



Professor Tomoya Obokata
Special Rapporteur on contemporary forms of slavery
Office of the United Nations High Commissioner for Human Rights
Palais des Nations
CH-1211 Geneva 10, Switzerland

May 31, 2023

Call for submissions ahead of visit to Canada

Dear Professor Obokata,

Above Ground and the Canadian Network on Corporate Accountability (CNCA) welcome the opportunity to inform preparations for your upcoming visit to Canada. What follows is a brief by Above Ground outlining gaps in existing Canadian laws and policies on forced labour abroad, and including commentary from the CNCA on Canada's new corporate reporting law, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*. We show that Canada lacks measures requiring companies to exercise due diligence, its forced labour import ban has gone largely unenforced, and its new law requires no *action* by companies to address the issue.

We would also welcome the opportunity to meet with you during your visit.

Above Ground works to ensure that companies based in Canada or supported by the Canadian state respect human rights and the environment wherever they operate. Above Ground is a member of the CNCA.

The CNCA advocates for mandatory corporate accountability standards for Canadian companies operating abroad. The network brings together forty human rights, environmental, labour, faith-based and solidarity groups from across Canada. It represents the concerns of millions of Canadians and is connected with communities, workers, Indigenous peoples, and environmental and human rights defenders from around the world.

Sincerely,

A handwritten signature in black ink that reads "K. Hamilton".

Karen Hamilton
Director
Above Ground

A handwritten signature in black ink that reads "Aidan Gilchrist-Blackwood".

Aidan Gilchrist-Blackwood
Network Coordinator
Canadian Network on Corporate Accountability

Canadian policy on forced labour in international supply chains

The Canadian government and Parliament are actively examining legislative options to address forced labour in companies' global supply chains. Crafting an effective legal framework to counter this injustice will require a clear understanding of the gaps left unaddressed by Canada's existing laws and policies, and their enforcement. To help inform this debate, here we take stock of existing Canadian legislation and policies that either aim explicitly to fight forced labour in companies' international supply chains or could be used towards that end.¹

***Customs Tariff* import ban on products of forced labour**

Canada committed to ban the importation of all products of forced labour when it signed the Canada-United-States-Mexico Agreement in 2018. The prohibition applies to all "goods that are mined, manufactured, or produced wholly or in part by forced labour." It was added to Canada's *Customs Tariff* legislation and came into effect in July 2020.

While other jurisdictions are considering similar measures, the U.S. and Canada are the only countries that have had such a legal provision in force for a significant period of time.²

In both countries, the ban is enforced by customs authorities, who are expected to block goods made with forced labour from entering the domestic market by detaining shipments of these goods as they arrive at the border. An importer whose shipment is detained could forfeit it, export it to another country,³ or challenge its classification as a product of forced labour. If the importer can prove that no forced labour was used to produce the goods, they will be released.

Beyond this, however, Canada's enforcement approach differs dramatically from that of the U.S., in ways that will likely continue to result in Canadian enforcement action being far rarer and more limited in scope. For instance:

- While U.S. customs authorities will block goods based on "[reasonable suspicion](#)" they were made using forced labour, the Canada Border Services Agency (CBSA) [says](#) it must have "legally sufficient and defensible evidence of production by forced labour" before it can act.⁴

¹ Forced labour within Canada is also a serious problem that merits attention. However, Canadian law and policies targeting this problem are largely distinct from those that aim to counter forced labour abroad. This policy brief focuses primarily on the latter.

² Mexico's provision to ban the importation of goods made by forced labour only came into force on May 18, 2023.

³ An exception under the U.S. law is that the importer can't export goods that are subject to a formal "finding."

⁴ To gather evidence, the agency relies in part on Employment and Social Development Canada, [which](#) researches "problematic supply chains" and reports to the CBSA on goods likely produced by forced labour.

- The CBSA [says](#) Canada's *Customs Act* and *Privacy Act* prohibit it from publicly naming the manufacturers whose goods it decides to block. Such disclosure is a key factor in the effectiveness of U.S. enforcement actions. It flags to all importers goods that must be removed from their supply chains, and exerts additional pressure on manufacturers to clean up their practices.⁵
- The CBSA [asserts](#) that it can't make determinations that all goods of a certain type from a specific region are produced by forced labour and are therefore prohibited—as U.S. authorities have done with products containing cotton from Turkmenistan or from the region of China known as East Turkestan or Xinjiang, for instance.

The U.S. has also adopted additional legislation directing its customs authorities to block all goods made in this region of China. Similar legislation [has been tabled](#) in Canada, but it has several stages still to pass through in Parliament before it could be voted into law.

