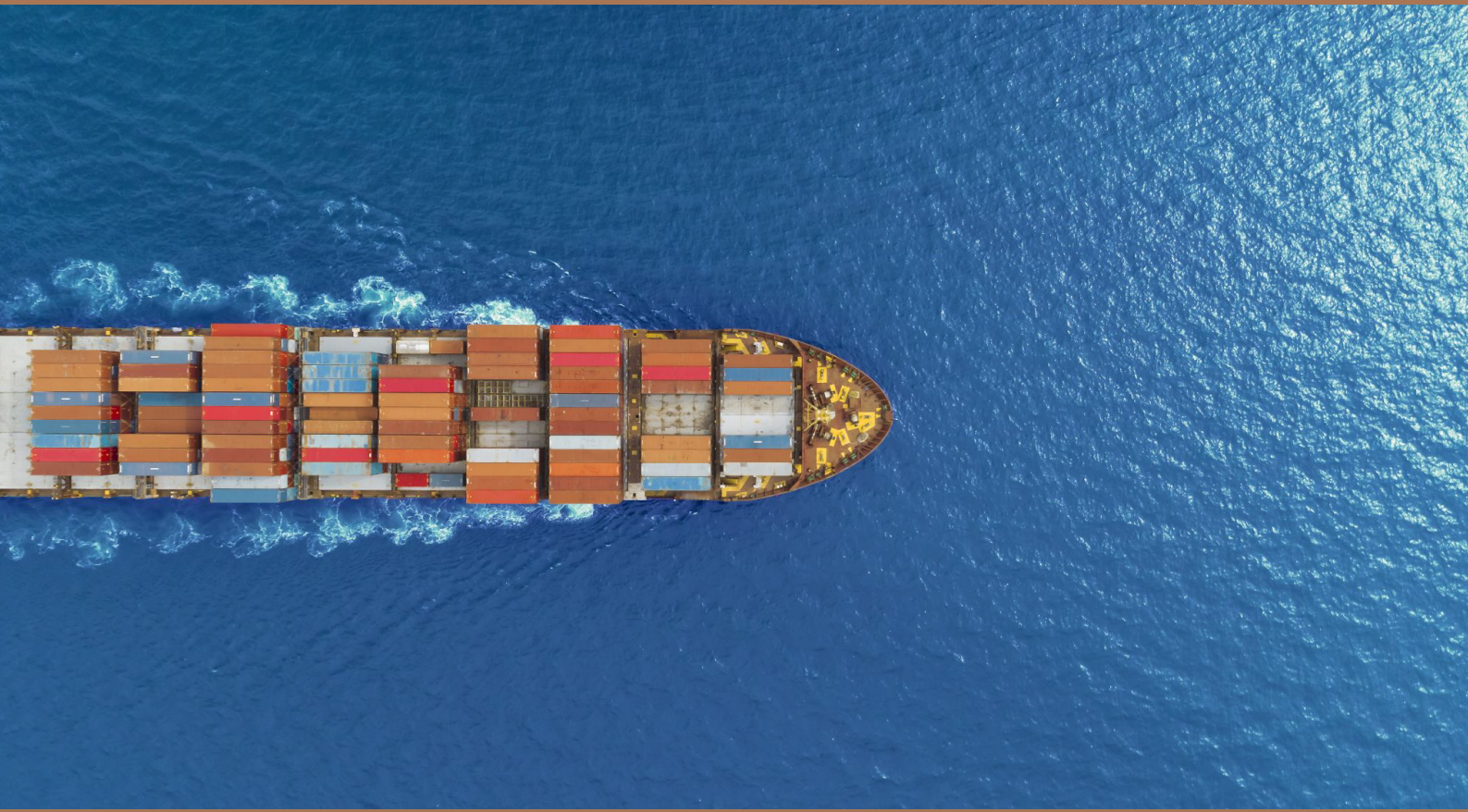


# Forced Labor in Global Supply Chains: The Case of Canada



August 2023

**Free the Slaves (FTS)** is an international non-profit organization with twenty-two years of experience eradicating the conditions that contribute to modern slavery. In tandem with grassroots partner organizations, government agencies, and the media, FTS provides educational, vocational training, and other essential services that support communities, including survivors. FTS' Community Liberation Model provides scalable opportunities for mainstreaming anti-slavery strategies in communities where slavery is prevalent. FTS is headquartered in Washington, D.C. and has successfully mobilized community-based responses in the Democratic Republic of the Congo (DRC), Ghana, Mauritania, Senegal, Uganda, India, Nepal, Brazil, Dominican Republic (DR), Haiti, Vietnam, and Kenya.

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## **Acronyms**

CBP - United States Customs and Border Protection

CBSA - Canada Border Services Agency

CNCA - Canadian Network on Corporate Accountability

CORE - Canadian Ombudsperson for Responsible Enterprise

CSOs - Civil society organizations

GDP - Gross domestic product

MHRDD - Mandatory human rights due diligence legislation

MNC - Multi-national corporation

NCP - National Contact Point for Responsible Business Conduct

NGOs - Non-governmental organizations

SAWP - Seasonal Agricultural Worker Program

SDGs - Sustainable Development Goals

UNGPs - United Nations Guiding Principles on Business and Human Rights

USMCA - US-Mexico-Canada Free Trade Agreement

## Glossary

***At-risk goods*** – Refers to goods in whose supply chains (*definition below*) there are well documented cases of worker exploitation, which suggests a high likelihood that forced labour and/or child labour, and possibly other human rights violations as well, might be “contained” in those goods. [Author’s definition].

***Child labour*** - Labour or services provided or offered to be provided by persons under the age of 18 years and that: (i) are provided or offered to be provided in Canada under circumstances that are against Canadian law; (ii) are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous to them; (iii) 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 (iv) constitute the worst forms of child labour as defined in article 3 of the Worst Forms of Child Labour Convention, 1999, adopted at Geneva on June 17, 1999. [Government of Canada, 2023, S-211].

***Entity*** - A corporation, trust, partnership, or other unincorporated organization that (i) is listed on a stock exchange in Canada;(ii) has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years: (a) it has at least \$20 million in assets, (b) it has generated at least \$40 million in revenue, and, (c) it employs an average of at least 250 employees; or (iii) is prescribed by regulations. [Government of Canada, S-211, 2023].

