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## Canada to Implement New Modern Slavery Reporting Requirements and Child Labor Import Ban – Slotting into Global Compliance by U.S.-based Multinationals

On May 3, the Fighting Against Forced Labour and Child Labour in Supply Chains Act passed its third reading in the Canadian House of Commons, marking the Act's passage in both houses of Parliament. The Act is expected to require thousands of companies – including a large number of U.S.-based multinationals – to annually report on their steps to address forced and child labor in supply chains. The Act also will ban imports into Canada that are produced with child labor. Upon receiving royal assent, the Act will go into effect on January 1, 2024, with the first modern slavery reports due by May 31, 2024. The good news for many U.S.-based multinationals is that the Act's requirements are closely aligned with their current reporting and compliance procedures. However, there will be some new twists. In this Alert, we provide an overview of the Act, as well as commentary on compliance by U.S.-based multinationals.

### Attorneys

[Michael R. Littenberg](#)

[Samantha Elliott](#)

[Kelley R. Cohen](#)

### The Act in Context

The bill calling for the adoption of the Act, S-211, was introduced in the Canadian Senate on November 24, 2021 by Senator Julie Miville-Dechéne. However, that was not the first bite at the apple. The 2021 bill was preceded by other bills with similar goals and obligations.

Canada has previously taken other measures to address forced labor in supply chains. As required by the United States-Mexico-Canada Agreement (the successor to NAFTA), effective July 2020, Canada amended the Customs Tariff to prohibit imports produced by forced labor. Thus far, there has been one publicly reported blocked shipment that was suspected of having ties to forced labor. Civil society has been critical of the lack of enforcement. In contrast, the United States has been vigorously enforcing its forced labor ban. U.S. Customs and Border Protection recently released Uyghur Forced Labor Prevention Act enforcement statistics (discussed in our Alert [here](#)), underscoring the sharp difference in its enforcement approach. Mexico recently implemented the forced labor ban mandated by the USMCA, as described in our Alert [here](#).

In addition, in early 2021, in coordination with the United States and the United Kingdom, Canada announced additional measures addressing forced labor concerns relating to products originating from the Xinjiang region of China. Those measures are discussed in our earlier Alert [here](#).

Senator Miville-Dechéne said she hopes the Act will serve as the “gold standard” in supply chain transparency legislation. However, critics argue that the Act does not go far enough and potentially risks exacerbating forced labor by providing the appearance of action. In this regard, the Act stands in stark contrast to the direction of travel of regulation in Europe, which has been moving toward mandatory human rights due diligence. In addition to requiring disclosure, MHRDD legislation requires subject companies to assess and address applicable adverse human rights risks and impacts. Most recently, Germany, Norway and Switzerland have adopted MHRDD legislation, with the first compliance periods underway (see our earlier Alerts [here](#), [here](#) and [here](#), respectively). The European Commission also has proposed an EU-wide Corporate Sustainability Due Diligence Directive (see our earlier Alert [here](#)), which currently is undergoing the usual legislative sausage-making. Other European jurisdictions, including the Netherlands, have proposed MHRDD legislation (see our earlier Alert [here](#)).

Canada may still move in the direction of MHRDD. In its 2023 budget, the Canadian government indicated it intends to introduce legislation by 2024 to eradicate forced labor from Canadian supply chains. In a recent interview, the Canadian Labour Minister indicated that follow-up legislation will require companies to take steps to address forced labor in supply chains. Canadian MHRDD legislation was proposed in 2022, although that bill has not progressed.

## Subject Entities

An entity will be required to report pursuant to the Act if it:

- Is listed on a stock exchange in Canada;
- Has a place of business in Canada, does business in Canada or has assets in Canada and, based on its consolidated financial statements, meets at least two of the three following conditions for at least one of its two most recent financial years:
  - At least CAD 20 million in assets;
  - At least CAD 40 million in revenue; and/or
  - An average of at least 250 employees; or
- Meets other additional requirements prescribed by regulations.

**And** it engages in any of the following activities:

- Produces, sells or distributes goods in Canada or elsewhere;
- Imports into Canada goods produced outside of Canada; or
- Controls an entity engaged in any of the foregoing activities.

Given the low size threshold and breadth of business activities that bring an entity within the reporting provisions of the Act, a significant number of U.S.-based multinationals will be captured. This is consistent with what has occurred under the UK Modern Slavery Act and the Norwegian Transparency Act, both of which have low compliance thresholds.

## Definitions of Child and Forced Labor

As noted, the Act applies to both child and forced labor. **“Child labor”** is labor or services provided or offered to be provided by persons under the age of 18 that:

- Are provided or offered to be provided in Canada under circumstances that are contrary to the laws applicable in Canada;
- Are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to them;
- Interfere with their schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work; or
- Constitute the worst forms of child labor as defined in Article 3 of the Worst Forms of Child Labour Convention.

