ The definition used for SMEs by SBA's Office of Advocacy (SBA Advocacy) is the most straightforward, which includes all enterprises with fewer than 500 employees and is what the U.S. typically considers in identifying SMEs.⁹⁴

B. Importance of SMEs

The Organisation for Economic Co-operation and Development (OECD), an intergovernmental economic organization with 36 member countries,⁹⁵ including the U.S., the U.K. and most of the E.U. countries, which “promotes policies that will improve the economic and social well-being of people around the world”⁹⁶ through stimulating economic progress and world trade stated that SMEs account for over 95% of manufacturing enterprises and an even higher share in many service industries in OECD countries by 2005.⁹⁷ As generally agreed amongst scholars and policy makers, one the major advantages of the SME sector is its employment potential at low capital cost.⁹⁸ The OECD also pointed out some of the most important roles and contribution of the SMEs in the world's economic growth and development, among other things, as discussed below.

⁹³ *Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports*, U.S. International Trade Commission, Investigation No. 332-508 USITC Publication 4125 (2010).

⁹⁴ *Id.*

⁹⁵ Australia, Austria, Belgium, Canada, Chile, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Israel, Italy, Japan, Korea, Latvia, Lithuania, Luxembourg, Mexico, Netherlands, New Zealand, Norway, Poland, Portugal, Slovak Republic, Slovenia, Spain, Sweden, Switzerland, Turkey, United Kingdom and United States.

⁹⁶ About the OECD, (Mar. 29, 2019 02:35PM), <https://www.oecd.org/about/>.

⁹⁷ OECD SME and Entrepreneurship Outlook, OECD Publishing, ISBN 92-64-00924-8, Paris, p.17, (2005).

⁹⁸ Dr. Ngui Thomas Katua, *The Role of SMEs in Employment Creation and Economic Growth in Selected Countries*, International Journal of Education and Research Vol. 2 No. 12, (2014).

1. Employment and Job Creation

For the OECD area, SMEs play a major role in economic growth as it provides the source for new jobs.⁹⁹ By 2000, over 95% of OECD enterprises are SMEs, accounting almost for 60%-70% of employment in most countries.¹⁰⁰ By 2017, SMEs are the predominant form of enterprise, accounting for approximately 99% of all firms in the OECD area.¹⁰¹ They were able to provide main source of employment, accounting for about 70% of jobs on average making SMEs as the main source of jobs in the business sector, and are major contributors to value creation, generating between 50% and 60% of value added on average.¹⁰² The OECD likewise cited that in emerging economies, SMEs contribute up to 45% of total employment and 33% of GDP.¹⁰³

Considering that larger firms downsize and has continuously outsourced more functions, the weight of SMEs in the economy is increasing.¹⁰⁴ In addition, the OECD stated that, “productivity growth – and consequently economic growth – is strongly influenced by the competition inherent in the birth and death, entry and exit of smaller firms.”¹⁰⁵ This resulted to job turnover rates and stirring in labor markets that have contributed to the competitive process and structural change.¹⁰⁶ With the continuous expansion of SMEs, it has been able to create jobs and boost employment.

⁹⁹ OECD Policy Brief June 2000, Small and Medium-sized Enterprises: Local Strength, Global Reach, (2000).

¹⁰⁰ *Id.*

¹⁰¹ Enhancing the Contributions of SMEs in a Global and Digitalised Economy, Meeting of the OECD Council at Ministerial Level on 7-8 June 2017 in Paris, (2017).

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ *Id.*

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

SMEs also account for a large share of new jobs, especially in those countries that have displayed a strong employment record, including the United States and the Netherlands.¹⁰⁷ As SMEs are young and new firms, it was able to generate jobs more than their share of employment.¹⁰⁸

Small enterprises or establishments played an important role in the job creation process since they account for between 40 and 80 per cent of total manufacturing employment.¹⁰⁹ Furthermore, it was shown that the share of large firms in employment and output declined.¹¹⁰ The OECD assessed the importance of smaller establishments in job dynamics on the basis of net employment changes. From the mid-1980s to the early 1990s, in all countries, small establishments that were basically composed of fewer than 100 employees displayed more rapid net employment growth than larger ones.¹¹¹

2. Export, Production and Productivity

SMEs account for between 30 and 70 per cent of value added which varied between countries and industries.¹¹² Moreover, “the likelihood that output or product is exported is smaller for SMEs than for large enterprises: in very general terms and depending on the country, SMEs contribute between 15 and 50 per cent of exports, while between 20 and 80 per cent of SMEs are active exporters.”¹¹³ It was estimated that, overall, SMEs contribute between 25 and 35 per cent of world manufactured direct exports.¹¹⁴ However, the OECD posits that “most of the growth of exports seems to be taking place in smaller SMEs.”¹¹⁵

¹⁰⁷ OECD, *Small Business, Job Creation and Growth: Facts, Obstacles and Best Practices*, (1997).

