

**Seafood Procurement & Human Rights**

 Briefing on Slavery in the Global Marketplace

Senate Caucus to End Human Trafficking

Presentation by Robert Stumberg

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1. **Introduction – Why does procurement matter to seafood and human rights?**

*The Outlaw Ocean* series illustrates a void of legal jurisdiction.

1. **Does the U.S. government purchase seafood with a high risk of slavery?**High-risk products & supply chains – Links to SE Asia factories/vessels that violate human rights
	* 1. Fishmeal – Feed for hatcheries, aquaculture, poultry
		2. Seafood – Tuna, shrimp, fish oil
2. **Who are the government purchasers?** FY 2014, in millions



1. **How does U.S. law provide jurisdiction to protect seafood workers?**
	1. Tariff Act prohibits importing goods made with forced labor.
	2. Treaties protect maritime workers.
	3. Tariff preferences require respect for internationally recognized labor standards.
	4. Procurement rules prohibit and seek to prevent human trafficking.
	5. Supply chain accountability is within reach – via a coherent policy framework.
2. **Does “USAspending.gov” promote supply chain transparency?**
	1. The Transparency Act requires full disclosure via a public database (USAspending.gov) for subcontracts and vendors, including those for commercial items.
	2. USAspending.gov does not:
		1. Show subcontractors or sub-vendors as required by the Transparency Act.
		2. Enable word searches for high-risk products in all contracts.
		3. Enable a search of all contractors, both domestic and foreign.
		4. Enable a search of all foreign contractors (only one country at a time).
		5. Provide useful contractor and agency profiles that were available in 2014.
3. **Conclusion – Seafood slavery is a timely case study**
	1. Transparency is the key to accountability, but USAspending.gov is not designed for trafficking.
	2. The Senate Caucus can ask why transparency gaps exist. Vehicles for doing this include (1) questions or objectives for the procurement section of the U.S. National Action Plan on Responsible Business Conduct and (2) a GAO study to map transparency gaps and alternatives.

**Outline of Research Notes**

1. **Introduction – Why does procurement matter to seafood and human rights?**
	1. *The Outlaw Ocean,* a NY Times series, illustrates a void of legal jurisdiction.[[1]](#footnote-1)
	2. The U.S. government purchases seafood with a high risk of slavery.
	3. Procurement is a source of legal jurisdiction.
	4. Procurement entails an obligation to protect human rights.
	5. Seafood is a timely case study in transparency of procurement.
2. **Does the U.S. government purchase sea goods with a high risk of slavery?**
	1. **What are the high-risk products?**

		1. ***Supply chains***
			1. *Southeast Asia:* SE Asia supply chains that co-mingle fish stocks have a 20% risk of slave labor on fishing boats.[[2]](#footnote-2) Migrant laborers from Myanmar, Laos, Bangladesh, and Vietnam are at highest risk of enslavement and abusive conditions on fishing vessels. In addition, seafood factories have a 30% risk of child labor as well as unsafe conditions, illegal wages and hours, and denial of freedom of association and the right to organize.[[3]](#footnote-3)
			2. *Volume of U.S. imports:* 59% of U.S. fishery imports come from Asia.[[4]](#footnote-4) Among the largest exporters to the U.S. market are: China 24%, Thailand 12%, Viet Nam 9%, and Indonesia 6%.[[5]](#footnote-5) Thailand’s seafood export totaled $6.9 billion in 2013, while US import of Thai seafood was $1.54 billion in 2014.[[6]](#footnote-6) Total US import of edible fishery products was valued at $20.2 billion in 2014.[[7]](#footnote-7) The Thai government estimates that “up to 300,000 people work in its fishing industry, 90% of whom are migrants vulnerable to being duped, trafficked and sold to the sea.”[[8]](#footnote-8)
		2. ***Products***
			1. *Low risk:* U.S. domestic wild-caught seafood and domestic brine shrimp.[[9]](#footnote-9)
			2. *High-risk*
				1. **Fishmeal[[10]](#footnote-10)**

Fish feed for aquaculture: shrimp, salmon, catfish (amount varies depending on the cost of soy protein and the availability of domestic brine shrimp)

Poultry feed:[[11]](#footnote-11) approx. 1.5 pounds of fishmeal per 4-pound chicken

* + - * 1. **Seafood**

Tuna[[12]](#footnote-12)

Shrimp[[13]](#footnote-13)

Fish oil[[14]](#footnote-14)

* 1. **High-risk supply chains**

		+ 1. *Mapping forwards from Thai exporters*As examples, we cite two Thai exporters that have been identified as supply chains that process seafood made with slave labor. Using U.S. customs data for 2007 to date:
				1. *Thai Union Frozen* – exported 528 million pounds to various U.S. ports. Thai Union used 353 agents for 5,600 shipments.[[15]](#footnote-15) Thai Union accounts for 12% of Thai exports to the United States.[[16]](#footnote-16) Thai Union is identified in a slave-labor lawsuit against Nestle.[[17]](#footnote-17)
				2. *Charoen Pokphand Foods (CP) –* exported 46.2 million pounds to various U.S. ports. CP used 20 agents for 917 shipments.[[18]](#footnote-18) CP is identified in a slave-labor lawsuit against Costco. [[19]](#footnote-19)
			2. *Mapping backwards from a U.S. government contractor*
			In order to map backwards, it is necessary to know the names of U.S. intermediaries that do business with both Thai exporters and U.S. government contractors. The following stages establish commercial relationships based on customs data (courtesy of Panjiva[[20]](#footnote-20)); they do not establish custody of any specific packet of slave-tainted fish.

6. Sysco Foods sells fish to U.S. Department of Defense in the following states: AL, CT, FL, KY, ME, MD, MT, NY, NC, TX, UT, VA, WA, WI.