***Forced labour*** - Labour or service provided or offered to be provided by a person under circumstances that: (i) 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 labour or service; or (ii) constitute forced or compulsory labour as defined in article 2 of the Forced Labour Convention , 1930, adopted in Geneva on June 28, 1930. [Government of Canada, S-211, 2023].

***Global supply chains*** – Cross-border organization of the activities required to produce goods or services and bring them to consumers through inputs and various phases of development, production, and delivery. This definition includes foreign direct investment (FDI) by multinational enterprises (MNEs) in wholly owned subsidiaries or in joint ventures in which the MNE has direct responsibility for the employment relationship. It also includes the increasingly predominant model of international sourcing where the engagement of lead firms is defined by the terms and conditions of contractual or sometimes tacit arrangements with their suppliers and subcontracted firms for specific goods, inputs and services". [ILO, *Decent Work in Global Supply Chains*, International Labour Conference, 105<sup>th</sup> Session, 2016].

## Introduction: Forced Labour and Supply Chains

In today's globalized economy,<sup>1</sup> the production, acquisition, and distribution of most consumer goods – from the sourcing of raw materials to manufacturing, packaging, and transportation – as well as the provision of services occur across countries, as opposed to being confined within the borders of single nation states.<sup>2</sup> This organization of activities creates global supply chains that connect manufacturers, distributors, and consumers across the entire world.

Over the past few decades, supply chains have become increasingly long and complex, as the demand for goods and services has grown substantially. This has been especially the case in developed countries, where demand has been driven by a culture of consumerism, rising incomes, increased access to credit, and advances in technology and e-commerce. This rising demand has both positive and negative impacts. On the one hand, it can drive economic growth and innovation, create jobs, and provide people with access to goods and services that can improve their quality of life. On the other hand, it can contribute to environmental degradation, social inequality, unsustainable patterns of consumption and waste, and forced labour, including forced child labour. It is on this latter aspect that the present report will focus.

To understand how forced labour is linked to global supply chains, one needs to consider that the search for profit maximization has progressively led multinational corporations (MNCs) from advanced economies to the developing world, where cheap labour, low gross domestic product (GDP) per capita, weak legal frameworks, and poor governance are prevalent. The “weak governance zone” includes states that are “unable or unwilling to protect the fundamental human rights of some or all of [their] population over some or all of [their] territory.”<sup>3</sup> On the background of this governance vacuum, or weakness, labour exploitation becomes a business that brings considerable financial benefits and bears no significant consequences.

In developing countries, moreover, workers are more easily vulnerable to labour exploitation due to factors such as poverty, lack of job opportunities, lack of access to education, internal displacement, foreign migration, lack of proper documentation, and informality of the economy

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<sup>1</sup> G. Shangquan, “Economic Globalization: Trends, Risks, and Risk Prevention”, UN Development Policy and Analysis Division, Department of Economic and Social Affairs Committee for Development Policy Background Paper No.1, 2000,

[https://www.un.org/en/development/desa/policy/cdp/cdp\\_background\\_papers/bp2000\\_1.pdf](https://www.un.org/en/development/desa/policy/cdp/cdp_background_papers/bp2000_1.pdf).

<sup>2</sup> Prior to the industrial revolutions in Europe and North America, most supply chains were local in nature, and typically restricted to a certain region.

<sup>3</sup> P. Simons, A. Macklin, *The Governance Gap: Extractive Industries, Human Rights, And The Home State Advantage* (New York: Routledge, 2014), p.291; J. Bakan, “The Invisible Hand of Law: Private Regulation and the Rule of Law”, *Cornell International Law Journal*, Vol.48, No.2 (2015); OECD, Risk Awareness Tool for Multinational Enterprises in Weak Governance Zones, 2006, <https://www.oecd.org/daf/inv/investmentfordevelopment/36885821.pdf>.

– among others. As has been noted, this vulnerability was further worsened in the context of the Covid-19 pandemic.<sup>4</sup>

At the same time, the absence of adequate regulatory frameworks in most of the MNC’s home countries results in a legislative gap that does not encourage human rights and labour rights protection and that is conducive to unethical, unaware, and irresponsible business practices. Absent a well-developed legislative framework, MNCs are typically found to lack awareness, lack commitment, and lack capacity to adequately address the risk of forced labour, and other human rights violations, in their supply chains. At the same time, aspiring to maximize profit in a poorly legislated environment, most MNCs have seemed to favour an unequal distribution of value whereby profits are tightly concentrated at the top of the supply chains.<sup>5</sup>

*Table 1. Factors conducive to forced labor in supply chains*

<b>Businesses</b>	<b>Governments</b>	<b>Workers</b>
Lack of awareness Lack of capacity Lack of commitment Unequal value distribution Irresponsible corporate practices	Weak governance Inadequate labour laws Gaps in human rights due diligence legislation Gaps in law enforcement Low wages Lack of social safety nets Lack of trade unions	Vulnerability (poverty, discrimination, displacement, lack of education, informality...) Unequal power dynamics between workers and employers
<b>Forced labor</b>		

The significance of the phenomenon of forced labour in global supply chains is well captured by the most recent statistics, according to which nearly two-thirds of all forced labour cases (i.e., a total of 17.3 million adults and children) are linked to global supply chains, with workers exploited across a wide range of sectors and at every stage of the supply chain.<sup>6</sup> On this background, it becomes evident how “one of the most significant and growing liabilities from which firms are attempting to distance themselves is that of forced labour”.<sup>7</sup>

<sup>4</sup> C. Searcy et al., “Modern Slavery in Global Supply Chains: The Impact of Covid-19”, *California Management Review*, March 15, 2022, <https://cmr.berkeley.edu/2022/03/modern-slavery-in-global-supply-chains-the-impact-of-covid-19/>.

<sup>5</sup> Human Rights Council, “Protect, Respect and Remedy: a framework for business and human rights. Report of the Special Representative of the Secretary-General on the issue of Human Rights and Transnational Corporations and Other Business Enterprises”, A/HRC/8/5, April 7, 2008.

<sup>6</sup> International Labour Organization, Walk Free & International Organization for Migration 2022, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage*, September 12, 2022, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipecc/documents/publication/wcms\\_854733.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipecc/documents/publication/wcms_854733.pdf).

<sup>7</sup> G. LeBaron, “Subcontracting is not illegal, but is it unethical?: Business ethics, forced labor and economic success”, *The Brown Journal of World Affairs*, Vol. 20, No. 2 (2014): 237-249.