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* citing OECD Employment Outlook 1994, Chapter 3.

¹¹² *Id.*

¹¹³ *Id.*

¹¹⁴ OECD, *Globalisation and Small and Medium Enterprises*, (1997).

¹¹⁵ *Id.*

In the U.S., small businesses’ “exports grow faster, add jobs faster, and pay higher wages, accounting for 98 percent of all identified U.S. exporters and supporting nearly four million jobs in communities across America through both direct and indirect exports.”¹¹⁶

3. Innovation

As many big enterprises tend to focus their efforts on improving their old and existing products and trying to produce the same in larger quantities obtaining general advantages of the dimensional economy, many new products and technological processes are being made in small and medium-sized then.¹¹⁷ SMEs then focus their efforts on creating new products and services, thus being capable to adapt their production faster to the changing market requirements considering that most of the time, large enterprises do not have the same flexibility as SMEs.¹¹⁸

Although not all SMEs are innovative, “new and small firms are often the driving force behind the sort of radical innovations that are important for economic growth, since they can work outside of dominant paradigms, exploit technological or commercial opportunities that have been neglected by more established companies or enable the commercialisation of knowledge that would otherwise remain uncommercialised in universities and research organisations.”¹¹⁹

Chapter 2 Conclusion

¹¹⁶ Office of the United States Trade Representative, *Small Business*, (Mar. 29, 03:45 PM), <https://ustr.gov/issue-areas/small-business>.

¹¹⁷ Cibela Neagu, *The importance and role of small and medium-sized businesses*, Theoretical and Applied Economics, Volume XXIII, No. 3(608), Autumn, pp. 331-338 (2016).

¹¹⁸ *Id.*

¹¹⁹ OECD *Enhancing the Contributions of SMEs in a Global and Digitalised Economy* (2017), citing Baumol, W., *The Free-Market Innovation Machine: Analyzing the Growth Miracle of Capitalism*, Princeton University Press, Princeton (2002).

With this, it cannot be denied that the SME sector plays an extremely significant part in modern economy and has been of vital contribution to the world's overall economic development.¹²⁰ The SME sector has proved its economic and social beneficial effects making it a field of strategic interest for the economy.¹²¹ The SMEs represent the main catalyst of economic development and have contributed immensely “to achieving the fundamental goals to any national economy, becoming the backbone of social-economical progress.”¹²² In addition, SMEs are important for economic and social reasons, given the sectors role in employment. The vast majority of both developed and developing countries “rely on dynamism, resourcefulness and risk taking of SMEs to trigger and sustain process of economic growth.”¹²³ As the OECD puts it, “SMEs play a key role in national economies around the world, generating employment and value added and contributing to innovation.”¹²⁴

The U.S. recognizes that SMEs are the backbone of the American and European economies. As found by the Office of the United States Trade Representative, “the U.S.’ 30 million SMEs account for nearly two-thirds of net new private sector jobs in recent decades.”¹²⁵ In the same manner, according to the European Commission, small and medium-sized enterprises (SMEs) represent 99% of all businesses in the EU.¹²⁶

¹²⁰ *Supra* note 117.

¹²¹ Avasilicai, S. (coord.) & Cluj-Napoca: Tedosco, *Entrepreneurship: applied research*, (2009).

¹²² Druker, P.F., *Innovation and Entrepreneurship*, New York: Harper Collins. (2009).

¹²³ Muritala, Taiwo, Awolaja, Ayodeji & Bako, Yusuf, *Impact of Small and Medium Enterprises on Economic Growth and Development*, American Journal of Business and Management, 1(1), pp.18-22, Vol. 1, No. 1, 2012, 18–22, (2012).

¹²⁴ OECD, *Enhancing the Contributions of SMEs in a Global and Digitalised Economy*, (2017).

