

CANADA PROPOSES STRICTER SUPPLY CHAIN REQUIREMENTS TO TACKLE FORCED AND CHILD LABOUR

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The Government of Canada is currently accepting submissions as part of a 30-day consultation on the import prohibition on goods produced from forced labour.

This initiative forms part of the government's efforts to strengthen compliance with international human and labour rights in supply chains and aligns with ongoing commitments under the Canada-United States-Mexico Agreement ("**CUSMA**").

The consultations on the import ban follow closely on the heels of other government consultations, which we discuss in our previous bulletin: [Deadlines Approaching: Government of Canada Launches Series of Consultations on Canada's Trade Future](#).

Current Context: The Import Ban Today

Canada's import ban was implemented in July 2020 under the Labour Chapter of the CUSMA. The ban amended the Canadian *Customs Tariff* to prohibit all goods, regardless of country of origin, from entering Canada that are mined, manufactured, or produced, wholly or in part, using forced labour.^[1]

Companies that acquire imported goods that they reasonable believe were produced using forced labour are subject to reporting obligations,^[2] and there is a further prohibition on possessing, purchasing, selling, exchanging, or otherwise acquiring or disposing of goods made of forced labour.^[3]

On January 1, 2024, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the "**Supply Chains Act**") came into effect and with it expanded the *Customs Tariff* prohibition to all goods, regardless of country of origin, from entering Canada that are mined, manufactured, or produced, wholly or in part, using child labour.^[4] The *Supply Chains Act* also introduced reporting requirements for certain Canadian entities that produce, sell, or distribute goods in Canada, import goods to Canada, or control an entity engaged in such activities. The Government of Canada's focus on transparency in supply chains continues following these 2024 reporting requirements^[5] and the ongoing consultations.

As a result, Canada currently has an import prohibition on goods made of forced labour or child labour, and

most medium and large-sized businesses are required to report annually on steps they are taking to reduce the risk of forced labour or child labour in their supply chains. The government has begun taking steps to enforce the prohibition on importing goods made of forced labour, with the Canada Border Services Agency reporting on the detention of various shipments in the last months.

Consultation Objectives

The government is looking to introduce stringent new border measures aimed at goods allegedly made of forced or child labour. The consultations specifically seek input on potential measures to enhance the current import ban, including:

1. **Publication of a “goods at risk of forced labour” list:** Identifying goods at risk of being produced by forced labour, informed by International Labour Organization indicators and other sources. This list will likely look similar to the United States’ [List of Goods Produced by Forced Labor or Child Labor](#), which includes goods and their origin countries that the US Bureau of International Labor Affairs believes to be produced by child or forced labour.
2. **Creating a reverse onus for importers of such “goods at risk”:** In addition to the existing import ban, imposing a reverse-onus that would require importers appearing on the above “goods at risk” list to provide documentation on the imported goods’ supply chain and effectively prove the negative (that the goods are *not made* from forced labour or child labour).
3. **Cost-recovery model:** Importers of goods allegedly made by forced labour will be responsible for costs associated with the detention, removal, abandonment, and/or forfeiture of the goods.
4. **Dispute resolution mechanism:** Establishing a streamlined process for resolving disagreements between importers and the government.
5. **Legislative and regulatory enhancements:** Strengthening authorities on information collection, enforcement, and collaboration with the US and Mexico to prevent transshipments.

The creation of a “reverse onus” on various categories of goods would significantly expand Canada’s forced labour regime. It would require importers to “prove the negative” by instituting traceability processes to demonstrate that goods are not made of forced labour or child labour. This process could resemble the regulations currently in force in the United States under the *Uyghur Forced Labor Prevention Act* (“**UFLPA**”), which similarly creates a reverse onus on goods sourced from the Xinjiang Uyghur Autonomous Region of China.

The government explains that in evaluating potential new border measures it will be guided by the need to protect international human and labour rights; the effectiveness of existing tools and CUSMA compliance; stakeholder interests and administrative burdens; technical feasibility and expected effectiveness; avoidance of

unintended trade barriers; and alignment with Canadian values and international commitments.

The Government of Canada has set out three key questions for discussion:

1. What do you view as the most effective way to improve the current import ban? Which measures would you prioritize?
2. Do you have suggestions for tools and sources of information to identify and address risks in supply chains, that could be utilized in the creation of a goods at-risk list?
3. What negative effects do you anticipate on workers and industries should the government proceed with some of the measures to strengthen the ban? What are your suggestions to mitigate those risks?

Implications for Businesses

The Government of Canada has been criticized by stakeholders as well as US politicians for lagging behind the United States in enforcing the forced labour ban. For instance, while the United States has stopped thousands of imports suspected of being produced with forced labour, Canada has to date [intercepted and assessed approximately 50 shipments](#), only six of which were exported out of Canada and back to their country of origin. Amid CUSMA talks, the Government of Canada has been clear that it seeks to improve enforcement.

The government has not provided anticipated timelines following the consultations, though it has informed stakeholders that new legislation could be introduced late this year.

Given the reporting requirements under the *Supply Chains Act*, and Canada commitment to advance a due diligence based framework for forced labour and child labour, organizations should already be ensuring they have established adequate internal diligence systems to reduce the risk of forced labour and child labour in their supply chains.

Although the Supply Chains Act serves to complement the Customs Tariff, organizations should keep in mind that the import prohibition under the Customs Tariff is an absolute prohibition on goods produced by forced or child labour. Penalties for non-compliance under the Customs Act are severe, and may include up to \$500,000 fines, up to five years in jail, or both.^[6]

The proposed “reverse onus” legislation would vastly expand the diligence and supply chain traceability requirements on Canadian businesses. **b**usinesses should continue to establish stringent internal diligence processes and maintain communications with foreign suppliers to ensure they are capable of affirmatively demonstrating that their goods are not tied to forced or child labour.

Next Steps

The consultations opened on October 17 and will close on November 15, 2024. Given the significant

repercussion and onerous requirements that could flow from new legislation as contemplated in the consultations, Canadian and international businesses should consider availing themselves of the opportunity to comment.

McMillan LLP regularly assists leading Canadian and global companies in articulating their perspectives on import and export controls and trade policy. Our team is available to support your participation in this consultation process.

[1] Government of Canada, *Background information: Public consultations on Canada's strengthened forced labour import prohibition*, [online](#). See also Government of Canada, *Share your views: Public consultations on measures to strengthen Canada's import ban on all goods mined, manufactured, or produced wholly or in part, by forced labour*, [online](#).

[2] *Customs Act*, RSC 1985 c 1, s. 15.

[3] *Customs Act*, RSC 1985 c 1, s. 155.

[4] *Customs Tariff*, Tariff Item No. 9897.00.00.00.

[5] McMillan's team has written extensively on the *Supply Chain Act's* developments. For more information, see: [Combating Forced Labour in Supply Chains from a Canadian Customs Perspective](#); [Canadian Businesses Should Prepare for New Mandatory Reporting on Supply Chains and Forced Labour](#); and [Update on 2024 Mandatory Supply Chain Reporting Obligation: New Guidance and Mandatory Questionnaire](#).

[6] *Customs Act*, RSC 1985 c 1, s. 160(1).

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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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