Most forced labour occurs in the lowest tiers of supply chains where raw imports are mined, farmed, fished, and processed. As noted by prominent observers, the lower the value stage in the supply chain, the more likely that slavery will occur.<sup>8</sup> That said, no tier is immune to the risk of forced labor, especially when supply chains are long and complex.<sup>9</sup> At high risk of forced labor are also those industries characterized by seasonal work, low wages, low entry-level qualifications, and use of informal labour, such as agriculture, mining, and construction.<sup>10</sup> Moreover, the risk of trafficked and exploited labour is not limited to a product's supply chain but exists in the service industry as well. For example, companies may rely on transportation services that employ child labour, or on security services that use slave labour.

All actors operating in the global economy have a responsibility to ensure that human rights violations are addressed.<sup>11</sup> Over the past 30 years, MNCs have faced mounting pressure to improve labour standards in their supply chains. While the results have been mostly disappointing thus far, in 2015 the adoption of Target 8.7 of the 2030 Sustainable Development Goals (SDGs) – which calls for immediate and effective measures to eradicate forced labour, end modern slavery, end human trafficking, and eliminate child labour – brought renewed global attention to the problem of labour exploitation and to the role of supply chains as a vector of forced labour and modern slavery. There is now widespread acknowledgment that eliminating forced labour from supply chains, which made up 80% of global trade prior to the Covid-19 pandemic, is critical to achieving Target 8.7.

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<sup>8</sup> L. Chen et al., “The Impact of Governmental COVID-19 Measures on Manufacturers' Stock Market Valuations: The Role of Labor Intensity and Operational Slack”, *Journal of Operations Management*, Vol.69, No.3 (2023): 405-425.

<sup>9</sup> J. Allain et al., “Forced Labour’s Business Models and Supply Chains”, Joseph Rowntree Foundation, November 2013, <https://www.jrf.org.uk/sites/default/files/jrf/migrated/files/forced-labour-business-full.pdf>.

<sup>10</sup> University of Nottingham, Rights Lab, “Submission to the Supply Chain Consultation: Government of Canada”, June 2019, <https://www.nottingham.ac.uk/research/beacons-of-excellence/rights-lab/resources/reports-and-briefings/2019/september/supply-chain-consultation.pdf>.

<sup>11</sup> International Labour Organization, Organisation for Economic Co-operation and Development, International Organization for Migration, United Nations Children’s Fund, *Ending child labour, forced labour and human trafficking in global supply chains*, 2019, [https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---ipcc/documents/publication/wcms\\_716930.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---ipcc/documents/publication/wcms_716930.pdf), p.1.



## Forced Labor in Canada’s Supply Chains: Prevalence and Patterns

In the Americas, Canada is the country with the lowest prevalence of modern slavery. According to the 2023 Global Slavery Index, it ranks 25<sup>th</sup> out of 25 in the region, with a rate of slavery prevalence estimated at 1.8 per 1,000 inhabitants and with 69,000 people overall (out of a population of 38 million) suspected of being trapped in modern slavery. Canada also ranks last in the region for the level of vulnerability to modern slavery, estimated at 11%.<sup>12</sup>

However, this does not mean that Canada is unaffected by modern slavery or exempted from addressing this grave violation of human rights. Besides the well-known and well-documented phenomenon of sex trafficking among Indigenous women and girls,<sup>13</sup> forced labor in supply chains is a manifestation of modern slavery that Canada is especially called to acknowledge, assess, and address in a prompt and adequate manner. In fact, twelve years after the unanimous endorsement of the United Nations Guiding Principles on Business and Human Rights (UNGPs), there continue to be widespread reports of serious human rights abuses (as well as environmental damage) linked to the overseas activities of Canadian MNCs or linked to the global supply chains of Canadian companies.

In 2015, for instance, in its concluding observations on the sixth periodic report of Canada, the UN Human Rights Commission expressed its concerns “about allegations of human rights abuses by Canadian companies operating abroad, in particular mining corporations, and about the inaccessibility to remedies by victims of such violations”.<sup>14</sup> This concern is partially shared by Canadian companies themselves: according to a survey of 26 Canadian companies conducted in 2019, 86% of companies consider modern slavery in supply chains to be a “highly relevant” or “moderately relevant” issue.<sup>15</sup>

### *Box 1- In Focus*

As early as 2018, allegations of forced labour at Malaysian factories owned by the world’s largest rubber glove producer, Top Glove, made international news. In July 2020, the United States (US) Customs and Border Protection (CBP) barred imports into the US of goods linked to Top Glove. In January 2021, it was revealed that at least 18 Canadian companies

<sup>12</sup> Walk Free, *Global Slavery Index*, 2023, <https://www.walkfree.org/global-slavery-index/>.

<sup>13</sup> C. Kasisi- Monet, “Trafficked woman hopes sharing her story will help girls back home in Akwesasne”, *Canadian Broadcasting Corporation*, February 27, 2023, <https://www.cbc.ca/news/canada/ottawa/human-trafficking-ontario-indigenous-akwesasne-survivor-2023-1.6760973#:~:text=About%2050%20per%20cent%20of,2020%20by%20Public%20Safety%20Canada>;

A. Roudometkina, K. Wakeford, *Trafficking of Indigenous Women and Girls in Canada*, Native Women’s Association of Canada, June 15, 2018, <https://humantraffickingsearch.org/resource/trafficking-of-indigenous-women-and-girls-in-canada/>.

<sup>14</sup> United Nations Human Rights Commission, “Concluding Observations on the sixth periodic report of Canada”, 2015, UN Doc CCPR/C/CAN/CO/6, <https://www.refworld.org/docid/5645a16f4.html>.

