

Enforcing Canada's forced labour import prohibition

Key challenges and recommended reforms

The importation of “goods mined, manufactured or produced wholly or in part by forced labour” has been [prohibited](#) under Canadian law since July 2020.¹ However, customs authorities have only once taken enforcement action under this prohibition.²

In this document we examine weaknesses in Canada's enforcement practices and rules that may have contributed to these underwhelming results, as well as possible solutions. We draw from legal analysis carried out in late 2023 by labour and trade lawyers at the firm Goldblatt Partners LLP.³

Their analysis shows that Ottawa could ensure more effective and transparent enforcement by making changes to enforcement practices and the rules governing these practices.

Nearly all of these reforms could be adopted right now, using current powers, requiring only minor changes to policies or to regulations under the Customs Act. They would not require new legislation. This means they could be adopted swiftly, to begin transforming the import prohibition from empty words into effective action to help protect workers' rights in global supply chains.

Part 1: Current enforcement framework

The Canada Border Services Agency (CBSA), which is overseen by the Minister of Public Safety, is responsible for enforcing the prohibition. The CBSA relies in part on Employment and Social Development Canada (ESDC) to research supply chains to inform its investigations.

ESDC [states that](#) it “monitors, researches and analyses cases of potentially problematic supply chains,” and “shares this information with the CBSA.”

The CBSA may also receive reports of alleged forced labour in supply chains from the public or any

1. Canadian law also prohibits the importation of goods made with prison labour or child labour.

2. In 2021 a shipment of goods was detained and determined to be inadmissible. (This decision was [later reversed](#), however, following an appeal from the importer.) Since then [no further shipments](#) have been seized, according to a government statement [tabled](#) in Parliament on April 15, 2024.

3. This analysis was provided on request to Above Ground in October 2023. Throughout this document we will refer to it as the Goldblatt Partners LLP analysis.

other source. The CBSA “[may use](#) this information to identify and detain, upon importation, suspected goods produced by prison or forced labour, the importation of which is prohibited.”

The CBSA’s enforcement process is described in further detail in government [briefing notes](#):

Shipments containing goods suspected of being produced by forced labour will be detained at the border for inspection by a border services officer. If in the judgement of the officer the goods were produced by forced labour, the officer will apply the tariff classification under chapter 9897 and prohibit the goods from entering Canada. Determinations are made on a case-by-case basis, based on available supporting evidence and analysis.

An importer whose shipment is detained could forfeit it, export it to another country, or challenge its classification as a product of forced labour. If the importer can satisfy the CBSA that no forced labour was used to produce the goods, they will be released.

It is through this classification of particular goods, under tariff item 9897.00.00, that the CBSA formally determines them to be prohibited. It is not clear how these determinations are made case-by-case, or how evidence is gathered and analysed by CBSA or relayed to border services officers.

Part 2: Significant weaknesses in framework

2.1 Lack of specific regulations to govern enforcement

There are no regulations setting out how the CBSA is to identify which goods fall specifically under the forced labour import ban. (The technical reference to the import ban is tariff item no. 9897.00.00, which is the tariff item covering products of forced labour, as well as other prohibited goods.)

Instead, the agency must rely on general rules that set out how goods should be classified, none of which are specific to tariff item 9897.00.00.

These general tariff classification rules are not well suited to the task of identifying and blocking the importation of goods produced with forced labour, which requires an investigation of production processes in the supply chain, as we examine below.

2.2 Shipment-by-shipment classification at the border

If forced labour is being used to make a product at a given production site, then it is a reasonable and defensible inference that all batches of the product made at that site are in fact goods made with forced labour.

Many wonder why, then, Canada does not employ the same enforcement process as the U.S. does to enforce its forced labour import ban. Under the U.S. process, all customs officers are ordered to

detain all shipments of a product once an investigation finds indications of forced labour in its production. The CBSA, by contrast, enforces Canada's prohibition one shipment at a time, relying on the judgement of each officer examining each shipment to determine whether the product is made with forced labour.

The reason for this appears to be that tariff determinations — i.e., determinations regarding which tariff classification a good falls under — are generally made on goods upon their importation. The *Customs Act* requires that an officer determine the tariff classification.⁴ While each officer must have regard to all relevant information when assigning a tariff classification, the law requires that the officer exercise judgement in making this determination.

The CBSA cannot impose mandatory requirements on border services officers about how to classify particular goods. Rather, according to the Goldblatt Partners LLP analysis, the determination must be made on a balance of probabilities by the border services officer.

Thus, even if the agency head or senior investigative staff have evidence that a company uses forced workers at a given factory, they cannot simply order all frontline officers to apply the forced labour classification to any goods coming from that factory.

