

Preparing for Canada's New Anti-Forced Labour Supply Chain Law



Canada's new anti-forced labour legislation, the Forced and Child Labour in Supply Chains Act, will come into effect in January 2024, with due diligence reporting requirements starting on May 31, 2024.

The Forced and Child Labour in Supply Chains Act

Canada's new Forced and Child Labour in Supply Chains Act¹ ("Act") requires covered Canadian entities to release board-approved reports detailing their efforts to prevent and mitigate forced labour and child labour in their supply chains. It also includes new penalties for companies and officers that fail to make these reports or in the event that the reports include misleading statements. Accordingly, covered companies will need to prioritize supply chain due diligence, as well as assemble supporting records to prepare accurate reports and minimize supply chain risks.

The Act is the latest development in a global trend of increasing regulation of international supply chains, especially for labour rights, as well as efforts among North American governments to coordinate forced labour import restrictions.² Recent examples of anti-forced labour initiatives include the United States' Uyghur Forced Labour Prevention Act ("UFLPA");³ the United Kingdom's 2015 Modern Slavery Act; Australia's 2018 Modern Slavery Act; the European Union's deforestation regulation,⁴ draft regulation on forced labour,⁵ proposed Corporate Sustainability Due Diligence Directive, and batteries regulation;⁶ and South Korea's proposed bill on Human Rights and Environmental Protection for Sustainable Business Management.⁷

What importers need to know

Below, we discuss the key parts of this Act and what companies doing business in Canada need to know to begin compliance in January.

What entities are covered?

Entities covered by the Act include Canadian public companies and other Canadian private businesses that meet certain size thresholds, as well as entities that import goods into Canada. Many US companies that are involved with the importation of goods into Canada, or that control another entity doing business in Canada, will likely be considered "covered" under this standard.

For the purposes of this Act, covered entities are defined as a corporation or unincorporated organization that:

- Is listed on a stock exchange in Canada; or
- Has a place of business in Canada, does business in Canada or has assets in Canada and has met at least two of the following conditions in at least one of the last two financial years:
 - Had at least C\$20 million in assets;
 - Generated at least C\$40 million in revenue; and
 - Employed an average of at least 250 employees; or
- Is prescribed by regulations (which have yet to be enacted).

Currently, no regulations have been developed under this Act which would apply to the third option listed.

What entities must file reports?

An organization that fulfills the entity criteria must fulfill the entity reporting obligation, if it is:

- Producing, selling or distributing goods in Canada or elsewhere;
- Importing goods into Canada that were produced outside Canada; or
- Controlling an entity engaged in any activity described in the above points (1) or (2).

What reporting is required?

The Act requires entities to report steps taken during 2023 to prevent and reduce the risk that child or forced labour was part of the organization's supply chain. It specifically includes seven topics that reports must include, namely:

- Each entity's structure, activities and supply chains;
- The policies and due diligence processes of these entities regarding forced and child labour;
- The aspects of business and supply chains that carry a risk of forced or child labour being used and the steps the entity has taken to assess and manage that risk;
- Measures that have been taken to remediate any forced or child labour abuses;
- Measures that have been taken to remediate the loss of income to the vulnerable families that results from the measures taken to eliminate labour abuses;
- Any training provided to employees on forced and child labour; and
- How the entity determines its effectiveness in ensuring that forced and child labour are not used in its organization.

What labour abuses are covered?

Child labour and forced labour are both covered in this Act. Child labour is defined in the legislation as including services provided by those under the age of 18 under circumstances that are: illegal in Canada; dangerous for children; interfere with a child's schooling; or that constitute the worst forms of child labour as defined in article 3 of the 1999 Worst Forms of Child Labour Convention.⁸ The Act also notes that forced labour includes services that are provided under unsafe circumstances or that constitute compulsory labour as defined in article 2 of the 1930 Forced Labour Convention.

What are the requirements regarding submission dates, process, and publication?

Each entity covered by the Act is required, starting in 2024, to submit an annual

report to Canada's Minister of Public Safety and Emergency Preparedness before May 31st of each year. The Minister will post every filed report on an online register maintained by their office. This report must also be made publicly available by the entity itself, including being published in a conspicuous location on the covered entity's website. Copies of annual reports must also be provided to shareholders of federal corporations along with their annual financial statements.

What liabilities are there for covered entities?

Failing to follow the reporting requirement as laid out in the act can result in penalties under the law, potentially for both the company and the officers or directors. Publishing false or misleading information in these reports can cause an entity to be fined, searched without a warrant and face compliance orders.

Because public companies must issue the reports to stockholders along with financial statements, there may be a potential for securities fraud liability concerns as well. Other potential liability concerns include a risk of secondary market liability for misrepresentation or even tort liability.

The growing trend to fight forced labour in North American imports

This new legislation constitutes a significant expansion of the existing supply chain transparency and supervision requirements in Canada. In 2019, the country created the Canada Ombudsperson for Responsible Enterprise ("CORE") office to investigate alleged corporate human rights and ethics violations. It also follows a recent ban implemented by Canada in 2021 on import goods that were mined, manufactured or produced by forced labour as detailed in the United States-Mexico-Canada Agreement ("USMCA") Implementation Act. However, reports indicate that there have been only a few examples of Canada Border Service Agency ("CBSA") enforcing this ban since it took effect.

