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## Canadian Parliament Passes Bill to Mandate Reporting on Forced and Child Labor in Supply Chains

Soon to be law, the bill will require many foreign companies doing business in Canada to report annually; first reports will be due May 31, 2024

On May 3, 2023, Canada's Parliament passed Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff (the "Act"). Following royal assent, the Act will take effect January 1, 2024.

The purpose of Bill S-211 is to reduce the use of forced labor and child labor in supply chains by increasing transparency in supply chains. In passing the legislation, the Canadian Parliament has overwhelmingly determined that "it is essential to contribute to fighting modern slavery, including by imposing reporting obligations" on covered entities with respect to goods manufactured in (or imported into) Canada.

Accordingly, the Act will impose reporting obligations (similar to those contained in the UK and Australian Modern Slavery Acts) on a broad range of entities, including government institutions, domestic companies, and many foreign companies that do business or own assets in Canada. These obligations include filing annual public reports on measures taken to identify, address, and prevent forced labor and child labor in their supply chains.

Next year, covered entities must file initial reports (about their steps taken to prevent or reduce the use of forced labor) by May 31, 2024. Reports must be approved by a company's governing body. Companies may choose to file jointly with other companies.



## WHICH ENTITIES MUST REPORT?

Provided they meet the thresholds shown below, the Act requires reporting by any private sector “entity” (corporation, trust, partnership, or unincorporated organization) that (a) produces, sells, or distributes goods in Canada or elsewhere; or (b) imports goods produced outside Canada into Canada; or (c) directly or indirectly controls an entity described in (a) or (b).

To be covered, the entity must meet one or more of the following:

- a. Be listed on a Canadian stock exchange,
- b. Have a place of business in Canada, do business in Canada or have assets in Canada and, based on its consolidated financial statements, meet at least two of the following three conditions in at least one of its last two financial years:
  - At least C\$20 million in assets,
  - At least C\$40 million in revenue,
  - An average of at least 250 employees, or
- c. Be prescribed by regulations (not yet issued).

(These thresholds are similar to those already used for payment reporting by oil, gas and mineral companies under Canada’s Extractive Sector Transparency Measures Act.)

In addition, all Canadian federal government institutions, ministries and departments, including Crown corporations and wholly owned subsidiaries, that produce, purchase or distribute goods in Canada or elsewhere must also file reports. Thus, private sector entities who may not have independent reporting obligations may nevertheless be asked to provide information to covered government institutions which are required to prepare their own reports under the Act.

## WHAT INFORMATION MUST BE REPORTED?

Reports must detail steps taken to prevent and reduce the risk of the use of forced or child labor at any step of the production of goods produced or imported into Canada by the entity.

The report must also include additional information on each entity subject to the report, including:

- structure, activities and supply chains,
- policies and due diligence processes in relation to forced and child labor,
- parts of its business and of its supply chains that carry a risk of forced or child labor and steps taken to assess and manage that risk,
- measures taken to remediate any forced or child labor,
- measures taken to remediate loss of income to the most vulnerable families resulting from measures taken to eliminate forced or child labor,
- training to employees on forced and child labor, and
- how the entity assesses its effectiveness in ensuring that forced and child labor are not used in its business and supply chains. In imposing these mandatory reporting criteria, the Act goes beyond the existing UK Modern Slavery Act and aligns with the approach adopted in the Australian Modern Slavery Act.



## HOW WILL REPORTING BE ENFORCED?

**Warrantless Searches and Seizures:** The Act empowers designated officials to enter and search an entity's property and remove anything for the purpose of examination. The search may include, not only documents, but also examination and use of computer systems and emails and other forms of communications. No warrant is required unless the property is a dwelling-house. Similar warrantless powers to search (but not generally to remove material) currently exist under Canada's Customs Act and the Export and Import Permits Act.

**Ministerial Orders:** Based on the search, the Minister may order the company to take any measures the Minister considers necessary to ensure compliance with the reporting requirements found under the Act.

**Criminal fines:** An entity or individual that fails to submit a satisfactory annual report or make it public, obstructs a designated official, or fails to comply with an order from the Minister is guilty of a summary offence and liable to a fine of up to C\$250,000.

**D&O Liability:** Every director or officer who directs, authorizes, assents to, acquiesces or participates in any of these offences will also be personally liable.

## WILL REPORTS BE MADE PUBLIC?

Entities must make their reports publicly available. Annual reports must be submitted to Canada's Minister of Public Safety and Emergency Preparedness. The Minister will post them in an online registry on the website of the Department of Public Safety and Emergency Preparedness. The company must also publish its report prominently on its website. Federal corporations must also provide a copy to shareholders together with their annual financial statements.

## HOW WILL THE BAN ON FORCED OR CHILD LABOR BE ENFORCED?

**Current Law on Forced and Prison Labor:** as part of its implementation of Article 23.6 of the Canada–United States–Mexico Agreement, the Canadian Customs Tariff already prohibits import of goods produced, wholly or in part, by forced or compulsory labor. The Customs Act makes it a crime to possess, exchange, acquire, sell or dispose of goods that are prohibited for import under the Customs Tariff. Unlawfully imported goods can be investigated and seized by the Royal Canadian Mounted Police and the Canada Borders Services Agency.

**The New Law:** The Act expands the scope of these current offences by amending the prohibition in the Customs Tariff to cover child labor (by persons under 18 years of age) and broadening the definition of forced labor. These definitions incorporate and go beyond the definitions in the International Labor Organization's Forced Labor Convention, 1930 and Worst Forms of Child Labor Convention, 1999. Among other things, the Act defines child labor to include any labor that interferes with a child's schooling or is "mentally, physically, socially or morally dangerous" to children.

## WHAT SHOULD COMPANIES DO TO PREPARE?

Companies with reporting obligations must provide a report by May 31, 2024. Although the Act does not set out specific measures that a company must undertake in preparing the report, forthcoming regulations or government guidance may provide direction on necessary form and content. As of now, form and content are discretionary, so long as the statutory elements are included.

To file a meaningful report consistent with a company's overall policies or procedures on forced and child labor, business and human rights, and ESG (environmental, social and governance), companies should take the following steps:

- Map their supply chains,



- Conduct risk assessments of their supply chains,
- Identify the parts of their business or supply chain that may carry a risk of forced or child labor, considering, for example, factors such as the general sectors, industries, types of products or countries involved,
- Review and update or develop and implement policies and practices on preventing and remediating forced or child labor, and
- Develop training and education for employees on forced and child labor.
- In sum, the impact of this Act will be felt far beyond Canada’s borders because of the nature of global supply chains and the increasingly interconnected ways in which governments are imposing new obligations on companies with respect to forced labor and child labor.

For background on forced and child labor prohibitions and reporting requirements in the United States and the United Kingdom, and on supply chain due diligence, see our previous articles and client alerts:

- [EU Joins US in Banning Forced Labour Products: Supply Chain Human Rights Due Diligence](#)
- [UN High Commissioner reports serious human rights violations in Xinjiang – what does this mean for businesses with supply chains in the region?](#)
- [G7 Leaders Sharpen Focus on Labor Issues in Xinjiang: What Does This Mean for Multinational Businesses with Supply Chains in the Region?](#)
- [Forced Labor Enforcement Task Force Issues Strategy To Prevent Forced Labor Imports From China](#)
- [New U.S. Customs Anti-Forced Labor Tool Will Require Submission Of Chinese Supplier Postal Codes](#)
- [Using Contractual Clauses to Manage Supply Chain Human Rights Issues](#)

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