

# Modern slavery and supply chains - a significant ESG consideration

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Over the past year, Canada has implemented a significant and increasing number of measures relating to modern slavery. While the underlying concerns driving such measures are not necessarily new, the measures are of significant consequence for international business, and specifically international supply chains. These measures are part and parcel of an increasing focus on environmental, social and governance (ESG) considerations, both as a matter of compliance with law and as part of responsible business practices.

In the section below, we outline the recent and forthcoming Canadian measures on modern slavery.

## Recent developments

### 1. United States-Mexico-Canada Agreement (USMCA)

On July 1, 2020, the USMCA entered into force. The USMCA's Labour Chapter prohibits the importation of goods produced in whole or in part by forced or compulsory labour, including forced or compulsory child labour. This treaty obligation was implemented in Canadian law through an amendment to the *Customs Tariff* prohibiting the commercial importation of goods that are mined, manufactured or produced wholly or in part by forced labour. More specifically, tariff item 9897.00.00 now bans "goods mined, manufactured or produced wholly or in part by forced labour." Notably, while the USMCA obligation only applied to USMCA parties, Canada's amendment of the Customs Tariff is not specific to goods of any particular origin - hence it applies to goods imported from everywhere. As a result, companies that import goods that are produced even in part from forced labour, even inadvertently, may be subject to administrative monetary penalties and potentially additional legal consequences depending on the particulars of a situation.

Within the Labour Chapter, USMCA parties further agreed to cooperate on the identification and movement of goods produced by forced labour, and to adopt and maintain legislation relating to eliminating all forms of forced or compulsory labour.

### 2. Draft modern slavery legislation currently before the Senate of Canada

Canada has not yet adopted targeted modern slavery legislation. However, on October 29, 2020, Bill S-216, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff* (the "Bill"), was introduced in the Senate. The Bill has now received two readings in the Senate and will continue to work through the legislative process in 2021. The scope of businesses covered by Bill S-211 closely mirrors the *Extractive Sector Transparency Measures Act*, which has been in force since 2015 and serves to reduce corruption in the extractive industry through increased transparency measures. Under the current iteration of Bill S-211, if businesses produce, sell or import goods into or within Canada and meet one of the following criteria, they will be subject to the Bill's reporting requirements:

- Businesses listed on a stock exchange in Canada;
- Businesses that have a place of business in Canada, do business in Canada or have assets in Canada, and meet at least two of three possible financial or employment thresholds for one of the two most recent financial years:
- They have at least CA\$20 million in assets
- They have generated at least CA\$40 million in revenue
- They employ an average of at least 250 employees

The Bill's scope also includes any entities that are controlled by a business that falls within the above definition and provides that future regulations may further specify certain businesses that must provide an annual public report.

The Bill, in its current form, requires annual reports to be submitted to the federal government. At present, the reports must include the steps an entity has taken during a given year to prevent and reduce the risk that forced labour or child labour is used at any step of the production process, and whether the goods are produced by the entity itself (in Canada or elsewhere) or imported by the entity.

### 3. Canada's China-specific measures - Xinjiang

In 2020, Canada made significant efforts to address modern slavery and forced labor and denounced China and Chinese officials engaging in modern slavery and forced labor.

In tandem with the implementation of the USMCA, Canada reaffirmed the importance of responsible business practices. As of July 1, 2020, Canadian companies that are 1) sourcing directly or indirectly from Xinjiang or from entities relying on Uyghur labour, 2) established in Xinjiang, or 3) seeking to engage in the Xinjiang market, were required to sign an *Integrity Declaration on Doing Business with Xinjiang Entities* prior to receiving services and support from the Trade Commissioner Service. The **declaration** affirms that the company: a) is aware of the human rights situation in Xinjiang; b) abides by all relevant Canadian and International laws, respects human rights, and seeks to meet or exceed the **OECD Guidelines for Multinational Enterprises and the UN Guiding Principles for Business and Human Rights**; and c) has not knowingly sourced products or services from a supplier implicated in forced labour or other human rights violations connected to the repression of Uyghurs and other ethnic minorities in Xinjiang.

Similarly, Canada also published a **business advisory** covering its expectations for responsible business conduct, Canada's stance on export controls related to Xinjiang, and supply chain due diligence in relation to all Xinjian-relating business.

These measures, adopted along with the United Kingdom (UK) and other international partners, form part of a **comprehensive approach** to defending the rights of Uyghurs and other ethnic minorities in Xinjiang.

