

# CANADA POISED TO INCREASE REGULATION OF FORCED LABOUR IN SUPPLY CHAINS

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Last December, our team provided an [overview](#) of Canada's regulation of forced labour in supply chains and foreshadowed potential changes to this regime. The last few months have seen increased attention on Canada's enforcement record, as well as the advancement of important modern slavery legislation through Parliament. In this post, we recap Canada's existing regulatory framework before discussing these latest developments and their potential impact on Canadian businesses.

## State of Play

Canada committed to banning imports of goods produced by forced labour, anywhere in the world, in the Canada-United States-Mexico Agreement.<sup>[1]</sup> It implemented this ban by amending the *Customs Tariff* in 2020.<sup>[2]</sup>

Canada has also imposed sanctions targeting the Xinjiang Uyghur Autonomous Region ("**Xinjiang**") for being a source of goods produced by forced labour.<sup>[3]</sup> In addition, Global Affairs Canada has indicated that it will require importers doing business with entities in Xinjiang to sign an "Integrity Declaration" containing a representation that the importer has not knowingly sourced from a supplier implicated in forced labour or other human rights violations before it can access certain Government services and support relating to trade.<sup>[4]</sup>

## Canada is Under Pressure to Increase Enforcement

Canada's law and policy on forced labour may be clear, but the spotlight has recently shifted towards enforcement. As we have [noted](#), the Canada Border Services Agency ("**CBSA**") is responsible for enforcing the forced labour prohibition, and does so with the aid of reports prepared by Employment and Social Development Canada ("**ESDC**") and through complaints from the public.<sup>[5]</sup>

However, in early May, a media [report](#) highlighted that Canada seized only one shipment – containing clothing from China – suspected of being manufactured with forced labour in the last 21 months. By comparison, the United States intercepted more than 1,300 shipments from China over the same period. Moreover, it was later

[reported](#) that the one shipment Canada seized on forced labour grounds was released after a challenge from the importer.

The recent [case](#) of *Kilgour v. Canada* also shed light on Canada's enforcement of the import ban.[\[6\]](#) In that case, representatives of the NGO Canadians in Support of Refugees in Dire Need argued that the CBSA should presumptively prohibit goods imported from Xinjiang on forced labour grounds, absent evidence to the contrary. The CBSA denied the request on the basis that it did not have legal authority to apply such a presumption and must examine case-by-case circumstances to determine whether or not goods are prohibited.[\[7\]](#) The Federal Court upheld the CBSA's approach under the current law.

Notably, the United States is proceeding with the opposite approach. Its *Uyghur Forced Labor Prevention Act* prohibits importation of goods from Xinjiang unless the government determines that the importer has complied with certain conditions including establishing the goods were not produced by forced labour. This presumptive prohibition on goods from Xinjiang begins to apply on June 21, 2022.

In light of these developments, we expect that the Canadian government may face increased pressure from the US Government under CUSMA as well as from media and the public to enforce Canada's import ban more vigorously.

### **In the Works**

At the same time, Canadian efforts to address forced labour in supply chains appear to be gathering momentum.

On March 11, 2022 ESDC released the [Labour exploitation in global supply chains: What we heard report](#), a long-overdue summary of stakeholder consultations on labour exploitation in supply chains conducted in 2019. While views varied on whether Canada should legislate a "diligence standard" on Canadian importers, the report noted broad agreement that current initiatives do not go far enough. ESDC described the release of the report as an "important step towards the Minister of Labour's mandate commitment to introduce legislation to eradicate forced labour from Canadian supply chains", signaling new legislation could be forthcoming.[\[8\]](#)

Two bills originating in the Senate aim directly at this issue.

Bill [S-211](#) would impose an obligation on certain private-sector entities and government institutions to report to the Minister of Public Safety and Emergency Preparedness on measures taken to prevent and reduce the risk that forced or child labour is used in their supply chains. Private sector entities subject to these requirements would include those listed on a Canadian stock exchange, those above certain size and revenue thresholds, and those otherwise listed in regulations. If passed, it will align Canada with other countries that impose reporting obligations such as Australia and the United Kingdom.[\[9\]](#)

The current political climate appears ripe for Bill S-211 to become law. While private member's bills often languish, the Minister of Labour has announced that the Government now backs these changes.<sup>[10]</sup> It passed third reading in the Senate in April and is currently in committee prior to third reading in the House of Commons, and could be enacted before Parliament recesses for the summer.

Bill [S-204](#) seeks to go even further than the petitioners in *Kilgour v. Canada*. It proposes an outright prohibition (i.e., no ability to rebut a presumption) on the importation of goods produced wholly or in part in Xinjiang. The bill passed first reading in the Senate in November 2021 and is currently being debated. With the recent spotlight on enforcement, it has a reasonable prospect of progressing in some form.

### Takeaways for Canadian Businesses

Canadian businesses should be prepared for new reporting requirements and take steps to assess the risks arising from their supplier relationships, including through appropriate due diligence. They should also be prepared for more thorough scrutiny at the Canadian border spurred by the recent spotlight on Canada's limited enforcement record. Supply chain audits to prospectively identify any vulnerabilities and even reorienting supply chains (for example through "on-shoring", "near-shoring" or "friend-shoring") are risk mitigation strategies that could be appropriate depending on the circumstances.

McMillan's International Trade group continues to monitor these developments and is available to help businesses comply with these rules.

[1] CUSMA, Articles 23.5 and 23.6. This raised the floor set by the Comprehensive and Progressive Agreement for Trans-pacific Partnership, which only obliges parties to "discourage" such importation. See CPTPP, Article 19.6.

[2] The *Customs Tariff* classifies goods manufactured or produced wholly or in part by prison or forced under tariff code 9897.00.00, which are prohibited from importation.

[3] Four individuals and a Chinese state-owned entity have been sanctioned in relation to alleged human rights violations, including forced labour, in Xinjiang. See Global Affairs Canada, [Canada joins international partners in imposing new sanctions in response to human rights violations in Xinjiang](#), March 22, 2021; [Special Economic Measures \(People's Republic of China\) Regulations](#), SOR/2021-49, s. 3 and sched. Part 1 and Part 2.

[4] Global Affairs Canada, [Integrity Declaration on Doing Business with Xinjiang Entities](#).

[5] CBSA, [Memorandum D9-1-6 – Goods manufactured or produced by prison or forced labour](#), May 28, 2021.

[6] *Kilgour v. Canada (Attorney General)*, 2022 FC 472.

[7] *Ibid*, at para. 39.

[8] Government of Canada, ["Government of Canada publishes report on labour exploitation in global supply chains"](#), March 11, 2022.

[9] See Australia's [Modern Slavery Act 2018](#) and the UK's [Modern Slavery Act 2015](#).

[10] CBC News, "[Labour Minister Seamus O'Reagan backs Senate forced labour bill](#)", June 1, 2022; The Globe and Mail, "[Liberal government throws support behind bill aimed at tackling forced labour in supply chains](#)", June 1, 2022.

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### **A Cautionary Note**

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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