

Labor and Anti-Human Trafficking Laws – Focused on Doing Business in China, Canada and the U.S.

September 12, 2024

Fredrikson

The logo for Fredrikson, featuring the name "Fredrikson" in a bold, black, sans-serif font. A red horizontal bar is positioned below the "Fred" portion of the name, extending to the right.

Forced Labor Laws

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What Is Forced Labor?

- The US Department of Homeland Security defines forced labor as labor that occurs when individuals are compelled against their will to provide work or service through the use of force, fraud, or coercion.
- Forced labor can happen both in the United States and overseas, often occurring within supply chains.
- The International Labour Organization estimated that 28 million people around the globe were in forced labor as of 2021.

When Does Forced Labor Typically Occur?

- Raw Material Sourcing – The initial harvesting and preparation of raw materials is often manual-labor-intensive. The suppliers are often small, unregulated operations. In the textile supply chain, the raw material supplier would be the farm that sells cotton to the textile mill.
- Component/Sub-assembly – These suppliers perform component and sub-assembly. This would include textile mills.
- Final assembly/Finished product –For many products, the final assembly process also requires intensive manual labor. While the risk of forced labor being used in this stage is lower, the risk still exists. This would include cut and sew operations.

Who Should Be Particularly Concerned About Forced Labor Laws?

- Companies dependent upon imports of products from countries or regions where there is a concern about the use of forced labor, including the Xinjiang Region of China.
- Private Equity Funds who are acquiring or selling companies that may be subject to forced labor laws (often arises during the DD process).
- Companies that may be acquired by larger, especially public companies.
- Companies selling high profile consumer apparel and other consumer products.
- Companies that wish to develop comprehensive policies for suppliers.

When Do Forced Labor Legal Problems Typically Arise?

- During M&A Transactions
 - Relatively large and sophisticated buyers (including publicly traded companies) will conduct DD to determine whether the company they are buying has any forced labor issues within its supply chain.
 - It is better to prepare for this DD ahead of time as it can be very difficult to prove conclusively that there is no potential for supply chain violations.
- When Products are Being Imported
 - Forced labor laws are enforced by Customs and Border Patrol. CBP can stop goods at the border and prevent shipments from clearing customs.
 - This can create significant expense and significantly disrupt product supply chains.

How Does The CBP Enforce Forced Labor Laws?

- The CBP uses Work Release Orders and findings to prohibit the importation into the United States of goods manufactured by the use of convict, forced or indentured labor.
- To release shipments subject to Work Release Orders or findings, importers must submit a certificate of origin and a detailed statement showing that the merchandise was not produced with forced labor.
- CBP suggests that companies set up a comprehensive and transparent system to document compliance with forced labor requirements and offers guidance on setting up supply chain due diligence programs.

What Laws Will We Discuss Today?

- While there are a number of laws that address forced labor, today we will focus on three key laws:
 - US federal laws, including the Uyghur Forced Labor Protection Act
 - The California Transparency in Supply Chains Act
 - The Fighting Against Forced Labour and Child Labour in Supply Chains Act of Canada

19 U.S.C. §1307

- All goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by convict labor or/ and forced labor or/and indentured labor under penal sanctions shall not be entitled to entry at any of the ports of the United States, and the importation thereof is hereby prohibited, and the Secretary of the Treasury is authorized and directed to prescribe such regulations as may be necessary for the enforcement of this provision.

19 CFR § 12.42 – 12.44

- (a) If any port director or other principal Customs officer has reason to believe that any class of merchandise that is being, or is likely to be, imported into the United States is being produced, whether by mining, manufacture, or other means, in any foreign locality with the use of convict labor, forced labor, or indentured labor under penal sanctions, including forced child labor or indentured child labor under penal sanctions, so as to come within the purview of section 307, Tariff Act of 1930, he shall communicate his belief to the Commissioner of CBP.
- (b) Any person outside CBP who has reason to believe that merchandise produced in the circumstances mentioned in paragraph (a) of this section is being, or is likely to be, imported into the United States may communicate his belief to any port director or the Commissioner of CBP.

