

Second reading Speech, Bill S-211

Fighting Against Forced Labour and Child Labour in Supply Chains Act

Introduction and Background

Dear Colleagues:

I rise to speak for the Second reading of Bill S-211, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act*.

This is the third time that I have introduced this bill.

The first version died when Parliament was prorogued. The 2nd version died on the Order Paper when the last election was called. Hopefully this time will be the right one.

While the essence of the Bill remains the same, several things have changed in recent months that have made the passage of a Canadian modern slavery law more relevant than ever.

I would like to bring four things to your attention.

1) The impact of the pandemic

First, there is the pandemic, and in particular the pressure it has exerted on public and private supply chains.

The pandemic has opened our eyes to certain personal, social and economic realities. It showed us the limits of our system, its iniquities, and it reminded us of our intimate connection to the rest of the planet, on which we depend for so many goods and services that we consume every day - from our phones to our clothes to much of our food.

Forced labour and child labour were among the problems aggravated by the pandemic. We know, for example, that the Government of Canada has awarded contracts worth \$ 220 million for disposable gloves from a subsidiary of the Malaysian company Supermax. Former Supermax workers have said they were forced to work 12 hours a day, 7 days a week, without even being able to go to the bathroom when needed, and without being able to free themselves from their debts.

Despite allegations of forced labour surfacing as early as January 2021, Canada maintained deliveries until last October. It was not until our American neighbors blocked the entry of Supermax products into the United States that Canada took action.



It should be noted in this regard that the United States can block goods on the basis of “information that reasonably but not conclusively indicates” that certain goods are produced by forced labour¹, while Canada conditions its interventions on a much higher standard of “legally sufficient and defensible evidence”.² Considering that it is extremely difficult to precisely document forced labour practices abroad, Canada’s choice of evidentiary standard means that in practice interventions will be extremely rare.

According to the ILO and UNICEF, after years of decline, global child labour has started to increase again. The number of children concerned stood at 160 million in 2020, an increase of 8.4 million in four years. And it could climb an additional 9 million by the end of 2022. It is estimated that there were 25 million victims of forced labour in 2016, compared to 21 million in 2012.³

2) An omnipresent problem

A complex international issue

Although the pandemic may have aggravated the problem in an exceptional way, we should recognize that the issue of forced labour has always existed. It is a complex phenomenon, fueled by poverty, discrimination and inequality.

There are many ways to make a person fall into the trap of forced labour: endless debt repayment, confiscation of identity documents, threats to report to immigration authorities, intimidation, violence and so on. Several cases are sadly well-known: children exploited in certain African mines⁴, fishermen and migrants imprisoned on fishing boats in Asia⁵, foreign workers in Dubai,⁶ etc.

Consumers in rich countries also participate in this system – most often unintentionally – by always seeking the cheapest products possible. But low prices can come at a high human cost.

These cases are not exceptional. Forced labour and child labour have long permeated our everyday consumption.

¹ US Code 19 CFR § 12.42 (e)

² See: <https://aboveground.ngo/wp-content/uploads/2021/06/BlairCombined.pdf>; Jacob Atkins, *Canada’s forced labour import bans go unenforced*, Global Trade Review, 7 juillet 2021.

<https://www.gtreview.com/news/americas/canadas-forced-labour-import-bans-go-unenforced/>

³ <https://www.lesechos.fr/economie-france/social/la-france-veut-renforcer-sa-lutte-contre-le-travail-des-enfants-et-le-travail-force-1362458>; International Labor Organization and Walk Free Foundation, *Global Estimates of Modern Slavery*, 2017:

https://www.ilo.org/wcmsp5/groups/public/@dgreports/@dcomm/documents/publication/wcms_575479.pdf

⁴ Human Rights Watch, *Africa’s Child Mining Shame*, 11 September 2013;

<https://www.hrw.org/news/2013/09/11/africas-child-mining-shame#>

⁵ Ian Urbina, ‘Sea Slaves’: *The Human Misery That Feeds Pets and Livestock*, The New York Times, 27 Juillet 2015

<https://www.nytimes.com/2015/07/27/world/outlaw-ocean-thailand-fishing-sea-slaves-pets.html>

⁶ <https://travellingjezebel.com/modern-slavery-dubai/>

Generally, it is not the Canadian companies that are directly involved, but rather their subcontractors, as well as their suppliers of raw materials and agricultural products. There lies the main risk: in supply chains.

