Canada’s Modern Slavery Act: Update Guidance From Public Safety Canada



On November 15, 2024, Public Safety Canada (“**PSC**“) published its latest guidance to help businesses navigate Canada’s *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the “**Act**“). This third edition builds on earlier versions released in December 20, 2023, and March 5, 2024, which was discussed in prior MT Biosphere newsletters (available in our December 2023 newsletter and our March 2024 newsletter). Drawing from its analysis of reports submitted earlier this year, PSC’s updated guidance aims to better support organizations preparing their next round of disclosures, due by May 31, 2025.

The Revised Guidance provides clarification to help businesses comply with the Act and strengthen their supply chain transparency.

An “entity” under the Act should report only if it is involved in the production or importation of goods

The Revised Guidance reaffirms PSC’s past interpretation that the Act only imposes a reporting obligation on “entities” involved in:

1. the production of goods in Canada or elsewhere;
2. the importation of goods produced outside Canada; or
3. controlling another entity that performs the activities described under (a) or (b).

This interpretation is grounded in Section 11 of the Act, which limits reporting to steps taken to prevent or reduce forced and child labour in the **production** of goods in Canada or elsewhere by the entity, or of goods **imported** in Canada by the entity. The Revised Guidance now explicitly clarifies that entities engaged solely in distribution or sales are not required to report and will not face enforcement action under the Act.

However, PSC has indicated on its summary of the Revised Guidance that reports prepared using previous versions of the online guidance will be accepted in the 2025 reporting year. Additionally, while not mandatory, organizations may choose to voluntarily file an annual report under the Act. Doing so could highlight their leadership in addressing forced and child labour, showcasing their integrity and commitment to responsible business practices.

Voluntary reporting can provide tangible benefits, such as improving ESG scores, lowering the cost of capital, enhancing reputation, and creating a competitive edge. It is an opportunity for businesses to demonstrate their role as responsible corporate citizens and attract customers, partners, and opportunities that value ethical operations.

Clarification on the meaning of “goods” produced or imported

The Revised Guidance clarifies the types of goods targeted by the Act when it states that reporting obligations apply only to entities which produce goods in Canada or import goods to Canada. According to PSC, only tangible physical property that is the subject of trade and commerce is targeted by the Act. Through the Revised Guidance, PSC confirms that certain types of property are explicitly excluded from the definition of “goods” such as real property, electricity, software services, and insurance plans.

Clarification on the meaning of “having assets in Canada”

The Revised Guidance also clarifies the meaning of the expression “having assets in Canada” which is used in the application threshold tests of the Act contained in paragraph (b) of the definition of “entity” and makes it clear that an organization should not include intangible assets such as intellectual property, securities and goodwill in its assessment, when determining whether it has assets in Canada.

This means that a parent company whose sole assets in Canada would be the shares of its Canadian subsidiary would not be considered as having “assets in Canada.”

This is a departure from the December 2023 online guidance published by PSC which considered that assets were property owned by a person or business such as investments and intangibles such as goodwill.

Clarifying the seven items of disclosure required under the Act

The Revised Guidance also provides additional information as to what is expected from reporting entities under the seven mandatory items of disclosure required under Section 11(3) of the Act. This additional information establishes recommendations rather than prescriptions, as can be inferred from the repeated use in the Revised Guidance of phrases such as “entities may include.”

Important additional information provided in the Revised Guidance includes the fact that:

- annual reports should identify the source countries or regions of origin of each of the goods and services used in the entities’ supply chain;
- overlap between the section on due diligence processes and other sections of the annual report is acceptable;
- An entity’s supply chain includes all suppliers and service providers involved in its business activities, from raw materials to final products, both direct and indirect, in Canada and abroad. The Revised Guidance acknowledge the complexity of supply chains and the limited visibility reporting entities may have but emphasizes the need to actively improve transparency where possible;
- identifying risks of forced labour or child labour in parts of an entity’s supply chain does not mean that forced labour or child labour is actually being used;
- entities are not required to report on specific cases or allegations of forced labour or child labour (if this information is included in the report, entities should make sure it does not compromise any individual’s privacy);

- if there was no instance of forced labour or child labour in the entity's supply chain, it can state that remediation measures were therefore not applicable to its case;
- details on the training given to employees should include its contents, its length, the modes of assessment, the number, groups and levels of employees who received it; and
- entities are required to report on how they assess their effectiveness in ensuring forced labour and child labour are not used in their supply chain, and not the results of such assessment.

Concrete action over aspirational statements

The Revised Guidance clearly states that the report should focus on concrete actions taken to address the risks of forced labour and child labour in an entity's supply chain. It should not be composed entirely of aspirational statements regarding what the entity intends on doing or the values it espouses. The focus of the report should be the actions it took in the previous financial year.

Clarifying "very minor dealings" in public safety Canada's revised guidance

The Revised Guidance shades light on the expression "very minor dealings" used by PSC in its previous guidance. According to PSC there is no prescribed threshold for the minimum value of goods that an entity must produce or import to be subject to the reporting obligation of the Act and the terms as they are used in the Act should be understood as excluding "very minor dealings." For PSC, this expression may be interpreted in accordance with generally accepted principles of *de minimis* and evaluated within the context of each entity's business.

Originating from Roman law, *de minimis* means "the law does not concern itself with trifles." In practice, this principle is used to set a threshold below which infractions are too minor to merit attention of the regulatory authority or punishment. Often times, the *de minimis* rule is exemplified by a determined threshold value. For example, in Canadian securities laws a listed company will be able to ask for revocation of its "reporting issuer" status if no more than 2% of its securities are owned by Canadian residents and such residents represent no more than 2% of the total worldwide number of securityholders of the listed company. Similarly, under customs regulations, an item made with an amount of material from a specific country (often set at or below 7% of the whole item) will not be considered originating from such country and will be exempt from applicable taxes and duties.

Under trade agreements like the Canada-U.S.-Mexico Agreement (CUSMA), *de minimis* thresholds applicable to courier imports are explicitly stated by the Canada Border Services Agency: CAD$150 for customs duties and CAD$40 for taxes. Trade rules also use percentage-based thresholds, such as the 2% *de minimis* margin of dumping (expressed as a percentage of the export price) under the World Trade Organization's General Agreement on Tariffs and Trade.

However, PSC's Revised Guidance does not specify such thresholds for "very minor dealings" under the Act. As a result, businesses are left to interpret this term within the context of their operations. While PSC references general *de minimis* principles, the lack of clear criteria leaves some ambiguity, requiring companies to carefully evaluate their activities and seek legal advice as needed.

New rules for annual report signatures: what you need to know?

Finally, the Revised Guidance states that the PDF version of the annual report filed by a reporting entity under the Act must contain wet ink or electronic signature of

the person signing the required attestation. Simply typing the name of the signatory preceded with the mention of “signed” is not sufficient to satisfy the requirement of the Act. This is a departure from the practice used by public companies when filing their public disclosure information with securities regulatory authorities in Canada.

What does this mean for your organization?

Public Safety Canada’s Revised Guidance narrows the scope of entities required to report under the Fighting Against Forced Labour and Child Labour in Supply Chains Act, now focusing exclusively on those producing or importing goods. It also offers clearer expectations for the form and content of the annual reports due under the Act.

If your organization falls within the reporting scope and operates on a calendar year, now is the time to review your compliance program addressing forced and child labour. With the next reporting deadline set for May 31, 2025, your annual report must detail the measures implemented by December 31, 2024.

The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.

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