The Uyghur Forced Labor Protection Act (UFLPA)

- Specifically addresses the importation of goods into the United States that are manufactured with forced labor in China, especially from the Xinjiang Uyghur Autonomous Region of China (XUAR).
- The UFLPA establishes a theoretically rebuttable presumption that all goods mined, produced or manufactured wholly or in part in Xinjiang or by an entity on the UFLPA Entity List are prohibited from importation into the United States.
- The United States created a Forced Labor Enforcement Task Force to develop a strategy for enforcing the UFLPA, including operational guidance programs for importers.

The Uyghur Forced Labor Protection Act

- In June 2022, the UFLPA established a rebuttable presumption that the importation of any goods produced by an entity on the UFLPA Entity List is prohibited from importation into the United States.
- Since then, CBP has reviewed more than 9,000 shipments valued at over \$3.4 billion, covering a broad range of products from apparel, automotive parts, chemicals, electronics, flooring, and solar panels.
- The UFLPA Entity List now includes 68 entities, across a large number of industry sectors, which are located in the XUAR and other provinces in China.

The Uyghur Forced Labor Protection Act

- High Priority Enforcement Sectors
 - Congress and the FLETF originally identified apparel, cotton and cotton products, silica-based products including polysilicon and tomatoes and downstream products as high priority sectors for enforcement.
 - With this year's updates, the FLETF is identifying new high priority sectors - aluminum, polyvinyl chloride (PVC) and seafood - involving a higher risk of forced labor or state labor transfer of Uyghurs and other ethnic minorities from the XUAR.
 - The FLETF has already included entities in these sectors on the UFLPA Entity List and will continue to prioritize review for additional entities in these sectors.

The Uyghur Forced Labor Protection Act



U.S. Customs and Border Protection (CBP)
Uyghur Forced Labor Prevention Act Enforcement Statistics
 June FY2022 to FY2024 to date

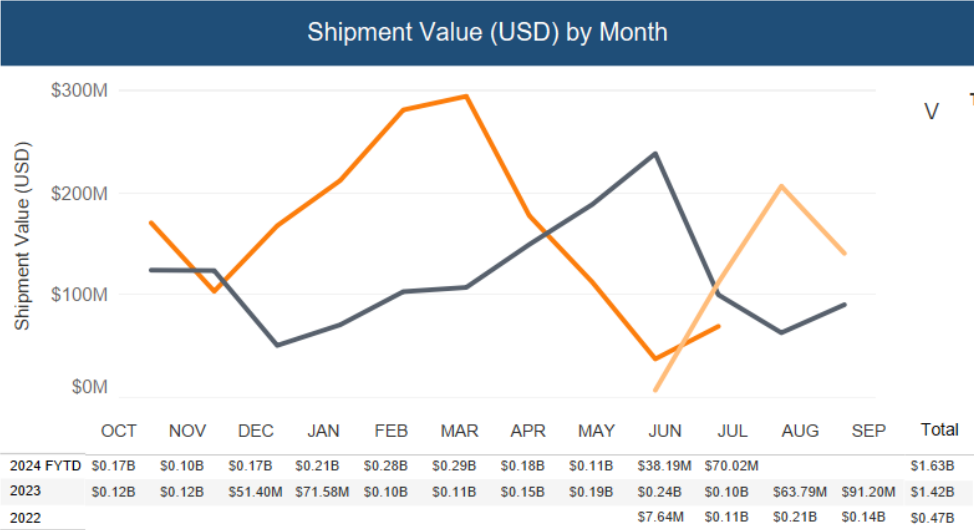
Shipment Metrics

Total 9,475	Denied 3,729	Released 4,477	Value (USD) \$3.52B
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FY All Industry All Exam Result All Country of Origin All

[Reset Filters](#)

FY 2022 2023 2024 FYTD



What You Can Do To Ensure Compliance

- Develop an internal program to educate key employees involved in procurement and to document compliance, including sourcing mapping using available online resources <https://www.dol.gov/agencies/ilab/comply-chain>
- Regularly review and confirm that the internal program is being followed
- Develop written contract provisions to require suppliers to document and verify compliance with forced labor requirements
- Verify internal and supplier compliance with forced labor requirements, including audits
- Consider other countries' laws and regulations concerning forced labor where your company conducts manufacturing and commercial operations