Canada Ombudsman for Responsible Enterprise's ("CORE") recent investigations

The new obligations and liabilities from Canada's new supply chain act intersect with those already imposed under the CORE, as a number of the CORE complaints relate to the alleged use of forced labour by Canadian importers. For example, in 2022 there was a complaint filed against Nike Canada Corp., alleging that it has supply relationships with several Chinese companies that a policy group identified as using or benefiting from forced labour.⁹ The CORE specifically reviews complaints about possible human rights abuses by Canadian companies that work outside Canada in the garment, mining and oil and gas sectors. The group publishes statistics regarding inquiries and complaints every quarter.

Currently, the largest number of complaints by country is against China, for which there are 13 active complaints. For example, CORE recently investigated clothing company Levi Strauss over its alleged links to organizations in China that use forced labour.¹⁰ The investigation stems from a complaint made by various activist groups that are concerned with Levi's supply relationships with suspect cotton sourced from China.

USMCA commitments

Canada's new Act is the outgrowth of its USMCA commitment to adopt forced labour bans—something the United States has been promoting in recent trade agreements. Specifically, Article 23.6 of the USMCA states a "goal of eliminating all forms of forced or compulsory labour, including forced or compulsory child labour," and, accordingly, requires each party to the agreement to prohibit the importation of

goods into its territory from other sources produced by these types of abusive labour practices.¹¹ Mexico also adopted a forced labour import ban in February 2023, based on the USMCA standard.¹²

Notably, USMCA Article 23.6 requires cooperation between the party states, which may lead to more information sharing and joint enforcement activities. One potential for inter-coordination of countries is US concerns about alleged forced labour links in the automotive supply chain, which could have implications for Mexico and Canada down the line.¹³ The United States is also now pursuing a similar forced labour commitment in the Indo-Pacific Economic Framework for Prosperity (“IPEF”), though obtaining binding commitments on the arrangement’s labour provisions has been challenging.¹⁴

The growing proliferation of import bans by USMCA countries can have wide implications for imports in North America and the world. Wider adoption of import bans would help prevent transshipment to the United States through Canada and Mexico and would prevent shippers from diverting products to third countries after they are blocked from entering the United States. There are also potential concerns about the re-export of goods detained by US CBP to countries with weaker labour rules, undermining the US forced labour legislation.

The US Congress has also exhibited continued bipartisan interest in improving supply chain visibility following the passage of the UFLPA, which may lead to additional scrutiny of US imports from Canada. On November 2, 2023, Senators Sheldon Whitehouse (D-RI) and Bill Cassidy (R-LA) introduced the Manifest Modernization Act of 2023 to increase public disclosure of international trade documentation.¹⁵ Under this bill, air, rail, and truck manifests would be subjected to the same public disclosure as that of ocean vessel freight currently. Labour rights advocacy groups commonly use the public manifest data to track supply chain risks and report them to CBP. Expanded reporting of this data to land transport would significantly increase public visibility into trade between Canada and the United States.

Conclusion

Canada’s Forced and Child Labour in Supply Chains Act is just the latest in USMCA countries adopting new legislation to combat potential labour abuses in the imports sectors. Accordingly, there is a growing trend emerging in the wake of this new legislation from Canada of new supply chain liabilities. The Firm will continue to monitor developments in Canada, as well as the interactions of these changes with US supply chain requirements.

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1 The text of the Act can be found [here](#).

2 See White & Case Alert from February 24, 2023, [Supply Chain Compliance with Human Rights and Environmental Obligations](#), for more information about these new government initiatives.

3 [Uyghur Forced Labour Prevention Act](#), 19 U.S.C. §§ 1307, 4681 (2021); also see White & Case Alert from January 3, 2023, [WROs, UFLPA and revised CTPAT](#), for a discussion of US forced labour laws.

4 See White & Case Alert from July 21, 2023, [10 key things to know about the new EU Deforestation Regulation](#), for more information on preparing for the EU Deforestation Regulation.

5 [Procedure File: 2022/0269\(COD\), European Parliament \(europa.eu\)](#).

6 See White & Case Alert from August 2, 2023, [New EU Batteries Regulation: introducing enhanced sustainability, recycling and safety requirements](#), for more information on the new EU batteries regulation.

7 [Bill on Human Rights and Environmental Protection for Corporate Sustainable Management](#), National Assembly of the Republic of Korea (in Korean).

8 [Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#), International Labour Organization.

9 [Initial Assessment Report for a complaint filed by a coalition of 28 organizations about the activities of Nike Canada Corp.](#)

10 The Globe and Mail, [“Corporate ethics watchdog investigating Levi Strauss over alleged links to forced labour in China.”](#)

11 Article 23.6 of the USMCA.

12 [Mexico forced labour import ban](#) (in Spanish).

13 [“Senate Finance Committee Chair Wyden Expands Investigation of Auto Supply Chain Links to Forced Labour in Xinjiang, China,” The United States Senate](#)

[Committee on Finance.](#)

14 [Indo-Pacific Economic Framework for Prosperity \(IPEF\), United States Trade Representative.](#)

15 ["Whitehouse, Cassidy Introduce Bipartisan Legislation to Increase Transparency of Shipping Manifests," Senator Sheldon Whitehouse.](#)

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