CANADA'S NEW *SUPPLY CHAINS ACT* & INTERNATIONAL COMPARISONS

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Canada's Fighting Against Forced Labour and Child Labour in Supply Chains Act *(2024) marks a shift from voluntary corporate social responsibility to legislated transparency. It mandates annual reporting from entities producing or importing goods into Canada, including energy companies, on policies and risks related to forced and child labour. This article analyzes the* Act*'s structure, interpretive challenges, and compliance issues from its first reporting cycle. It compares Canada's model to international regimes — transparency laws, mandatory due diligence, and import bans — and critiques its limited enforcement. The article also explores implications for multinational supply chains, investor scrutiny, and reputational risk, offering practical steps for Canadian companies to strengthen compliance and align with global standards.*

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INTRODUCTION

In 2021, the International Labour Organization (ILO) estimated that 27.6 million people were experiencing situations of forced labour on any given day.[1] Of those, 11.8 million were women and girls, and more than 3.3 million were children.[2] Estimates have continued to grow in recent years. These figures point to an increase of 2.7 million people since 2016 — a troubling upward trend that is expected to continue.[3] The numbers for child labour are no less grim. In 2020, the ILO estimated that 160 million children worldwide were engaged in child labour, which translates to for almost one in ten children globally.[4] Nearly 80 million of those in child labour were engaging in what was considered to be hazardous work.[5] Like trends with forced labour, the absolute number of children in child labour continues to increase globally.[6] Though widely viewed as a conservative estimate, it is believed that forced labour generates an estimated USD$236 billion in annual profits.[7] Canada and the United States are estimated to annually import at least CAD$27 billion and USD$170 billion, respectively, in goods at risk of being produced through forced or child labour.[8]

Amid pressure from investors, the public, and policymakers to enhance corporate responsibility, governments worldwide are establishing legal frameworks directed at increasing transparency in supply chains.[9] In 2024, Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the *Supply Chains Act* or the *Act*) came into force.[10] The *Act* imposed mandatory reporting obligations for public and private corporations, trusts, partnerships, and other unincorporated organizations (collectively, the Organizations), including those in the energy sector.[11] This legislation aims to curb human rights violations by enhancing awareness and transparency in supply chains. It seeks to encourage responsible

1 International Labour Organization, Walk Free & International Organization for Migration, *Global Estimates of Modern Slavery: Forced Labour and Forced Marriage* (Geneva: ILO, 2022) at 2, online (pdf): [perma.cc/B9LD-4SLM].

2 *Ibid.*

3 *Ibid.*

4 ILO & United Nations Children's Fund, *Child Labour: Global Estimates 2020, Trends and the Road Forward* (New York: ILO & UNICEF, 2021) at 8, online (pdf): [perma.cc/2KYS-BS8Z].

5 *Ibid.*

6 *Ibid.*

7 ILO, *Profits and Poverty: The Economics of Forced Labour*, 2nd ed (Geneva: ILO, 2024) at 13, online (pdf): [perma.cc/9AB2-VJL8].

8 Walk Free, "Canada Needs a Stronger Forced Labour Import Ban" (26 November 2024), online: [perma.cc/L4UR-WDS7]; see also Walk Free, "Global Slavery Index/Country Study: Modern Slavery in United States" (2024), online: [perma.cc/JST2-UVRX].

9 Adam S Chilton & Galit A Sarfaty, "The Limitations of Supply Chain Disclosure Regimes" (2017) 53:1 Stan J Intl L 1 at 1.

10 SC 2023, c 9 [*Supply Chains Act*].

11 *Ibid*, ss 2, 9.

business practices through public reporting of the risks of forced labour and child labour within entities' supply chains.[12]

Canada's *Supply Chains Act* is part of a global trend: the shift from reliance on voluntary steps to address human rights issues, to legally mandated transparency and due diligence. The energy sector's reliance on complex, multinational supply chains include exposure to modern slavery risks. Globally, governments continue to contemplate enhanced enforcement mechanisms and increased penalties, and investors are placing greater emphasis on sustainability. Businesses should be cognizant of the evolving regulatory landscapes to mitigate legal and reputational risks.

This article proceeds as follows: Part II provides an overview of Canada's new *Supply Chains Act*, analyzing its scope, purpose, and the practicalities of compliance, highlighting key areas of uncertainty that businesses must navigate. Part III offers a comparative assessment of international regulatory frameworks, contrasting Canada's transparency model with more rigorous due diligence regimes implemented by global peers such as the European Union, France, Germany, and the United States. Finally, Part IV anticipates emerging trends, examining pressures for enhanced border enforcement and growing stakeholder and investor demands for ethical supply chain practices, and suggests some opportunities for industry leadership.

I. OVERVIEW OF CANADA'S NEW *SUPPLY CHAINS ACT*

A. BACKGROUND AND ENACTMENT

On 11 May 2023, the *Supply Chains Act* received royal assent.[13] This marked the final milestone of the *Act*'s tumultuous journey from its three prior failed introductions in 2018,[14] 2020,[15] and 2021.[16] As explained below, this *Act* introduced broad mandatory reporting obligations on Organizations to disclose, among other things, the steps taken to prevent and reduce the risk of child labour and forced labour in their supply chains and operations.[17]

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12 Public Safety Canada, *2024 Annual Report to Parliament on the* Fighting Against Forced Labour and Child Labour in Supply Chains Act (2024) at Introduction, online: [perma.cc/MR97-L5YN] [*2024 Report*].

13 For the legislative history of Bill S-211 that was eventually enacted, see: S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*, 1st Sess, 44th Parl, 2021–2025 (assented to 11 May 2023).

14 Bill C-423, *An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff*, 1st Sess, 44th Parl, 2018, online: [perma.cc/77AW-VJ6B]. Bill C-423 proposed the first of three iterations of an act focused on the elimination of child labour and forced labour in global supply chains. Note, this was introduced by Member of Parliament John McKay: "Bill C-423, An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff", 1st reading, *House of Commons Debates*, 42-1, No 371 (13 December 2018) at 24799 (Hon John McKay).

15 Bill S-211, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*, 1st Sess, 43rd Parl, 2020, online: [perma.cc/8ETL-9Y5S].

16 Bill S-216, *An Act to enact the Modern Slavery Act and to amend the Customs Tariff*, 2nd Sess, 43rd Parl, 2021 (second reading 30 March 2021), online: [perma.cc/9C5X-W68H]. Note, the first reading occurred on 29 October 2020.

17 *Supply Chains Act*, *supra* note 10.

Debates and correspondence written during the legislative process revealed a stark contrast in views about the "correct" approach for Canada to implement.[18]

Senator Julie Miville-Dechêne introduced Bill S-211 (which became the *Supply Chains Act*) on 21 November 2021.[19] This marked the fourth attempt at passing legislation of this kind, and her third time leading the way, prompting Miville-Dechêne to remark: "Let's hope the third time is the charm."[20] When introducing Bill S-211, Miville-Dechêne attributed much of the urgency of this legislation to the COVID-19 pandemic, which placed additional pressure public and private supply chains.[21] This pressure increased the risk of forced labour and child labour being perpetuated due to demand for low-cost goods at an often high, but invisible, human cost.[22]

Some parliamentarians — specifically those representing the New Democratic Party and Bloc Québécois — attempted to block Bill S-211 because *it failed to go far enough*, noting that "it doesn't actually hold companies accountable."[23] Supporters of the *Act* countered these criticisms by arguing that imposing requirements for mandatory due diligence at first instance would "in effect [be] trying to run before crawling or walking."[24] Despite these ongoing disagreements, the *Act* passed successfully.

B. THE *ACT*'S PURPOSE

Parliament enacted the *Supply Chains Act* "to implement Canada's international commitment to contribute to the fight against forced labour and child labour."[25] To accomplish this goal, the *Act* imposed mandatory reporting obligations on entities producing goods in Canada or elsewhere, or importing goods produced outside Canada.[26]

The stated purpose and the actual effect of the *Act* has been subject to scrutiny.[27] In practice, the *Act* has been said to simply "prioritiz[e] holding corporations accountable for reporting compliance rather than for violating human rights through forced or child labor practices."[28] Like other transparency laws, the *Supply Chains Act* operates under the assumption that transparency will lead to accountability.[29] While similar transparency

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18 Business & Human Rights Resource Centre, "Canada: House of Commons Passes Bill Tackling Forced and Child Labour, but Critics Argue Corporations Still Evade Meaningful Accountability" (3 May 2023), online: [perma.cc/JR2E-YA3K].

19 Bill S-211, *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*, 1st Sess, 44th Parl, 2021, online: [perma.cc/J568-Z8P5].

20 "Bill S-211, Fighting Against Forced Labour and Child Labour in Supply Chains Bill", 2nd reading, *Debates of the Senate*, 44-1, Vol 153, No 9 (8 December 2021) at 245 (Hon Julie Miville-Dechêne) [Bill S-211 Debates].

21 *Ibid.*

22 *Ibid* at 245–46.

23 Business & Human Rights Resource Centre, *supra* note 18.

24 "Bill S-211, Fighting Against Forced Labour and Child Labour in the Supply Chains Act", 3rd reading, *House of Commons Debates*, 44-1, Vol 151, No 164 (6 March 2023) at 11937 (Hon John McKay), online: [perma.cc/5LBR-RMUE].

25 *Supply Chains Act*, *supra note* 10, s 3.

26 *Ibid*.

27 Bill S-211 Debates, *supra* note 20 at 247 (Hon Julie Miville-Dechêne).

28 Barnali Choudhury, "BHR Developments in Canada: Targeting Low Hanging Fruit" (13 June 2024), online (blog): [perma.cc/6EME-V954].

29 Chilton & Sarfaty, *supra* note 9 at 20.

regimes in other jurisdictions appear to have increased awareness of modern slavery risks, empirical evidence demonstrating significant changes in corporate behaviour is lacking.[30] However, with only the inaugural reporting cycle complete, the correlation between the *Act*'s purpose and effect remains to be seen.

C. WHAT IS FORCED LABOUR AND CHILD LABOUR

In the *Act*, the term "child labour" is defined with reference to both domestic legal standards and international human rights conventions.[31] Under the *Act*, child labour encompasses any labour or services performed or offered by individuals under the age of 18 that occur under legally or ethically unacceptable conditions.[32] This includes work that is unlawful under Canadian legislation, as well as work that poses mental, physical, social, or moral harm to the child.[33] It also captures situations where work interferes with a child's education — whether by denying school attendance, forcing premature school departure, or requiring the child to balance school with excessively burdensome labour.[34] Significantly, the definition incorporates the "worst forms of child labour" as set out in article 3 of the *Worst Forms of Child Labour Convention, 1999*.[35] These worst forms of child labour include slavery and practices akin to slavery, the exploitation of children for prostitution or pornography, involvement in illicit activities, and work that is inherently hazardous to a child's health, safety, or moral development.[36] By aligning domestic reporting obligations with internationally recognized standards, the *Act* underscores Canada's commitment to eradicating child labour in both national and global supply chains.