It is exceedingly difficult for consumers to know which products have been produced by children or by adults working under duress. Not all fair trade certifications are created equal, and industry self-regulation has obvious limitations.⁷

In 2016, it was estimated that \$ 34 billion worth of goods imported into Canada could have been manufactured, in whole or in part, through forced labour or child labour. Some 1,200 companies imported at least one of these high-risk goods into Canada.⁸

In recent months and years, NGOs and media reports have shined the spotlight on this uncomfortable reality.

A recent World Vision survey⁹ revealed that nearly \$ 4 billion worth of agricultural products imported into Canada could be the product of forced labour and child labour, particularly from Mexico. That's about 10% of all Canadian food imports, and the equivalent of \$ 264 per Canadian household. This is also a 63% increase in imports of risky products in 10 years.

Among the worst foods: coffee, fish, cane sugar, tomatoes and cocoa. Common products for many of us.

Just a few weeks ago, we learned in The Globe & Mail that Canadian authorities had seized - for the first time - a shipment of garments from China.¹⁰ But the authorities did not want to reveal its contents, nor the importing company.

Even more recently, there have been reports of child labour in Congo's cobalt mines, where some of the materials needed to make electric cars are sourced, most often to be sold in wealthy countries in Europe and North America.¹¹

⁷ Genevieve LeBaron, *Combatting Modern Slavery: Why Labour Governance is Failing and What We Can Do About It*, Polity Press, 2020

⁸ World Vision Canada, *Proposed Canadian Modern Slavery Bill draws needed attention to a pressing issue*, 13 décembre 2018; <https://www.worldvision.ca/about-us/media-centre/proposed-canadian-modern-slavery-bill>

⁹ World Vision Canada, *Warning: May Contain Child Labour*, 3 février 2021; <https://www.worldvision.ca/WorldVisionCanada/media/NCFS/Risky-Canadian-Grocery-Report-Final-03Feb2021.pdf>

¹⁰ Steven Chase, *Canada seizes goods made with forced labour from China; MPs urge more action for Uyghurs*, The Globe and Mail, 15 novembre 2021; <https://www.theglobeandmail.com/politics/article-canada-seizes-goods-made-with-forced-labour-from-china-mps-urge-more/>

¹¹ Dionne Searcey and Eric Lipton, *Hunt for the 'Blood Diamond of Batteries' Impedes Green Energy Push*, The New York Times, 29 novembre 2021; <https://www.nytimes.com/2021/11/29/world/congo-cobalt-albert-yuma-mulimbi.html>



A Canadian reality as well

Even if most cases of forced labour are identified abroad, we should not assume that this reality does not exist here.

The Global Slavery Index estimates that 17,000 people are believed to be living in conditions of modern slavery in Canada. Our temporary agricultural workers are particularly at risk. Over the years, there have also been other cases of illegal practices in Canada.

For example, in February 2019, 43 workers of Mexican origin were released by Ontario police.¹² These men had been trafficked to Canada to work as maintenance workers in hotels.

The practices of forced labour and child labour are violations unworthy of our humanity and the principles that we put forward. We cannot fight them only with virtuous speeches. We must act.

The Case of the Uyghurs

In this regard, I would like to dwell for a moment on the plight of the Muslim Uyghur minority in the Xinjiang region of China. Today, the case of the Uyghurs is undoubtedly the most striking example of the methods used by an autocratic regime to subdue an entire population.

For years, allegations of forced labour in re-education camps and in the tomato and cotton fields have multiplied.¹³ Several credible sources have reported on it -- so much that the House of Commons has even called the situation a genocide.

A recent shocking CBC investigation¹⁴ found that many of the processed tomato products we consume in Canada originate from the Xinjiang region and can be found in our grocery stores under labels like Del Monte, Nestlé, Unilever and Doria.

Should we ban all products from the Xinjiang province, as my colleague Leo Housakos is proposing?

We will have this debate, but until then I would like to point out that our two bills are not contradictory.