5. Sysco purchases from wholesaler Stavis Seafoods, based in Boston, MA.[[21]](#footnote-21)

4. Stavis purchases from KingFisher, a Thai export company.[[22]](#footnote-22)

3. KingFisher purchases fish from a factory based in Thailand that cleans and packages fish for export.

2. That factory co-mingles the product that it acquires from shipping companies that collect seafood from trawlers on the open sea.[[23]](#footnote-23)

1. Some of the trawlers that sell to the shipping company use slave labor.

1. **Who are the government purchasers?**

|  |  |  |  |
| --- | --- | --- | --- |
| *Agency & purchase* | *Fishmeal* | *Seafood* | *Totals* |
| USDA / local school districts | $208.3 | $82.3 | $290.6 |
| USDA & others / federal purchase | $61.9 | $20.\* | $81.9 |
| Defense & others / food service | $11.6 | $4.6 | $16.2 |
| Interior / hatchery feed | $5.2 | $0.0 | $5.2 |
| Defense / MREs | $3.1 | $1.2 | $4.3 |
| ***Total*** | **$209.1** | **$108.1** | **$317.2** |

* 1. **Fishmeal ~ $209.1 million**
		1. ***USDA*** *– National School Lunch Program* – Fishmeal input to chicken
			1. Potential scale – $208.3 million
			$17.9 billion (fy 2014)[[24]](#footnote-24) \* 46% food[[25]](#footnote-25) \* 11% poultry[[26]](#footnote-26) \* 23% fishmeal ratio[[27]](#footnote-27) = $208.3 m
			2. Recent purchases – These are made by local school districts.
		2. ***USDA and other departments*** *–* Fishmeal input to chicken
			1. Potential scale – $61.9 million
			$269.3 million chicken (fy 2014)[[28]](#footnote-28) \* 23% fishmeal ratio[[29]](#footnote-29) = $61.9 m
			2. Recent contracts – Tyson Foods, $10,473,840 and $1,721,643; Koch Foods of Gainesville LLC, $2,915,451 (all from 9/18/15)
		3. ***Defense & other departments*** – Food service contracts – Fishmeal input to chicken
			1. Potential scale – $11.6 million
			$1 billion food service[[30]](#footnote-30) \* 46% food \* 11% poultry \* 23% fishmeal ratio[[31]](#footnote-31) = $11.6 m
			2. Recent contracts – Sodexo $105,478,119; Texas Dept. of Assist. & Rehab. Services, $22,764,018.[[32]](#footnote-32) In FY 2014, Sodexo was awarded a net total of $259.3 million in contracts.[[33]](#footnote-33)
		4. ***Interior***– fish hatchery feed
			1. Potential scale – $5.2 million (fy 2014)[[34]](#footnote-34)
			2. Recent contract – Moore-Clark USA, average of $3.5 million per year between 2013-2015[[35]](#footnote-35)
		5. ***Defense*** – Meals ready to eat (MREs) – Fishmeal input to chicken
			1. Potential scale – $3.1 million
			$265.3 million (fy 2014)[[36]](#footnote-36) \* 46% food \* 11% poultry \* 23% fishmeal ratio[[37]](#footnote-37) = $3.1 m
			2. Recent contracts – Sopakco, $60,620,00; Ameriqual Group, $58,992,500; Wornick Co., $55,102,500.[[38]](#footnote-38) For all of fy 2014, the net totals for these companies were: Sopakco, $81.3 million; Ameriqual, $77.3 million; and Wornick, $93.8 million.[[39]](#footnote-39)
	2. **Seafood ~ $108.1 million**
		1. ***USDA*** *– National School Lunch Program* – fish
			1. Potential scale – $82.3 million
			$17.9 billion (fy 2014)[[40]](#footnote-40) \* 46% food[[41]](#footnote-41) \* 1% fish[[42]](#footnote-42) = $82.3 m
			2. Recent purchases – These are made by local school districts.
		2. ***USDA Foods*** *–* Tuna
			1. Potential scale – $20 million per year (fy 2012-2013)[[43]](#footnote-43)
			2. Recent contracts – none due to FDA sanitation remedies[[44]](#footnote-44)
			3. Recent purchases – Vermont school districts[[45]](#footnote-45)
		3. ***Defense & other departments*** – Food service contracts – fish
			1. Potential scale – $4.6 million
			$1 billion food service[[46]](#footnote-46) \* 46% food \* 1% fish = $4.6 m
			2. Recent contracts – Sodexo $105,478,119; Texas Dept. of Assist. & Rehab. Services, $22,764,018.[[47]](#footnote-47) In FY 2014, Sodexo was awarded a net total of $259.3 million in contracts.[[48]](#footnote-48)
		4. ***Defense***– Meals ready to eat (MREs) – fish
			1. Potential scale – $1.2 million
			$265.3 million (fy 2014)[[49]](#footnote-49) \* 46% food \* 1% fish = $1.2 m
			2. Recent contracts – Sopakco, $60,620,00; Ameriqual Group, $58,992,500; Wornick Co., $55,102,500.[[50]](#footnote-50) For all of fy 2014, the net totals for these companies were: Sopakco, $81.3 million; Ameriqual, $77.3 million; and Wornick, $93.8 million.[[51]](#footnote-51)
	3. **Total estimate ~ $317.2 million (fy 2014)**
1. **How does U.S. law provide jurisdiction to protect seafood workers?**
	1. **Tariff Act prohibits importing goods made with forced labor**[[52]](#footnote-52)
	2. **Treaties protect maritime workers**
		1. ***The ILO’s Sick and Injured Seamen Convention*** (1936, ratified by the United States) protects workers on ships by allocating liability to the ship owner for injuries to the crew.[[53]](#footnote-53)
		2. ***The ILO’s Work in Fishing Convention*** (pending, not ratified by the United States) sets standards protects workers on fishing vessels, taking into account the unique nature of pay, working conditions, health and safety in fishing industry.[[54]](#footnote-54)
	3. **Trade preferences require respect for human rights**
		1. ***GSP standards*** – Under U.S. law providing a General System of Preferences to developing countries, a country is only eligible for reduced tariffs if it protects “internationally recognized workers rights.”[[55]](#footnote-55) Among these rights are the prohibition on forced labor and provision of acceptable conditions of work.[[56]](#footnote-56)