¹²⁵ Office of the United States Trade Representative, *Small – and Medium-Sized Enterprises (SMEs)*, (Mar. 29, 2019, 04:58 PM), <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-12>.

¹²⁶ European Commission, *What is an SME*, (Mar. 29, 2019, 04:58 PM), https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en.

III. Areas of Legislation and Applicability to SMEs

The laws of the U.S., the U.K. and the E.U. pertaining to supply chain, after discussing in detail their scope of applicability, can be categorized into three areas accordingly: mandatory transparency, due diligence on conflict minerals and public procurement.

A. Mandatory Transparency

The California Transparency Supply Chains Act (CTSCA), the UK Modern Slavery Act of 2015 (MSA) and the EU Non-Financial Reporting Directive (Directive 2014/95) would fall under this category.

Both the CTSCA and MSA require public disclosure of measures or actions that companies are taking to address modern slavery in their operations and supply chains, if any. This requirement only covers companies that meet certain global revenues, which, considering such level of threshold, would not include SMEs. For the CTSCA, the Assembly Committee of SB No. 657 made it clear that small businesses are exempt from the coverage because of their “reduced ability to influence human trafficking” and that “they may not have the same type of ability or resources to exert economic influence on their suppliers as do the state’s largest businesses.”¹²⁷ This was bolstered by stating that, according to California’s Franchise Tax Board, “giant major retailers and manufacturers account for over 87% of the total receipts for total income and cost of goods sold in California.” It was likewise concluded that the economic influence of these large

¹²⁷ SB 657 Bill Analysis (Steinberg) Assembly Committee on Judiciary, Mike Feuer, Chair, pp.9-10 (June 29, 2010).

companies are sufficient to “effect the most significant impact on efforts to fight human trafficking and slavery.”¹²⁸

However, given this view, it can be gleaned that the remaining 13% of the total receipts for total income and cost of goods sold in California were unaccounted for. It can be safe to assume that this percentage is composed of SMEs and although 13% may appear to be immaterial, it still is a big percentage that has been disregarded. This should not be the case. 13% is 13% and in a numerical or point of view, especially on an international human rights perspective, it is considered material. There should be no room left for any possibilities or chances for any kind of human trafficking and slavery regardless of how big or small a company is. As the main objective of the law is to “eradicate slavery and human trafficking” it is only proper to cover all enterprises. The law should not have settled with “significant impact”, but should have aimed for a wider and more comprehensive coverage since “eradication” entails putting an end or completely eliminating this kind of transgressions. Instead of excluding the remaining 13%, all of the companies operating in California should have been within the reach of the law without any exception. The gravity of slavery and human trafficking or any form of human slavery as human rights violations cannot be overemphasized.

Meanwhile, the EU directive on disclosure of non-financial and diversity information apply only to large public-interest companies with more than 500 employees. Since under EU recommendation 2003/361, companies that employ less than 250 persons fall within the definition and category of micro, small and medium-sized enterprises (SMEs), it follows that the directive does not cover SMEs. Moreover, the Directive wants

¹²⁸ *Id.*

to avoid undue administrative or regulatory burden on SMEs recognizing that they lack appropriate human resources and information handling costs would make the overall burden disproportionately high.¹²⁹ It was unequivocally acknowledged that SMEs need simpler and less burdensome conditions for doing business across the EU and has remained to be the clear priority.¹³⁰

Based on the foregoing, the three jurisdictions unanimously excluded SMEs in the mandatory transparency laws. The main considerations and justifications were the limited or insufficient resources of the same and the belief that SMEs do not have that much significant influence or percentage to effect economic impact or to create effective change within the supply chain. However, with the number of employment created and being catered by SMEs and its vital contribution in the world's overall economic development, it is more than enough to recognize that SMEs are players that greatly affect the supply chain. They should not be taken out of the picture and its significance in the supply chain cannot and should not be disregarded.

B. Due Diligence on Conflict Minerals

The Dodd Frank Act 1502 and the EU Conflict Minerals Regulation fall under this category. These legislations require companies to check their supply chains for tin, tungsten, tantalum and gold (3TGs) and take steps to address any risks they find, and to report or disclose on their efforts. As the US Dodd-Frank Act of 2010 was major source of

¹²⁹ European Commission, *Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions*, (Mar. 29, 2019, 04:58 PM), http://europa.eu/rapid/press-release_MEMO-14-301_en.htm.