<sup>15</sup> K. Phung et al., *The Straight Goods: Canadian Business Insights on Modern Slavery in Supply Chains*, York University, SHARE, World Vision, May 2019, [https://share.ca/wp-content/uploads/2022/01/Cdn-Business-Insights-on-Modern-Slavery-in-supply-chains\\_final2.pdf](https://share.ca/wp-content/uploads/2022/01/Cdn-Business-Insights-on-Modern-Slavery-in-supply-chains_final2.pdf).

had imported into Canada Personal Protective Equipment from Top Glove, despite the ban in the neighbouring country.<sup>16</sup>

Several months later, allegations emerged of forced labour linked to another Malaysian glove manufacturer, Supermax Corp. CBP barred imports from Supermax in October 2021, but its products were nonetheless being imported into Canada by Supermax Healthcare Canada for distribution to Canadian healthcare facilities.<sup>17</sup> In January 2022, the Canadian government cancelled two contracts with Supermax Healthcare Canada, from which it was sourcing disposable gloves made in Malaysia by the firm's parent company.<sup>18</sup>

In 2021, allegations surfaced that popular tomato-based products sold in Canada may be harvested and manufactured by Uyghurs and other ethnic minorities under conditions of forced labour in China. Investigations, in fact, had identified several major brands — Nestle, Del Monte, and Unilever — that purchased tomatoes from at-risk Chinese companies in Xinjiang, processed them in intermediary countries like Pakistan, the Philippines, or India, and shipped them to be sold at Canadian grocery stores.<sup>19</sup>

According to the 2023 Global Slavery Index, in 2021 G20 countries imported goods regarded as being at risk of modern slavery for a total value of US\$468 billion.<sup>20</sup> These included electronics (US\$243.6 bn), garments (US\$147.9 bn), palm oil (US\$19.7 bn), solar panels (US\$14.8 bn), and textiles (US\$12.7 bn).<sup>21</sup> Among the G20 nations, Canada imported at-risk products for a total value of US\$20 billion.<sup>22</sup> This also represented a US\$5 billion increase with respect to 2016.<sup>23</sup> The top 5 at-risk products imported by Canada included electronics, garments, gold, sugar cane, and textiles.

**US\$20 billions**  
of at-risk products  
were imported by Canada in 2021,  
a **33.3% increase** with respect to five years ago.

<sup>16</sup> Canadian Network on Corporate Accountability, “Case Study: Forced labour in Canada’s PPE supply chains”, February 14, 2023, <https://cnca-rcrce.ca/2023/02/14/case-study-forced-labour-in-canadas-ppe-supply-chains/>.

<sup>17</sup> Ibid.

<sup>18</sup> Ibid.

<sup>19</sup> E. Szeto et al., “Canada's grocery chains stocked with tomato products connected to Chinese forced labour”, Canada Broadcasting Channel, October 29, 2021, <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>

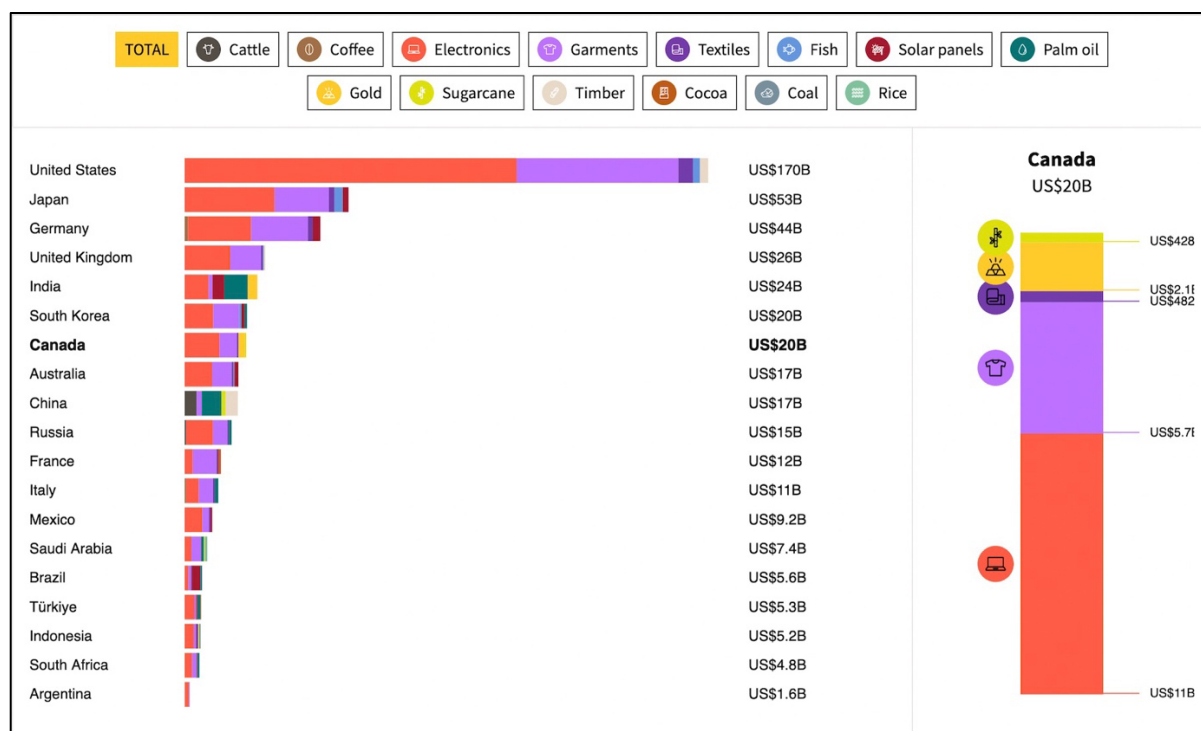
<sup>20</sup> *Global Slavery Index*, 2023.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Walk Free, *Global Slavery Index*, 2018, <https://respect.international/wp-content/uploads/2018/07/The-Global-Slavery-Index-2018-Walk-Free-Foundation.pdf>.

Figure 1. At-risk goods imported into Canada, 2021.



[Source: *Global Slavery Index*, 2023.]

At the same time, it is noticeable that seasonal, temporary, and undocumented workers in Canada are also vulnerable to forced labor, especially in informal and rural labor contexts such as the agricultural sector, where there are limited regulations and few labor inspections.<sup>24</sup> In this regard, the Seasonal Agricultural Worker Program (SAWP) allows Canadian employers to hire foreign nationals from Mexico and 11 countries in the Caribbean region to fill gaps in the labor force required in the agricultural sector. Foreign nationals under this program are able to work in Canada for up to eight months a year, during which time their immigration status is tied to their employer.

This arrangement has obviously created a dangerous power imbalance between employers and workers that has contributed to the latter’s systemic exploitation.<sup>25</sup> In 2022, for instance, Jamaican nationals temporarily working in Canada under SAWP exposed their experiences of “systemic slavery” at the hands of exploitative employers.<sup>26</sup>

<sup>24</sup> M. Puttick, “The Exploitation of Mexican and Caribbean Migrant Workers in Ontario’s Agricultural Sector”, *Minority Rights*, 2022, <https://minorityrights.org/programmes/library/trends/trends2022/canada/>.