		2. ***Thailand’s record*** *–* The U.S. Department of State recently downgraded Thailand’s status to Tier 3 on a wide range of trafficking conditions with particular focus on forced labor, inhumane hours and unsafe conditions in the fishing industry.[[57]](#footnote-57) This status authorizes the U.S. government to withhold or withdraw non-humanitarian, non-trade-related foreign assistance.[[58]](#footnote-58) The Thai government is also at risk of losing its trade preferences under the GSP program. In 2013, the AFL-CIO petitioned to exclude Thailand from GSP benefits,[[59]](#footnote-59) but the Office of U.S. Trade Representative has yet to initiate a GSP review of Thailand.[[60]](#footnote-60)
	4. **Procurement rules prohibit human trafficking**
		1. ***Trafficking***Procurement rules prohibit severe forms of trafficking[[61]](#footnote-61) and requires “procedures to prevent” trafficking at every tier and every dollar value.
			1. The rule applies to “any supplier, distributor, vendor, or firm that furnishes supplies or services to or for a prime contractor or another subcontractor.”[[62]](#footnote-62)
			2. There is clearly is a gap between the prohibition and prevention, particularly with respect to food products. The requirement of a compliance plan to prevent trafficking outside of the United States does not apply to purchases below $500,000 or purchases of commercially available off-the-shelf (COTS) products such as canned or bulk fish products.[[63]](#footnote-63)
		2. ***Forced child labor***Procurement rules prohibit the use of forced or indentured child labor.[[64]](#footnote-64)
			1. If a product is on the Department of Labor’s list of high-risk products, suppliers must certify the absence of forced child labor in their supply chain.[[65]](#footnote-65)
			2. The most recent DOL list includes shrimp from Thailand and dried fish from Bangladesh.[[66]](#footnote-66) Based on the literature we have reviewed, the DOL list could also include most fish products or ingredients that are harvested or processed in Thailand.[[67]](#footnote-67)
		3. ***Walsh-Healey Act – authority to expand the scope of protection***
			1. *Prohibition on procurement of “sweatshop”* goods – The Walsh-Healey Act prohibits federal agencies from purchasing “sweatshop” goods that are produced out of compliance with laws in the country of production regarding minimum wages, maximum hours, child and convict labor, and health and safety.[[68]](#footnote-68)
			2. *Application to imported goods* – Although the Walsh-Healey Act does not presently apply to procurement of imported seafood, the Executive Branch has the authority to do so. It is only because the Secretary of Labor has exempted imported goods or services (under authority delegated by Congress) that the Walsh-Healey protections do not extend to all government supply chains.[[69]](#footnote-69) However, the language of the Act,[[70]](#footnote-70) its statutory history, and the Department of Labor’s longstanding interpretation of the Act all indicate that the Act would apply to any part of a contract performed abroad, if not for the exemption.[[71]](#footnote-71)
	5. **Supply-chain accountability is within reach – via a coherent policy framework**
		* 1. *Policy coherence and human rights*
				1. The UN Human Rights Council has called on all Member States to develop NAPs as a means of implementing the UNGPs.[[72]](#footnote-72) Guiding Principle 6 provides that “States should promote respect for human rights by business enterprises with which they conduct commercial transactions.”[[73]](#footnote-73) The greatest opportunity to do so is through government procurement, “including [within] the terms of contracts.”[[74]](#footnote-74) While the NAP will not have the force of law like a statute or agency rule, it is an ideal vehicle to assert U.S. leadership in areas where Congress has already delegated authority to the Executive Branch. These include: (1) requiring transparency in government supply chains, (2) expanding the scope of protection, (3) requiring independent monitoring, and (4) harmonizing purchasing power.[[75]](#footnote-75)
				2. U.S. procurement actually lags behind U.S. policy on tariff preferences, trade rules, and foreign development assistance. To the extent that it does lag, procurement undermines these other policies because of the significance of government purchasing power.[[76]](#footnote-76)
			2. *Government purchasing power – fy 2014*
				1. $1.048 billion – Food service[[77]](#footnote-77)
				2. $1.296 billion – Subsistence: meat, fish and poultry[[78]](#footnote-78)
				3. $2.344 billion
			3. *Standard of compliance that other will follow*As governments develop effective practices to respect human rights in procurement, other institutions and actors will follow:
				1. State and local governments (about 2/3 of procurement in the United States)
				2. Other national governments (some of which have higher standards)
				3. Private-sector institutions: universities, hospitals, international aid agencies
				4. Business organizations and brands
			4. *Laboratory for procurement and human rights*
				1. It is difficult if not impossible for the U.S. government, given its size and complexity, to move from low to high efficacy on procurement and human rights on a government-wide basis.
				2. Options for a more focused approach include:

Focus on high-risk sectors, products, and abuses (like seafood slavery)

Compare and develop the most effective practices

Engage with other governments and industry leaders in a virtual learning lab

1. **Does “USAspending.gov” promote supply chain transparency?**
	1. **What the Transparency Act requires**
		1. ***Full disclosure via a public database* –** In the Federal Funding Accountability and Transparency Act of 2006 (Transparency Act or FFATA) Congress mandated “full disclosure” of entities receiving federal funds including their location and “the primary location of performance for the award, including the “city, State, congressional district, and country.”[[79]](#footnote-79) Congress charged the Office of Management and Budget with operating a free, public, searchable website that includes, “for each Federal award,” information about the entity receiving the award and the award itself including industry classification codes.[[80]](#footnote-80)
		2. ***Subcontracts*** – Congress also explicitly authorized agencies to disclose relevant information about “contracts, subcontracts, purchase orders, task orders, and delivery orders,” so long as the value of the transaction is at least $25,000.[[81]](#footnote-81) Congress authorized a pilot project that OMB ran from July 2007 through December 2009. The pilot was supposed to inform reporting of subcontracts “in the same manner” as reporting for other federal awards.[[82]](#footnote-82)
		3. ***Links with other data* –** In 2014, Congress amended the Transparency Act to require linking federal contract data with other federal programs in order to improve transparency.[[83]](#footnote-83)
	2. **Observations on USAspending.gov**
		1. ***Limited subcontract reporting*** – As implemented in the FAR, USAspending.gov provides information only on prime contractors/contracts and “first-tier” subcontracts—those dedicated to performance of a particular contract—a narrower definition of subcontracts than the FAR uses elsewhere. Excluded are all other subcontractors and vendors that are part of commercial supply chain.[[84]](#footnote-84) When it issued this rule, the FAR Council acknowledged that the Transparency Act indicates that reporting requirements should flow down to all levels of subcontractor, but OMB had directed the FAR Council to limit the rule to the first-tier subcontractors.[[85]](#footnote-85)
		2. ***Commercial items***
		USAspending.gov includes contracts for commercial items (e.g., seafood products), and the FAR Council has ruled that it is in the national interest to apply the Transparency Act to commercial items.[[86]](#footnote-86)
		3. ***Product codes***
			1. Product codes cover far more than a product or subsector in which there are human rights abuses. Example: Tuna and shrimp are usually contained in PSC 8905, which includes meat, fish and poultry, with fish being the least of the purchases.
			2. Word searches of contract descriptions are not possible; a researcher must open individual contract summaries for each of hundreds of individual contracts.
			3. Products are often inconsistently coded in multiple PSC categories. For example, tuna can be found under both 8905 (Meat, Poultry, and Fish) and 8910 (Dairy Foods and Eggs).
			4. MREs are under a separate PSC code (8970); it is not possible to identify types of food within MRE contracts using the codes in USAspending.gov.
		4. ***Service and industry codes***For some contracts, USAspending.gov provides a combination of service codes, NAICS industry codes, and product codes. However, the product codes are not consistently applied to large-volume service codes such as M1FD (Operation of Dining Facilities) or industry codes such as NAICS 72 (Accommodation and Food Services).
		5. ***Contractors***
			1. *Foreign contractors*
				1. USAspending.gov includes foreign contractors and contracts performed abroad.[[87]](#footnote-87)
				2. It is not possible to do a unified search of all contractors, domestic and foreign.
				3. It is not possible to search all foreign contractors; foreign contractors can only be searched on a country-by-country basis. This makes it difficult to get a sense of where the government buys certain products overseas.
				4. Billions of dollars given to unidentified foreign contractors; they are listed as “Miscellaneous Foreign Awardees.”

No information, address, company name, or product given for these contractors.

Amounts are significant, and the countries involved suggest that the contracts include security services. For example (fy 2013-2015):

Afghanistan = $862,199,025

Mexico = $49,742,139

Iraq = $32,415,478

Canada = $11,303,407

* + - 1. *Agency profile provided by USAspending.gov*
				1. After March 2015

Total department contract amount for fiscal year

Total for bureaus ranked by total contract amount

Total combined awards by state (map and amount per state)

Prime recipients ranked by total contract amount (all goods and services)

* + - * 1. Before March 2015

*Same as above plus:*

Top ranked contractors within a product or service code

* + - 1. *Contractor profile provided by USAspending.gov*
				1. After March 2015

List of contracts and total of contract values

* + - * 1. Before March 2015

*Same as above plus:*

Top 10 prime awards in all fiscal years

Top 5 prime award recipient locations (states)

Top 5 prime award major agencies

Top 5 prime award sub agencies

Top 5 award type of contracts used

Top 5 award products or services sold

Top 5 sub award contractors

Prime awards timeline (past 6 fiscal years)

Dollars by type of competition

* 1. **Summary – USAspending.gov does not:**
		1. Show subcontractors or sub-vendors as required by the Transparency Act.
		2. Enable word searches of contract descriptions.
		3. Enable searches for high-risk products within broad categories (e.g., food service).
		4. Enable a search of all contractors, both domestic and foreign.
		5. Enable a search of all foreign contractors (only one country at a time).
		6. Provide contractor profile summaries that were available in 2014.
		7. Provide agency profile summaries that were available in 2014.
		8. For high-risk products, enable searches with product terms used in customs data (Harmonized Tariff System), which would be consistent with the DATA Act.
	2. **Potential next steps**
		1. Connect with Executive Branch agencies that are developing the U.S. National Action Plan on Responsible Business Conduct—particularly with respect to the importance of the Transparency Act for respecting human rights in government procurement.
		2. Ask the Department of Treasury's Bureau of the Fiscal Service to explain gaps noted above.
		3. Ask the GAO to evaluate USAspending.gov and map current gaps and alternatives for achieving objectives of the Transparency Act with respect to human rights.

**Background information**

**The Harrison Institute for Public Law** is a legal service and education program of Georgetown University Law Center. The Institute supports actors who shape and make public policy. Some of our clients are nonprofit coalitions that promote policy change at various levels – local, state, federal, and international. Others are decision-makers – legislators, attorneys general, regulatory agencies, and their national associations.

**Contributors** to this presentation include Robert Stumberg, director of the Institute and professor of law, with essential research support from Nicholas Eckstein, Joseph Vukovich, Christopher St. Martin, Maria Choi, and Matt Porterfield.

**Collaborators and recent work** – The Harrison Institute provides legal and policy support on the subject of procurement and human rights to ICAR, the International Corporate Accountability Roundtable. (Web address: <http://icar.ngo/>) Recent work includes:

* Robert Stumberg, Anita Ramasastry and Meg Roggensack, ICAR, Turning a Blind Eye: Respecting Human Rights in Government Purchasing (2014), *available at* <http://icar.ngo/initiatives/procurement/>.
* ICAR Submission for U.S. National Action Plan on Responsible Business Conduct regarding Federal Procurement Policy (September 8, 2015), available at <http://icar.ngo/analysis/submission-to-the-u-s-national-action-plan-on-responsible-business-conduct-regarding-public-procurement/>.
1. *The Outlaw Ocean*, The New York Times, four-part series by Ian Urbina (beginning July 15, 2015) plus editorial coverage is available at <http://www.nytimes.com/interactive/2015/07/24/world/the-outlaw-ocean.html?_r=0> (viewed September 25, 2015). [↑](#footnote-ref-1)
2. Blake D. Ratner, Bjorn Asgard, and Edward H. Allison, *Fishing For Justice: Human Rights, Development, and Fisheries Sector Reform*, Global Environmental Change (Elsevier, July 2014), available at <http://www.sciencedirect.com/science/article/pii/S0959378014001010> (viewed September 24, 2015). [↑](#footnote-ref-2)
3. Id., Ian Urbina, *‘Sea Slaves’:The Human Misery That Feeds Pets And Livestock*, The New York Times (July 27, 2015), <http://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html> (hereafter, Ian Urbina, *Sea Slaves*, NYT); Urmila Bhoola, *Report of the Special Rapporteur on contemporary forms of slavery, including its causes and consequences*, ¶26, UN Human Rights Council, Thirtieth session, Agenda item 3 (8 July 2015); Environmental Justice Foundation, Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans (July 2015); Fishwise, Trafficked II: An Updated Summary of Human Rights Abuses in the Seafood Industry (March 2014) <http://fishwise.org/images/pdfs/Trafficked_II_FishWise_2014.pdf>. (viewed September 24, 2015); [↑](#footnote-ref-3)
4. NOAA, National Marine Fisheries Service, Fisheries of the United States 2013, 68 (Foreign Trade, Fishery Products, U.S. Imports by Major Areas, 2013, by Volume). [↑](#footnote-ref-4)
5. NOAA, National Marine Fisheries Service, Fisheries of the United States 2013, 68 (Foreign Trade, Fishery Products, U.S. Imports by Major Exporters, 2013, by Volume). [↑](#footnote-ref-5)
6. Environmental Justice Foundation, Pirates and Slaves: How Overfishing in Thailand Fuels Human Trafficking and the Plundering of Our Oceans, 18 (July 2015). [↑](#footnote-ref-6)
7. NOAA Fisheries, *Imports and Exports of Fishery Products Annual Summary*, 2014 Revised, available at <http://www.st.nmfs.noaa.gov/Assets/commercial/trade/Trade2014.pdf> (viewed September 29, 2015). [↑](#footnote-ref-7)
8. Kate Hodal, Chris Kelly, & Felicity Lawrence, *Revealed: Asian slave labour producing prawns for supermarkets in US, UK*, The Guardian (June 10, 2014), <http://www.theguardian.com/global-development/2014/jun/10/supermarket-prawns-thailand-produced-slave-labour> (viewed September 29, 2015). [↑](#footnote-ref-8)
9. P. Candreva, *Use Of The Brine Shrimp In Marine Fish Larviculture*, 200 Aquaculture 147-159; *See also,* Oregon Desert Brine Shrimp Co.,About Our Company, http://www.oregondesertbrineshrimp.com/. [↑](#footnote-ref-9)
10. Ian Urbina, *Sea Slaves*, NYT; Albert G.J. Tacon & Marc Metian, Global Overview on the Use of Fish Meal and Fish Oil in Industrially Compounded Aquafeeds: Trends and Future Prospects, Aquaculture 285, 159, available at <http://www.elsevier.com/life-sciences>; Albert G.J. Tacon & Marc Metian, Fishing for Aquaculture: Non-Food Use of Small Pelagic Forage Fish—A Global Perspective, Reviews in Fisheries Science, 17(3):305–317 (2009). [↑](#footnote-ref-10)
11. Ian Urbina, *Sea Slaves* NYT. [↑](#footnote-ref-11)
12. *Id.,* David Pinsky, Carting Away The Oceans 9, 13, (Greenpeace, June 2015), available at <http://cato.greenpeaceusa.org/Carting-Away-the-Oceans-9.pdf>; (viewed September 24, 2015) Finnwatch, Cheap has a high price: Responsibility problems relating to international private label products and food production in Thailand, 3-10 (2013). [↑](#footnote-ref-12)
13. *See* Sud v. Costco Wholesale Co*.,* 3:2015cv03783 (2015) available at [https://dockets.justia.com/docket/california/candce/3:2015cv03783/290388](https://dockets.justia.com/docket/california/candce/3%3A2015cv03783/290388); Felicity Lawrence, *Costco and CP Foods face lawsuit over alleged slavery in prawn supply chain – Legal claim filed in California seeks injunction against US retailer to prevent sale of prawns produced by Thai supplier unless labelled a product tainted by slavery,* The Guardian (19 August 2015), available at <http://www.theguardian.com/global-development/2015/aug/19/costco-cp-foods-lawsuit-alleged-slavery-prawn-supply-chain> (viewed September 15, 2015); Solidarity Center, The True Cost of Shrimp (2007). [↑](#footnote-ref-13)