In fact, Bill S-211 amends the Customs Tariff to prohibit the importation of goods manufactured or produced not only through forced labour, but also through child labour. Senator Housakos wants to block all imports from Xinjiang. We seek to ensure that all companies that import products into Canada are more transparent about their supply chains.

¹² <https://www.cbc.ca/news/canada/toronto/human-trafficking-bust-barrie-1.5014269>

¹³ Above Ground, Creating Consequences: Canada's moment to act on slavery in global supply chains, Juin 2021; <https://aboveground.ngo/wp-content/uploads/2021/06/Above-Ground-forced-labour-report-June-2021.pdf>

¹⁴ <https://www.cbc.ca/news/canada/marketplace-tomato-products-investigation-1.6227359>

3) Political commitments

The good news is that the time seems better than ever to finally take action.

A few months ago, the Canadian Minister for International Trade signed a G7 declaration in which she, along with her counterparts, committed to taking action on the issue of modern slavery in supply chains.¹⁵

From the outset, I have been grateful to have the support of the All-Party Parliamentary Group to End Modern Slavery and Human Trafficking, which is made up of Members of Parliament and Senators of all stripes.

Even more recently, during the last election campaign, both the Liberal Party and the Conservative Party included in their platforms commitments to fight forced labour in Canadian supply chains.

On page 67 of their platform¹⁶, the Liberals promised to:

"Introduce legislation to eradicate forced labour from Canadian supply chains and ensure that Canadian companies operating abroad do not contribute to human rights abuses."

On page 112 of their platform¹⁷, the Conservatives for their part pledged to:

"Place significant emphasis on the fight against extremism, human trafficking and the use of child soldiers, and abolish all forms of modern slavery. "

The political parties are in line with public opinion. In a 2015 World Vision survey, an overwhelming majority of 87% of Canadians said they wanted the government to require companies to assess the risks of child labour in their supply chains.¹⁸

According to another poll, 89% of Canadians are even willing to pay more -- up to 23% more, on average -- for products that are free from child labour.¹⁹

¹⁵ <https://www.gov.uk/government/news/g7-trade-ministers-statement-on-forced-labour-annex-a>

¹⁶ <https://liberal.ca/wp-content/uploads/sites/292/2021/09/Platform-Forward-For-Everyone.pdf>

¹⁷ <https://cpcassets.conservative.ca/wp-content/uploads/2021/08/25132033/5ea53c19b2e3597.pdf>

¹⁸ World Vision Canada, *Canadians want to quit the child labour habit*, 10 juin 2015;

<https://www.worldvision.ca/about-us/media-centre/canadians-want-to-quit-the-child-labour-habit>

¹⁹ Ipsos, *Nine in Ten (89%, Up 21 Points) Indicate Willingness to Pay More For Products Guaranteed to be Free of Child Labour; Average Canadian Willing to Spend 23% More (Up 12 Points)*, 12 juin 2013;

<https://www.ipsos.com/en-ca/nine-ten-89-21-points-indicate-willingness-pay-more-products-guaranteed-be-free-child-labour>

A 2019 survey by the Center of Excellence in Responsible Business at the Schulich School of Business indicates that, even in the business world, 75% of respondents believe that a law on transparency in supply chains could drive change and benefit their own business.²⁰

Canada has for too long relied on self-regulation and the social responsibility of businesses, which do not always have the means - nor the economic incentives - to act in a meaningful way.

The struggle against modern slavery is a non-partisan issue. It is also a question of coherence for Canada: it is high time that our actions reflect our speeches.

The Bill

So what does Bill S-211 do?

As in previous versions, it is first and foremost a transparency tool. Bill S-211 would require federal institutions and large corporations doing business in Canada to produce an annual report that details the measures taken to prevent or mitigate the risk of forced labour or child labour in their supply chains. These reports would be public.

The law provides for fines of up to \$ 250,000 for companies that fail to file a report or make false or misleading statements.

But I want to make it clear at the outset that the obligation is to report, not to immediately eliminate all forced labour. The bill is a step in the right direction, but it does not claim to eradicate human rights violations committed in the production of the goods we consume. Several systemic causes sustain modern slavery. But it is a start. And as our American friends say, *Sunlight can be the best disinfectant*.