Similarly, the *Supply Chains Act* defines "forced labour" in terms that reflect both Canadian legal principles and established international standards.[37] According to the *Act*, forced labour includes any labour or service that a person provides, or is compelled to offer, under coercive conditions — specifically where a reasonable person would fear for their own safety or the safety of someone they know if they refused.[38] This definition also encompasses the broader concept of "forced or compulsory labour" as articulated in article 2 of the ILO's *Forced Labour Convention, 1930 (No. 29)*.[39] This convention defines forced labour as all work or service extracted from an individual under the threat of a penalty and for which the person has not voluntarily consented.[40] Together, these definitions capture a wide range of exploitative labour conditions, from overt physical threats to more insidious forms of coercion, reinforcing the *Act*'s objective to expose and prevent such practices within Canadian businesses and their global supply chains.

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30 *Ibid* at 21.
31 *Supply Chains Act*, *supra* note 10, s 2, sub verbo "child labour".
32 *Ibid*.
33 *Ibid*.
34 *Ibid*.
35 *Ibid*. See also ILO, *Worst Forms of Child Labour Convention, 1999 (No 182)*, 1 June 1999, art 3.
36 *Ibid*.
37 *Supply Chains Act*, *supra* note 10, s 2, sub verbo "forced labour".
38 *Ibid*.
39 *Ibid*. See also ILO, *Forced Labour Convention, 1930 (No 29)*, 28 June 1930, art 2.
40 *Ibid*.

While there are different definitions of child and forced labour in the global regimes, the unifying thread is the recognition that such practices constitute serious violations of fundamental human rights. Whether framed through domestic legislation or international conventions, these definitions share a core concern with protecting children and vulnerable populations from coercion, exploitation, and harm. They emphasize the absence of genuine consent, the presence of threats or dangerous conditions, and the detrimental impact on health, education, and personal development.

D. UNDERSTANDING THE SCOPE OF THE *ACT*: THE WHO, WHEN, WHAT AND HOW OF COMPLIANCE

The *Supply Chains Act* imposes mandatory reporting obligations on "entities."[41] On or before May 31 annually, entities must assess and disclose their efforts to prevent and reduce the risk of forced and child labour in their supply chains.[42] This section focuses on explaining the requirements of the *Act*, clarifying *who* must report, *what* must be reported, *when* it must be reported, and *how* these reports must be shared. This information is essential for businesses navigating compliance with this new and evolving legal framework. In addition, as part of the discussion, this article examines some pertinent issues that have arisen from the *Act*'s obligations.

1. WHO DOES THE *ACT* APPLY TO: ENTITIES

The first step to compliance is understanding who constitutes an "entity" as defined under the *Act*. Pursuant to section 2 of the *Act*, an "entity"

> means as a corporation or a trust, partnership or other unincorporated organization that
>
> (a) is listed on a stock exchange in Canada;
> (b) 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:
> (i) it has at least $20 million in assets,
> (ii) it has generated at least $40 million in revenue, and
> (iii) it employs an average of at least 250 employees; or
> (c) is prescribed by regulations.[43]

Presently there are no regulations prescribing any entities. Accordingly, there are two ways in which Organizations can be "entities" under the *Act*.

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41 *Supply Chains Act*, *supra* note 10, ss 2, 9.

42 *Ibid*, s 6. For the purposes of this article, we have limited the discussion of the *Act* related considerations to only "entities." Part 1 of the *Act* details the requirements of the *Act* applicable to "government institutions" (*ibid*, s 5). Accordingly, all discussion of the government's guidance, or the *Act*'s requirements and considerations flowing therefrom should be understood in the context of entities only.

43 *Ibid*, s 2. "Prescribed by regulations" means that the Governor in Council may, if for the purposes of carrying out the intended purpose and provisions of the *Act*, designate a corporation or a trust, partnership, or other unincorporated organization as an entity, without necessarily conforming to the *Act*'s definition. To date, there have been no regulations promulgated under the *Act*.

The first is straightforward: if an Organization is listed on a Canadian stock exchange, it is an entity.[44]

The second way in which an Organization can be an "entity" under the *Act* requires the consideration of whether the Organization has "a place of business in Canada, does business in Canada or has assets in Canada" (the Canadian Nexus).[45] Following significant discussions in the inaugural reporting cycle about the appropriate considerations under this analysis, in its most recent guidance (the Updated Guidance), the Canadian Government has sought to provide clarity as to this requirement by providing some additional factors for consideration when determining whether the relevant Canadian Nexus exists.[46]

When determining whether an Organization has a Canadian Nexus under the *Act*, the Government's Updated Guidance emphasizes a business-specific evaluation of three key factors: 1) business presence in Canada, 2) doing business in Canada, and 3) possessing tangible assets in Canada. First, business presence can be demonstrated through tax and employment records indicating ongoing commercial activities within Canada.[47] A "place of business" is interpreted broadly. The premises, facilities, or installations (whether owned, rented, or simply made available to the Organization) can all contribute to meeting the Canadian Nexus, even when the space is not exclusively used for commercial activities.[48]

Second, whether the Organization is "doing business" in Canada may be assessed in light of the Canada Revenue Agency's criteria for "carrying on business" for GST/HST purposes.[49] This assessment includes the practical consideration of the location of employees, the sites where goods are produced, sold, or distributed, and the places where deliveries, purchases, or contracts are executed.[50] These factors will vary based on the particular context and do not form an exhaustive list. Finally, an Organization may be found to have a Canadian Nexus if it owns tangible property in Canada.[51] As part of the Updated Guidance, the Government clarified that intangibles — such as intellectual property, securities, and goodwill — are excluded from this analysis. As noted, this analysis is specific to each business, but the more touchpoints an Organization has within Canada's commercial landscape, the more likely it is to satisfy the Canadian Nexus.

If the Organization meets the Canadian Nexus requirement, it is then necessary to consider whether it satisfies the size thresholds with respect to assets, revenue, and employees

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44 *Ibid*, s 2. In most cases, the applicable stock exchange is likely the Toronto Stock Exchange (TSX). The authors note that in addition to the TSX, there is the TSX Venture Exchange, the Canadian Securities Exchange, and the Aequitas NEO Exchange.

45 *Ibid*, s 2(b).

46 Public Safety Canada, *Guidance for Entities* (Ottawa: PSC, 2025) online: [perma.cc/U99L-DXC2] [*Guidance for Entities*].

47 *Ibid.*

48 *Ibid.*

49 *Ibid.*

50 Canada Revenue Agency, Policy Statement P-051R2, "Carrying on Business in Canada" (Ottawa: CRA, 2005) online: [perma.cc/5BP4-96T2].

51 *Guidance for Entities*, *supra* note 46.

(the Thresholds).[52] An Organization will satisfy the Thresholds where it meets two of the three asset, revenue, or employee criteria in one of its two most recent financial years.[53] This assessment requires Organizations to use its consolidated financial statements and include the revenue, assets, and employees of any Organization it controls, but not those which control it (that is, a parent company).[54]

If an Organization satisfies both the Canadian Nexus and the Thresholds, it is "entity" under the *Act*. However, not every entity will have reporting obligations under the *Act*.

2. WHEN MUST ENTITIES REPORT

Pursuant to section 9 of the *Act*, an entity must prepare a report if, in its most recent fiscal year, it was engaged in:

(a) producing, selling or distributing goods in Canada or elsewhere;

(b) importing into Canada goods produced outside Canada; or

(c) controlling an entity engaged in any activity described in paragraph (a) or (b).[55]

Prior to discussing the activities under section 9 and the evolution of the legal effect of this section since 1 January 2024, we briefly address the meaning of the word "goods," which is not defined in the *Act*.

Although the *Act* does not explicitly define the term "goods," the Updated Guidance clarifies that "goods" refers to "tangible physical property that is the subject of trade and commerce, [as] understood in the ordinary sense of the word."[56] This definition excludes real property, electricity, software services, and insurance plans, thereby narrowing the scope of what entities must consider when determining whether they are subject to the *Act*'s reporting requirements.[57] By focusing on tangible physical property, the Updated Guidance aligns with the conventional understanding that "goods" involve moveable, material items — such as manufactured products or agricultural commodities — rather than assets or services primarily rooted in intangible or digital domains.[58] For businesses dealing in less typical forms of commerce (such as software, energy, or financial products), this clarification provides concrete parameters for establishing whether their operations fall within the *Act*'s reach. Consequently, organizations can more accurately assess their reporting obligations without

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52 While the initial governmental guidance released in December 2022 (the Guidance) included "intangible" goods, including "goodwill" as part of the asset threshold calculation, the Updated Guidance has since walked that back and clarified that assets in this context refer to "any tangible property owned by a person or business" (see *Guidance for Entities*, *supra* note 46).

53 *Supply Chains Act*, *supra* note 10, s 2.

54 *Guidance for Entities*, *supra* note 46.

55 *Supply Chains Act*, *supra* note 10, s 9.

56 *Guidance for Entities*, *supra* note 46.

57 *Ibid.*

58 See e.g. *Sales of Goods Act*, RSO 1990, c S.1, s 1(1); *Sale of Goods Act*, RSA 2000, c S-2, s 1(h); Bryan A Gardner, ed, *Black's Law Dictionary*, 12th ed (Eagan, Minn: Thomson West, 2024), sub verbo "goods" ("[t]angible or movable personal property other than money; esp., articles of trade or items of merchandise"); Canadian Border Services Agency, *Departmental Consolidation of the* Customs Tariff *2024*, Catalogue No PS35-7E-PDF (Ottawa: CBSA, 2024) online (pdf): [perma.cc/D969-L29Q].

conflating intangible services or property with physical goods that engage the risk of forced or child labour in their production.

a. Section 9(a): Producing, Selling or Distributing Goods Anywhere

A heavily debated aspect of the *Act* during the inaugural reporting cycle centered on the *Act*'s inclusion of entities that "sell or distribute" goods. Including these activities extended the *Act*'s reach far beyond entities that produce or import goods — consistent with the *Act*'s stated purpose — to also include virtually any organization engaged in the downstream supply chain. This broad scope stood in tension with the *Act*'s stated purpose and preamble.[59]

In response, the Government clarified its position in the Updated Guidance. Specifically, despite the plain language of section 9(a), Public Safety Canada has stated that it "will not seek enforcement action" for non-reporting against entities whose sole connection to goods is selling or distributing them.[60] This policy decision administratively narrows the scope of the *Act* by exempting entities without a direct role in manufacturing or importing into Canada, thereby reducing the reporting burden on organizations at the later stages of the supply chain.

Accordingly, under section 9(a), Public Safety Canada does not expect reporting from entities that only engage in selling and distributing goods. However, while helpful on its face, it bears emphasizing that this clarification is purely a policy decision by the Government and is subject to reversal in future reporting years.

b. Section 9(b): Importing Goods into Canada

Pursuant to section 9(b) of the *Act*, an entity will have reporting obligations if it is engaged in the importation of goods into Canada. This provision proved to be deceivingly complex in some respects, as "importing" does not have one singular legal definition.

