

Dear Global Affairs Canada,

Thank you for seeking feedback from stakeholders on how to strengthen the forced labour import provisions in the Customs Tariff Act. Fair Futures is a for-purpose consultancy specialising in preventing and responding to modern slavery. We work on this issue with both the government and business clients.

We congratulate the Government of Canada for giving this important issue focused attention. Forced labour is a severe violation of human rights affecting 28 million men, women and children. Forced labour occurs in all economic sectors and is found in every country. Non-state forced labour generates around USD \$236 billion per year, much of which ends up in our global supply chains, including those in Canada. Of those people in forced labour, 3.9 million are being forced to work by state authorities. State-sponsored forced labour is notoriously difficult, if not impossible, for individual businesses to address. In this regard, Canada's forced labour import provisions are an important adjunct to other mechanisms, such as obligations on the private sector to engage in responsible business conduct.

We support your efforts to find practical ways to strengthen the forced labour import provisions. In this letter, we respond to the specific measures noted in the Background Information: Public consultations on Canada's strengthened forced labour import prohibition. Information provided is not commercially sensitive.

List of goods at risk of forced labour

Suggestion #1: Prioritise developing an official list of goods at risk of forced labour, that is based on independent, verifiable information, is regularly updated, and made publicly available.

We support the "Publication of a list of goods at risk of forced labour, informed by the International Labour Organization's (ILO) forced labour indicators and definitions and supplemented by other sources of information". The list is crucial for implementing Canada's modern slavery import ban, as it serves as the starting point for the supply chain "minimum traceability" process outlined below and therefore should be prioritised as a measure to develop.

A list of goods at risk of forced labour is also anticipated by the EU Forced Labour Regulation, which prohibits products made with forced labour from entering the EU market or being exported from the EU. As has been suggested for Canada, the EU will create a list of economic sectors in specific geographic areas with a high risk of forced labour. Whilst not utilised specifically for import bans, the US and Australian State of New South Wales (NSW) have published similar lists. Namely the US List of Goods Produced by Child Labor or Forced Labor, and the NSW Modern Slavery Inherent Risk Identification Tool. The EU, US, and NSW lists are publicly available and include sources of evidence supporting the inclusion of each item. These resources serve as valuable references for entities aiming to engage responsible business conduct and address forced labour.

The EU Forced Labour Regulation makes it clear that the list must be based on independent and verifiable information, from international organisations, or institutional, research or

academic organisations. International standards like the OECD Guidelines for Multinational Enterprises on Responsible Business Conduct also suggest that identified risks should be regularly reviewed. The locations and industries where forced labour manifests are constantly changing. For instance, with the transition to renewable energy, substantial evidence has emerged indicating the use of forced labour in the mining and processing of raw materials and the manufacturing of solar panels. Therefore, we recommend that the list be regularly updated—not only to add new goods but also to ensure that existing entries remain relevant, with evidence kept current.

Practical mechanisms to enable effective implementation of the forced labour import ban

Suggestion #2: Require importers of goods on the list to provide information on the entire supply chain.

Suggestion #3: Consider establishing a process for prioritising supplementary checks and inspections, and ensure there are sufficient resources allocated to conduct them.

We strongly support the “Creation of a supply chain “minimum traceability” process in which importers of goods appearing on the above-cited public list would have the reverse onus to provide additional documentation regarding the imported goods’ supply chain journey” as a potential measure. One of the key challenges in addressing forced labour is the opacity of complex global supply chains. Forced labour is most often found at the lower tiers of the supply chain, including in the mining of raw materials and manufacturing components and goods. A lack of visibility across all stages of a product’s production makes it impossible to determine where a good has come from and whether forced labour has been involved. Requiring importers to provide basic information about the entire supply chain would greatly assist the Canadian Border Services Agency identify imports that may involve forced labour.

Given the prevalence of forced labour in global supply chains, the list of goods at risk of forced labour may be extensive. For reference, the current US List of Goods Produced by Child Labor or Forced Labor comprises 204 goods from 82 countries. The Special Rapporteur on Contemporary Forms of Slavery’s visit to Canada notes that, at the time of writing, only one shipment had been seized under the Customs Tariff Act. The lack of enforcement was attributed to insufficient resources for inspections. For both practicality and resource reasons, the Canadian Border Services Agency may need to follow a process of triaging supplementary checks and inspections on imports. A useful model to consider is Articles 14-19 of the EU Forced Labour Regulation, which outlines how imports will be prioritised for inspection and the sources of information that will be used in this process. To effectively carry out inspections, it is essential that the Canadian Border Services Agency is sufficiently resourced, ensuring alignment with the recommendations of the Special Rapporteur on Contemporary Forms of Slavery.¹

¹ The Special Rapporteur on Contemporary Forms of Slavery’s visit to Canada recommended the following: “Allocate sufficient resources to implement import ban and Bill S-211” and “Strengthen the regime of import ban with sufficient resources allocated for inspections”.

