Shift response to Government of Canada consultation on measures to tackle forced labour in global supply chains

August 2026

Shift

Shift Response to the public consultation on potential due diligence and civil liability measures to fight labor exploitation in supply chains by the Government of Canada

Executive Summary

Shift welcomes the Government of Canada's leadership in considering the introduction of human rights due diligence requirements for businesses, alongside a revision of the existing forced labor import ban, to strengthen Canada's approach to addressing forced labor and labor exploitation in company operations and global supply chains.

Shift is a non-profit, mission-driven organisation that grew directly out of the mandate of the former Special Representative of the UN Secretary-General, Professor John Ruggie, who authored the UN Guiding Principles on Business and Human Rights (UNGPs). In the 15 years since, Shift has worked directly with a wide range of companies, financial institutions and other organizations to embed the UNGPs into their operations, and we have also engaged with policy-makers and public and private standard-setters to advance their uptake in the rules that drive business practice.

Over the last 4 years, we have been closely involved in advising on the negotiations on the EU Corporate Sustainability Due Diligence Directive (CSDDD), the Omnibus I process and the European Sustainability Reporting Standards (ESRS) to help ensure they remain substantially aligned with the UNGPs and OECD Guidelines for Multinational Enterprises.

Based on our extensive experience engaging on and influencing other regulatory proposals, and with the practical implementation of the international standards that underpin them, we make the following recommendations to ensure that the Government's proposals are efficient for companies to implement and effective in advancing better outcomes for people.

Section	Recommendation
1 - Scope	A scope limited to labor rights would work against current company practice and global expectations; if the scope is restricted, consideration of its future expansion to all human rights should be provided for (Question 1)
1 - Coverage	Coverage should be designed to shape behavior beyond the companies immediately in scope. (Questions 3–5)
1 – Due Diligence and reporting obligations	The duty should apply to a company's own operations and to the activities of business relationships across its value chain (Questions 7-8)
	Severity-based prioritization makes human rights due diligence manageable for companies without weakening its effectiveness for affected stakeholders (Questions 7-8)
	The geographic scope of the obligation needs to be clarified and needs to include provision for activities within Canada (Questions 7-8)
	Action and remedy proportionate to a company's involvement with an impact is the right framework (Questions 7-10)
	Due diligence measures should be judged by whether they work for the people affected (Questions 7-9)
	The framework should include a requirement to have or participate in a grievance mechanism (Questions 7-14)
	Stakeholder engagement should be required at specific steps in the due diligence process in line with the international standards (Question 11)
1 – Compliance and enforcement	Effective enforcement should involve both administrative supervision and civil liability. The effectiveness of administrative oversight depends on the authority's capacity and on what it chooses to look at (Questions 12-13)
2 – Civil liability	Providing for judicial remedy is part of the State duty to protect under the UNGPs (Questions 15-16)
3 – Maximizing effectiveness	The import prohibition should reward fixing problems, not exiting business relationships (Questions 17 and 18)

Introduction

Shift welcomes the Government of Canada's leadership in considering the introduction of human rights due diligence requirements for businesses to strengthen Canada's existing approach to addressing forced labor and labor exploitation in company operations and global supply chains. With the right approach, due diligence requirements can advance better outcomes for people while remaining reasonable for companies to undertake. For these opportunities to be realized, it is critical that a new corporate duty is firmly grounded in the authoritative international standards on sustainability due diligence adopted by the UN and the OECD – the UNGPs and OECD Guidelines.

About Shift

Shift is the leading non-profit centre of expertise on the UNGPs. We are a US-headquartered mission-driven organization working globally to embed respect for human rights into business and build a fairer economic system. We leverage the UNGPs to shape the standards, incentives and practices that are needed for a fairer economic system in which everyone, not just the few, can thrive. Our co-founders helped develop the UNGPs, and we have remained at the forefront of shaping the due diligence and reporting standards that build on them.

In our policy work, Shift is focused on helping ensure that influential mandatory and voluntary standards are both aligned with the UNGPs and supported by practical insights and resources that enable effective implementation by business and robust enforcement, helping to normalize respect for people in how business gets done. We have actively contributed to the evolution of national and regional legislation on human rights, including for due diligence, reporting and forced labor. We are also active in supporting the development of authoritative implementation guidance, helping ensure that new regulatory approaches remain grounded in the UNGPs and capable of delivering meaningful outcomes for people.