It's not clear if Canada's enforcement framework even allows for the prohibition of all goods of a given type made by a specific company. The CBSA [insists](#) goods can only be classified by individual officers on a shipment-by-shipment basis, as each one arrives at the border. The CBSA has declined to clarify whether, once one officer classifies a company's product as having been made with forced labour, other officers are required to follow suit with other shipments of the same product from the same manufacturer.⁶

These and other notable differences between the Canadian and U.S. enforcement approaches are summarized in the table on the following page.

⁵ U.S. detention orders often generate significant media coverage, which can spur increased scrutiny of the firm by its shareholders, its customers worldwide, and legal authorities in the country where it allegedly employs forced workers.

⁶ Above Ground posed this question, among others, to the CBSA in April 2022. It [was not answered](#) in the letter we received in reply.

Table: Comparison of Canadian and U.S. enforcement of forced labour import bans⁷

	Canada	U.S.
Number of shipments detained, July 2020 to March 2023	One, later released upon challenge by the importer	More than 6,160 ⁸
Number of producers whose goods were deemed inadmissible, July 2020 to March 2023	One, but the decision was later reversed	27 ⁹
Regulations adopted to govern enforcement?	No	Yes
Scope of goods typically prohibited by a single enforcement action ¹⁰	A single shipment of goods	- All goods of a certain type made by a specific company - All goods of a certain type from a specific region
Evidence required for enforcement action	"Legally sufficient and defensible evidence of production by forced labour"	Information that "reasonably but not conclusively" indicates use of forced labour
Person who makes the determination that the goods were produced by forced labour	Individual border service officer	Head of the enforcement agency
Penalties the importer could face	Unclear ¹¹	Fines , criminal prosecution
Information reported by authorities for each enforcement action	- None routinely reported - Upon request, the CBSA may disclose the type of goods and their country of origin	- Always published: the manufacturer name, type of goods, and country of origin - Often published: the rationale for action, such as indicators of forced labour at the producer's facilities
Information reported regarding enforcement outcomes	- None routinely reported - Upon request, the CBSA may disclose information such as the number of shipments detained and their country of origin	- Number of detention orders - Number and value of shipments detained - Large detentions, seizures, fines

⁷ Except where otherwise noted, all information about U.S. enforcement presented in this table refers to enforcement of the *Tariff Act's* broad prohibition on importing goods made with forced labour.

⁸ [1,469](#) from Oct. 1, 2020 to Sep. 30, 2021 (which is U.S. CBP's fiscal year 2021), plus [2,398](#) from Oct. 1, 2021 to Sep. 30, 2022, plus [2,293](#) from Oct 1, 2022 to March 31, 2023. These figures include shipments targeted under the [Uyghur Forced Labor Prevention Act \(UFLPA\)](#).

⁹ This refers to companies whose products were [deemed inadmissible](#), at any point during this time period, under enforcement of the U.S.'s *Tariff Act* prohibition on forced labour imports. It does not include those whose products were banned under the UFLPA.

¹⁰ In the U.S., an enforcement action is the [issuing](#) of a "withhold release order" or "finding." In Canada, it is the classification of goods under tariff item no. 9897.00.00. In either case, the goods are to be stopped at the border and withheld from the importer.

¹¹ In 2021, we asked the minister overseeing the CBSA if it would be a civil or criminal offence to import goods made by forced labour, and if a firm could face penalties for doing so. The [reply](#) we received did not answer this question.

Sanctions legislation

Canadian sanctions law [can be used](#) to place restrictions on financial, business or technological dealings with foreign individuals, governments or companies in relation to “gross and systematic human rights violations” committed abroad. When targeting individuals or companies, these restrictions generally forbid Canadians and Canadian businesses¹² from dealing in any property, including financial assets, of the person or company in question.

It is possible, then, for Canada to use sanctions to limit Canadian business ties to foreign companies implicated in systematic forced labour schemes, particularly when these affect vast swathes of a population or are tied to other serious human rights violations, as has been reported in East Turkestan / Xinjiang.

Canada has taken one step in this direction, passing sanctions that restrict business dealings with a division of a Chinese entity, the Xinjiang Production and Construction Corps (XPCC), for its role “in the mass arbitrary detention, torture..., mass surveillance and forced labour of Uyghurs and other Muslim ethnic minorities in the XUAR [Xinjiang Uyghur Autonomous Region].” The XPCC is a paramilitary organization that operates as both a state-owned business and government authority in a large territory within this region. It owns thousands of subsidiary companies across many industries. Canada’s sanctions do not apply to the XPCC as a whole, however, but [only to](#) its “Public Security Bureau.” The government [notes that](#) “it is unlikely that Canadian businesses have dealings” with this entity.