We have had a chance in recent months to make a few significant improvements to the bill. I will mention four today.

1) A new title

First, we changed the title of the Bill to better reflect its content. The old title of *Modern Slavery Act* was too broad, because modern slavery also includes sex trafficking and forced marriages, and our bill does not address these issues. The new title more accurately reflects the focus on forced labour and child labour in supply chains.

²⁰ Kam Phung, Delaney Greig and Simon Lewchuk, *The Straight Goods*, May 2019; <http://schulich.yorku.ca/wp-content/uploads/2019/05/Canadian-Business-Insights-on-Modern-Slavery-in-Supply-Chains-Full-Report.pdf>

2) Application to government and large businesses

Second, we have broadened the scope of the bill to include federal institutions²¹, namely departments and over 100 public agencies that buy or distribute goods in Canada or somewhere else.

There are two main reasons for this change.

First, as we saw in the case of orders for medical equipment during the pandemic, the federal government is also at risk of importing goods produced by forced labour into the country. Second, as a major economic actor, the federal government has a certain duty to be consistent and set an example. It seems only fair for the State to apply to itself the standards that it would apply to the private sector.

With respect to private companies, the new version of the law has not changed the applicability thresholds, which are identical to those in the *Extractive Sector Transparency Measures Act*. The law would essentially apply to businesses:

- With assets of at least \$ 20 million;
- Whose income is at least \$ 40 million; or
- Who have at least 250 employees.

The bill therefore primarily targets large businesses. It's a pragmatic choice, at least as a first step.

3) harmonization of certifications and report content

As a third improvement, we have sought to harmonize the contents of the reports with comparable international legislation, and we have also aligned the certification standard with the one applicable to financial statements.

So we changed the content of the reports to add:

- Explicit references to supply chains;
- An explicit reference to the due diligence processes put in place by companies;
- An assessment of the effectiveness of the company's efforts.

These changes have the effect of making the content of Canadian reports more similar to the regulatory requirements of Great Britain and Australia. The result gives more complete reports, but it also simplifies the task of companies that won't have a multitude of different questionnaires to fill out.

²¹ au sens de l'article 3 de la Loi sur l'accès à l'information.

Similarly, the new version of the law also allows a corporate group to provide a single report that covers all member entities. It's a simpler and more efficient procedure, that gives a better overall picture.

Bill S-211 also changes the standard for approving and certifying report. Under the new section 11, reports on the risks of forced labour must be approved by the company's governing body -- in the case of a business corporations, that is the board of directors. We have harmonized these rules with those provided for in the Canada Business Corporations Act for the approval of the company's financial statements.

This change not only allows for a single standard for corporate reporting, but it is in line with the contemporary trend of requiring an equivalent degree of corporate approval for financial and non-financial disclosures.

4) Definition of child labour

Finally, Bill S-211 proposes an amended definition of child labour which, in my opinion, better corresponds to the ideals and aspirations of Canada, while also being more realistic and representative of the international reality.

The new definition incorporates the definition of “child labour” of the International Labour Organization, that is to say:

labour or services that

(b) are provided or offered to be provided under circumstances that are mentally, physically, socially or morally dangerous; or

(c) interfere with children's schooling by depriving them of the opportunity to attend school, obliging them to leave school prematurely or requiring them to attempt to combine school attendance with excessively long and heavy work.

Compared to the predecessor bill, this definition avoids the application Canadian standards abroad. It also defines child labour more broadly than simply referring to the “worst forms”, with references to dangerous circumstances and undue interference with school attendance.

In addition to these improvements, the new definition inspired by the ILO seems particularly relevant to promote a real evaluation by companies, rather than a simple tick-the-box exercise.

International examples for Canada

The need for Canada to act on modern slavery is even greater considering that we are late.

In 2015, six years ago, the UK adopted its *Modern Slavery Act*. The British legislation consisted of several sections, including one specifically dealing with supply chains. The British law set an

applicability threshold equivalent to approximately \$ 60 million Canadian. In 2019, an independent review recommended that the law be amended to add penalties, and that company reports be included in annual reports provided to shareholders.²² We have included these two recommendations in Bill S-211.