Over the last 4 years, we have been closely involved in advising policy-makers in EU Member States, the EU Parliament and the European Commission on the negotiations on the EU Corporate Sustainability Due Diligence Directive (CSDDD), the Omnibus I process and the European Sustainability Reporting Standards (ESRS) under the EU Corporate Sustainability Reporting Directive (CSRD). Our aim throughout has been to help ensure these standards remain substantially aligned with the UNGPs and OECD Guidelines for Multinational Enterprises so that companies can adopt efficient implementation approaches that are more likely to produce better outcomes for affected workers and local communities.

We have collaborated closely with supportive businesses and industry associations to bring the practical experience of leading companies with human rights due diligence into the policy process, as well as with our civil social allies. We have also worked with the UN Office of the High Commissioner for Human Rights and with the OECD Responsible Business Conduct team to provide expert input on drafting proposals.

Approach

This submission responds to the Government of Canada's discussion paper on potential due diligence and civil liability measures. While Shift has direct expertise on forced labor trade measures (as a member of the Expert Advisory Group to the European Commission on the EU Forced Labor Regulation), given the time constraints in this consultation process, we do not comment on that parallel consultation, except where the two intersect in Section 3 below. We would be pleased to provide additional reflections on the parallel proposal.
Throughout this submission, we refer to the potential due diligence requirements as "the duty", without assuming the legislative form they may take. We focus on the areas where we believe alignment with the international standards could be enhanced to support the ability of the duty to meet Canada's objectives: addressing forced labor and labor exploitation in global supply chains, and levelling the playing field for companies. We follow the structure of the discussion paper and set out key messages with recommendations on how the relevant issue could best be addressed.

Section 1: Key elements of a due diligence regime

a.Scope

A scope limited to labor rights would work against current company practice and global expectations (Question 1)

We support Option 1 over Option 2: covering the five fundamental ILO rights is better than a regime limited to forced and child labor. But we encourage the Government to consider a broader scope in the future and to provide for such a review in the legislation. We recommend that the duty be defined by reference to internationally recognized human rights, with prioritization based on severity and likelihood as the mechanism for managing and directing regulated parties' efforts.

A labor rights-only duty does not align with the UNGPs and with how many companies already manage their salient human rights impacts, and it would make compliance harder, not easier, with other existing requirements. Many of the companies potentially covered are already responding to the EU CSDDD, sustainability reporting under the CSRD and ESRS, and other emerging standards grounded in the UNGPs and the OECD Guidelines (such as in Switzerland, Thailand, Indonesia, the UK), as well as expectations from investors, lenders and business customers. None of these operates on a labor-rights-only basis. Coherence with other legal requirements helps prevent companies from creating parallel due diligence systems that drain resources, confuse priorities, and undermine impactful action. A narrow scope also removes the analytical benefit of seeing how many human rights risks are interconnected in order to direct resources towards root causes.

There is also a question of coherence within Canada's own framework. Canada maintains a National Contact Point for Responsible Business Conduct, through which complaints may be brought under any chapter of the OECD Guidelines. A statutory duty limited to core labor rights would give companies two materially different definitions of what they are expected to assess and manage.

We recognize the concern that a broad scope could be seen as onerous, but the international standards and other due diligence legislation already address this by expecting companies to prioritize rather than create artificial limitations (as described further below). Prioritization based on severity and likelihood is the key factor in making human rights due diligence manageable for businesses while remaining principled in what it aims to address.

b.Coverage

Coverage should be designed to change behavior beyond the companies in scope. (Questions 3–5)

Of the options presented in the consultation, we recommend that Option 1 be adopted. Of course, under the UNGPs, the responsibility to respect applies to all enterprises, regardless of size, sector, ownership, or structure; what varies is the scale and complexity of the means by which each enterprise meets it.

The duty for medium and large companies should be designed to shape how companies in scope interact with their SME business partners to ensure that obligations are not off-loaded onto their smaller business partners, and are more likely to deliver better outcomes for people. The default “policing” approach in supply chain relationships and its clear limitations are well documented.[1] Medium and large companies typically incorporate expectations in contracts and codes of conduct and monitor compliance via audits. Expectations flow in one direction from buyer to supplier, with limited support provided to suppliers and no discussion about whether the buyer is doing anything that might make it harder for the supplier to respect human rights. This transfers the compliance burden without improving conditions for workers.