14. *See* IFFO, *Modern Slavery in the Fishing Sector*, http://www.iffo.net/position-paper/modern-slavery-fishing-sector. [↑](#footnote-ref-14)
15. U.S. Customs data from 2007 through September 28, 2015 using the Panjiva database (<https://panjiva.com/>). [↑](#footnote-ref-15)
16. U.S. Customs data for 2013 using Panjiva. [↑](#footnote-ref-16)
17. Class Action, Complaint for Violation of California Consumer Protection Law, Melanie Barber et al. v. Nestle USA, Inc., and Nestle Purina Petcare Co., Case No. 8:15-cv-1364, U.S. District Court for the Central District of California, Southern Division (8/27/15), available at [http://www.hbsslaw.com/Templates/media/files/08-27-15%20(Dkt%201)%20Complaint%20for%20Violation%20of%20California%20Consumer%20Protection%20Laws%20(2).PDF](http://www.hbsslaw.com/Templates/media/files/08-27-15%20%28Dkt%201%29%20Complaint%20for%20Violation%20of%20California%20Consumer%20Protection%20Laws%20%282%29.PDF) (viewed September 29, 2015); Class Action, Complaint for Violation of California Consumer Protection Law, Christina Wirth et al. v. Mars Inc., Mars Petcare US, Inc., Iams Company, Procter & Gamble Co., Case No. 8:15-cv-01470, U.S. District Court for the Central District of California, Southern Division (9/10/15), available at <http://www.hbsslaw.com/Templates/media/files/case_pdfs/Cat%20Food/Iams_Complaint.pdf> (viewed September 29, 2015); *see* Business Wire, *Class Action Filed against Nestlé for Slave Labor, Human Trafficking Used to Produce Top-Selling Pet Food* (August 27, 2015), available at <http://www.businesswire.com/news/home/20150827006036/en/Hagens-Berman-Class-Action-Filed-Nestl%C3%A9-Slave#.Vg1LDhO6dE5> (viewed September 29, 2015). [↑](#footnote-ref-17)
18. U.S. Customs data from 2007 through September 28, 2015 using the Panjiva database (<https://panjiva.com/>). [↑](#footnote-ref-18)
19. Class Action Complaint for Violations of California Business and Professions Code, Monica Sud et al. v. Costco Wholesale Corp., Charoen Pokphand Foods, PCL, and C.P. Food Products, Inc., Case No. 15-cv-03783, U.S. District Court for the Northern District of California, San Francisco (August 19, 2015); *see* Samantha Masunaga, *Costco faces lawsuit over sale of prawns allegedly farmed by slave labor*, Los Angeles Times (August 20, 2015), available at <http://www.latimes.com/business/la-fi-costco-prawns-20150820-story.html> (viewed September 20, 2015). [↑](#footnote-ref-19)
20. *See* Panjiva (subscription database), How we help researchers, <https://panjiva.com/researchers> (viewed September 28, 2015). [↑](#footnote-ref-20)
21. Robin McDowell, Margie Mason, and Martha Mendoza, *Are slaves catching the fish you buy?* Mar. 25, 2015), available at <http://bigstory.ap.org/article/b9e0fc7155014ba78e07f1a022d90389/ap-investigation-are-slaves-catching-fish-you-buy> (viewed September 15, 2015). [↑](#footnote-ref-21)
22. Id., confirmed by U.S. Customs data. [↑](#footnote-ref-22)
23. Id., confirmed by U.S. Customs data; *see also* Robin McDowell, Martha Mendoza and Margie Mason, *AP tracks slave boats to Papua New Guinea*, Associated Press (Jul. 27, 2015), available at <http://bigstory.ap.org/article/c2fe8406ff7145a8b484deae3f748aa5/ap-tracks-missing-slave-fishing-boats-papua-new-guinea> (viewed September 15, 2015). [↑](#footnote-ref-23)
24. USAspending.gov, search grants from USDA and “National School Lunch Program”; *see also* School Nutrition Association, School Meal Trends and Stats, <https://schoolnutrition.org/AboutSchoolMeals/SchoolMealTrendsStats/> (viewed September 24, 2015). [↑](#footnote-ref-24)
25. USDA, Office of Research, Nutrition and Analysis, School Lunch and Breakfast Cost Study – II, Report No. CN-08-MCII, 9-2, Exhibit 9.2, Comparison of the Composition of Reported Foodservice Cost (April 2008). [↑](#footnote-ref-25)
26. USDA, Food and Nutrition Service, School Food Purchase Study-III, CN-12-SFPSIII, Section 5: Food Acquisitions by Unified School Districts, 92, Figure 5-1: Share of food product acquisitions in SY 2009/10 by public unified school districts (March 2012). [↑](#footnote-ref-26)
27. Ratio of the value of 1.5# of fishmeal consumed for a 4# broiler is 1.5# fishmeal to 4# chicken, a ratio of .2326.