The California Transparency In Supply Chains Act

- This CTSCA requires large retailers and manufacturers doing business in California to disclose on their websites their “efforts to eradicate slavery and human trafficking from [their] direct supply chain for tangible goods offered for sale.”
- The law applies to any company doing business in California that has annual worldwide gross receipts of more than \$100 million and that identifies itself as a retail seller or manufacturer on its California tax return.
- Companies subject to the Act must post disclosures on their Internet websites related to five specific areas: verification, audits, certification, internal accountability, and training.

The California Transparency In Supply Chains Act

Conspicuous Format Requirement

Statute:

“[P]osted on the retail seller’s or manufacturer’s Internet Web site with a conspicuous and easily understood link to the required information placed on the business’ homepage.”

Key Requirement:

The disclosure link must be conspicuous, easily understood, and located on a retailer’s and manufacturer’s homepages.

The California Transparency In Supply Chains Act

Verification Requirement

Statute:

“[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [e]ngages in verification of product supply chains to evaluate and address risks of human trafficking and slavery. The disclosure shall specify if the verification was not conducted by a third party.”

Key Requirements:

Confirm whether the company engages in verification activities to identify, assess and manage the risks of human trafficking in its product supply chain.

If the company conducts verifications, additionally disclose whether the company uses a third-party verifier.

The California Transparency In Supply Chains Act

Audit

Statute:

“[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [c]onducts audits of suppliers to evaluate supplier compliance with company standards for trafficking and slavery in supply chains. The disclosure shall specify if the verification was not an independent, unannounced audit.”

Key Requirements:

Confirm whether the company audits suppliers in evaluating compliance with the company’s standards for trafficking and slavery in its supply chains.

State whether the audits are independent and unannounced.

The California Transparency In Supply Chains Act

Certification

Statute:

“[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [r]equires direct suppliers to certify that materials incorporated into the product comply with the laws regarding slavery and human trafficking of the country or countries in which they are doing business.”

Key Requirement:

State whether the company requires its direct suppliers to make the certification.

The California Transparency In Supply Chains Act

Internal Accountability

Statute:

“[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [m]aintains internal accountability standards and procedures for employees or contractors failing to meet company standards regarding slavery and trafficking.”

Key Requirement:

Disclose whether the company has internal procedures for determining whether employees or contractors are complying with company standards regarding slavery and human trafficking

The California Transparency In Supply Chains Act

Training

Statute:

“[A]t a minimum, disclose to what extent, if any, that the retail seller or manufacturer... [p]rovides company employees and management, who have direct responsibility for supply chain management, training on human trafficking and slavery, particularly with respect to mitigating risks within the supply chains of products.”

Key Requirement:

Confirm whether the company engages in the specified training.

The Fighting Against Forced Labour and Child Labour in Supply Chains Act of Canada

- [Richard Weiner]

CANADA'S MODERN SLAVERY ACT

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A MILESTONE FOR ETHICAL COMMERCE

Canada's New Act Against Forced
Labor and Child Labor in
Supply Chains

I. BACKGROUND

A. Enactment

B. Purpose

C. Government Guidance

II. APPLICABILITY TO U.S. COMPANIES

- A. Parent Company in Canada
- B. Subsidiary in Canada
- C. Carrying on Business in Canada
- D. Supplier to Canadian Company
- E. Target of Canadian Company

II. APPLICABILITY TO U.S. COMPANIES (cont'd)

- A. Is Your Business Listed on a Canadian Stock Exchange?
- B. Does Your Business Have a Place of Business, Do Business or Have Assets in Canada?
 1. C\$40 Million in Global Revenue
 2. C\$20 Million in Assets Worldwide
 3. 250 Employees in Canada