We therefore encourage the Government to design the obligations to incentivize a partnership-based approach to supply chain management, rooted in collaboration and support for SMEs; one that not only discharges obligations to business partners but also supports and equips them to conduct their own due diligence and openly addresses any potential tensions in the demands placed on them. This approach is also cost-effective in the long term as it empowers business partners to identify and manage their own human rights risks.

c.Due diligence and reporting obligations

The duty should apply to a company's own operations and to the activities of business relationships across the value chain (Questions 7 and 8)

Of the options proposed, we would support Option 1. However, we note that the limitation to certain downstream business relationships means that the proposal is not in fact 'in line with' the international standards (contrary to what the paper states). That limitation is unique to the CSDDD – it is not reflected in EU reporting legislation, nor in current or proposed due diligence or reporting requirements in other jurisdictions, nor in the demands of investors or lenders or of civil society. Accordingly, it leaves companies having to run multiple due diligence approaches to meet these various demands instead of adopting a single, coherent methodology which can answer all of them.

Whatever approach is chosen, the duty should make clear that a covered company is expected to examine whether its own business strategies, including purchasing practices, undermine the standards it asks suppliers to meet, to support smaller partners in building their own due diligence capacity, and to work with peers where impacts are systemic and no single buyer has sufficient leverage. Design choices that the company itself makes and that can heighten the risks of downstream misuse of products should also be within scope. This would ensure alignment with the CSDDD.

The Government can further support effective and efficient approaches through practical guidance, shared risk information, and clarity on permitted collaboration for sustainability purposes.

Severity-based prioritization makes human rights due diligence manageable without weakening it (Questions 7 and 8)

We welcome the proposal that regulated parties prioritize adverse impacts according to their severity and likelihood (in the case of potential impacts), and we encourage the Government to protect this formulation as the proposal develops.

Prioritization under the international standards concerns the sequence in which a company acts on the human rights impacts it has identified. Where a company cannot address all of its human rights impacts at once, it should act first on the most severe, judged by their scale, scope and remediability. Likelihood is a relevant consideration for potential impacts, but a severe potential impact should not be automatically set aside simply because it is judged as very unlikely to occur.[2]

Severity and likelihood give a company a clear basis for deciding where to put sometimes limited resources, and a rationale it can explain to a regulator. We would strongly caution against introducing other factors into this step.

Considerations such as leverage and the nature of the company's involvement in an impact have a legitimate role in shaping how a company plans and organizes action once impacts have been prioritized, but not at the stage of prioritization. Factors such as the company's proximity to an impact or potential risks to the business posed by the impact are never a valid basis for prioritization, as the CSDDD makes clear. If a company uses these factors to decide which impacts come first, it will direct effort towards what is easiest to reach rather than what causes the greatest harm to people. Legislation should ensure that regulated parties do not use such factors for prioritizing impacts.

The geographic scope of the obligation needs to be clarified and needs to include provision for activities within Canada (Questions 7 and 8)

The paper consistently frames the due diligence obligation as applying to a regulated party's "operations abroad" and its "international supply chains." It appears that operations and supply chain activities located within Canada fall outside the duty, potentially due to federal and provincial separation of powers concerns. While this may be less of an issue for a forced labor import ban (which by definition applies to goods entering Canada from abroad), it poses challenges for a general due diligence duty, as companies do not impose this kind of arbitrary scope limitation on their own due diligence.

If domestic activity is excluded, it would also create two different scopes within Canada's own framework. Entities report under the Supply Chains Act on their operations and supply chains without geographic limitation. A due diligence duty limited to activity abroad would require a second, narrower scoping exercise for the same supply chain, adding cost for companies. The legislation should provide for a mechanism to align provincial requirements with any new federal law, if that is the reason for adopting a more limited scope.

Action and remedy proportionate to a company's involvement in an impact is the right framework (Questions 7 and 10)

We welcome the proposal that regulated parties should address adverse impacts according to, and in proportion to, their level of involvement – that is, whether they have caused or contributed to an impact, or are connected to it through a business relationship. This is one of the most important elements in the due diligence requirement section, and it is aligned with the international standards and with the EU CSDDD and emerging requirements in other jurisdictions. We encourage the Government to protect it.

The involvement framework is what keeps the duty from being open-ended. It means a company is not expected to solve everything that occurs anywhere in its value chain, and what is expected of it varies based on its relationship to the harm. It makes the obligation predictable and reasonable.