<sup>25</sup> Freedom United, “Jamaican Farmworkers in Canada organize against ‘systematic slavery’”, August 24, 2022, <https://www.freedomunited.org/news/jamaican-farmworkers-canada/>.

<sup>26</sup> *Ibid.*

In 2022, Canada was the world's 5th largest agricultural exporter, exporting nearly US\$92.8 billion in agriculture and food products including raw agricultural materials, fish and seafood, and processed foods.<sup>27</sup> Considering the global relevance of Canada's agricultural exports, the forced labor conditions to which seasonal migrant workers are often subjected in Canada is not a problem confined to the country's borders, but rather one with international implications.

### *Box 2 – In Focus*

By their very nature, **food supply chains** present many inherent risks of forced labour exploitation, including for children:

- **Labour intensive:** the need for high levels of seasonal, low-skilled labour in most agricultural work results in a low-paid workforce comprised of especially vulnerable groups such as migrants, the poor, and children (especially unaccompanied children).
- **Physically demanding:** the exposure to the elements and the use of dangerous tools, machinery, and toxic chemicals puts the health and safety of workers at risk.
- **Complex global supply chains:** the existence of multiple producers selling identical products to intermediaries and traders leads to difficulties in tracing their exact origin and ensuring that labour rights are monitored and protected.
- **Informal economy:** the presence of smallholder farmers and informal employment arrangements with seasonal workers can make it hard for the authorities to properly monitor and regulate the sector.
- **Weak law enforcement:** many countries exempt farming from child labour prohibitions and/or lack the capacity to adequately enforce measures that do exist, especially given the remote and rural location of most agricultural work.

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<sup>27</sup> Government of Canada, Overview of Canada's agriculture and agri-food sector, <https://agriculture.canada.ca/en/sector/overview>.

## Supply Chains and Human Rights: Canada's Legal Framework

According to the 2023 Global Slavery index, in 2021 Canada ranked second in the Americas (after the United States) for its government's response to modern slavery. As far as supply chains are concerned, together with Brazil and the US, Canada is the country in the region that has taken the most action to tackle modern slavery in supply chains. The government and business response to modern slavery in supply chains was thus rated at 25% (vis-à-vis 38% in the US and Brazil).<sup>28</sup>

However, when assessed from a global perspective, Canada has been slower than many other developed countries to address modern slavery in global supply chains in the context of its jurisdiction. Among all G20 countries, in fact, it is Australia, France, Germany, Brazil, the United Kingdom, and the United States that are taking the most significant action to eliminate risks of forced labour in global supply chains.

### *Box 3 – In Focus*

When it comes to laws to fight forced labour in global supply chains, two different models of legislation have been developed worldwide:

- (I) **transparency/reporting-only legislation**, such as that in the UK's and Australia's Modern Slavery Acts,
- (II) **mandatory human rights due diligence legislation (MHRDD)**, such as France's Corporate Duty of Vigilance law.

Academic research has highlighted major weaknesses in the effectiveness of transparency legislation to influence corporate behaviour. The major criticism is that corporations can comply with transparency legislation without altering the commercial practices that lead to forced labour. As strong sanctions for non-compliance are lacking, as are paths for remedy and redress for victims, transparency seems to have sparked disclosure without changing things.

MHRDD is generally considered to be the best practice as it introduces a duty on corporations to carry out robust human rights due diligence across their entire supply chains and it can be combined with strong sanctions such as civil liability and supervision by a public oversight body that can impose a fine on those not carrying out the duty.<sup>29</sup>

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<sup>28</sup> *Global Slavery Index*, 2023.

<sup>29</sup> Justice & Care, *Modern Slavery in Global Supply Chains*, July 2022, <https://respect.international/wp-content/uploads/2022/11/Modern-Slavery-in-Global-Supply-Chains-The-State-of-Evidence-for-Key-Government-and-Private-Approaches.pdf>.

The current legislative gap with the other G20 countries is one that Canada has been recently tried to address, and one that many Canadian businesses and consumers feel needs a prompt response. According to the above-mentioned survey of Canadian companies, 76% of Canadian companies believe that supply chain legislation could benefit their company by driving action to address modern slavery.<sup>30</sup> Efforts to introduce a legislative framework for regulating forced labour in supply chains date back to 2009. The major legislative mechanisms are outlined in the table below:

Table 2. Canada's legislation to address modern slavery in supply chains

Date	Title	Significance
2009	C-300 - An Act Respecting Corporate Accountability For The Activities Of Mining, Oil Or Gas In Developing Countries	Requires Canadian companies engaged in mining, oil, and gas operations in the Global South to comply with international human rights standards and proposes a complaints procedure by which non-Canadian citizens could bring violations to the government's attention.
2018	C-423 - An Act Respecting The Fight Against Certain Forms Of Modern Slavery Through The Imposition Of Certain Measures And Amending The Customs Tariff	Focus on the elimination of child labour and forced labour. Although they differ slightly in detail, the general thrust of these bills is to impose an obligation on businesses to disclose the efforts they have taken to rid their business and supply chains of child and forced labour.
2020	S-211 - An Act To Enact The Modern Slavery Act And To Amend The Customs Tariff	Under Bill S-216, companies must publish an annual report detailing the steps they have taken to prevent and reduce the risk that forced labour or child labour is used at any step of their production or sale of goods in any country, and in their import of goods into Canada.
2020	S-216 - An Act To Enact The Modern Slavery Act And To Amend The Customs Tariff	
2020	USMCA - US-Mexico-Canada Free Trade Agreement	Prohibits the importation of goods manufactured wholly, or in part, by forced or compulsory labour.
2020	Customs Tariff as amended by the USMCA	In accordance with the provisions of the USMCA, imposes import restrictions on goods produced with forced labour.
2021	S-211 - An Act To Enact The Fighting Against Forced Labour And Child Labour In Supply Chains Act And To Amend The Customs Tariff	Imposes reporting obligations on entities (producers and importers) and government institutions (producers, purchasers, and importers), when it comes to forced labour and child labour.

<sup>30</sup> K. Phung et al., *The Straight Goods*.