1.056 fishmeal / 4.54 chicken = .1542

A 4-pound chicken consumes approx. 1.5 pounds of fishmeal (within a range of 1.35 to 1.89 pounds per chicken) The Feeds Directory.

Wholesale price of fishmeal is .7040 per pound (1.056 value per 1.5 pounds) (1,552/ton divided by 2,204.6 pounds), August 2015. Fishmeal Monthly Price - US Dollars per Metric Ton, <http://www.indexmundi.com/commodities/?commodity=fish-meal> (viewed September 24, 2015).

Wholesale price of a broiler is 1.1357 per pound (4.54 per average 4-pound broiler), August 2015. Poultry (chicken) Daily Price, <http://www.indexmundi.com/commodities/?commodity=chicken> (viewed September 24, 2015). [↑](#footnote-ref-27)
28. USAspending.gov, search PSC 8905 and “chicken”; *see also* School Nutrition Association, School Meal Trends and Stats, <https://schoolnutrition.org/AboutSchoolMeals/SchoolMealTrendsStats/> (viewed September 24, 2015). [↑](#footnote-ref-28)
29. Ratio of the value of 1.5# of fishmeal consumed for a 4# broiler is 1.5# fishmeal to 4# chicken, a ratio of .2326. Same calculation as note 12 above. [↑](#footnote-ref-29)
30. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets). [↑](#footnote-ref-30)
31. Ratio of the value of 1.5# of fishmeal consumed for a 4# broiler is 1.5# fishmeal to 4# chicken, a ratio of .2326. See calculation in note 12 above. [↑](#footnote-ref-31)
32. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets) and sort for largest contracts. [↑](#footnote-ref-32)
33. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets), and Sodexo; then download the search result and total the amount column (positive and negative amounts). [↑](#footnote-ref-33)
34. USAspending.gov, search PSC 8710 and “fish.” [↑](#footnote-ref-34)
35. USAspending.gov, search PSC 8710 and “fish,” then add individual contracts with Moore-Clark USA that total $10,441,914 between 2013-2015. [↑](#footnote-ref-35)
36. USAspending.gov, search fy 2014 contracts for PSC 8970: Composite Food Packages. [↑](#footnote-ref-36)
37. Ratio of the value of 1.5# of fishmeal consumed for a 4# broiler is 1.5# fishmeal to 4# chicken, a ratio of .2326. See calculation in note 12 above. [↑](#footnote-ref-37)
38. USAspending.gov, search fy2014 contracts for PSC 8970 and sort for largest contract. [↑](#footnote-ref-38)
39. USAspending.gov, search fy2014 contracts for PSC 8970 and sort by company name; then download the search result for all companies; and then sort by total the amount column for the selected companies (positive and negative amounts). [↑](#footnote-ref-39)
40. USAspending.gov, search grants from USDA and “National School Lunch Program”; *see also* School Nutrition Association, School Meal Trends and Stats, <https://schoolnutrition.org/AboutSchoolMeals/SchoolMealTrendsStats/> (viewed September 24, 2015). [↑](#footnote-ref-40)
41. USDA, Office of Research, Nutrition and Analysis, School Lunch and Breakfast Cost Study – II, Report No. CN-08-MCII, 9-2, Exhibit 9.2, Comparison of the Composition of Reported Foodservice Cost (April 2008). [↑](#footnote-ref-41)
42. USDA, Food and Nutrition Service, School Food Purchase Study-III, CN-12-SFPSIII, Section 5: Food Acquisitions by Unified School Districts, 92, Figure 5-1: Share of food product acquisitions in SY 2009/10 by public unified school districts (March 2012). [↑](#footnote-ref-42)
43. James R. Hagarty, *Tuna Firms Jostle for Uncle Sam's Recognition: Bumble Bee, Chicken of the Sea Press for Easing of School-Lunch Program Rules*, Wall Street Journal (Feb. 17, 2014), available at <http://www.wsj.com/articles/SB10001424052702303743604579352793666178318> (viewed September 24, 2015); U.S. Department of Agriculture*, Report to Congress: Potential Ways that Would Allow a Revision of the Master Solicitation for Commodity Procurement to Allow for the Purchase of Canned Tuna* (April 2014). [↑](#footnote-ref-43)
44. Id. [↑](#footnote-ref-44)
45. Vermont Advisory Commission on Mercury Pollution, 2011 Annual Report, 5 (January 2011) (“Canned tuna is a common school lunch program offering in Vermont schools.”), available at <http://www.mercvt.org/acmp/index.htm> (viewed September 24, 2015). [↑](#footnote-ref-45)
46. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets). [↑](#footnote-ref-46)
47. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets) and sort for largest contracts. [↑](#footnote-ref-47)
48. USAspending.gov, search fy 2014 contracts for NAIC 722320 (Caterers), 722310 (Food Service Contractors), (722514 Cafeterias, Grill Buffets, and Buffets), and Sodexo; then download the search result and total the amount column (positive and negative amounts). [↑](#footnote-ref-48)
49. USAspending.gov, search fy 2014 contracts for PSC 8970: Composite Food Packages. [↑](#footnote-ref-49)
50. USAspending.gov, search fy2014 contracts for PSC 8970 and sort for largest contract. [↑](#footnote-ref-50)
51. USAspending.gov, search fy2014 contracts for PSC 8970 and sort by company name; then download the search result for all companies; and then sort by total the amount column for the selected companies (positive and negative amounts). [↑](#footnote-ref-51)
52. Tariff Act of 1930, 19 U.S.C. §1307 (Convict or forced labor goods; import prohibited). [↑](#footnote-ref-52)
53. Shipowner’s Liability (Sick and Injured Seaman) Convention, entry into force: 29 Oct 1939 (No. 55, ratified by the United States), available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO:12100:P12100_INSTRUMENT_ID:312200:NO>. (viewed September 25, 2015). [↑](#footnote-ref-53)
54. Work in Fishing Convention, 2007 (No. 188, convention not yet in effect), available at <http://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:12100:0::NO::P12100_ILO_CODE:C188> (viewed September 28, 2015). [↑](#footnote-ref-54)
55. 19 U.S.C. §2462 (b)(2)(G). *See also* 19 U.S.C. §1323 (Conservation of fishery resources). [↑](#footnote-ref-55)
56. 19 U.S.C. §2467 (4) – The term “internationally recognized worker rights” includes• the right of association;