Regarding the extent of responsibility for remediation (Question 10), our view follows the same logic as the involvement framework in the international standards. Where a Canadian business causes an impact, it should provide remedy. Where it contributes, it should contribute to remedy to the extent of its contribution, and use its leverage with the other parties involved. Where it is connected to an impact solely because its operations, products or services are linked to it through a business relationship, it should not be required to provide remedy, but it should be expected to use and build leverage with the responsible party, which can include seeking to ensure that they provide remedy. This aligns with the approach in the CSDDD as well.

We would encourage using "remedy" rather than "damages" in the drafting. Remedy under the international standards is broader than financial compensation and may include cessation of the activity, apologies, restitution, rehabilitation, and guarantees of non-repetition, as the paper's own Section 2 recognises.

Due diligence measures should be judged by whether they work for the people affected (Questions 7 and 9)

Due diligence is a means to an end. Its purpose is to prevent and address harm to people, and the measures a company takes should be aimed at achieving that, not simply at showing that something was done.

The paper already contains key elements here, but does not have a sufficiently clear expectation akin to the CSDDD's overarching "appropriate measures" requirement. For example, the proposal requires remedy to be "tailored to the circumstances". Effectiveness is only mentioned in relation to the obligation to monitor, assess and improve the effectiveness of measures taken. The obligation to address impacts requires action "proportionate to" a company's involvement but says nothing about whether the chosen action is capable of working in practice.

We recommend expressly providing that a regulated party is required to take appropriate measures, tailored to the circumstances, that are capable of effectively preventing, mitigating or ceasing the impact. This also clarifies what should count as evidence of compliance. Merely adopting a policy, training staff or auditing suppliers are easily observable activities that may show a company is trying to meet the standard. But without more, they are unlikely to be sufficient evidence of risk-adjusted due diligence measures designed to improve outcomes for people. See the related point in the compliance and enforcement section below.

This does not turn the duty into a guarantee of outcomes. Due diligence may have been appropriate, and an impact may still occur. The fact that harm has occurred is not, by itself, sufficient proof that a company's due diligence was inadequate. But a company cannot keep maintaining that its measures are appropriate if the same harms recur and its approach has not changed. The framework should encourage companies to constantly test their approach against the question whether the measures they have adopted are appropriate to the nature and severity of the impact and to ensure this assessment is informed by the views of affected stakeholders (as explained further below).

The framework should include a requirement to have or participate in a grievance mechanism (Questions 7 and 14)

We support the proposed obligation to establish a process allowing any person or organization to submit information about a suspected adverse impact, and for regulated parties to consider that information when identifying and assessing impacts.

We would encourage the Government to go further and include an explicit requirement that at least regulated entities have or participate in an effective grievance mechanism, as the CSDDD and international standards require. Receiving and considering information is only half of what is needed: a person who raises a legitimate concern should also be able to have it addressed and to know what happens as a result.

We therefore recommend that regulated entities be required to provide for or cooperate in effective grievance mechanisms through which workers and other affected people can raise concerns and seek remedy, accessible to those in the value chain and not only to those in a company's own operations.

Such mechanisms should be designed using the effectiveness criteria in the UNGPs, which are also referenced in the CSDDD. These criteria matter because a channel that people do not trust, cannot reach, or cannot use safely will not be used. Mechanisms that are worker-driven or that use trusted intermediaries tend to be both the most credible and the most effective for this reason. Of course where workers are represented, then trade unions are also themselves an effective grievance mechanism and the legislation should be clear that respect for trade union rights is fundamental to achieving other labor rights and wider human rights outcomes.

We would also note the connection to enforcement. A company that learns of problems only through a regulator's inspection or a complaint to the competent authority has failed to detect them itself. Effective grievance mechanisms function as an early warning system, which serves the company as well as the people it affects.

Stakeholder engagement should be required at specific steps in the due diligence process in line with the international standards (Question 11)

We strongly support the inclusion of an obligation for meaningful engagement with affected stakeholders as a feature of effective due diligence, in line with the international standards and as the CSDDD also requires.

What makes engagement workable for companies is being clear about who a company engages with, and when. ‘Affected stakeholders’ typically means four broad groups of stakeholders: a company’s own workforce (including contractors); workers in a company’s value chain; communities affected by a company’s operations or those of its business relationships; and people affected by a company’s products or services. This ‘4 stakeholder construct’ is reflected in the revised ESRS as the basis for EU sustainability due diligence reporting.