### 4. March 22, 2021 China sanctions under the *Special Economic Measures Act*

On March 22, 2021, in a multilateral action with the UK, the United States, and the European Union, Canada imposed sanctions on Chinese officials under Canada's *Special Economic Measures (People's Republic of China) Regulations* (the "Regulations"). The **Regulations** target the following individuals:

- Zhu Hailun, Former Secretary of the Political and Legal Affairs Committee of the XUAR, former Deputy Secretary of the Party Committee of the XUAR and former Deputy Head of the 13th People's Congress of the XUAR;
- Wang Junzheng, Party Secretary and Political Commissar of the Xinjiang Production and Construction Corps and

Deputy Secretary of the Party Committee of the XUAR;

- Wang Mingshan, Member of the Standing Committee of the Party Committee of the XUAR and Secretary of the Political and Legal Affairs Committee of the XUAR, former Director and Deputy Party Secretary of the Xinjiang Public Security Bureau;
- Chen Mingguo, Director of the Xinjiang Public Security Bureau and Vice-Chairman of the XUAR People's Government.

The sanctions, similar to many Canadian sanctions, extend to associates or family members of the individuals, as well as entities owned, held or controlled directly or indirectly by one of the includes parties.

Most notably, they prohibit the following activities:

- Dealing in property, wherever situated, that is owned, held or controlled by listed persons or a person acting on behalf of a listed person;
- Entering into or facilitating any transaction related to a prohibited dealing;
- Providing any financial or related services in respect of a prohibited dealing;
- Making available any goods, wherever situated, to a listed person or a person acting on behalf of a listed person; and
- Providing any financial or other related services to or for the benefit of a listed person.

The breadth of the prohibitions extends to anyone in Canada and to Canadians wherever they may be located. The prohibitions include knowingly doing anything that causes, facilitates or assists in, or is intended to cause, facilitate or assist in, any prohibited activity. Notably, the sanctions also impose a duty on certain Canadian financial institutions (including certain banks, insurance companies, loan and trust companies, among others) to determine if they are in possession or control of property owned, held or controlled by or on behalf of a listed person. Listed individuals are also deemed inadmissible to Canada under the *Immigration and Refugee Protection Act*.

## 5. Modern slavery's in Canada's Code of Conduct for Procurement

Canada's **National Strategy to Combat Human Trafficking (2019-2024)** included a commitment to prevent human trafficking in federal procurement supply chains. As a result, Public Services and Procurement Canada (PSPC) decided to launch a **consultation process to update the Code of Conduct for Procurement** (the "Code") to ensure that human and labour rights were integrated in the Code. The Code is a statement of principles outlining practices, behaviours, and expectations for suppliers to integrate into their main operations and all tiers of their supply chains. The consultation process seeks input from suppliers, non-governmental organizations, and experts on proposed updates to the Code.

As of this date, PSPC has not given an update on the consultation process, but has committed to providing a summary report online in Spring 2021.

## 6. Office of the Ombudsman for Responsible Enterprises

In January 2018, the Canadian government announced the creation of a Canadian Ombudsperson for Responsible Enterprises (CORE). The office is mandated to investigate allegations of human rights abuses linked to Canadian corporate activity abroad.

On March 15, 2021, Sheri Meyerhoffer, the Canadian Ombudsperson for CORE, **announced** that CORE was open to

receive complaints of possible human rights abuses arising from the operations abroad of Canadian companies in mining, oil and gas, and garment sectors. These companies include any entities that a Canadian firm controls – directly or indirectly – abroad. Notably, the inclusion of garment sectors as a priority sector is a key indication that modern slavery, specifically clothing stemming from Xinjiang, will form a key element of investigations.

The CORE can resolve disputes through mediation on agreement of the parties and is also empowered to issue public reports on their findings as well as to make remedial recommendations to the Minister of International Trade to alter policies, pursue trade measures or take other actions against a non-compliant company. Complaint is filed using an **online form** and afterwards CORE will follow-up with the complainant to complete a series of investigative steps.

## What this means for business

Canada is taking clear action in developing a robust modern slavery framework. As a result, it is important that companies not only think of, but also, implement ESG policies, which include modern slavery and human rights considerations, into their sourcing and purchasing practices. Practically, this can include reviewing supply chains and related contracts, including specific ESG-related representations and warranties, indemnities, and other protections in agreements with third party suppliers, and carrying out third party audits and assessments of supply chains. This is not only viewed as a good reputational business practice, but also as a means to minimize or avoid financial penalties, negative regulatory action, and negative reputational outcomes if a company violates an ESG standard or regulation.

The Dentons International Trade team keeps abreast of leading global developments. If you have any questions, please feel free to reach out to **Paul Lalonde**, **Sean Stephenson** or **Daniela Acevedo** with any inquiries.

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## Your Key Contacts



**Paul M. Lalonde**

Partner, Toronto

D +1 416 361 2372

M +1 416 414 5833

[paul.lalonde@dentons.com](mailto:paul.lalonde@dentons.com)



**Sean Stephenson**

Senior Associate, Toronto

D +1 416 863 4519

[sean.stephenson@dentons.com](mailto:sean.stephenson@dentons.com)



**Daniela Acevedo**

Associate, Toronto

D +1 416 863 4747

[daniela.acevedo@dentons.com](mailto:daniela.acevedo@dentons.com)