As a result, the Updated Guidance sought to clarify what constitutes "importing" for the purposes of the *Act* and has added additional context to interpret the meaning of importing goods, emphasizing the the concept of the "true importer" — that is, the entity that genuinely causes the goods to be brought into Canada and is generally responsible for accounting for or paying the duties on those goods.[61] Notably, the Updated Guidance has expressly explained customs brokers, express couriers, trade consultants, and other third parties authorized to transact business on behalf of the importer, or to account for goods in lieu of the importer, will generally not be considered importers.[62] This is because these parties will usually not be the party that, in reality, caused the goods to be imported. Additionally, merely purchasing

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59 *Supply Chains Act*, *supra* note 10, s 3. See also *Supply Chains Act*, *supra* note 10, Preamble ("[a]nd whereas Parliament considers that it is essential to contribute to fighting modern slavery, including by imposing reporting obligations on … entities involved in manufacturing, producing, growing, extracting or processing goods in Canada or elsewhere or in importing goods manufactured, produced, grown, extracted or processed outside Canada").

60 *Guidance for Entities*, *supra* note 46.

61 Canadian Border Services Agency, *What We Heard Report: Importer of Record Implementation* (Ottawa: CBSA, 2023), online: [perma.cc/Q327-XSWX] [*What We Heard Report*].

62 *Guidance for Entities*, *supra* note 46.

goods produced outside Canada from a third party, where that third party is considered to be the importer, does not count as importing goods.[63]

This clarification aims to identify the actual party behind the importation rather than intermediaries, such as customs brokers, couriers, or trade consultants who may handle the logistics or paperwork but do not initiate the importation. Accordingly, in this context, the term "importer of record" still applies, but with a more nuanced understanding. The "importer of record" is the entity listed on customs documents and is responsible for compliance with customs regulations, including the payment of duties and taxes.[64] However, the new guidance requires a deeper look into the relationship and the actual role of the parties involved.

While the language used in the Updated Guidance could be interpreted as importing a body of case law that is multifaceted and fact specific, at a practical level, the analysis of whether an entity is "importing goods" for the purposes of the *Act* should consider whether it has ultimate control over and responsibility for the importation of goods.

c. Controlling an Entity Engaged in Producing or Importing

Finally, pursuant to section 9(c), an entity will have a reporting obligation if it "control[s] an entity" that is engaged in producing or importing goods. This section of the *Act* raises two interpretive questions.[65]

First, it required consideration of what it meant to "control" another entity. This was addressed in the initial guidance, but nevertheless left some unanswered questions as it pertained to joint ventures and *de facto* (effective) and *de jure* (legal) control. With respect to the concept of control, control generally aligns with the concept of majority ownership or the ability to direct management decisions.[66] The Updated Guidance, however, is clear that the *Act* captures both *de jure* and *de facto* control, which can extend beyond traditional majority shareholding.[67] For instance, certain joint venture agreements may confer sufficient voting power or operational authority to constitute control.[68] In this way, the Updated Guidance underscores the broad reach of "control" for the purposes of section 9(c). Accordingly, entities — particularly those with joint ventures or nuanced corporate structures — must carefully assess their governance arrangements when considering reporting obligations.

Second, it was not clear whether the requirement that an entity control another "entity" meant that the reporting obligation was triggered by control of an "entity" as defined in the *Act*, or just control over a body corporate that engaged in the relevant activities. The Updated Guidance is clear that the accepted interpretation is the former: control of an entity as defined in the *Act*.[69] This aligns with the plain wording of section 9(c), which uses the defined term

63 *Ibid.*

64 *What We Heard Report*, *supra* note 61.

65 *Supply Chains Act*, *supra* note 10, s 9(c).

66 Canada, Office of the Superintendent of Financial Institutions, *Control in Fact* (Regulatory and Legislative Advisory), No 2020-03 (Ottawa: OSFI, 2020), Interpretation, online: [perma.cc/6JZ5-XWQ5].

67 *Guidance for Entities*, *supra* note 46.

68 *Bresse Syndics Inc v Canada*, 2021 FCA 115 at paras 12, 22, citing *Silicon Graphics Ltd v Canada*, 2002 FCA 260 at para 67.

69 *Guidance for Entities*, *supra* note 46.

as provided in the *Act*. Practically speaking, this means that to trigger a reporting obligation under section 9(c), both the controlling and controlled entities must either be listed on a Canadian stock exchange or meet the Canadian Nexus and satisfy the Thresholds.

d. The *de minimis* exception

The original Guidance included a "carve out" or "exemption" from reporting for entities whose importing and producing activities were properly characterized as "very minor dealings."[70] Without additional context, this caused significant uncertainty for entities. To address this uncertainty, Public Safety Canada expanded on the "very minor dealings" exception by adding the following additional information:

> There is no prescribed threshold for the minimum value of goods that an entity must produce or import to be subject to the reporting obligation. However, the terms as they are used in the Act should be understood as excluding "very minor dealings" which may be interpreted in accordance with generally accepted principles of *de minimis* and evaluated within the context of each entity's business.[71]

De minimis is a legal doctrine that is applied to matters that are deemed too trifling to justify the imposition of liability or punishment.[72] When the full Latin phase is translated, the doctrine means, "the law does not concern itself with trifles." As the *Act* itself does not contain a statutory exemption for "very minor dealings," it appears that the Government has turned to the *de minimis* doctrine in the Updated Guidance to give legal effect and further clarify this exception. When interpreting a statute, the Supreme Court of Canada has linked the *de minimis* doctrine to considerations of absurdity. In *Canadian Pacific Ltd. v. Ontario*, Justice Gonthier stated:

> Where a provision is open to two or more interpretations, the absurdity principle may be employed to reject interpretations which lead to negative consequences, as such consequences are presumed to have been unintended by the legislature. In particular, because the legislature is presumed not to have intended to attach penal consequences to trivial or minimal violations of a provision, the absurdity principle allows for the narrowing of the scope of the provision. In this respect, the absurdity principle is closely related to the maxim, *de minimis non curat lex* (the law does not concern itself with trifles). The rationale of this doctrine was explained by Sir William Scott in the case of *The "Reward"* (1818), 2 Dods. 265, 165 E.R. 1482, at pp. 269-70 and p. 1484:
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> > The Court is not bound to a strictness at once harsh and pedantic in the application of statutes. The law permits the qualification implied in the ancient maxim *De minimis non curat lex*. -- Where there are irregularities of very slight consequence, it does not intend that the infliction of penalties should be inflexibly severe. If the deviation were a mere trifle, which, if continued in practice, would weigh little or nothing on the public interest, it might properly be overlooked.[73]

Given the Updated Guidance and its purpose, *de minimis* is reasonably interpretated as contextual in the context of an entity's business, but it is not a subjective standard. Ultimately,

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70 *Ibid.*
71 *Ibid.*
72 *R v Hinchey*, 1996 CanLII 157 at para 69 (SCC).
73 *Canadian Pacific Ltd v Ontario*, 1995 CanLII 112 at para 65 (SCC).

it is reasonable to interpret this clarification from Public Safety Canada as an effort to prevent creating a reporting obligation where it is not warranted because the entity's imports were very small and do not go to the entity's core business activities (for example, office furniture or office supplies, a one-off purchase of promotional items, and so on). In these situations, it is arguable that such reporting would not further the *Act*'s objectives.

There is, however, a reasonable possibility that some entities will take a percentage-based approach to compare the value of their imports to their revenue and take a position that millions of dollars worth of imports are *de minimis* in the context of their overall business. Legally, there is an argument that can be asserted for this position, and there is some case law that could be interpreted in support of this position. However, in light of the *Act*'s purpose and the majority of the case law interpreting the meaning and application of the *de minimis* standard, there is a low probability that this position would ultimately withstand government or judicial scrutiny.

3. WHAT MUST ENTITIES REPORT

Subsections 11(1) and 11(3) of the *Act* contain the substantive reporting requirements that each entity must include in its report. Section 11(1) directs that entities must describe the steps taken during the previous financial year to prevent and reduce the risk that forced labour or child labour is used at any step of the production of the entity or of goods imported into Canada by the entity. The *Act* does not, however, prescribe a minimum level of detail, specific compliance steps, or any response to the discovery of child or forced labour in an entity's supply chains.

Section 11(3) sets out the following seven mandatory categories of "supplementary information." The discussion below provides an overview of some of the various ways that an entity can provide information responsive to the reporting requirements. However, it must be remembered that beyond providing a report when obligated to do so, the only requirement of the report is that the reporting about the mandatory categories it is true and accurate. The *Act* does not require entities to take any actual compliance steps to satisfy these categories.

(a) Information about then entity's structure, activities, and supply chains.

Without any requirements, entities are able to provide as much or as little detail in response to this requirement as determined to be appropriate in the context of the entity's business. The suggested information in the Updated Guidance includes reporting about the organizational structure, employee count (within and outside of Canada), types and volumes of goods produced or imported, and operational locations.[74] In addition, with respect to the supply chain reporting, the Updated Guidance proposes identifying "the source countries or regions of origin of each of the goods and services used in the entities' supply chain."[75] Reporting should extend to controlled entities also obligated to report under the *Act*.[76]

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74 *Guidance for Entities*, *supra* note 46.

75 *Ibid.*

76 *Ibid.*

(b) Information about the entity's policies and due diligence processes related to forced labour and child labour.

Reports should outline policies and procedures addressing forced labour and child labour risks. As the *Act* is transparency legislation, it does not impose a requirement for any specific policy or due diligence process to be implemented. Instead, entities are required to report about any applicable policies or procedures that may have been implemented This leaves room for a wide range of reporting depending on an entity's circumstances. That can include third party screening programs, vendor screening questionnaires, business and supplier codes of conduct, human rights policies, and other applicable processes. In practical terms, the report should discuss what, if any, compliance and mitigation efforts the entity has taken to address this issue through its policies and procedures.

(c) Information about areas of the entity's business and supply chains at risk of using forced labour or child labour, and the steps taken to assess and manage that risk.

Under this requirement, entities are not expected to disclose that forced labour or child labour was or is actually being used.[77] Instead, in preparing the report, entities are asked to consider how their activities and supply chains *could potentially* contribute to risks that forced labour or child labour is used in its operations or supply chains.[78] This includes considerations of the geographic region of its operations or suppliers, that nature of the good being produced or imported, the industry within which the entity or its suppliers operate, to name a few. However, there is no specified minimum level of detail and entities are free to report about their risks as appropriate in the circumstances of their business and operations, so long as the report is not misleading. Entities should also explain if and how they have identified potential risks, such as through supply chain mapping, and how any risks have been dealt with.

Entities need not report on specific cases or allegations of forced or child labour.[79] If an entity does choose to disclose this information, the report should be free from personal identifying information regarding any individual or circumstance included in the report.[80]

(d) Information about measures taken to remediate any instances of forced labour or child labour.