¹³⁰ European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies (2012).

inspiration for the EU Conflict Minerals Regulation, the EU regulation almost mirrored the former except that the regulation was not limited to 3TGs originating from the Congo region. The EU regulation also covered smelters and refiners whether based inside or outside EU. Both of the laws made no distinction between small and large companies with respect to the coverage of the law. As long as a company imports tin, tungsten, tantalum and gold minerals and metals, then the law would apply. Hence, these legislations were made applicable to SMEs. The 880,000 EU-based companies affected by the EU regulation includes various SMEs and other SMEs are under commercial pressures to implement due diligence.¹³¹

C. Public Procurement

The US Federal Acquisition Regulation Section 52.222-50 was enacted with the aim of ending trafficking in government contracting and would thus regulate government procurement. Section 52.222-50 of the regulation requires all government contractors to certify that they and their subcontractors are not engaged in human trafficking activities. As the law does not explicitly exclude SMEs from its coverage, commercial SMEs transacting contracts not under \$500,000 would be within the coverage of the law.

Chapter 3 Conclusion

Based on the foregoing, it can be observed that supply chain laws in the three largest economies in the world has and can be classified into similar categories including mandatory transparency, due diligence on conflict minerals and public procurement, among others. After examination of each category, it was identified that only the mandatory

¹³¹ Levin Sources and RINA Consulting, *Study on the Support System for SME Supply Chain Due Diligence: Final Report*, (2017).

transparency legislations are the ones that has intentionally and explicitly excluded SMEs within its coverage. The due diligence on conflict minerals understandably emphasizes on the source of the conflict minerals regardless of the amount of the transaction or importation and regardless of the size of the company. On the other hand, public procurement supply chain laws, particularly the U.S. Federal Acquisition Regulation used the amount of the transaction which is benchmarked at \$500,000 in identifying coverage of the law instead of the size of the company contracting with the government. Thus, for the due diligence on conflict minerals and public procurement supply chain laws categories, no discussion was made with respect to its applicability to large and small companies. Notably, the law of one jurisdiction in each category almost resembles the same content, wisdom, reasoning and objective of the other two jurisdictions. Hence, for the mandatory transparency category, justification propounded for excluding SMEs is related and almost identical. Moreover, as can be observed, there has been not much deviation from each other's contents and the texts almost have the same line of thought.

IV. Conclusion and Recommendation

Amongst the three areas of legislation of supply chain laws, it is only the mandatory transparency laws category, having three laws with identical tenor of requirement, that explicitly excluded SMEs from its coverage. By the nature of what is required by these laws, transparency is achieved by providing website disclosure or a published statement or report. It follows that for a company to comply with this requirement, additional cost would be incurred from their end. From the collection of information to the preparation of the statement or report, either through posting in the company's website or publication of such statement or report, the legislature took into consideration that it would necessitate financial expenditure on the part of the company. As a consequence, they see that this could be too much of a burden for SMEs if they would also be required to comply. SMEs might be shelling out funds not within its means, just for the sake of complying. This in turn could lead to financial troubles that could take a hit on the SMEs' operations and once they are not able to sustain the additional cost, this could bring about the business' closure eventually. From the point of view of encouraging formation and protection of SMEs' viability, this could be a valid presumption.

However, it must be pointed out that due diligence requirement under conflict minerals and certification requirement under public procurement would also entail cost for covered companies. Nevertheless, SMEs were not exempted from its coverage. With this, it could be safe to say that economic resources should not be the primary consideration in omitting SMEs in the coverage of the law. If cost of compliance is an issue, then the legislature should have found ways of making it economical and affordable to SMEs so as not to financially cripple the latter. This is enough basis in itself to actually apply the same

treatment to both big and small companies with respect to mandatory transparency requirements.

Both of the due diligence and certification requirements for conflict minerals and government procurement does not distinguish whether a company is big or small. For the due diligence requirement on conflict minerals, as long as a company is sourcing or importing 3TG minerals, then it is covered by the law. While under public procurement, once the transaction exceeds \$500,000, SMEs would be covered. In this case, the essential feature used in determining compliance with the law is not the size of the enterprise contracting with the government, but the amount of the procurement contract. This is a factor that can be looked into in capturing what a significant economic activity is.