Beyond this, Canadian sanctions law can also be used to impose financial, trade or investment restrictions on whole business sectors—or all business sectors—within a given region or country.¹³ This can include prohibiting the importation of any goods from a certain region.

Unlike the *Customs Tariff* provision, which can only be used to block the importation of goods into Canada, sanctions legislation could be used to bar Canadian companies operating anywhere in the world from doing business with a designated company or sourcing from a given region. It would also offer greater transparency on the restrictions established, as sanctions are imposed through regulations specifying which activities are prohibited, and which goods, companies or regions are covered.

¹² The prohibitions [apply to](#) “any person in Canada”—which includes businesses, as corporations fall under the definition of “person”—and to any “Canadian outside Canada,” with “Canadian” meaning a Canadian citizen or a company incorporated in Canada.

¹³ For instance, Canada [has used](#) the [Special Economic Measures Act](#) to prohibit exporting or selling designated goods to [Russian companies](#) involved in shale, deep-water or Arctic oil exploitation; the importation of any goods from [Syria](#) or Russian-occupied [Crimea](#); and any investments in [North Korea](#), Syria or Russian-occupied Crimea, to name just a few examples.

The *Fighting Against Forced Labour and Child Labour in Supply Chains Act*

On May 3, 2023 Canada [adopted](#) the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (formerly Bill S-211). Contrary to claims made by proponents and widely reported by the media, the act does not require companies to examine their supply chains or take steps to ensure they are free of forced labour. Instead, under the act, medium and large firms are required to publish annual reports stating the steps they've taken, if any, "to prevent and reduce the risk" that forced labour or child labour is used in their supply chains.

According to [analysis](#) of Bill S-211 by law professor [Penelope Simons](#), "[i]f a company has no policies on forced or child labour and/or has taken no such steps, it will only need to report that fact. It is only if a company fails to report, to make the report public, or if it provides false or misleading information that it can incur a fine of up to \$250,000. The prescriptions of this Bill do not meet Canada's obligations to protect human rights, nor do they meet the UN Guiding Principles on Business and Human Rights."

Proponents of the act have [argued](#) that reporting requirements can nonetheless have an impact: once companies face public scrutiny over potential abuse in their supply chains, they will feel compelled to take meaningful action to end it. This is disputable. The act is modelled on similar laws in the U.K. and Australia, and recent studies [show](#) these laws have [failed](#) to incentivize companies to address the risk of forced labour and child labour in their supply chains.

The CNCA repeatedly [raised concerns](#) about Bill S-211 before it was adopted, including that it would give a false impression of government action on human rights and could delay progress towards effective measures. To effectively address forced labour and other abuses, the network advocates for a robust mandatory human rights and environmental due diligence law in Canada, such as the *Corporate Responsibility to Protect Human Rights Act* ([Bill C-262](#)), which is based on [model legislation](#) developed by the CNCA.

Government pledges new legislation in 2024

The Canadian government recently [committed](#) to "introduce government legislation next year to help eradicate forced labour from Canadian supply chains" and "strengthen the import ban on goods produced using forced labour." The labour minister [reportedly said](#) the legislation "will build on S-211" and "oblige companies to take steps to eradicate forced labour from their supply chains after it's discovered." However, the "exact measures in this upcoming bill are still to be determined" and it appears the deadline has been [pushed](#) to "the end of" 2024.

The CNCA calls on the government to immediately put forward legislation that:

- requires companies to exercise due diligence in preventing human rights abuses;
- helps people outside of Canada who have been harmed access remedy in Canadian courts; and
- applies to all human rights.

Public procurement policies

Since 2018, the Canadian government has [required its apparel suppliers](#) to sign a statement declaring that they and their first-tier subcontractors respect “eight fundamental human and labour rights,” including by not using any “forced labour or compulsory labour.”

In 2021 the government adopted a similar requirement for all suppliers contracting with its central procurement department, Public Services and Procurement Canada (PSPC).¹⁴ The department’s updated [code of conduct](#) for suppliers states that it “expects vendors to guarantee workers’ labour and human rights in their main operations and their supply chains.” This includes monitoring for abuse in their supply chains, and ensuring that they and their subcontractors don’t import into Canada goods made with forced labour.

The department also [amended](#) its standard contract terms to allow it to end a contract if it has “reasonable grounds to believe” the goods supplied were “produced in whole or in part” with forced labour. PSPC “may” opt to terminate a contract on these grounds, but this result isn’t certain even if the goods are determined by the Canada Border Services Agency to be products of forced labour. Business considerations may take precedence in PSPC’s decision in such cases.¹⁵

There is [one publicly known case](#) in which the government terminated a contract over forced labour concerns. In January 2022 it cancelled two contracts with Supermax Healthcare Canada, from which it was sourcing disposable gloves made in Malaysia by the firm’s parent company, Supermax Corporation.