**“Forced labor”** is labor or service provided or offered to be provided by a person under circumstances that:

- Could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labor or service; or
- Constitute forced or compulsory labor as defined in Article 2 of the Forced Labour Convention.

## Reporting Requirements

The Act requires subject entities to annually publish a report detailing the steps taken during the previous financial year to prevent and reduce the risk that forced or child labor is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity.

Reports also must include the following information with respect to each entity subject to the Act:

- Its structure, activities and supply chains;
- Its policies and due diligence processes in relation to forced and child labor;
- The parts of its business and supply chains that carry a risk of forced or child labor being used and the steps it has taken to assess and manage that risk;
- Any measures taken to remediate any forced or child labor;
- Any measures taken to remediate the loss of income to the most vulnerable families that results from any measure taken to eliminate the use of forced or child labor in its activities and supply chains;

Note that this disclosure requirement is not specified in any of the other current modern slavery reporting statutes.

- The training provided to employees regarding forced and child labor; and
- How the entity assesses its effectiveness in ensuring that forced and child labor are not being used in its business and supply chains.

The report must be approved by the entity's governing body. A joint report covering multiple entities required to publish a report under the Act may be prepared. In the case of a joint report, the governing body of each entity covered by the report must approve the report or, if a single governing body controls each entity, then that upper-tier entity may approve the report instead. The report must disclose which governing body or bodies approved the report. It also must be signed by at least one member of the governing body of each entity that approved the report.

The reporting deadline is May 31 in respect of the subject entity's prior fiscal year. As earlier noted, the first report is required to be submitted by May 31, 2024. The report is required to be submitted to the Minister of Public Safety and Emergency Preparedness. The Minister will make all reports publicly available on the Department of Public Safety and Emergency Preparedness website. If an entity is incorporated under the Canada Business Corporations Act or another Act of Parliament, it must also provide the report to its shareholders with its annual financial statements. An entity also must make the report publicly available, including by publishing it in a prominent place on its website.

## The Interplay with Current Modern Slavery Reporting

The Act has substantial overlap with other current global modern slavery transparency legislation, all of which, in broad strokes, require similar information to be reported. Many U.S.-based and other multinationals subject to multiple modern slavery reporting requirements produce a single combined modern slavery statement that addresses all of these requirements. For multinationals that have the same products, supply chains and compliance policies and procedures globally, this is more efficient than producing separate statements and also ensures global consistency in disclosures. We expect that most U.S.-based multinationals will fold Canadian reporting into their global modern slavery statements, assuming additional implementing regulations or guidance (if any) are not inconsistent with that approach.

Depending upon their fiscal year-end, reporters in Canada may need to accelerate their global modern slavery reporting to meet the deadline under the Act. The Australian Commonwealth Modern Slavery Act requires subject entities to submit their modern slavery statements within six months after the end of their fiscal year. The UK Modern Slavery Act

does not have a specific publication deadline, although the Home Office advocates publishing the statement within six months after fiscal year-end. The California Transparency in Supply Chains Act is silent on timing.

### **Enforcement of the Act**

A frequent knock on current modern slavery transparency legislation is that these instruments lack meaningful enforcement mechanisms to ensure compliance. The Act aims to address this criticism.

The Minister has the power to designate individuals to administer and enforce the Act. The Act provides broad authority for the designated individuals to review documents or inspect any place that it has reasonable grounds to believe is relevant to verifying compliance with the Act. If, based on that review and inspection, the Minister believes that an entity is not in compliance with the Act, it may require the entity to take any measures that the Minister deems necessary to ensure compliance.

More significantly, any person or entity that fails to comply with the Act, knowingly makes a false or misleading statement or knowingly provides false or misleading information to the Minister (or its designee) is liable for a fine of up to CAD 250,000. The potential for fines will place more pressure on U.S.-based multinationals to ensure that they have sufficient compliance procedures in place to identify group entities that have a reporting obligation and ensure timely reporting occurs and that there are sufficient controls in place to verify that reported information meets the requirements of the Act and is accurate.

If a person or entity commits an offence under the Act, any director, officer or agent who directed, authorized, assented to, acquiesced in or participated in the commission of the offence also can be fined.

### **The Child Labor Import Ban**

The Act also amends the Customs Tariff to prohibit imports produced with child labor. As previously noted, the Customs Tariff was previously amended to prohibit imports produced with forced labor. In light of this additional prohibition, at a minimum, U.S.-based multinationals should assess the adequacy of their policies and procedures to assess and address child labor risks in their Canadian imports.

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