2022	C-243 - An Act Respecting The Elimination Of The Use Of Forced Labour And Child Labour In Supply Chains	As S-211 (2021), but it also requires entities to report on steps taken with respect to entities they control, and it allows entities to revise reports.
2022	C-262 - An Act Respecting The Corporate Responsibility To Prevent, Address And Remedy Adverse Impacts On Human Rights Occurring In Relation To Business Activities Conducted Abroad	With respect to prior legislation, it covers more entities, including all companies incorporated, carrying out business, or having offices or assets in Canada. It also covers companies with whom Canadian companies have business relationships, such as individuals and entities in their supply chain or who are directly linked to their operations, products, or services.
2022	C-263 - An Act To Establish The Office Of The Commissioner For Responsible Business Conduct Abroad And To Make Consequential Amendments To Other Acts	Establishes the Office of the Commissioner for Responsible Business Conduct Abroad. The enactment authorizes the Commissioner to monitor and investigate the business activities of certain Canadian entities operating abroad for the purpose of reporting on the entities' compliance with international human rights law.
2023	S-211 - An Act To Enact The Fighting Against Forced Labor And Child Labor In Supply Chains Act And To Amend The Customs Tariff (Canada's Modern Slavery Act)  [Will come into force on January 1, 2024]	Applies to (i) government institutions producing, purchasing, or distributing goods in Canada or elsewhere; and (ii) certain business entities producing goods in Canada or elsewhere or importing goods produced outside Canada. Imposes an obligation to submit an annual report on the steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used by them or in their supply chains. Amends the Customs Tariff to expand the prohibition on the import of goods mined, manufactured, or produced in whole, or in part, by forced labour to also include child labour.



## Protection of Supply Chains or Protection of Human Rights? The Current Limitations of Canada’s Approach

While the past years have seen Canada take certain steps to address the issue of forced labour in the supply chains of Canadian companies, a series of limitations remain. For instance, the latest and long-awaited piece of legislation, S-211 (2023), has been widely criticized inside and outside Canada in that it does not prevent human rights abuses in the global operations and supply chains of companies linked to Canada, it does not make companies liable for modern slavery practices, it does not provide access to remedy for victims through Canadian courts.<sup>31</sup> In other words, it is criticized as a legal instrument that focuses merely on reporting rather than on preventing, punishing, and remedying harm.<sup>32</sup>

As argued by the Canadian Network on Corporate Accountability (CNCA), Canada’s latest legislation "will not provide people who are harmed by Canadian companies, or their subsidiaries, or their suppliers, access to remedy for the abuse they have suffered, such as by bringing their grievances to Canadian courts." The Canada Director at Human Rights Watch also remarked that the S-211 (2023) law “doesn’t actually require companies to do anything to combat forced or child labour. The law’s toothless reporting obligation should be replaced by meaningful requirements to protect workers and provide remedies to victims.”<sup>33</sup> The President of the Canadian Labour Congress also added her voice to this wave of criticism, arguing that “this new forced labour legislation does not meet the [government’s] commitment to eradicate forced labour from Canadian supply chains and ensure that Canadian businesses operating abroad do not contribute to human rights abuses.”<sup>34</sup>

### *Box 4 – In Focus*

Canada mining firm, Nevsun Resources, accused of forced labour abroad was sued in Canadian courts. Allegedly over 1,000 Eritreans had been conscripted through Eritrea’s military into forced labour to construct Nevsun’s Bisha gold, copper, and zinc mine in East Africa. Though the case reached a settlement in October 2020, it sets a precedent that Canadian companies can be sued in Canada for abuses occurring in other jurisdictions.

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<sup>31</sup> Canadian Network on Corporate Accountability, “Human Rights and Environmental Due Diligence Legislation in Canada”, <https://cnca-rcrce.ca/campaigns/mhredd/>.

<sup>32</sup> Canadian Network on Corporate Accountability, “Frequently Asked Questions: Mandatory Human Rights and Environmental Due Diligence Legislation in Canada”, March 2022, <https://cnca-rcrce.ca/site/wp-content/uploads/2022/04/FAQs-E.pdf>.

<sup>33</sup> Amnesty International, “Joint statement: Canada’s new law on forced, child labour in supply chains won’t work”, May 3, 2023, <https://www.amnesty.ca/human-rights-news/joint-statement-bill-s-211-forced-child-labour/>.

<sup>34</sup> Ibid.



However, it is not only S-211 (2023) that generates concerns over Canada’s capacity to protect human rights in the supply chains of its companies. Rather, criticism has been directed also at the import ban on products of forced labour introduced in Canada’s Customs Tariff. While Canada committed to ban the importation of all products of forced labour when it signed the USMCA Agreement in 2018, Canada’s enforcement approach differs dramatically from that of the US, in ways that will likely continue to result in Canadian enforcement action being far rarer and more limited in scope.

### *Box 5 – In Focus*

In 2022, Canadian anti-slavery activists lost a court bid for a general ban on Canada’s import of all goods from the Xinjiang region of China. The activists wanted the border agency to prohibit the import of goods from Xinjiang (as done in the US) on the basis that - unless there is clear evidence to prove the contrary - they have been mined, manufactured, or produced wholly, or in part, by forced labour. The activists accused the Chinese state of oppressing the Uyghur people and other ethnic minorities who are enlisted for involuntary labour in large work camps. Canada’s Federal Court, however, rejected their application to overturn a prior decision by the Canada Border Services Agency (CBSA).<sup>35</sup>

Specifically, for Canadian customs authorities to block imported goods there needs to be a “legally sufficient and defensible evidence of production by forced labour”, rather than a mere suspicion. Moreover, Canada’s Customs Act and Privacy Act prevent from publicly naming the manufacturers whose goods are blocked on evidence of forced labour. Such disclosure, however, is a key factor in the effectiveness of import bans, in that it flags to all importers that certain goods must be removed from their supply chains and exerts additional pressure on manufacturers to protect their reputation by clean up their practices. Finally, CBSA has declined to clarify whether, once a company’s product is classified 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.

Finally, additional concerns are related to the fact that the Canadian government operates two offices that encourage businesses to respect human rights in their operations worldwide: Canada’s National Contact Point (NCP) for Responsible Business Conduct, which covers all industries, and 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 that the company should take to resolve the problem. However, a

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<sup>35</sup> J. Bronskill, “Federal Court rejects bid to ban imports from China’s Xinjiang region over labour concerns”, *the Globe and Mail*, April 10, 2022, <https://www.theglobeandmail.com/canada/article-federal-court-rejects-bid-to-ban-imports-from-chinas-xinjiang-region/>.