These contracts had come under media scrutiny in October 2021 when American authorities banned Supermax’s gloves from the U.S., reporting they’d found all but one of the ILO’s 11 indicators of forced labour at the Malaysian factories. In November 2021 the Canadian government said it was putting deliveries of the gloves on hold pending results of an audit ordered by the company. Two months later it opted to cancel the contracts due to “the seriousness of the allegations” and lack of timely results from the audit.

It’s unclear if these alleged abuses would have come to the Canadian government’s attention if not for widespread media coverage of the U.S. enforcement action. The procurement

¹⁴ The department was formerly known as Public Works and Government Services Canada, and has retained that name in legal documents, including its supplier code of conduct.

¹⁵ Before ending a contract for non-compliance with the code, PSPC “[will seek](#) to work with vendors to ensure a sound understanding of expectations, and to address any apparent lack of compliance.” It [stresses](#) that “a classification made by the CBSA [that the goods were produced by forced labour] does not automatically trigger a contract termination. [...] PWGSC reserves the right to not terminate a contract when it determines that continuation is warranted, based on relevant business considerations.”

department [states that](#) it will not monitor suppliers' compliance with the code. Instead, it "is expected that vendors will follow the principles set out in the code in good faith."

Complaint review and mediation offices

The government operates [two offices](#) that encourage businesses to respect human rights in their dealings around the globe: Canada's National Contact Point (NCP) for responsible business conduct, which covers all industries, and the Canadian Ombudsperson for Responsible Enterprise (CORE), which focuses on the extractive and garment industries. Both can receive complaints about a Canadian company's harmful practices, and may offer "dialogue facilitation" to the company and aggrieved parties or recommend steps the company should take to resolve the problem. In principle, either the NCP or CORE could consider a complaint that a company employs forced workers itself overseas or sources goods from manufacturers that do.

It should be noted, however, that a voluntary agreement by a company to change its practices has been an exceedingly rare outcome in the dozens of cases brought to the NCP since it was created in 2000.¹⁶ The CORE is a newer office, and [has yet to conclude](#) a case. It has no substantial powers that go beyond those of the NCP, despite an [initial commitment](#) by the government to grant the office investigative powers to ensure its ability to uncover the truth about alleged human rights abuse.

Trade and financial support policies

Questions have been raised as to whether a company's eligibility to receive trade and financial support from the Canadian government would be affected by evidence of forced labour in its supply chain. The government's policy here, as set out in its "Responsible Business Conduct" [strategy document](#), isn't entirely clear.

The government requires businesses seeking trade advocacy support to "attest that they operate in a manner consistent with the UN Guiding Principles [on Business and Human Rights]." It further requires those with ties to East Turkestan / Xinjiang to [sign a declaration](#) that they haven't "knowingly sourced" from a supplier implicated in forced labour or other human rights abuse in the region. It doesn't state, however, what consequence would follow if it became clear that a company that signed one or both of these statements is in fact sourcing goods made by forced workers.

The government's strategy document identifies one circumstance in which a company may be cut off or denied support. If the firm were subject to a complaint to the NCP or CORE and it

¹⁶ See [this report](#) for an assessment of the outcomes of the NCP's process up to 2016. In the [11 cases](#) the NCP has handled since then, no agreement was reached on remedial action to be taken by a company. In one case a mining firm pledged to "raise [its] level of performance with respect to occupational health and safety."

failed to “act in good faith” during their review, the government may recommend “trade measures such as the withdrawal of [trade commissioner support]” or denial of future support from Export Development Canada and the Canadian Commercial Corporation.

Further reading

- “Anticipated Canadian law on forced and child labour will achieve little, say experts,” [blog post](#), Above Ground, March 2023
- “Canadian importers largely silent about their potential ties to forced labour,” [report](#), Above Ground, February 2023
- *Creating consequences: Canada’s moment to act on slavery in global supply chains*, [report](#), Above Ground, June 2021
- “Forced labour in Canada’s PPE supply chains,” [case study](#), CNCA, February 2023
- *CNCA submission to the Standing Committee on Foreign Affairs and International Development’s study of Bill S-211*, [cover letter](#) and [detailed submission](#), CNCA, November 2022
- “Don’t Mistake Reporting for Accountability,” [Comparative Chart of Bill S-211 and Bill C-262](#), CNCA, June 2022
- “Human Rights and Accountability: Non-Negotiable Campaign,” [media backgrounder](#), CNCA, March 2022