This head of reporting assumes that instances of forced or child labor have been identified. If an entity has concluded that there is no evidence of instances of forced labour or child labour in its activities and supply chains, stating this in the report will satisfy the requirement.[81]

Where instances of forced or child labor have been identified, there is no affirmative remediation requirement in the *Act*. However, accurate reporting about any remediation that has been undertaken, or lack thereof, is required. Remedies that may be undertaken in

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77 *Ibid.*
78 *Ibid.*
79 *Ibid.*
80 *Ibid.*
81 *Ibid.*

instances of forced labour vary depend on the circumstances and may include compensation or actions to support victims and their families, taking action to prevent forced labour or child labour and associated harms from reoccurring, grievance mechanisms, and formal apologies.[82]

(e) Information about actions taken to address the loss of income to vulnerable families resulting from efforts to eliminate forced labour or child labour.

Like the prior criterion, this requirement assumes that an entity has identified instances of forced labour and child labour. However, it includes the additional assumption that the entity has taken remedial steps in response to these findings and that these actions have resulted in a loss of income to vulnerable families. If an entity has determined that vulnerable families have not experienced loss of income, stating this in the report will satisfy the requirement.[83] Again, however, if true, it is compliant to report that no steps have been taken to remediate the loss of income resulting from remediation efforts.

(f) Information about training provided to employees on these issues.

The *Act* does not impose a training obligation; however, it requires reporting about any relevant training that is provided. Where no relevant training is provided, that should also be reported. Training on forced labour and child labour within an entity can include a wide range of training activities, from entity-wide mandatory formal training courses to awareness-raising initiatives.[84] In a report, where training has been provided, entities are invited to consider providing details including whether training is mandatory or optional, if training is entity-wide or only covers employees in specific roles such as procurement, the content of the training, and how many employees have received or will receive the training.[85]

(g) Information about how the entity assesses its effectiveness in ensuring that forced labour and child labour are not used in its business and supply chains.

Under this requirement, there is no obligation to implement any particular assessment process. Entities have the flexibility to adopt any assessment process that suits their business, or not adopt any process at all. The only affirmative requirement under the *Act* is accurate reporting. Moreover, entities are only required to set out *how* they assess effectiveness, not give the results of those assessments.[86] Examples of steps an entity may take to assess its effectiveness in ensuring that forced labour and child labour are not used in its business and supply chains include: a regular review or audit of the relevant policies and procedures of the entity; tracking relevant performance indicators, such as level of employee awareness, numbers of cases reported and solved through grievance mechanisms, and numbers of contracts that include anti-forced labour and anti-child labour clauses; and partnering with external organizations to conduct an independent review or audit.[87]

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82 *Ibid.*
83 *Ibid.*
84 *Ibid.*
85 *Ibid.*
86 *Ibid.*
87 *Ibid.*

4. WHAT APPROVALS ARE REQUIRED?

Prior to submitting a report, the report must be approved by the entity's governing body.[88] In many cases, the governing body will be the board of directors. However, for entities with alternative governance structures, the governing body refers to the person or people with ultimate oversight and decision-making authority for the entity. In the case of a joint report, it must be approved either by the governing body of each entity included in the report or by the governing body of the entity that controls each entity included in the report.[89] The approval must be in the form of a statement showing that it was approved by its governing body and include the signature of at least one member of the governing body of each entity that approved the report.[90]

While a signed attestation is a mandatory requirement, the exact language used is up to the entity itself, so long as the attestation states how the report was approved, and that the approving member has the legal authority to bind the entity.[91]

5. HOW DO ENTITIES SUBMIT, DISTRIBUTE, AND PUBLISH THE REPORT

Once the report has been prepared and approved by the applicable governing body, federally incorporated entities must provide their shareholders with a copy, along with its annual financial statements.[92] Without any clear direction as to how applicable entities could satisfy this requirement, the practice that appeared to emerge in the inaugural reporting cycle was the use of the "Notice and Access" process, whereby shareholders receive notice and instructions for accessing the report electronically rather than automatically receiving a physical copy.

In addition, all entities must: (1) submit the report to the Minister of Public Safety; and (2) post the report to a "prominent place" on the entity's website.[93]

With respect to submitting the report, every entity is required to submit the report to the Minister on or before May 31, annually, using the online portal. As part of submitting the report under section 11 of the *Act*, the Minister has created a questionnaire that entities are required to complete.[94] While completing a questionnaire is not contemplated in the *Act*, it has become *de facto* mandatory, as it is necessary to complete the questionnaire to meet the *Act*'s requirement of submitting the report to the Minister.

The questionnaire consists of some short answer and multiple-choice questions designed to collect high level information from entities about the contents of the report. It allows the government to aggregate data about the reports in order to meet its own parliamentary

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88 *Ibid.*
89 *Ibid.*
90 *Ibid.*
91 *Ibid.*
92 *Ibid.*
93 *Ibid.*
94 Public Safety Canada, "Submit a Report" (2 May 2025), online: [perma.cc/LZ9B-RFBR].

reporting obligations.[95] Following the inaugural reporting cycle, the government released an updated questionnaire. The updates were non-substantive and appear to be designed to create increased transparency surrounding the sectors entities operate in and which sector any concerns in supply chains arise from.

Finally, the *Act* requires entities to make their report publicly accessible, including by publishing it prominently on its website.[96] Beyond indicating that entities were free to use discretion in complying with this requirement, the Government provided no guidance. As a result, no single identifiable trend developed. However, in a post-reporting analysis by a UN Global Compact Network Canada partner in the 2024 Business & Human Rights Accelerator, the analysis identified the following four locations as the most common locations where entities published the report: "(1) the bottom of the website next to the website terms of use, privacy policy and other legal notices (52%), (2) the 'about us section of the website (18%), (3) the sustainability / corporate responsibility / ESG section (13%) and (4) the area of the website dedicated to investor relations (7%)."[97]

E. ENFORCEMENT POWERS AND PENALTIES UNDER THE *ACT* AND RELATED STATUTES

1. QUASI-CRIMINAL SEARCH POWERS

The *Act* contains various enforcement mechanisms and penalties. The Minister may enforce the reporting obligations through warrantless searches and seizures, under which officials may enter and search an entity's property (excluding "dwelling houses") and remove anything for examination.[98] Based on the results of the search, the Minister can order the entity to take any measures the Minister considers necessary to ensure compliance with the reporting requirements.[99]

2. CORPORATE AND PERSONAL LIABILITY

Fines may also be imposed under the *Act.* An entity or individual is guilty of a summary offence and liable to a fine of up to CAD$250,000 if they (1) fail to submit a compliant annual report or make it public; (2) obstruct a designated official; or (3) fails to comply with an order from the Minister.[100]

The CAD$250,000 fine is, on its face, minor compared to fines provided under other regimes.[101] It is worth emphasizing that directors and officers can also face prosecution in their personal capacity under the *Act*. However, notwithstanding the potential for personal liability under the *Act*, supporters of the transparency regime argue that the "real teeth" of the

95 *2024 Report*, *supra* note 12.

96 *Guidance for Entities*, *supra* note 46.

97 UN Global Compact Network Canada, "A Closer Look at Canada's Modern Slavery Reporting" (22 November 2024), online: [perma.cc/X3UN-75FL].

98 *Supply Chains Act*, *supra* note 10, ss 15, 16.

99 *Ibid*, s 18.

100 *Ibid*, s 19(1).

101 See, for example, the discussion of Due Diligence Regimes in section B.1, below.

Act comes from its ability to "name and shame" organizations who have not taken steps to eradicate modern slavery within supply chains.[102]

3. *CUSTOMS ACT* AND *CUSTOMS TARIFF*

In addition to creating reporting obligations, the *Supply Chains Act* amended the *Customs Tariff* legislation to create new prohibitions directed at the importation of goods produced by child labour.[103] Import bans on goods made in whole or in part with forced or compulsory labour were already included in the *Customs Tariff*; however, in July 2020, to come into compliance with its obligations under the *Canada-United States-Mexico Agreement*,[104] Canada amended its *Customs Tariff* legislation to prohibit the importation of goods produced wholly or in part by forced or compulsory labour.[105]

Under the *Customs Act*, it is an offence to "have in his possession, purchase, sell, exchange or otherwise acquire or dispose of any imported goods in respect of which the provisions of this or any other Act of Parliament that prohibits, controls or regulates the importation of goods have been contravened."[106] This includes goods made with forced labour, child labour, or prison labour. As punishment for contravening this section of the *Customs Act*, an individual can face a prison term, corporations and individuals can also face substantial fines.[107]

II. THE GLOBAL REGULATORY LANDSCAPE: OVERVIEW OF INTERNATIONAL REGIMES

Despite significant regulatory efforts, modern slavery continues to persist around the globe, posing a serious challenge to human rights and ethical business practices.[108] In response, there has been a notable rise in corporate accountability laws aimed at promoting transparency and responsibility within supply chains.[109]

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102 "Fighting Against Forced Labour and Child Labour in Supply Chains Act", *House of Commons Debates*, 44-1, No 74 (18 May 2022) at 5538 (Hon John McKay).

103 *Customs Tariff*, SC 1997, c 36, s 132(m)(i.1); Bill S-211 Debates, *supra* note 20 at 245 (Hon Julie Miville-Dechêne).

104 *Canada-United States-Mexico Agreement as amended by Protocol of Amendment to the Agreement between Canada, the United States of America, and the United Mexican States*, 10 December 2019, Can TS 2020 No 6.

105 *Customs Tariff*, *supra* note 103; Public Safety Canada, "Import Prohibition on Goods Produced by Forced Labour" (8 February 2021), online: [perma.cc/64MG-QU83].

106 *Customs Act*, RSC 1985, c 1 (2nd Supp), s 155.

107 *Ibid*, s 160(1) ("every person who contravenes … section 155 … (a) is guilty of an offence punishable on summary conviction and liable to a fine of not more than fifty thousand dollars or to imprisonment for a term not exceeding six months or to both that fine and that imprisonment; or (b) is guilty of an indictable offence and liable to a fine of not more than five hundred thousand dollars or to imprisonment for a term not exceeding five years or to both that fine and that imprisonment").

108 See generally Jolyon Ford & Justine Nolan, "Regulating Transparency on Human Rights and Modern Slavery in Corporate Supply Chains: The Discrepancy Between Human Rights Due Diligence and the Social Audit" (2020) 26:1 Austl J H R.

109 Peter Polanowski & Megan Leahy Wright, "Supply Chain Due Diligence Requirements Coming to Canada" (18 December 2024), online: [perma.cc/GJ8G-ZSMS].

The global regulatory response has been dominated by three approaches: (1) transparency regimes, which are focused on "sharing information about an organization's activities with stakeholders, providing them with visibility on supply chain activities, including human rights risks";[110] (2) due diligence regimes, which require "a systematic process that carefully examines and evaluates an organization's supply chain operations to identify, assess and mitigate supply chain risks";[111] and (3) import bans which prohibit the entry of goods produced using forced or child labour into a country's market, shifting the compliance burden to importers, and complementing transparency and due diligence regimes by enforcing supply chain accountability at the border.[112]

This section provides an overview of the legal landscape in this area by introducing the key transparency, due diligence, and import ban regimes currently in force.