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. CORE, for its part, is a newer office and has yet to conclude a case. It has no substantial powers that go beyond those of the NCP.

*Table 3. Comparison of US and Canadian Enforcement of Forced Labour Import Bans*

	Canada	U.S.
Number of shipments detained, July 2020 to March 2023	One, later released upon challenge by the importer	More than 6,160 <sup>8</sup>
Number of producers whose goods were deemed inadmissible, July 2020 to March 2023	One, but the decision was <a href="#">later reversed</a>	<a href="#">27</a> <sup>9</sup>
Regulations adopted to govern enforcement?	No	<a href="#">Yes</a>
Scope of goods typically prohibited by a single enforcement action <sup>10</sup>	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 <sup>11</sup>	<a href="#">Fines</a> , 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

<sup>7</sup> 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.

<sup>8</sup> [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 \(UFLPA\)](#).

<sup>9</sup> 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.

<sup>10</sup> 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.

<sup>11</sup> 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.

[Source: Canadian Network for Corporate Accountability, Letter to Prof. Obokata, [https://cnca-rcrce.ca/site/wp-content/uploads/2023/08/Submission\\_AboveGroundCNCA\\_31May2023.pdf](https://cnca-rcrce.ca/site/wp-content/uploads/2023/08/Submission_AboveGroundCNCA_31May2023.pdf)]

## Conclusion

For years, Canadian MNCs have been implicated in serious human rights abuses, especially forced labour and child labour, in Canada and abroad. While certain steps have been taken that have contributed to somewhat reducing the gap between Canadian legislation and legislations in G20 countries with respect to modern slavery in supply chains, Canada is still falling behind. On this background, experts such as Surya Deva, former member of the UN Working Group on Business and Human Rights, made it clear that Canada cannot claim leadership on promoting business respect for human rights.<sup>36</sup>

Therefore, Canada must do more to protect and promote respect for human rights by Canadian companies throughout their operations and supply chains.

As a first step, existing mandatory reporting laws should be strengthened by including and implementing penalties (e.g., financial penalties) for companies that do not carry out their duties. However, a Canadian approach that is built around mandatory human rights due diligence legislation ultimately provides the most promise. In fact, while public disclosure is critical, it is not sufficient on its own to drive meaningful, broad, and lasting change, as evidenced from other jurisdictions. Therefore, the Canadian government should introduce mandatory human rights due diligence laws requiring companies to conduct due diligence. Canada's approach must also be comprehensive in reach, with legislation applying throughout the entirety of a company's business operations and supply chains, inside and outside of Canada. Legislation must also apply to both companies headquartered in Canada and globally headquartered corporations doing business in Canada. Legislation should also provide accessible remedy avenues for victims and their families. Finally, the government should support research about the patterns of forced labour in Canada's supply chains.

For their part, Canadian businesses should invest adequate resources to identify, prevent, mitigate, and account for adverse human rights impacts, including forced labour, in their global supply chains. While doing so, it is important to adopt a whole-of-supply-chain approach that goes beyond tier one suppliers. At the same time, actions should favour meaningful changes to company policies and practices relevant to the root causes of forced labour in supply chains, including both reducing vulnerability of the workforce and eliminating business demand for forced labour. Businesses should also introduce and enforce a supplier code of conduct that reflects international labour standards and provide training on the risk of modern slavery to their relevant departments and personnel. Multi-stakeholders' partnerships should be valued by businesses as platforms that allow to foster collaboration, share experiences and good practices, and accelerate progress.

Investors, for their part, should seek accurate data on the risk of forced labour in Canadian companies' supply chains and encourage Canadian companies to develop better processes to

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<sup>36</sup> House of Commons Canada, March 23, 2021, <https://www.ourcommons.ca/DocumentViewer/en/43-2/SDIR/meeting-14/evidence>.

search their supply chains for modern slavery. They should establish clear standards for investment, with stringent clauses around forced labour, launch a shareholder action against businesses known to use forced labour, and responsibly divest from those same businesses if alternative actions lead no results. Besides, they could consider introducing an investor-led multi-stakeholder initiative in Canada to promote effective action in finding, fixing, and preventing modern slavery in Canada's supply chains.

A successful human-rights centered Canadian approach to supply chains would also include academia and non-governmental organizations (NGOs) advocating with the Canadian government the implementation of mandatory due diligence laws and offering advisory support to the Canadian government in the development of adequate anti-slavery legislations. Anti-slavery organizations should also engage with workers in geographies and industries at risk of forced labour to spread awareness about workers' rights and conduct new research to better understand how Canadian companies are addressing modern slavery, and which factors are determining successes and challenges.

Finally, while attempts to "pass the bucket" of responsibility to consumers away from governments and businesses are to be rejected, consumers-citizens should nonetheless be encouraged (and helped) to act as responsible agents. As such, they should urge their government to adopt and enforce mandatory due diligence legislation, strive to maintain themselves informed, pressure companies to prevent, assess, and address the risk of modern slavery, and privilege acquiring products and services from businesses that have shown to be proactive and sensitive towards modern slavery in their operations and supply chains.

Only once these steps are taken, will Canada be able to meet the current expectations on the protection of human rights in supply chains and live up to its global reputation as a defender of human rights.

## Recommendations

Considering the limitations that continue to be observed in Canada's approach to the issue of forced labour in global supply chains, the following recommendations are offered.

### For the Canadian government:

- **Strengthen existing mandatory reporting laws** by including and implementing penalties. Establish a public supervisory agency with responsibility for overseeing entities' compliance with their reporting obligations, and with the authority to effectively sanction those entities that do not carry out their duties, for example, by imposing financial penalties.
- Remove the **asset, revenue, and employee threshold** requirements for entities to be covered by the S-211 (2023) law. The UNGPs make it clear that while policies and processes will necessarily have to vary in complexity depending on the size of the business enterprise, *all* companies are required to carry out human rights due diligence.
- Introduce **mandatory human rights due diligence laws** requiring companies to conduct due diligence to prevent, mitigate, and remedy modern slavery in their operations and supply chains. In fact, while public disclosure is critical, it is not sufficient on its own to drive meaningful, broad, and lasting change.
- Introduce a **broad due diligence obligation** that applies throughout the entirety of a company's business operations and supply chains, inside and outside of Canada, and that applies to both companies headquartered in Canada and globally headquartered corporations doing business in Canada.
- Provide access to **remedy for victims**, including a robust liability regime and strong enforcement measures that ensure accountability for harm arising out of human rights abuses caused, or contributed to, by a certain entity or by entities with which there is a business relation.
- Consult with a wide range of stakeholders, including workers' unions, investors, NGOs, and topical experts to **keep updating and revising supply chain legislation** in a way that reflects best practices and lessons learnt.
- Support **research about the patterns of forced labour in Canada's supply chains**. This includes research on worker vulnerability, including links between forced labour and low wages, migrant and informal workers, gender and racial discrimination in the workplace, as well as business demand, including links between forced labour and sourcing at or below the costs of production.