Another factor that was laid out is the ability of SMEs to exert economic influence on their suppliers compared to large businesses, again because of its size and limited resources. However, this presumption is misplaced. Although it cannot be denied that large companies command a strong influence, it does not follow that SMEs are incapable of doing so. It is as if saying that SMEs are just very small powerless players whose influence is negligible and whose significance is immaterial. They may have overlooked how SMEs actually affect the supply chain, who most of the time are at the very bottom of it. Also, SMEs indubitably contribute greatly to the overall economic activity of the U.S., the U.K. and the E.U. given the enterprises' percentage in the industry and the number of employments it provides. This has been categorically recognized by all of the three jurisdictions and even by the OECD whom they are members of.

Following the “zero tolerance” policy, the mandatory transparency laws must cover all bases and that would mean application of the law must cover both large companies and

SMEs. As mentioned by *Dr. Jardine*, “slavery and human trafficking statements play a vital role in the regulation of slavery by allowing the operations of firms to be transparent, drawing attention to areas where exploitation and abuses are likely to occur, and placing businesses’ response to be subject under scrutiny by investors, consumers and civil society. Such transparency can place added pressure on businesses to be more accountable and proactive in the fight against slavery.”¹³² The mandatory transparency laws should maximize and realize its full potential by extending its reach to SMEs. Commitment to upholding human rights protection should not only be for a chosen few, it should encompass all enterprises as part of their corporate social responsibility.

Thus, it is important to have the mandatory transparency laws revisited, particularly on its exclusion of SMEs within its coverage. The fact that laws in the U.S. and the U.K. under this category has been consistently questioned by legal scholars and commentators with respect to its scope of applicability to businesses and has been time and again regarded as one of the major loopholes of the mandatory transparency laws, this only implies that they should very well be reexamined. With regard to the factors brought forward in excluding SMEs, there should be proper reevaluation if these factors are valid and reasonable vis-à-vis the objective of eradicating slavery, forced labor and human trafficking. There should be certain parameters set to check if these factors clearly outweigh the objective of the laws. The law should be able to strike a balance between the survival of the SMEs and the overall impact of excluding SMEs in the coverage, not only in the supply chain, but most importantly on championing and protecting human rights

¹³² Dr. Akilah Jardine, *Could standards help businesses comply with the Modern Slavery Act?* The British Academy, (Mar. 27, 2019 04:56 PM), <https://www.thebritishacademy.ac.uk/blog/could-standards-help-businesses-comply-modern-slavery-act>.

both in their own jurisdictions and on a global scale. Also, if compliance would be considered as an impediment for SMEs to prosper and flourish in their businesses, then the government must find ways on how to actually go about it and minimize the cost and burden on complying with the requirements of the law. The government can also look at providing assistance to make compliance easy, simple and cost-effective and it can likewise conduct studies that would find ways on how to achieve the same.

Another point that must be noted is that, when one of these countries put in place a certain kind of law, the other jurisdictions would somehow follow or pattern theirs on the law of first country that enacted it. They would be providing the same basis, content and justification. There is a significant resemblance between and amongst the categories of the laws. Thus, when drafting laws such as mandatory transparency laws, which would be the first of its kind, it is important to carefully consider all aspects and factors especially before making any exclusion. There should be a very careful analysis on the coverage of the law and it must be ensured that all bases will be covered considering that these three jurisdictions, more often than not, set the leading trends in laws, and has created tremendous economic and legal impact globally.

Bibliography

Laws

A. United States

California Transparency in Supply Chains Act [Cal. Civ. Code, § 1714.43] (2010)

Dodd Frank Act Section 1502

US Federal Acquisition Regulation §22.1703 and 52.222-50 (2015)

Victims of Trafficking and Violence Protection Act of 2000, 22 U.S.C. (2000).