A. TRANSPARENCY REGIMES: AUSTRALIA, THE UNITED KINGDOM, THE EU, AND CALIFORNIA

As noted above, the *Supply Chains Act* is a transparency regime, requiring reporting about steps taken to prevent and reduce the risk of forced labour and child labour in an entity's supply chains, but does not require any actual steps to remediate any issues. Similar transparency regimes are found in Australia, the United Kingdom, the EU, and California.

1. AUSTRALIA

Australia's *Modern Slavery Act* requires large businesses and other entities with an annual consolidated revenue of at least AUD$100 million to annually report on the risks of modern slavery in their operations and supply chains, as well as the actions taken to address those risks.[113] Failure to comply with the *Modern Slavery Act* may result in the Minister requesting the entity remediate their failure, or otherwise risk being publicly identified.[114]

2. THE UNITED KINGDOM

Under the UK's *Modern Slavery Act*, "Commercial Organizations" with an annual turnover of not less than GBP£36 million must prepare a slavery and human trafficking statement for each financial year of the organization. This involves: (a) steps the Commercial Organization has taken during the financial year to ensure that slavery and human trafficking is not taking place (i) in any of its supply chains, and (ii) in any part of its own business; or (b) a statement that the Commercial Organization has taken no such steps.[115]

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110 *Ibid.*

111 *Ibid*; Re:Structure Lab, *Forced Labour Evidence Brief: Due Diligence and Transparency Legislation* (Sheffield: Sheffield, Stanford & Yale Universities, 2021). See also Charlotte Villiers, "Corporate Transparency Requirements: An Inadequate Form of Regulation in the Context of Global Supply Chains", University of Bristol, Law Research Paper No 004-2018; Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It* (Cambridge: Polity Press, 2020).

112 See e.g. U.S. Customs and Border Protection, "Forced Labor Frequently Asked Questions" (4 February 2025), online: [perma.cc/9ZYR-DWRQ].

113 *Modern Slavery Act 2018 (No 2)* (Commonwealth), 2018/153, s 3 (Austl).

114 *Ibid*, s 16A.

115 *Modern Slavery Act 2015* (UK), ss 54(1), (2), (4) [*MSA*].

There are few direct legal penalties for non-compliance with the reporting requirements. If a business fails to comply with their reporting requirements, the Secretary of State can seek an injunction through the High Court to compel compliance.[116] If the business continuously fails to comply with the UK *MSA* in the face of the injunction, it may be found in contempt of court, which can result in fines.[117]

3. THE EUROPEAN UNION: THE *CORPORATE SUSTAINABILITY REPORTING DIRECTIVE*

The *Corporate Sustainability Reporting Directive* was adopted in December 2022, and aims to improve and standardize the sustainability reporting of companies within the EU.[118] This directive will require large companies and listed companies to publish regular reports on their social and environmental impacts, risks, and opportunities.[119] The *CSRD* mandates that companies report according to the European Sustainability Reporting Standards, which are developed by the European Financial Reporting Advisory Group.[120] The first reports under the *CSRD* are expected to be published in 2025, covering the 2024 financial year.[121]

Key aspects of the *CSRD* include enhanced transparency, as well as standardized reporting for EU companies and groups that exceed at least two out of following three thresholds: (1) a balance sheet total of EUR€25 million; (2) a worldwide net turnover of EUR€50 million; or (3) a workforce of 250 employees.[122]

On 26 February 2025, the EU released a comprehensive set of proposals known as the "Omnibus package."[123] This package, among other proposals, advocates for the *CSRD* to be amended to bring it more in line with the *Corporate Sustainability Due Diligence Directive* (*CSDDD*).[124] This amendment would considerably narrow the scope of applicable reporting entities; only those entities with over 1,000 employees and either a EUR€25 million balance sheet total or a EUR€50 million net turnover would be captured by the *CSRD*.[125] It also seeks to create a two-year delay in the reporting requirements under the *CSRD* for large companies

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116 *Ibid*, s 54(11).

117 *Ibid.*

118 EU, *Directive 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*, [2022] OJ, L 322/15 [*CSRD*].

119 *Ibid* at 29.

120 Serge Diarra, "CSRD Omnibus: What are the Implications for Non-financial Disclosures?" (4 March 2025), online (blog): [perma.cc/3N28-FSK9].

121 *Ibid.*

122 European Commission, *Proposal for a Directive of the European Parliament and of the Council amending Directives 2006/43/EC, 2013/34/EU, (EU) 2022/2464 and (EU) 2024/1760, as regards certain corporate sustainability reporting and due diligence requirements*, COM/2025/81 final at 61 [European Commission Proposal].

123 *Ibid*.

124 EU, *Directive 2024/1760 of the European Parliament and of the Council of 13 June 2024 on corporate sustainability due diligence and amending Directive 2019/1937 and Regulation 2023/2859*, [2024] OJ, L 2024/1760 [Directive 2024/1760].

125 European Commission Proposal, *supra* note 122 at 4.

that have not yet begun implementing the *CSRD*. This means that companies that were initially required to start reporting in 2026 and 2027 would have until 2028 to comply.

4. CALIFORNIA

The *California Transparency in Supply Chains Act* requires large retailers and manufacturers doing business in California with annual worldwide gross receipts exceeding USD$100 million to disclose efforts to eradicate slavery and human trafficking from supply chains.[126] Companies' websites must provide supply chain information, including verification and audit processes, certification of suppliers, internal accountability mechanisms, and training for employees.[127]

B. DUE DILIGENCE REGIMES: THE EU, GERMANY, FRANCE, AND NORWAY

In contrast to transparency-based regimes, due diligence-based approaches emphasize proactive risk identification and mitigation to combat modern slavery. Due diligence regimes have been enacted by the EU as well as in France, Norway, and Germany. We discuss the approaches in these jurisdictions in turn.

1. THE EUROPEAN UNION: THE *CSDDD*

The *CSDDD* entered into force in July 2024 and aims to foster sustainable and responsible corporate behavior throughout companies' global value chains.[128] The *CSDDD* requires companies to identify, prevent, and mitigate adverse human rights and environmental impacts resulting from their operations, subsidiaries, and value chains.[129] The *CSDDD* covers distribution, transport, and storage of a product, but excludes end-users and product disposal.[130]

The *CSDDD* targets large EU companies with 1,000 employees and EUR€450 million turnover. It also includes financial penalties for non-compliance "based on the company's net worldwide turnover… [which] shall be not less than 5% of the net worldwide turnover of the company in the financial year preceding that of the decision to impose the fine."[131] Depending on a particular entity's net worldwide turnover amount, a 5 percent financial penalty could be a significant sum.

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126 Cal Civ Code, § 1714.43 (2010).

127 *Ibid.*

128 Directive 2024/1760, *supra* note 124 at 1, 7.

129 European Commission, "Frequently Asked Questions about the Corporate Sustainability Due Diligence Directive (CSDDD)" (29 July 2024), online: [perma.cc/DZ7A-M8UH].

130 Rebekah Mays & Tian Daphne, "CSRD and CSDDD: What are the key differences?" (12 July 2024), online (blog): [perma.cc/L3YM-A7U5].

131 Directive 2024/1760, *supra* note 124.

2. FRANCE

France has enacted a "true" due diligence regime under the *Loi sur le devoir de vigilance* (*Duty of Vigilance Law*) mandating proactive steps.[132] Specifically, the *Duty of Vigilance Law* directs that large companies headquartered in France, or with significant operations in France, must implement and publish a vigilance plan that outlines measures to identify and prevent human rights violations, environmental harm, and health risks within their operations and supply chains.[133]

The law applies to companies with at least 5,000 employees in France or 10,000 employees worldwide, including subsidiaries.[134] The vigilance plan must include several key components such as a detailed map identifying risks related to human rights, among other things, within their operations and supply chains; the steps implement and tailored actions to mitigate identified risks and prevent severe impacts; a plan for periodic assessments; and a system to monitor the effectiveness of the measures implemented.[135]

Under the *Duty of Vigilance Law*, courts can order companies that have not complied with reporting requirements to adhere or face penalties up to EUR€10 million, and if the failure to adhere leads to an incident that was preventable, the fines can increase to EUR€30 million.[136] Further, and unique to France, the *Duty of Vigilance Law* provides for private rights of action (based on French law) to seek damages resulting from a company's non-compliance.[137]

3. GERMANY

Germany's *Act on Corporate Due Diligence Obligations in Supply Chains*, entered into force on 1 January 2023.[138] The *Due Diligence Act* applies to companies that either have their headquarters or a branch in Germany with at least 1,000 employees in the country.[139]

The *Due Diligence Act* has nine mandatory due diligence obligations required of companies, including establishing a risk management system, implementing necessary remediation measures and mandatory complaint procedures, and the publishing of an annual report on how it has fulfilled its due diligence obligations.[140] These obligations apply to *all* steps in a supply chain, from the extraction of raw materials to the delivery to the consumer.[141]

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132 *LOI n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d'ordre*, JO, 28 March 2017, no 1 [*Duty of Vigilance Law*].

133 *Ibid*, art 1.

134 *Ibid.*

135 *Ibid.*

136 Worldfavor, "All You Need to Know About France's Corporate Duty of Vigilance Law" (2024), online (blog): [perma.cc/WPX2-RCNG].

137 *Duty of Vigilance Law*, *supra* note 132, art 2.

138 *Act on Corporate Due Diligence Obligations in Supply Chains*, 16 July 2021 (Germany) [*Due Diligence Act*].

139 *Ibid*, s 1.

140 *Ibid*, ss 3(1), 10(2).

141 Igor Konstantinov, "German Supply Chain Act: Due Diligence Obligations Explained" (15 December 2022), online (blog): [perma.cc/U2P8-U5DK].

Companies who do not take required action under the *Due Diligence Act* may face penalties imposed by the German Federal Office for Economic Affairs and Export Control. Additionally, any intentional or negligent violations of the due diligence obligations can result in hefty fines of up to EUR€8 million; however, for companies with an annual turnover in excess of EUR€400 million, penalties can be imposed up to 2 percent of the company's annual average turnover.[142] Finally, the *Due Diligence Act* extends the rights of German trade unions and non-governmental organizations (NGOs) by allowing them to assert third party rights violations in the name of the victim in German courts.[143]

4. NORWAY

In June 2021, the Norwegian Parliament formally adopted the *Norwegian Transparency Act* (*Transparency Act*).[144] The *Transparency Act* applies to enterprises that either reside in Norway and offer goods and services domestically or internationally, or foreign enterprises that offer goods and services within Norway and are subject to Norwegian tax regulations.