### For Canadian businesses:

- Invest **resources to identify, assess, and address** the forced labour risks associated with a company's own commercial practices, supply chain structure and relationships, and business model, as well as those of commercial partners, including both producers and intermediaries within supply chains.

- Adopt a **whole-of-supply-chain approach** and ensure that supply chains due diligence efforts go beyond tier one suppliers to higher risks tiers further down the supply chain. This will entail expanding the focus from where companies may have greater leverage to where the risk of forced labour and child labour is greater.
- Provide **adequate training to the relevant departments** (e.g. human resource and labour compliance, senior management, procurement or sourcing, production) on (i) the protection of human rights, including labour rights, in the supply chains, (ii) the identification of risks of modern slavery in the company’s supply chain, both by product and by geography, (iii) and the requirements needed to comply with relevant legislation.
- Introduce meaningful changes to company policies and practices **relevant to the root causes of forced labour** in supply chains, including reducing vulnerability of the workforce (eg. through living wages, fair recruitment, removing barriers to worker freedom of association) and eliminating business demand for forced labour (eg. through value redistribution).
- Develop and enforce a **supplier code of conduct** that reflects international labour standards. Apply it to direct suppliers as well as sub-suppliers, provide awareness raising, training, and capacity building among suppliers, and make compliance with the code of conduct a condition for suppliers to conclude a contract with the company.
- Pursue **multi-stakeholder partnerships** as platforms that can enable to engage in collaboration, share experiences and good practices, and accelerate progress. These partnerships can be global, such as the Alliance 8.7 Action Group on Supply Chains; industry specific, such as CocoaAction or the Roundtable on Sustainable Palm Oil; or national based, such as the Malawi Tea 2020 partnership. They should include companies, government, trade unions, NGOs, and topical experts.

#### **For investors in Canada:**

- Engage with Canadian companies to **encourage them – and help them – to develop and implement better processes** to proactively search their supply chain for modern slavery (on the assumption that it exists), ensure remedy for those affected, and take meaningful steps to ensure that the situation of abuse does not continue.
- **Seek up-to-date and accurate data** about forced labour and child labour in Canadian companies’ operations and supply chains. Communication in foreign countries with local NGOs, civil society organizations (CSOs), and trade unions within at-risk communities has proved useful in this regard.<sup>37</sup> Partnering with academic institutions and NGOs (especially when engaged in data collection and data analysis) has also proved helpful.<sup>38</sup>
- Establish **clear standards for investment**. Investors’ considerations on whom to include in their investment portfolios should focus on factors such as (i) whether a

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<sup>37</sup> Netherlands Social and Economic Council, “Ensuring local impact through global collaboration”, 2021, <https://www.imvoconvenanten.nl/en/pension-funds/convenant/-/media/8CDF411F1FEC41C49918CFBD36BF760D.ashx>.

<sup>38</sup> Find It. Fix It, Prevent It, Annual Report 2020, <https://www.ccla.co.uk/documents/find-it-fix-it-prevent-it-annual-report-2020/download?inline>.

company has (and enforces) a supplier code of conduct that reflects international labour standards, (ii) whether a company works with suppliers at all levels (beyond the first tier) to improve their practices in relation to child labour, forced labour, discrimination, working conditions, minimum wages, (iii) whether a company has a process in place for assessing modern slavery risk, by product and by geography.

- **Launch a shareholder action against businesses known to use forced labour** or those whose business models and tactics are associated with labour exploitation. If that does not yield results, consider **responsibly divesting from those businesses**. In such cases, public disclosure of the divestment decision – and conditions for reinvestment, if applicable – will send a strong message to the company (and the business world at large) about investors’ human rights expectations.
- Following the Find It, Fix It, Prevent It initiative launched in the United Kingdom as well as the Investors Against Slavery and Trafficking Asia Pacific (IAST-APAC), **consider introducing a similar investor-led multi-stakeholder initiative** in Canada to promote effective action in finding, fixing, and preventing modern slavery in operations and supply chains. Investors can achieve greater impact working collaboratively.

#### **For NGOs and academia:**

- **Advocate with the Canadian government** the implementation of mandatory human rights due diligence laws that hold businesses to account for failing to prevent and address forced labour and other human rights abuses in their supply chains and that provide routes for remedies to workers that have been affected by labour rights violations.
- Offer to **support the Canadian government in an advisory function** in the development of adequate anti-slavery legislations, where the expertise of anti-slavery scholars and practitioners can be of critical support to identify best practices. Bridging the gap between civil society and government, in fact, has proved necessary in making the overall strategy against slavery more robust.
- Engage with workers in geographies and industries where the risk of forced labour and child labour is high(er) to **spread awareness about workers’ human and labour rights**, such as fair pay, access to healthcare, and fair contracts.
- Launch **investigations into instances of forced labour and child labour** implicating Canadian companies or their supplies. These investigations should focus on companies at all levels of the supply chain, from major brands to smaller suppliers down the supply chain.
- Promote and conduct research to better **understand how Canadian companies are addressing modern slavery**, which factors are determining successes, and which factors are posing challenges.
- **Initiate forums, conferences, and workshops** aimed at encouraging a constructive multi-stakeholder dialogue on successes, challenges, and failures in addressing the risk of modern slavery in supply chains.

**For Canadian consumers:**

- **Urge the Canadian government** to implement mandatory due diligence laws that hold businesses to account for failing to prevent and address forced labour and other human rights abuses in their supply chains and that provide routes for remedies to workers that have been affected by labour rights violations.
- Strive to **keep a good level of information** and pay attention when a headline mentions a company with shady business practices.
- **Exert pressure on companies** to take meaningful action to prevent, assess, and address modern slavery in their operations and supply chains.
- When and as possible, **buy products and services from companies that have shown to be responsible and proactive** when it comes to the protection of human rights, including labour rights, in their operations and supply chains.



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