It is therefore critical to ensure that all border officers have the most up to date and relevant information available on goods imported from sites suspected of using forced labour, as discussed under recommendation 3.2.

In addition, alongside the standard practice of classifying goods as they arrive at the border, the law also offers the possibility for goods to be classified both prior to and following importation. With some modifications, these pre- and post-importation classification regimes might be used to more effectively enforce the ban, as discussed under recommendation 3.3.

2.3 Little to no public disclosure

The government discloses very little information regarding its enforcement efforts or results. No information is routinely reported, and the information disclosed on request is extremely limited.

For instance, the CBSA has not disclosed how many reports of alleged forced labour it has received, how many have been investigated, or any criteria it uses to prioritize which products to investigate first. The agency and the minister responsible have declined to provide any information about human resource investments in forced labour import investigations or enforcement.⁵

4. *Customs Act*, s. 58(1).

5. See [correspondence](#) between Above Ground, Minister Bill Blair, and the president of the CBSA between March and June of 2021.

The CBSA did not publicly announce its sole enforcement action to date, in which a shipment of goods was detained and classified under the forced labour tariff item in the fall of 2021. Instead, it disclosed this information weeks later to a journalist asking questions about enforcement of the ban, and provided few details about the goods in question. Thus the public [learned only](#) that the goods were women's and children's clothing from China being imported into Quebec.

2.4 Producers' names not disclosed

A particularly serious weakness is the practice of keeping confidential the names of companies whose products are determined to be made with forced labour (i.e., the companies that employ forced workers). Such disclosure is a key factor in the effectiveness of U.S. enforcement actions, as it flags to all importers goods that must be removed from their supply chains, and exerts additional pressure on the manufacturer to clean up its practices.⁶

The CBSA says it does not have the legal authority to disclose the producers' names. Indeed, this information would fall within the definition of "customs information," according to the Goldblatt Partners LLP analysis. The CBSA is therefore "prohibited from providing this information to any person, or knowingly allowing any person to have access to it, unless it falls within one of the specific exceptions set out in the *Customs Act*."

However, according to the Goldblatt Partners LLP analysis, one exception contained in the *Customs Act* applies in this case: the public interest exception. It is surely in the public interest that imports made using forced labour be identified. Further details on this are included under recommendation 3.3.

2.5 Few opportunities for civil society to inform enforcement practices

Many academics, trade unions, NGOs and other civil society actors have detailed knowledge of working conditions in high-risk industries and production sites abroad. Their links to workers on the ground are a vital source of information for governments seeking to enforce forced labour import prohibitions effectively — i.e., in a way that benefits workers. Their knowledge can inform not only investigations of particular cases of forced labour, but also overall enforcement strategies and priorities.

While the CBSA website provides an email address and portal through which these groups could submit evidence, this information is not posted prominently. It is found only near the end of a

6. U.S. detention orders 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. See for instance the case of Top Glove, which adopted significant reforms [following a U.S. import ban](#) that received extensive international media coverage.

lengthy [memo](#). No guidance has been posted as to the level of detail that would be required to start an investigation.

In October 2023 the government held [a brief consultation](#) on potential changes to enforcement of the forced labour import ban with select civil society actors, among other stakeholders. There has been no indication, however, of plans to involve civil society on an ongoing basis in informing and advising on enforcement strategies.

Part 3: Recommended reforms

3.1 Conduct a review

The government should carefully examine current laws and regulations and assess ways they may impede effective enforcement of the ban, and then table amendments as needed.

At the same time, the initiation of this review should not delay the prompt adoption of reforms already identified as necessary.

3.2 Issue non-binding directions to officers at the border

When CBSA investigative staff find that a product or category of goods is more likely than not⁷ made with forced labour, the agency should issue non-binding directions to all front-line border services officers providing them with this information and guidance on how it could be used to assess goods.

The CBSA would be acting entirely within its authority in using such a protocol, according to the Goldblatt Partners LLP analysis.

Furthermore, the analysis notes that “[t]here would be nothing preventing the CBSA from adopting a... memorandum indicating that officers should specifically consider the manufacturer or place of origin of an item when considering whether it falls within the scope of tariff item 9897.00.00.” There is in fact [precedent](#) for the CBSA to issue policies directing customs officers to consider the origin of a product for the purposes of tariff classification, according to the Goldblatt Partners LLP analysis.

These directions to officers should be made publicly available online. Should they contain details

7. This would be the appropriate evidentiary standard on which officers would classify goods, according to the legal analysis mentioned above. Quoting from it: “The relevant standard would be proof on a balance of probabilities — i.e., that evidence shows that it is more likely than not that the good is the product of forced labour.” This fact should be mentioned in the CBSA’s directions to officers.

that constitute customs information, the government could rely on the public interest exception to the *Customs Act's* general prohibition on disclosing customs information in order to publish them. (For further details on this exception, see recommendation 3.3.)