Collaboration and engagement

Suggestion #4: Establish systems and processes to share information and intelligence for Canadian agencies and between Canada, the US and Mexico.

We support the proposal to “Strength[en] the legislative and regulatory authorities regarding information collection/sharing, enforcement, and disposition including enhanced collaboration and cooperation with the U.S. and Mexico to prevent transshipments” as part of strengthening the Customs Tariff Act. This is consistent with the approach taken in the UN Convention against Transnational Crime, which encourages and enables Member States to cooperate to combat serious crimes.

It is worth noting that the European Commission has recognised the importance of collaboration and communication between the 27 EU countries in implementing the EU Forced Labour Regulation. Under the EU Regulation, a communication system will be established that will notify each country on a decision made to ban a product, and the withdrawal of a ban. They will also set up a portal where each country can access guidelines on implementing the law, information on bans, and a database of high-risk areas and sectors (including evidence). This will enable a coordinated response between countries on global supply chain issues, whilst acting to reduce the resource burden on countries to repeat investigations. The Canadian Border Services Agency could look to implement similar systems and processes with the US’ and Mexico’s border agencies as a means to prevent transshipments.

In addition, it is critical to ensure that there are clear, fast communication channels in place between the Canadian Border Service Agency, and any supporting agencies domestically. In this regard, it may be useful to consider lessons learnt through the operation of comparable schemes. For example, the US has a legal regime that seeks to stop illegal, unreported and unregulated (IUU) fish from reaching its market by denying port access to vessels known to have engaged in such fishing. This requires collaboration between various domestic agencies. Specifically, the National Marine Fisheries Service evaluates, monitors, and identifies shipments that fit a pattern of interest or concern, which is passed on to the Customs and Border Protection. This is perhaps comparable to the close working relationship that will be needed between the Labour Program of ESDC as the providers of information and intelligence on goods made with forced labour to the Canadian Border Services Agency. A lesson can be drawn from the US model. A report to Congress by the Government Accountability Office, identified poor communication between agencies as the main barrier to effective implementation.² Since the Canadian Border Services Agency relies on the Labour Program of ESDC, effective information-sharing systems and protocols may need to be established.

² Government Accountability Office (May 2023) Combatting Illegal Fishing. Better Information Sharing Could Enhance U.S. Efforts to Target Seafood Imports for Investigation. Available at: <https://www.gao.gov/assets/d23105643.pdf>

Collaboration with EU

Suggestion #5: Consider engaging with EU countries to explore potential opportunities for collaboration and information-sharing.

Collaboration and information sharing could also include engagement with the EU. The EU Forced Labour Regulation has a specific clause for cooperation with third countries for information exchange on risk areas/products and sharing best practices. Special mention is made to collaborating with countries that have similar legislation in place (i.e. Canada). These engagements will be in the context of existing dialogues or implementation of trade agreements. Canada could look to leverage existing obligations in Conventions to engage in such international cooperation, such as those which Canada has already accepted under the UN Convention Against Transnational Organized Crime (Article 27) and the UN Trafficking Protocol (Articles 10-11).

Managing unintended consequences

Suggestion #6: Offer entities whose products are banned a defined timeframe to remediate the issue and demonstrate compliance, with the incentive of being allowed to resume imports once the situation is resolved.

The consultation seeks input on the negative effects on workers and industries should the government proceed with some of the measures to strengthen the ban. The Customs Tariff Act does not place any obligations on entities to remediate forced labour found in its supply chain. Under the ILO Protocol to the Forced Labour Convention (1930), States are required to take measures to remedy forced labour. That is to address, mitigate and provide solutions to identified cases of forced labour. While it is beyond the scope of the Customs Tariff Act to require entities to engage in remediation, the legislation could support the Protocol by offering incentives for entities to remediate forced labour in their supply chains. Under the relevant EU legislation, when goods of strategic importance are barred entry, border forces will hold the goods for a defined period to give the entity an opportunity to address forced labour. If the entity can prove that it has remediated the situation, they can resume imports into the EU. We recommend that Canada offers this incentive to all entities with banned goods, encouraging them to address forced labour within a specified timeframe if they wish for their import ban to be lifted.

This incentive is expected to have a greater impact on goods for which Canada holds a large market share of imports. Influence through market share could be further leveraged through collaboration between Canada, the US, Mexico, and the EU as discussed above.

We welcome discussing our recommendations with Global Affairs Canada if it would prove useful.

Yours sincerely,

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