B. United Kingdom

UK Modern Slavery Act 2015

C. European Union

EU Conflict Minerals Regulation (Regulation 2017/821)

EU Non-Financial Reporting Directive (Directive 2014/95)

Legislative Bill

U.S. Senate Bill 657 (2010)

Books and Periodic Materials

Avasilicai, S. & Cluj-Napoca: Tedosco, *Entrepreneurship: applied research*, (2009)

Cibela, Neagu, *The importance and role of small and medium-sized businesses*, Theoretical and Applied Economics, Volume XXIII, No. 3(608), (2016)

Druker, P.F., *Innovation and Entrepreneurship*, New York: Harper Collins. (2009)

Journals

Alexandra Prokopets, *Trafficking in Information: Evaluating the Efficacy of the California Transparency in Supply Chains Act of 2010*, 37 Hastings Int'l & Comp. L. Rev. 351 (2014)

Muritala, Taiwo, Awolaja, Ayodeji & Bako, Yusuf, *Impact of Small and Medium Enterprises on Economic Growth and Development*, American Journal of Business and Management, 1(1), pp.18-22, Vol. 1, No. 1, 2012, 18–22, (2012)

Ngui Thomas Katua, *The Role of SMEs in Employment Creation and Economic Growth in Selected Countries*, International Journal of Education and Research Vol. 2 No. 12, (2014)

Official Reports

Business and Human Rights Resource Centre (BHRRC) and commissioned by the International Trade Union Confederation (ITUC), *Modern Slavery in Company Operations and Supply Chains: Mandatory transparency, mandatory due diligence and public procurement due diligence*, (2017)

European Commission, *Commission Staff Working Document on the implementation of Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises*, Brussels, (2009)

European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions, Action Plan: European company law and corporate governance - a modern legal framework for more engaged shareholders and sustainable companies* (2012)

International Labour Organization, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, ILO, Geneva, (2017)

OECD Employment Outlook, Chapter 3, (1994)

OECD *Enhancing the Contributions of SMEs in a Global and Digitalised Economy* (2017)

OECD Policy Brief June 2000, Small and Medium-sized Enterprises: Local Strength, Global Reach, (2000).

OECD SME and Entrepreneurship Outlook, 2005 Ed.

OECD SME and Entrepreneurship Outlook, OECD Publishing, ISBN 92-64-00924-8, Paris, p.17, (2005)

OECD, *Small Business, Job Creation and Growth: Facts, Obstacles and Best Practices*, (1997)

OECD, A qualitative definition of SME, *SBS Expert Meeting “Towards better Structural Business and SME Statistics”* Statistics Directorate 3-4 (2005)

OECD, *Enhancing the Contributions of SMEs in a Global and Digitalised Economy*, Meeting of the OECD Council at Ministerial Level on 7-8 June 2017, (2017)

OECD, *Globalisation and Small and Medium Enterprises*, (1997)

U.S. International Trade Commission, *Small and Medium-Sized Enterprises: Overview of Participation in U.S. Exports*, Investigation No. 332-508 USITC Publication 4125, (2010)

U.S. Senate Bill 657 Bill 2010 Analysis (Steinberg) Assembly Committee on Judiciary, (2010)

U.K. Government, *Modern Slavery and Supply Chains Government Response - Summary of consultation responses and next steps*, (2015)

U.K. Government, *Transparency in Supply Chains etc. A practical guide*, (2017)

U.K. Parliament, *Briefing Paper Number 06152, Business statistics*, HOUSE OF COMMONS LIBRARY, (2018)

Online Sources & News Articles

About the OECD, <https://www.oecd.org/about/>

Deloitte Touche Tohmatsu Limited, *New EU Conflict minerals regulation Implications and lessons learnt from the Dodd-Frank Act in the US*, (2018)

Dr. Akilah Jardine, *Could standards help businesses comply with the Modern Slavery Act?* The British Academy, <https://www.thebritishacademy.ac.uk/blog/could-standards-help-businesses-comply-modern-slavery-act>

Ernst & Young LLP, *New FAR human trafficking rules - Regulations strengthening protections against trafficking and the impact on contractors*, EY Government contract services update, (2015)

Ernst & Young LLP, *The UK Modern Slavery Act 2015- What are the requirements and how should businesses respond?*, (2017)

European Commission Memo, *Frequently Asked Questions - Responsible sourcing of minerals originating conflict-affected and high-risk areas: towards an integrated EU approach*, (2014)

European Commission, *Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises (Text with EEA relevance) (notified under document number C (2003) 1422)*, Official Journal L 124, 20/05/2003 P. 0036 – 0041, <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:32003H0361>

European Commission, *Disclosure of non-financial and diversity information by large companies and groups - Frequently asked questions*, http://europa.eu/rapid/press-release_MEMO-14-301_en.htm

European Commission, *Non-financial reporting – EU rules require large companies to publish regular reports on the social and environmental impacts of their activities*, https://ec.europa.eu/info/business-economy-euro/company-reporting-and-auditing/company-reporting/non-financial-reporting_en.