II. APPLICABILITY TO U.S. COMPANIES (cont'd)

- C. Does Your Business Produce, Sell or Distribute Goods in Canada or From Canada?
- D. Does Your Business Import Goods into Canada Which Are Produced Outside of Canada?
- E. Does Your Business Have a Subsidiary or “Control” Another Entity that Is Involved in the Abovementioned Activities?
 - 1. “Control” of Another Entity

III. Reporting

A. Report to Ministry of Public Safety and Emergency Preparedness

1. Your Company's Structure, Business Activities and Supply Chain
2. Your Company's Policies and Due Diligence Activities Relating to Forced Labor and Child Labor
3. Risk Thereof in Your Company and Its Supply Chain
4. Steps Your Company Takes to Manage that Risk

III. Reporting (cont'd)

5. Remedial Actions Taken If Forced Labor or Child Labor Discovered
6. Training Provided to Your Company's Employees on Forced Labor and Child Labor
7. How Your Company Assesses Its Effectiveness in Ensuring Against Forced Labor and Child Labor
8. Actual Instances of Forced Labor or Child Labor and Steps Taken to Eradicate or Prevent It

III. Reporting (cont'd)

B. Approval and Submission of the Report

1. Official Questionnaire Format
2. Ministry Website
3. Your Company's Website
4. Every Shareholder (If Your Company Is Incorporated in Canada)

III. Reporting (cont'd)

5. Approved by All Directors of Your Company
6. Signed by Chairman of the Board
7. Submitted by May 31
8. Included in Public Database

IV. Sample Efforts

A. Hamilton Health Services

HAMILTONHEALTHSCIENCES.CA/WP-CONTENT/UPLOADS/2024/06/HHS-S-211-ANNUAL-REPORT-AND-ATTESTATION-31MAY2024.PDF

B. Emerson Corporation

EMERSON.COM/DOCUMENTS/CORPORATE/FY2023-EMERSON-CANADA-MODERN-SLAVERY-ACT-REPORTS-EN-US-10482434.PDF

With Proper Planning and Guidance, You Can Stay on the Right Road



V. Due Diligence

A. Written Due Diligence Requests for U.S. Suppliers or U.S. Targets

1. Your Company's Corporate Structure (Including Parent Companies, Subsidiaries and Affiliated Companies), Business Activities and Supply Chains
2. Instances Known by Your Company (After Due Investigation) of Forced Labor or Child Labor in Your Supply Chain

V. Due Diligence (cont'd)

3. Steps Taken by Your Company to Cure Prior Instances of Forced Labor or Child Labor
4. Your Company's Corporate Policies and Due Diligence Policies Regarding Forced Labor and Child Labor
5. Portions of Your Company's Activities and Supply Chains that Pose a Risk of Forced Labor and Child Labor
6. Steps Taken by Your Company to Assess and Manage Known Risks

V. Due Diligence (cont'd)

7. Steps Taken by Your Company to Prevent or Reduce Future Risk of Forced Labor or Child Labor in Your Supply Chain
8. Your Company's Actions to Offset Loss of Income to Families Affected by Measures to Eliminate Forced Labor or Child Labor
9. Training Offered to Your Company's Employees Regarding Forced Labor or Child Labor
10. Your Company's Policies and Procedures to Assess that Forced Labor and Child Labor Are Not Being Used in its Supply Chains

MADE A
VERBAL
CONTRACT



VI. Contractual Provisions

A. Representations and Warranties

1. Your Company's Due Diligence Responses
2. No Goods or Services in Your Company's Supply Chain Are Result of or Involve any Forced Labor or Child Labor
3. If Your Company Becomes Aware or Has Reason to Suspect Forced Labor or Child Labor, It Will Notify Canadian Company
4. Your Company Will Develop Policies and Training Specifically for Those Employees Involved in Sourcing and Supply Chain Roles

VI. Contractual Provisions (cont'd)

5. Your Company Will Appoint a Director or Officer to Enforce Such Policies

B. Indemnification

1. All Damages and Losses Incurred by Canadian Company

- a. Directors, Officers, Employees and Agents of Canadian Company Individually Liable for Fine of C\$250,000 Per Violation
- b. Reputational Damage

Q&A

Thank You.

For More Information



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