Notwithstanding its name, the *Transparency Act* includes due diligence requirements. Under the *Transparency Act*, eligible businesses must carry out due diligence in accordance with the Organization for Economic Co-operation and Development (OECD) guidelines, though foreign businesses need only conduct due diligence for the part of their activities that are linked to Norway.[145] This is an onerous requirement that, in practical application, requires the applicable companies to adopt measures to identify potential and actual violations of human rights in their supply chains, and implement mechanisms to stop, prevent, or mitigate such violations where they do occur.[146]

Businesses caught by the *Transparency Act* must provide an account of their due diligence outcomes in detail, as well as adhere to their duty to provide information, meaning that upon written request any person has the right to information from such a business regarding how that business is adequately addressing fundamental human rights and decent working conditions.[147]

C. IMPORT BANS: THE UNITED STATES AND THE EU

1. THE UNITED STATES

The *Uyghur Forced Labor Prevention Act* (*UFLPA*) prohibits the importation of goods made with forced labour from the Xinjiang Uyghur Autonomous Region of China

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142 *Due Diligence Act*, *supra* note 138, s 24(3).

143 David Weihrauch, Sophia Carodenuto & Sina Leipold, "From Voluntary to Mandatory Corporate Accountability: The Politics of the German Supply Chain Due Diligence Act" (2023) 17 Regulation & Governance 909 at 920.

144 *Act relating to enterprises' transparency and work on fundamental human rights and decent working conditions*, 1 July 2022 (Norway) [*Transparency Act*].

145 *Ibid*, ss 3-4.

146 *Ibid*; EcoVadis, "Norwegian Supply Chain Transparency Act: What Norway's New Due Diligence Law Means for Your Business and How EcoVadis Can Help" (September 2023), online (blog): [perma.cc/E4KM-4J74].

147 *Transparency Act*, *supra* note 144, s 6.

(Xinjiang).[148] The *UFLPA* establishes a rebuttable presumption that goods mined, produced, or manufactured wholly or in part in the Xinjiang region, or by entities on the *UFLPA* Entity List (that is, an extensive list of entities that are presumed to utilize forced labour), are prohibited from entering the United States.[149]

Companies can rebut the presumption by meeting the exception requirements under the *UFLPA*.[150] To do so, importers must provide clear and convincing evidence that their goods were not produced with forced labour. This is a significant evidentiary burden that involves presenting detailed supply chain documentation that traces the origin of the goods and demonstrates that forced labour was not used at any stage. Additionally, importers need to show evidence of thorough due diligence, including audits and assessments of their suppliers to ensure compliance with labour standards.[151] The U.S. Customs and Border Protection (CBP) will determine whether a company has rebutted the presumption.[152]

Failure to comply may result in the CBP seizing the prohibited goods, and the CBP is very active in this space.[153] As of May 2025, the CBP has stopped approximately USD$3.67 billion worth of prohibited goods from entering the United States pursuant to their enforcement powers under the *UFLPA*.[154]

2. THE EUROPEAN UNION: FORCED LABOUR IMPORT BAN

In December 2024, the EU's *Regulation Prohibiting Products Made with Forced Labour on the Union Market* (*FLR*) entered into force and its ban will apply from 14 December 2027.[155] The *FLR* prohibits companies from exporting from the EU, or placing or making available on the EU market, any product that was made, in whole or in part, with forced labour.[156] The *FLR* applies to all companies operating in the EU, with no limits related to revenue or jurisdiction of incorporation.[157] This broad scope includes e-commerce and other means of distance selling if the end-user is in the EU.[158] In addition to monetary penalties,

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148 *Uyghur Forced Labor Prevention Act*, Pub L No 117-78, § 3, 135 Stat 1525 (2021) [*UFLPA*]. In addition to the *UFLPA*, the United States also has powers under Section 307 of the *U.S. Tariff Act 1930*, which prohibits the importation of merchandise mined, produced, or manufactured, wholly or in part, by forced labour, to issue a withhold release order (WRO) and block the release of goods into the US where information reasonably but not conclusively indicates that goods were made with forced labor. WROs target goods from any jurisdiction: *Tariff Act of 1930*, Pub L No 119-21, § 307 (1930).

149 *UFLPA*, *supra* note 148, s 3.

150 *Ibid*, s 3(b).

151 *Ibid.*

152 US, Securities and Exchange Commission, "Conflict Minerals Disclosure" (13 November 2012), online: [perma.cc/G8MU-Y2M5].

153 *Ibid.*

154 US, Customs and Border Protection, "Uyghur Forced Labor Prevention Act Statistics" (12 May 2025), online: [perma.cc/Q4YA-57BG] [CBP Statistics].

155 EU, *Regulation 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market and amending Directive (EU) 2019/1937*, [2024] OJ, L 2024/3015.

156 *Ibid.* Note, the definition of forced labor in the *FLR* also includes forced child labour. The product ban applies to forced labour occurring in EU or non-EU countries at any stage of the supply chain (including extraction, harvest, production, and manufacture).

157 Covington, "EU Forced Labour Regulation Enters into Force" (20 December 2024), online: [perma.cc/HJB8-974E].

158 *Ibid.*

enforcement includes banning the import, requiring the product to be withdrawn from the market, and disposing of the product.

III. CONSIDERATIONS FOR THE ENERGY INDUSTRY: CHANGES AND EMERGING TRENDS

As this article has shown, there has been a growing trend away from simple transparency regimes and a push towards more stringent due diligence or import ban regimes. This future of this legislative trend, particularly in Canada, is difficult to predict in the current global socio-political climate.[159] Regardless of the uncertainty of where the law is headed, it is reasonable to expect enhanced enforcement and increased pressure from investors.

A. POTENTIAL INCREASED SCRUTINY OF IMPORTED GOODS BY CANADIAN BORDER AUTHORITIES

Human rights risks associated with global supply chains are not new and increasingly engage Canadian supply chains.[160] COVID-19 amplified the public's awareness of the risks associated with global supply chains, resulting in increased scrutiny.[161] The discussion and analysis of these risks have remained squarely in the spotlight, including an enhanced focus on the Xinjiang region of China.

There are significant concerns raised by the international community and NGOs about the Xinjiang region of China.[162] The remoteness of the Xinjiang region, and the state-led program of moving Uyghurs to work in other parts of China make human rights due diligence efforts uniquely complicated.[163] Canada has cautioned that the most common ways entities will be linked to forced labour in Xinjiang is not through direct partnerships and relationships with factories and suppliers in Xinjiang, but rather through indirect relationships deeper in their supply chains.[164]

While many countries have issued cautions about specific regions in China, the United States has imposed a ban on the importation of goods from the Xinjiang region, namely through the *UFLPA*, as discussed above. As a result, companies sourcing directly or indirectly from Xinjiang or engaging in Xinjiang's market face both legal and reputational risks.[165] Canada has come under fire from the United States for its failure to adequately address the

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159 The global socio-political climate in 2025 is marked by rising concerns about inflation, military conflict, and immigration, alongside increasing polarization and the erosion of global democracy, with economic policies and outcomes profoundly impacting political landscapes: see e.g. World Economic Forum, *The Global Risks Report 2025*, 20th Edition (Geneva: WEF, 2025).

160 Statistics Canada, *Research to Insights: Tracking Canada's Evolving Supply Chain Links and Their Effects*, Catalogue No 11-631-X (15 March 2024) online: [perma.cc/BA38-PULT]. Additionally, between 2019 and 2021, the change in exposure to imported specified intermediate products by selected categories and principal source countries was increased with respect to China for broad economic categories as defined in United Nations: Canada, Office of the Chief Economist, *The Growth of Supply Chain Trade Within the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP)* (December 2023), online: [perma.cc/5WR3-WEDD].

161 Bill S-211 Debates, *supra* note 20 at 246 (Hon Julie Miville-Dechêne).

162 Government of Canada, "Study of Supply Chain Risks Related to Xinjiang Forced Labour" (6 April 2022), online: [perma.cc/K7DR-BMWW].

163 *Ibid.*

164 *Ibid.*

165 *Ibid.*

importation of goods from the Xinjiang region. The United States has alleged that Canada's lacklustre border security measures are undermining its own efforts to prevent goods produced using forced labour from entering North America.[166]

Unlike the specific import ban in the United States, Canada has a general ban on the importation of goods which are "mined, manufactured or produced wholly or in part by *forced labour*," through its *Customs Tariffs*.[167] Despite this ban, as of 24 September 2024, the Canadian Border Service Agency (CBSA) has only intercepted and assessed approximately 50 shipments at the Canadian border.[168] One of these shipments was abandoned at the Canadian border by the importer, with the remaining shipments ultimately being permitted entry.[169] This number is in stark contrast to the 16,100 shipments detained by the CBP in the United States under the *UFLPA* since 2022.[170] Of those shipments detained by the CBP, 9,436 were ultimately denied entry into the United States.[171] The CBSA has been criticized for its failure to enforce the ban under the *Customs Tariff* and has been called upon to strengthen its measures amid concerns that Canada is becoming "a dumping ground for products made by … forced labour."[172]

Against the backdrop of the *UFLPA*'s success in preventing the importation of goods produced using modern slavery, the United States has been critical of Canada's approach to address the issue.[173] In a 2023 United States hearing examining the effectiveness of the *UFLPA* thus far, concerns were raised about Canada's slow implementation of similar measures.[174] On 18 September 2024, four members of Congress who led the effort to pass the *UFLPA* wrote a letter to Canada and Mexico urging the implementation of further measures to stop the import of goods produced using forced labour into North America.[175] Each of these members of Congress are also current or former chairs of the Congressional-Executive Commission on China (CECC), a United States governmental institution which monitors human rights in China.[176] Specifically, the letter encourages joint action between the three nations pursuant to obligations under the United States-Mexico-Canada trade

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166 Ryan Tumilty, "US legislators want Canada to do more to prevent slave-made goods from entering North America", *National Post* (24 September 2024), online: [perma.cc/TMK7-4EQQ]; Alexander Panetta, "Canada's Failure to Block Forced-Labour Imports Draws U.S. Scrutiny", *CBC News* (5 June 2024), online: [perma.cc/678E-7A6G].

167 *Customs Tariff*, *supra* note 103, s 132(l)(m)(i.1), as amended by *Canada–United States–Mexico Agreement Implementation Act*, SC 2020, c 1, s 204(8).

168 Tumilty, *supra* note 166.

169 *Ibid.*

170 CBP Statistics, *supra* note 154.

171 *Ibid.*

172 Jeff Semple, "Canada a 'Dumping Ground' for Products made by Forced Labour, Ottawa Promises Crackdown", *Global News* (13 June 2023), online: [perma.cc/ELF3-C6KF].

173 Panetta, *supra* note 166.

174 Jeremy Nuttall, "Is Canada Becoming a Dumping Ground for Goods Made with Uyghur Forced Labour? Here's Why Some are Raising the Alarm", *The Toronto Star* (21 April 2023), online: [perma.cc/V7EC-S2WH].

175 Letter from the Honourable Katherine Tai, United States Trade Representative to Secretary Raquel Buenrostro, Secretariat of Economy (Mexico) and the Honourable Mary Ng, Minister of Export Promotion (Canada) (18 September 2024), online (pdf): [perma.cc/Z4WA-YY3V].