European Commission, Par. 4.4, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions*, <https://eur-lex.europa.eu/legal-content/EN/ALL/?uri=CELEX:52012DC0740>, (2012)

European Commission, *The Regulation Explained*, <http://ec.europa.eu/trade/policy/in-focus/conflict-minerals-regulation/regulation-explained/#affected>

European Commission, *What is an SME*, https://ec.europa.eu/growth/smes/business-friendly-environment/sme-definition_en.

Global Witness, *US Conflict Minerals Law, Section 1502 of U.S. Dodd Frank Act: the landmark US law requiring responsible minerals sourcing*, <https://www.globalwitness.org/en/campaigns/conflict-minerals/dodd-frank-act-section-1502/>

Implementation of US Dodd-Frank Act rule on conflict minerals: Commentaries, guidance, company actions, <https://www.business-humanrights.org/en/conflict-peace/conflict-minerals/implementation-of-us-dodd-frank-act-rule-on-conflict-minerals-commentaries-guidance-company-actions>

James Chen, *Multinational Corporation – MNC*, <https://www.investopedia.com/terms/m/multinationalcorporation.asp>.

Know the Chain, Insights Brief, *Five Years of the California Transparency in Supply Chains Act*, (2015)

Kristen E. Ittig and Samuel M. Witten, *Final Anti-Human Trafficking Regulations Mean Stricter Requirements for Government Contractors and Subcontractors*, Arnold & Porter LLP, (2015)

Kristen E. Ittig, Samuel M. Witten, and Elizabeth T.M. Fitzpatrick, *The New Anti-Trafficking Rules and What They Mean for Government Contractors and Subcontractors*, Thomson Reuters Briefing Papers, (2015)

Latham & Watkins, *The California Transparency in Supply Chains Act (SB 657)*, Client Alert, Number 1262 (2011)

Leland Butisbauch and Marianna Smirnova, *What Companies Need to Know About the U.S. Business Supply Chain Transparency Act*, UL LLC, <https://industries.ul.com/blog/what-companies-need-to-know-about-the-u-s-business-supply-chain-transparency-act>

Levin Sources and RINA Consulting, *Study on the Support System for SME Supply Chain Due Diligence: Final Report*, (2017)

Louise Eldridge and Klara Skrivankova, *Why we need EU legislation to tackle slavery in supply chains*, ANTI-SLAVERY INTERNATIONAL, <https://www.antislavery.org/eu-legislation-slavery-supply-chains/>

Office of the United States Trade Representative, *Small – and Medium-Sized Enterprises (SMEs)*, <https://ustr.gov/trade-agreements/free-trade-agreements/transatlantic-trade-and-investment-partnership-t-tip/t-tip-12>

Office of the United States Trade Representative, *Small Business*, <https://ustr.gov/issue-areas/small-business>.

Sharon Benning-Prince, *A Guide to the Modern Slavery Act for Your Business*, Contract Store Legal Business Blog, (31 July 2015), <https://www.contractstore.com/blog/uk-law/a-guide-to-the-modern-slavery-act-your-business-could-be-affected/>

Slavery in Supply Chains, Anti-Slavery International,
<https://www.antislavery.org/slavery-today/slavery-in-global-supply-chains/>.

Timeline of abolition of slavery and serfdom,
https://en.wikipedia.org/wiki/Timeline_of_abolition_of_slavery_and_serfdom

U.K. Gov., *Historic law to end Modern Slavery passed, A landmark Bill to help eradicate modern slavery received Royal Assent*, News Story, March 26, 2015,
<https://www.gov.uk/government/news/historic-law-to-end-modern-slavery-passed>

US Securities and Exchange Commission (SEC), *Conflict Minerals Disclosure, A Small Entity Compliance Guide*, <https://www.sec.gov/info/smallbus/secg/conflict-minerals-disclosure-small-entity-compliance-guide.htm>

What is Dodd Frank Act Section 1502?, <https://www.ecovadis.com/dodd-frank-act-section-1502/>

World Bank, *Small and Medium Enterprises (SMEs) Finance: Improving SMEs access to finance and finding innovative solutions to unlock sources of capital*, THE WORLD BANK, <https://www.worldbank.org/en/topic/smefinance>