• the right to organize and bargain collectively;

• a prohibition on the use of any form of forced or compulsory labor;

• a minimum age for the employment of children, and a prohibition on the worst forms of child labor, as defined in paragraph (6); and

• acceptable conditions of work with respect to minimum wages, hours of work, and occupational safety and health. [↑](#footnote-ref-56)
57. U.S. Department of State, Trafficking in Persons Report 2015, 330-331 (July 2015) (“There are reports that some of those labor trafficking victims are exploited in commercial fishing, fishing-related industries, factories, and domestic work. \* \* \* Thai, Burmese, Cambodian, and Indonesian men are subjected to forced labor on Thai fishing boats; some men remain at sea for several years, are paid very little or irregularly, work as much as 18 to 20 hours per day for seven days a week, or are threatened and physically beaten. Some victims of trafficking in the fishing sector were unable to return home due to isolated workplaces, unpaid wages, and the lack of legitimate identity documents or safe means to travel back to their home country.”), available at <http://www.state.gov/j/tip/rls/tiprpt/2015/> (viewed September 25, 2015). [↑](#footnote-ref-57)
58. Id. at 42; *see* Thanyarat Doksone and Martha Mendoza, *Thailand remains blacklisted by US for human trafficking*, associated Press (Jul. 28, 2015), available at <http://bigstory.ap.org/article/5c9a1c6483af4e19b5c05bc3ef0c5930/thailand-remains-blacklisted-us-human-trafficking> (viewed September 24, 2015). [↑](#footnote-ref-58)
59. AFL-CIO, Petition to Remove Thailand from the List of Eligible Beneficiary Developing Countries Pursuant to 19 USC § 2462 of the Generalized System of Preferences (GSP), October 14, 2013. [↑](#footnote-ref-59)
60. *See* USTR, 2015 Trade Policy Agenda and 2014 Annual Report, 161-163 (March 2015). USTR’s most recent annual report cites Thailand at least 10 times for potential trade barriers, but there is no mention of Thailand with respect to violation of internationally recognized workers rights or GSP status. [↑](#footnote-ref-60)
61. FAR Subpart 22.17—Combating Trafficking in Persons, 22.1703. [↑](#footnote-ref-61)
62. FAR 22.1702. Elsewhere, the FAR refers to “vendor” as the seller of a commercial item. FAR 15.601. [↑](#footnote-ref-62)
63. FAR 22.1703(c). *See* Public Comment, Council of Defense and Space Industries Associations, at 9-10; Public Comment, Alliance to End Slavery and Trafficking, at 5. [↑](#footnote-ref-63)
64. FAR 22.1502, 22.1504 and 52.222-18(c); 19 U.S.C. §212 et seq. (Child labor provisions); 41 U.S.C. §6502. (Required contract terms). [↑](#footnote-ref-64)
65. FAR 52.222-18(c)(2). [↑](#footnote-ref-65)
66. U.S. Department of Labor, List of Products Requiring Contractor Certification as to Forced or Indentured Child Labor, <http://www.dol.gov/ilab/reports/child-labor/list-of-products/index-country.htm> (viewed September 25, 2015). [↑](#footnote-ref-66)
67. See notes to section 2 above. [↑](#footnote-ref-67)
68. Walsh-Healey Act, 41 U.S.C. § 65; Pub. L. No. 74-846; 49 Stat. 2036 (1936); H.R. Rep. No. 74-2946, at 4 (1936)*.* The Supreme Court has recognized that the Act’s “purpose is to use the leverage of the Government’s immense purchasing power to raise labor standards.” Endicott Johnson Corp. v. Perkins, 317 U.S. 501, 507 (1943). [↑](#footnote-ref-68)
69. 41 C.F.R. § 50-201.603(b). The exemption has existed, in some form, since the very first regulations ever promulgated under the Act. *See* 1 Fed. Reg. 1405. [↑](#footnote-ref-69)
70. As enacted, the Act stated that it was to apply to “any contract” made by an agency of the United States. Pub. L. No. 74-846. [↑](#footnote-ref-70)
71. In creating the exemption in 1936—and continuing it to today—DOL has consistently interpreted the Act as applying to contracts performed abroad; if the Act did not apply to those contracts, then there would be no need for a “full administration exemption” for all such contracts. If DOL had understood the Act as *not* applying to contracts performed abroad, then it could have simply made that understanding into an official interpretation of the Act and included it as such in the agency’s “Rulings & Interpretations” that it published after the Act’s passage. *See* *Rulings and Interpretations under the Walsh-Healey Public Contracts Act (Public, No. 846, Seventy-fourth Congress, Approved June 30, 1936)*, 17, Rulings and Interpretations No. 1, U.S. Government Printing Office, Washington, D.C. (1937). [↑](#footnote-ref-71)
72. Human Rights Council Res. A/HRC/26/L.1. Rep. of the Human Rights Council, 26th Sess., June 10-27, 2014 (June 27, 2014) *available at* http://www.norway-geneva.org/EFTA1/Statements/26th-Session-of-the-Human-Rights-Council/Item-3-Promotion-and-protection-of-human-rights/Business-and-Human-Rights-Resolution-/#.U63LWGSxPgJ. [↑](#footnote-ref-72)
73. *UN Guiding Principles*, principle 6. [↑](#footnote-ref-73)
74. Id., commentary to principal 6. [↑](#footnote-ref-74)
75. *See* International Corporate Accountability Roundtable (ICAR), Submission for U.S. National Action Plan on Responsible Business Conduct regarding Federal Procurement Policy (September 8, 2015), available at <http://icar.ngo/analysis/submission-to-the-u-s-national-action-plan-on-responsible-business-conduct-regarding-public-procurement/> (viewed September 28, 2015). [↑](#footnote-ref-75)
76. Robert Stumberg, Anita Ramasastry and Meg Roggensack, ICAR, Turning a Blind Eye: Respecting Human Rights in Government Purchasing (2014), *available at* <http://icar.ngo/initiatives/procurement/>. [↑](#footnote-ref-76)
77. USAspending.gov, search fy 2014 contracts for NAICS codes 722514, 722320, 722310. [↑](#footnote-ref-77)
78. USAspending.gov, search fy 2014 contracts for PSC code 8905. [↑](#footnote-ref-78)
79. FFATA §2(b). Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(b), *amended by* Government Funding Transparency Act of 2008, Pub. L. No. 110-252, title VI, § 6202(a); *amended by* Digital Accountability and Transparency Act, Pub. L. No. 113-101, § 3. [↑](#footnote-ref-79)
80. Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(b)(1), *amended by* Government Funding Transparency Act of 2008, Pub. L. No. 110-252, title VI, § 6202(a); *amended by* Digital Accountability and Transparency Act, Pub. L. No. 113-101, § 3. [↑](#footnote-ref-80)
81. Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(a)(4), *as amended by* Government Funding Transparency Act of 2008, Pub. L. No. 110-252, title VI, § 6202(a); *as amended by* Digital Accountability and Transparency Act, Pub. L. No. 113-101, § 3. [↑](#footnote-ref-81)
82. Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282, § 2(d), *amended by* Government Funding Transparency Act of 2008, Pub. L. No. 110-252, title VI, § 6202(a); *amended by* Digital Accountability and Transparency Act, Pub. L. No. 113-101, § 3. [↑](#footnote-ref-82)
83. Digital Accountability and Transparency Act, Pub. L. No. 113-101, §§ 2, 3 (*amending* Federal Funding Accountability and Transparency Act of 2006, Pub. L. No. 109-282). [↑](#footnote-ref-83)
84. 48 C.F.R. 52.204-10. (First-tier subcontract means a subcontract awarded directly by the Contractor for the purpose of acquiring supplies or services (including construction) for performance of a prime contract. *It does not include the Contractor's supplier agreements with vendors, such as long-term arrangements for materials or supplies that benefit multiple contracts and/or the costs of which are normally applied to a Contractor's general and administrative expenses or indirect costs*.) (emphasis added). [↑](#footnote-ref-84)
85. Reporting Executive Compensation and First-Tier Subcontract Awards, 77 Fed. Reg. 44,047, 44,053 (July 26, 2012) (final rule) (codified at 48 CFR 1.106, 2.201, 4.1401-4.1403, 52.204-7, 52.204-10, 52.212-5, and 52.213-4). The Agencies refer to OMB guidance from April 6, 2010. However, this guidance does not explain the rationale for the first-tier restriction. [↑](#footnote-ref-85)
86. Reporting Executive Compensation and First-Tier Subcontract Awards, 75 Fed. Reg. 39,414, 39416 (July 8, 2010) (summary presentation of interim rule) (codified at 48 CFR 4.1400-4.1403, 12.503, 42.1501, and 52.204-10). FAR Council is the rulemaking body with jurisdiction over the Federal Acquisition Regulation (FAR). It consists of the Administrator of Federal Procurement Policy, the Secretary of Defense, the Administrator of National Aeronautics and Space, and the Administrator of General Services. *See* <https://www.whitehouse.gov/omb/procurement_far_members>. [↑](#footnote-ref-86)
87. Reporting Executive Compensation and First-Tier Subcontract Awards, 77 Fed. Reg. 44,047, 44,053 (July 26, 2012) (final rule) (codified at 48 CFR 1.106, 2.201, 4.1401-4.1403, 52.204-7, 52.204-10, 52.212-5, and 52.213-4). [↑](#footnote-ref-87)