176 *Ibid.*

agreement and suggests the enactment of regimes similar to the *UFLPA* in Canada and Mexico, including the implementation of rebuttable presumptions for importers.[177]

Interestingly, during the United States legislative debates nearly three years ago, Miville-Dechêne made the following comments:

> Forced labour and child labour are among the problems that have been exacerbated by the pandemic. For example, we know that the Government of Canada awarded $220 million in contracts for disposable gloves to a subsidiary of the Malaysian company Supermax. Former Supermax workers said that they did back-breaking work for 12 hours a day, 7 days a week, and were not even permitted to take washroom breaks when needed. They were also never able to pay off their debts.
>
> Despite the fact that these allegations of forced labour came to light as early as January 2021, Canada continued to receive deliveries until October. Canada waited for our American neighbours to ban the entry of Supermax products into the U.S. before taking action.
>
> Let's not forget that the United States can ban merchandise if "the information available reasonably but not conclusively indicates" production by forced labour, while Canada can intervene only if a much higher standard is met. That standard requires "legally sufficient and defensible evidence" of production by forced labour. Given that it is extremely difficult to document in detail forced labour practices abroad, Canada's decision in this regard means that in practice we very rarely intervene. That is unfortunate.[178]

Canada is aware that it is lagging behind its peers when it comes to its enforcement measures at its border. Despite this, there has been no public response from Canada's Minister of Export Promotion, Mary Ng, to whom the September 2024 letter from the CECC was addressed. Notwithstanding this silence, the current political climate suggests that Canada will continue to face pressure from its peers to enhance its enforcement actions.[179]

B. STAKEHOLDER AND INVESTOR DEMAND FOR SUSTAINABLE AND ETHICAL PRACTICES

The very recent political change in the United States has created significant uncertainty regarding investor preference for Environmental, Social, and Governance (ESG) matters. However, this uncertainty created by the recent political developments aside, the trend over the last several years has been that investors are increasingly demanding that companies deliver not only strong financial performance but also demonstrable commitments to sustainability and human rights.[180] With global awareness of forced labour and child labour risks rising, investors and NGOs have been using their influence to hold companies

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177 *Ibid.*

178 Bill S-211 Debates, *supra* note 20 at 245 (Hon Julie Miville-Dechêne).

179 While outside the scope of this article, it is important to note that in the current political climate with increasing concerns about improper or inadequate border protection, the issue of Canada's actual or perceived lack of enforcement could inadvertently become a key issue, garnering significant media attention.

180 World Economic Forum, *Measuring Stakeholder Capitalism: Towards Common Metrics and Consistent Reporting of Sustainable Value Creation*, White Paper (Geneva: WEF, 2020) at 7.

accountable for their supply chain practices.[181] Canadian companies have not been immune from this scrutiny.

Exploitive labour practices are now widely recognized not just as human rights issues, but as a business and investment risk.[182] As such, stakeholder and investor pressure has been a key driver of improved transparency, corporate policy reform, and responsible business conduct in recent years.[183] Notably, multi-stakeholder engagement and investor stewardship tools — including proxy voting and collaborative engagements — have shaped how businesses address modern slavery risks.[184]

One example of investor-led initiative is the Investors Against Slavery and Trafficking Asia-Pacific (IAST APAC).[185] IAST APAC is a multistakeholder group comprised of over 50 institutional investors with approximately AUD$12 trillion in assets under management, along with civil society organizations.[186] IAST APAC focuses on two primary areas: investor advocacy and information sharing.[187] Its members have engaged companies in the Asia-Pacific region to identify, remediate, and prevent modern slavery in operations and supply chains.[188] Similar initiatives have emerged globally, such as the UK-based "Find It, Fix It, Prevent It" coalition, which has influenced modern slavery reporting practices among major public companies.[189]

The power of investor stewardship has also been demonstrated through targeted proxy voting strategies.[190] In the UK, asset manager Rathbones launched the "Votes Against Slavery" campaign, committing to vote against the re-election of directors and the approval of modern slavery reports where companies fail to meet their obligations under the UK MSA.[191] In 2021, Rathbones' stewardship team engaged 61 of the Financial Times Stock Exchange 350 companies that had not published required disclosures; by January 2022, all 61 companies had come into compliance.[192] The 2024 iteration of the campaign saw over 122

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181 First Sentier MUFG Sustainable Investment Institute & Walk Free, *Modern Slavery & Remediation—An Investor's Guide* (New York: First Sentier Investors (US) LLC, 2024) at 23 [Investor's Guide].

182 Bettina Reinboth, *An Investor Briefing on the Apparel Industry: Moving the Needle On Responsible Labour Practices*, ed by Ruth Wallis (London: PRI Association, 2017) at 4.

183 Hart O Awa, Willie Etim & Enyinda Ogbonda, "Stakeholders, Stakeholder Theory and Corporate Social Responsibility (CSR)" (2024) 9:11 Intl J Corp Soc Responsibility 1 at 11–12; Melina Heinrich-Fernandes & Holger Grundel, *Promoting Responsible Business Conduct: a Scoping Paper for Donors Supporting Private Sector Engagement* (Cambridge: Donor Committee for Enterprise Development, 2022) at 8.

184 Investor's Guide, *supra* note 181 at 5, 23.

185 IAST-APAC, "Home", online: [perma.cc/TN8Y-Q8DH].

186 *Ibid.*

187 IAST-APAC, "Framework and Approach", online: [perma.cc/KFK8-BMG3].

188 Rathbones, *Voting Policy 2024: a Framework for How We Achieve Our Governance Goals* (Liverpool: Rathbones, 2024) at 39, online (pdf): [perma.cc/BX3D-ZN3H] [Rathbones Voting Policy].

189 CCLA Investment Management, "CCLA-Led Modern Slavery Programme Announces Progress Across Corporate Engagement, Public Policy and Data" (2 October 2024), online: [perma.cc/TS5L-SAGY].

190 Josh Black, Will Arnot & Miles Rogerson, "Investor Stewardship 2024" (1 December 2024), online (blog): [perma.cc/KPF4-FMYJ].

191 Rathbones Voting Policy, *supra* note 188.

192 Rathbones, "Rathbones' 'Votes Against Slavery' Targets FTSE 350 and AIM Companies for Breaches of Modern Slavery Act Disclosure Requirements" (26 March 2025), online: [perma.cc/Y4KP-Q7DU].

investors participating, representing GBP£9.6 trillion in assets under management.[193] Rathbones' engagement has not only improved disclosure but has also been credited with elevating board-level awareness of supply chain human rights risks.[194]

Although Canadian proxy advisory services, such as ISS and Glass Lewis, have not yet incorporated modern slavery into their Canadian voting guidelines, there has been increasing support among Canadian institutional investors for stronger human rights stewardship.[195] For example, the Canada Pension Plan Investment Board (CPPIB) has integrated human rights risk into its investment decision-making process and stewardship activities.[196] CPPIB has joined global coalitions engaging companies over child labour in cobalt supply chains, while also supporting dozens of shareholder proposals addressing human rights due diligence and disclosure.[197]

Canadian investors have also more recently been at the forefront of policy advocacy.[198] In 2018, the Shareholder Association for Research and Education coordinated a coalition of institutional investors representing over CAD$2.3 trillion in assets calling for federal supply chain legislation.[199] Their position was clear: mandatory human rights due diligence and reporting are essential tools for managing risk and enabling informed investment decisions. This advocacy helped lay the groundwork for the 2023 enactment of the *Act*.[200]

From an investor perspective, it is arguable that Canada's *Supply Chains Act* introduces valuable new transparency, equipping shareholders with comparable, standardized data they can use to assess and engage companies.[201] According to the Responsible Investment Association of Canada, such disclosures enable investors to benchmark corporate practices, identify laggards, and target stewardship efforts more effectively.[202] Shareholder proposals, dialogue with management, and even voting against directors are among the mechanisms

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193 Rathbones, "Rathbones Targets Modern Slavery for Third Year with Biggest Collaborative Engagement Yet" (5 April 2022), online: [perma.cc/3ZML-DEMZ].

194 PRI, "Case Study: Rathbones: Votes Against Slavery" (10 February 2022), online: [perma.cc/9H5K-JZ4Z]; Brunel Pension Partnership, *2024 Responsible Investment and Stewardship Outcomes* (Bristol: Brunel Pension Partnership, 2023) at 47, online (pdf): [perma.cc/3PGT-X729].

195 ISS Governance, *Proxy Voting Guidelines Benchmark Policy Changes for 2025: U.S., Canada, and Americas Regional* (New York: ISS Americas, 2024), online (pdf): [perma.cc/FXG6-8EZP]; Glass Lewis, *2025 Benchmark Policy Guidelines – Canada* (San Francisco: Glass, Lewis & Co, 2025), online (pdf): [perma.cc/7Y39-NTJN]; Michelle Vigod, Julian Di Bartolomeo & Duncan Laurie, "Proxy Advisors Update Canadian Voting Guidelines for 2025" (6 January 2025), online: [perma.cc/5ZGM-EZ8J].

196 CPP Investments, "Our Approach to Sustainable Investing: Adding Human Rights as a Focus Area", online: [perma.cc/2MMN-HZB4].

197 *Ibid.*

198 Shareholder Association for Research and Education to the Government of Canada, "Investor Statement on Supply Chain Modern Slavery Legislation in Canada" (5 June 2018), online (pdf): [perma.cc/62ZE-X79F].

199 *Ibid.*

200 *Ibid*; Anthony Schein, "SHARE Supports Passing of Bill S-211, Modern Slavery Act, but More Work Needs to Be Done" (4 May 2023), online: [perma.cc/69WS-423Y].

201 RBC Global Asset Management, "Investor perspectives on modern slavery and supply chain risks" (10 July 2024), online: [perma.cc/2YBG-SLH2].

202 Maia Becker & Nureen Nagra, "Spotlight on Modern Slavery and Its Impact on Supply Chains" (27 June 2024), online: [perma.cc/H3GW-MJQG].

investors can use to encourage companies to go beyond compliance and adopt best-in-class human rights due diligence.[203]

With the EU's move toward mandatory due diligence, it appears that the international regulatory trend is leaning towards increased expectations, and Canadian companies that lag in addressing risks of forced labour and child labour in their supply chains may find themselves out of step with global peers.[204] Ultimately, the message from stakeholders and investors in recent years has been clear: ethical supply chain management is not just a "nice-to-have."[205] Through coalition-building, proxy voting, and sustained engagement, investors have shaped a new norm of corporate accountability. Canadian energy companies should expect growing scrutiny into their sustainability strategies, not only to comply with existing laws, but to lead in a global market that has increasingly becoming defined by ethical performance.