In 2017, France adopted its *Law relating to the duty of vigilance of parent companies*. Under this demanding law, companies "must establish, publish, respect and evaluate a vigilance plan which identifies the risks and must prevent serious attacks against human rights and fundamental freedoms, the health and safety of persons as well as the environment in their entire sphere of influence, both subsidiaries and subcontractors."²³ The French law, however, only applies to very large businesses with more than 5,000 employees in France, and 10,000 employees worldwide.

In 2018, Australia followed the UK with its own *Modern Slavery Act*, which made some improvements, including extending the scope of the law to public organizations and creating a central public registry.

In 2019, the Netherlands Senate passed its *Child Labour Due Diligence Act*. Dutch law breaks new ground by being applicable not only to companies which have establishments in the Netherlands, but also to those that only do business online.²⁴ The law even provides for fines for companies that fail to adhere to their own plans and measures. The law provides that any stakeholder with concrete evidence of child labour can submit a complaint against a company.

Last June, six months ago, Germany passed its own *Supply Chain Due Diligence Act*. This law imposes due diligence obligations on companies, it provides for the creation of a system of whistleblowers and sets fines of up to 800,000 Euros. The German law will initially apply to companies with 3000 or more employees. However, this threshold will be divided by three, and therefore lowered to 1,000 employees, in three years.²⁵

How does Bill S-211 compare to these international examples?

Subject to your comments and observations, colleagues, I consider the bill before you to be reasonable, pragmatic and measured. It draws mainly on British and Australian precedents - regimes comparable to the Canadian system - but also offers some improvements based on the experiences and innovations of recent years.

²² <https://www.gov.uk/government/publications/independent-review-of-the-modern-slavery-act-final-report>

²³ <https://www.vie-publique.fr/rapport/273894-loi-sur-la-vigilance-des-societes-meres-et-entreprises-donneuse-d-ordre>

²⁴ <https://www.akingump.com/en/news-insights/supply-chain-due-diligence-laws-go-orange-netherlands-latest-to.html>

²⁵ <https://www.idsupra.com/legalnews/the-new-german-supply-chain-due-8321932/>

As with all legislation, some would like us to go further, in particular by following certain European examples and by imposing more restrictive obligations on companies. Some will want us to cover more businesses by lowering the threshold for enforcement. Others will wish, on the contrary, to limit the scope of the law and reduce its requirements.

In the end, I have tried to find a compromise that would lead to a certain consensus, remembering that politics is the art of the possible. I'm not claiming the law is perfect, of course. But it is perfectible – in particular because of the 5-year review clause at section 25. My hope is that this law constitutes a first step in the right direction for Canada, and that we can improve it over the years.

Conclusion

In conclusion, I would say that Bill S-211 seeks to make a modest contribution to a larger, long-term objective, namely, aligning our business and economic activities with the imperatives of social and environmental sustainability.

Canada has made many commitments internationally, but we have yet to translate them into our national legislation. It's worth repeating: we are late.

Canada is a rich, free, modern society, committed in principle to the defense of human rights. If we are unable to act forcefully to limit the practices of modern slavery in our supply chains, we risk losing the moral stature we cherish, and looking like hypocrites. I do not want that.

And that's not the wish of some of our larger companies, either. I am thinking, in particular, of Canadian Tire, a company that has already implemented robust mechanisms for auditing its foreign suppliers. Other companies are leading by example, such as the Canadian sportswear company Lululemon, but also Adidas, Gap and others, according to a ranking by KnowTheChain.²⁶

Right now, responsible companies like Canadian Tire and Lululemon are at a disadvantage compared to unscrupulous competitors, who can sometimes pay less for products made under inhumane conditions. By highlighting and discouraging these practices as much as possible, Bill S-211 would promote fair competition, one that is not fueled by slavery. We would thus stop penalizing, through our inaction, the many companies that want to do well.

In doing so, Canada would also catch up with its peers, and seize an opportunity to act in accordance with our values.

Dear colleagues, I therefore humbly submit that Bill S-211 deserves to be referred for committee study.

²⁶ <https://knowthechain.org/wp-content/uploads/2021-KTC-AF-Benchmark-Report.pdf>



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