3.3 Disclose producers' names

For each enforcement action (i.e., tariff classification of goods as products of forced labour), the Minister of Public Safety should direct the CBSA to publish on its website the product name and name of the producer. Although this would be customs information, and therefore protected, the minister could invoke the public interest exception. According to the Goldblatt Partners LLP analysis:

The Minister of Public Safety may provide access to customs information to any person if, in the Minister's opinion, the public interest in providing the information clearly outweighs any invasion of privacy, or any material financial loss or prejudice to the competitive position of the person to whom the information relates, that could result from the provision of the information.

This is a strict test. The public interest in disclosure must clearly outweigh countervailing privacy and economic interests. That said, there is a serious case to be made that the public interest in combating the use of forced labour, including through greater transparency mechanisms within Canada's customs system, is significantly greater than the privacy or economic interests of manufacturers of goods.

3.4 Routinely report on enforcement efforts and results

The CBSA should adopt a practice of periodically reporting (e.g., quarterly) information about its enforcement activities and results, such as the number of manufacturers under investigation, investigations completed, shipments detained, etc. It should also report its budgetary and human resource allocations to enforcement of the forced labour import ban specifically.

3.5 Allow civil society actors to request determinations pre- and post-importation

The government should pursue amendments to allow civil society actors to request advance classification of goods prior to their importation, as well as re-determination of their classification following importation. Either process could in theory result in the goods being classified under the forced labour tariff item, and therefore prohibited.

Civil society should be broadly defined, such that it would include academics, workers' associations and non-profit organizations.

Classification of goods prior to importation is allowed for under the *Customs Act's* "advance

ruling” regime. The rules governing this process are contained in the [Tariff Classification Advance Rulings Regulations](#), which currently only permit certain business actors to request advance rulings. These regulations could be amended by cabinet to permit civil society actors to also request advance rulings on goods suspected or known to be made with forced labour.

An advantage of this approach is that officers must give “consistent advance rulings with respect to applications for advance rulings based on facts and circumstances that are identical in all material respects.”⁸ Furthermore, according to the Goldblatt Partners LLP analysis:

These provisions could permit broader determinations of classes of goods from particular regions or producers, or at least permit a type of “test case” procedure in which certain goods are identified as falling under tariff classification 9897.00.00, which could be relied upon to govern subsequent advance rulings on goods.

However, further amendments to the *Regulations* would likely assist in structuring how such “test cases” could work.

For example, currently the CBSA requires applications for advance rulings to be for “a single good.” Revised regulations could clarify how broad an application for an advanced ruling could be, and how a decision could be applied with respect to other, similar goods.

The *Customs Act* also permits “re-determinations” of tariff classifications to be made up to five years following importation. Civil society actors should be permitted to request re-determinations, which would require changes to the legislation.

3.6 Establish a civil society advisory body and target enforcement to minimize risk of harm

Concerns have been raised that in some cases the application of a forced labour import ban to a manufacturer’s products could inadvertently harm the very workers it is meant to protect — those working under forced conditions. The concern is that the volume of business lost by the manufacturer due to the ban may be so great as to force sharp production cuts and lay-offs, leaving affected workers with no jobs at all. Canada’s enforcement strategy should be carefully designed and continually re-evaluated and adapted to minimize this risk. The government should consider, among other possible measures:

- Creating a civil society advisory body to ensure ongoing dialogue between the government, labour rights experts, and representatives of workers in high-risk industries

8. *Tariff Classification Advance Rulings Regulations*, [SOR/2005-256](#), s. 6.

on the enforcement of the import prohibition.

- With input from this body, developing guidelines for the CBSA on investigational priorities. (For example, it might be an option to prioritize for investigation, when other factors are equal, manufacturers that are less likely to make drastic production cuts due to loss of customers in Canada.)
- Communicating to the manufacturers of prohibited goods precisely how their recruitment or employment practices would need to change to resolve concerns of forced labour. This might facilitate quick resolution and lifting of a prohibition before it results in high costs for the producer that may trigger lay-offs.
- Instituting ongoing assessment of working conditions at the production site(s) of goods determined to be made with forced labour, and ensuring that CBSA officers are made promptly aware of changes that indicate forced labour is no longer used in their production. This information should also be published.
- Putting money from any penalties issued against importers into a fund that would provide remedy to workers laid off as a result of their employer losing business due to a forced labour import ban.

Above Ground works to ensure that companies based in Canada or supported by the Canadian state respect human rights and the environment worldwide. It is a project of MakeWay, a national charity that builds partnerships and solutions to help nature and communities thrive together.