C. THE ROLE OF STAKEHOLDER ENGAGEMENT AND CORPORATE GOVERNANCE

As Canadian businesses prepare for and anticipate changes to the evolving compliance landscape, the role of stakeholder engagement and corporate governance should not be a secondary consideration.[206] Over the past two decades, stakeholder concerns and public pressures have led to evolving forms of social and environmental disclosure around the world.[207] Often, stakeholder expectations with respect to reporting and disclosure on these matters far surpass legislated standards.[208] Notwithstanding the United States political developments, these expectations for action and disclosure may continue to rise as social media platforms provide the public and frustrated stakeholders with enormous platforms, turning them into instant human rights activists without any real limits to their audiences. Like climate change, the issue of modern slavery may continue to grow in importance as more people become aware of it and choose to speak with their money.[209]

To proactively strengthen stakeholder relationships and avoid reputational risks, Canadian companies can consider engaging with relevant stakeholders proactively. To maximize the benefits that can flow from engaging with stakeholders, companies should seek to identify areas of concern and adjust corporate policies to respond to those concerns

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203 Kishanthi Parella, "Investors as International Law Intermediaries: Using Shareholder Proposals to Enforce Human Rights" (2021) 45:2 Seattle UL Rev 41.

204 Gunnar Friede, Timo Busch & Alexander Bassen "ESG And Financial Performance: Aggregated Evidence from More Than 2000 Empirical Studies" (2015) 5:4 J Sustainable Finance & Development 210.

205 Ashley Reichheld, John Peto & Cory Ritthaler, "Research: Consumers' Demands Are Rising", *Harvard Business Review* (18 September 2023), online: [perma.cc/N6V9-TUVD].

206 PWC, "2025 Canadian Sustainability Reporting Insights: Are Canadian Companies Keeping Pace?" (2025), online: [perma.cc/RVH5-5RY4].

207 Muhammad Azizul Islam & Chris J Van Staden, "Modern Slavery Disclosure Regulation and Global Supply Chains: Insights from Stakeholder Narratives on the UK Modern Slavery Act" (2021) 180 455 J Bus Ethics 455.

208 PWC, *supra* note 206.

209 Robert G Eccles, "How Companies Can Lead Fight Against $150 Billion Human Trafficking Trade", *Forbes* (18 July 2017), online: [perma.cc/5QXT-GLS3].

accordingly.[210] Canadian businesses that have robust policies in place for other ESG issues can leverage such frameworks in the development or strengthening of new policies to address modern slavery risks within supply chains.[211]

Corporate boards play an important role in building interest in, enacting, and enforcing policies to mitigate modern slavery. As such, compliance within an organization should begin with the board of directors and senior executives setting the tone and demonstrating commitment to addressing modern slavery risks.[212] Like other ESG risks, boards must identify and understand modern slavery risks and advise stakeholders on how these risks are being addressed to maintain credibility with customers, investors, non-government organizations, and the public.[213] Companies who fail to do so may increasingly be exposed to reputational and other business risks.[214]

D. OPPORTUNITIES FOR DEMONSTRATING LEADERSHIP IN SUSTAINABLE SUPPLY CHAIN PRACTICES

In understanding that modern slavery risks are present in every supply chain, including those in the energy sector, there is ample opportunity for companies to emerge as industry leaders in sustainable supply chain practices.[215]

Notwithstanding the fact that the *Act* does not mandate entities to positively take any steps other than providing a true and accurate report, there are a number of compelling reasons for improving human rights aspects throughout the supply chain, beyond seeking mere compliance. These reasons include protecting reputation and brand value; meeting investors' and stakeholders' expectations; minimizing business disruptions from social and economic impacts; meeting existing and emerging legal and reporting requirements; creating efficiency across supply chains; meeting evolving customer and business partner requirements; and innovating for a changing market.[216]

Opportunities for leadership are varied and are context specific.[217] However, one way that links directly to the Updated Guidance is by reviewing and adopting the four key components of a corporation's duty with respect to human rights due diligence as set out by the United Nations Guiding Principles on Business and Human Rights (UN Guidelines) and the Organization for Economic Co-operation and Development Due Diligence Guidance for Responsible Business (OECD Guidelines):

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210 Enodo Rights & Liberty Global | Liberty Asia, *Modern Slavery Governance: Basics for Boards* (Enodo Rights & Liberty Global, 2018), online (pdf): [perma.cc/XCL9-M3EM].

211 *Ibid.*

212 Rachel Risoleo, "The Responsibility of Corporate Boards in Fighting Modern Slavery" (25 July 2017), online (blog): [perma.cc/PZ4T-4QDR]; Marla Orenstein, Dinara Millington & Brendan Cooke, *ESG and the Canadian Energy Sector* (Calgary: Canada West Foundation, 2021).

213 SER, "Stakeholder Engagement in Guidelines and Legislation" (2025), online: [perma.cc/JQ8Z-55NX].

214 Eccles, *supra* note 209.

215 Orenstein, Millington & Cooke, *supra* note 212.

216 United Nations Global Compact & BSR, *Supply Chain Sustainability: A Practical Guide for Continuous Improvement*, 2nd ed (UN Global Compact & BSR, 2015) at 15.

217 Orenstein, Millington & Cooke, *supra* note 212.

1. Identification and assessment of actual or potential adverse human rights impacts in business relationships;

2. Formation and implementation of a plan of actions to address these risks;

3. Effective monitoring of measures taken; and

4. Issuing reports on actions taken and their outcomes.[218]

Canada, the EU, the UK, and Australia each reference these guidelines in their statutory guidance.[219] Accordingly, the due diligence recommendations and principles contained in these guidelines offer a helpful starting point for entities seeking guidance on leadership opportunities in supply chain practices. [220]

To identify and assess actual or potential risk of modern slavery within supply chains, the OECD Guidelines recommend conducting a broad scoping exercise to identify areas where risks are most likely to be present.[221] Once a broad analysis has been conducted and significant risk areas have been identified, the OECD Guidelines recommend carrying out in-depth assessments of operations, suppliers, and other business relationships in order to assess actual and potential instances of modern slavery within supply chains.[222] The UN Guidelines recommend drawing on individuals with human rights expertise, both internally and externally, during this phase of the due diligence process.[223] Practically, this could entail engaging an independent auditor to examine an entity's supply chain.

Once a supply chain analysis has been completed, an entity must address any instances or risks of modern slavery it finds. The OECD Guidelines recommend involving in-house legal counsel and impacted or potentially impacted stakeholders and rightsholders to create a plan for ceasing activities causing or contributing to modern slavery.[224] The UN Guidelines recommend integrating these plans across all relevant internal functions and processes.[225] Effective integration will require responsibility being assigned to the appropriate individuals within the business, and the implementation of internal decision-making, budget allocation, and oversight processes.[226] Oversight and responsibility for implementing plans to stop or mitigate risks should be assigned to relevant senior management.[227] Boards of companies should also generally be involved with approving an enterprise's policies involving

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218 OECD, "OECD Due Diligence Guidance for Responsible Business Conduct" (2018) at 21 [OECD]; UN, "Guiding Principles on Business and Human Rights" (2011) [UN Guiding Principles].

219 *Guidance for Entities*, *supra* note 46; Austl, Commonwealth, Attorney-General's Department, *Commonwealth Modern Slavery Act 2018: Guidance for Reporting Entities* (2023) at 30; UK Home Office, "Statutory Guidance: Transparency in supply chains: a practical guide" (last modified 30 July 2025), online: [perma.cc/5JTA-KP42].

220 This assumes that a company is not already subject to a law requiring due diligence steps in another jurisdiction.

221 OECD, *supra* note 218 at 25.

222 *Ibid* at 26.

223 UN Guiding Principles, *supra* note 218 at 19.

224 OECD, *supra* note 218 at 29.

225 UN Guiding Principles, *supra* note 218 at 20.

226 *Ibid* at 21.

227 OECD, *supra* note 218 at 23.

responsible business conduct.[228] Accordingly, entities may wish to consider appointing board members with expertise on responsible business conduct issues to oversee implementation of plans developed by senior management.[229]

Upon creating plans to address modern slavery risks relying on input from appropriate members of the business, the implementation and effectiveness of the plan should be tracked.[230] Periodic assessments of business relationships should be carried out to ensure that risk mitigation measures are being pursued in accordance with an entity's policies.[231] Third party audits or reviews may also be conducted to track the effectiveness of measures in place to identify, prevent and mitigate risks and instances of modern slavery within an entity's supply chain.[232] Finally, organizations should communicate information on its due diligence policies, processes, and activities to address modern slavery within its supply chain.[233] These reports should include the findings and outcomes of an entity's due diligence efforts. [234]

Each of the procedural due diligence recommendations within the UN Guidelines only necessitate compliance to the extent appropriate for the size of the business enterprise and the nature and context of operations.[235] The UN Guidelines also acknowledge that where business enterprises have large numbers of entities in their value chains, it may be unreasonably difficult to conduct due diligence for adverse human rights impacts across them all.[236] Businesses with complex organization structures should endeavor to identify general areas where the risk of adverse human rights impacts is most significant and prioritize these for human rights due diligence.[237] Significant risks may be identified due to certain suppliers' or clients' operating context, the particular operations, products or services involved, or other relevant considerations.[238]

A second way in which entities can demonstrate leadership in their supply chain practices is by developing a compliance program, or enhancing an existing compliance program, to proactively address the risks of forced labour and child labour in supply chains. This can include:

- Implementing clear policies that prohibit the use of forced and child labour;
- Conducting risk-based due diligence across all tiers of the supply chain;
- Engaging suppliers through onboarding screening, training, and contractual obligations;

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228 *Ibid* at 57.
229 *Ibid.*
230 *Ibid* at 32; UN Guiding Principles, *supra* note 218 at 22.
231 OECD, *supra* note 218 at 32; UN Guiding Principles, *supra* note 218 at19.
232 OECD, *supra* note 218 at 32; UN Guiding Principles, *supra* note 218 at 23.
233 OECD, *supra* note 218 at 33; UN Guiding Principles, *supra* note 218 at 23.
234 OECD, *supra* note 218 at 33; UN Guiding Principles, *supra* note 218 at 23.
235 UN Guiding Principles, *supra* note 218 at 15.
236 *Ibid* at 18.
237 *Ibid.*
238 *Ibid.*

- Establishing robust grievance and remediation mechanisms; and
- Conducting ongoing monitoring and review through audits and performance metrics.

A well-designed compliance program not only demonstrates a commitment to ethical sourcing but also strengthens resilience, enhances investor confidence, and positions the company as a responsible leader in a competitive global market.

IV. CONCLUSION

As global supply chain regulations evolve, energy companies are forced to navigate increasingly stringent and often ambiguous legal requirements in multiple jurisdictions. Understanding compliance strategies and best practices will be crucial in mitigating legal risks and protecting corporate reputations through corporate responsibility. The *Supply Chains Act* is Canada's first contribution to the international efforts to combat modern slavery, and likely will not be its last.

Since the *Act*'s enactment, Canada's peers have strengthened existing transparency legislation and enacted due diligence requirements. Even without a legislated due diligence requirement, organizations should consider the possibility that increased focus on sustainability from investors may require voluntary engagement in due diligence practices to satisfy investors and remain competitive with international peers in the years to come.