Under the international standards, there are three distinct groups that can be relevant to a company’s due diligence process. First, affected people themselves and their legitimate representatives, such as trade unions or recognized community leaders. Second, credible proxies, meaning organizations with informed insight into affected people's perspectives, such as trusted local civil society organizations with a sustained presence among those groups. Third, human rights and other experts in particular issues, sectors or geographies. Proxies and experts both speak about, not for, affected people.

Meaningful stakeholder engagement is an important way of understanding the concerns of stakeholders and building effective relationships with them on an ongoing basis as part of due diligence. In the UNGPs, direct engagement with affected stakeholders or their representatives is essential at three moments in particular:

- **Assessment and prioritization of impacts**, to understand how impacts are actually experienced by whom, in what numbers, and with what consequences. This is where hidden harms surface, such as debt bondage driven by recruitment fees or gender-based harassment, which rarely appear in supplier self-reporting or standard social audits.

- **Tracking whether measures are working**, since a company relying on internal assessment alone risks failing to notice that its measures are no longer adequate, so problems emerge through complaints instead.
- **Remediation**, to inform the outcome and ideally also the process or mechanism for delivering remedy. This can help ensure remedy is experienced as such by the people harmed.

The effectiveness of engagement should be judged by whether and how it informs company decisions, not by the number of meetings held; companies should also explain how input has been used, since, without that, people have little reason to engage again. Being deliberate about who the company is engaging with at different due diligence steps and why also contributes to cost-effectiveness for the company and makes the expectation of engagement manageable.

d.Compliance and enforcement

Effective enforcement should involve both administrative supervision and civil liability. The effectiveness of administrative oversight depends on the authority's capacity and on what it chooses to look at (Questions 12 and 13)

Research conducted by Shift and the UN Office of the High Commissioner for Human Rights confirms that administrative supervision and civil liability for certain human rights harms can work as essential complements in delivering effective enforcement of mandatory human rights due diligence regimes, as the UNGPs themselves foresaw.[3] This relationship is summarized in the graphic below.

	ENFORCEMENT THROUGH CIVIL LIABILITY	ENFORCEMENT THROUGH ADMINISTRATIVE SUPERVISION
ROLE REGARDING PREVENTION	• Civil liability for certain cases helps signal that a new due diligence obligation should be taken seriously	• Risk-based, proactive monitoring and sanctioning can complement civil liability in encouraging compliance • Education and advice can support better quality due diligence processes
ROLE REGARDING REMEDY	• Provides enforceable remedy where harm has occurred in certain cases	• Strengthens companies' role in providing or enabling remedy as part of due diligence
ADVANTAGES?	• Courts are familiar with assessing the appropriateness or quality of due diligence duties of care • Clearly providing for/defining liability can increase legal certainty • Civil litigation has established rules for handling cross-border cases	• Can address greater scale (number of companies) and scope (business relationships throughout value chain, not only those giving rise to liability) • Can incentivize companies to take full scope of duty seriously if liability for harms is more circumscribed • Can develop deep expertise in the general standard of conduct and on specific issues/sectors
LIMITATIONS?	• Encourages companies to focus on the (relatively small) circle of business relationships that may give rise to liability • Resources needed to bring civil case may be significant	• May have limited ability to ensure remedy for complainants • Typically lack powers and capacities in cross-border cases which can limit insight into impacts on the ground

With regard to administrative supervision, the tools proposed by the Government (monetary penalties, publication of names, complaints assessment and inspections), are certainly important. However, we would also highlight the following design considerations based on our collaboration with UN OHCHR.

The authority should be credible and accountable. This includes being independent of the executive branch of government and subject to Parliamentary oversight. It also includes having a clear separation between its guidance and capacity-building function and its investigation and complaints function. The authority needs to be transparent about key aspects of its operations, including its methodology and approach to enforcement, the pathways for complaints and for review of its decisions, the existence of active investigations, and any formal orders or penalties imposed. This helps protect against perceptions that the authority is following political direction or otherwise not acting on clear, objective criteria, and reassures business and civil society stakeholders alike.

It will need staff with expertise in human rights due diligence, and specifically in implementing the UNGPs and the OECD Guidelines, as well as staff experienced in engaging with business and with civil society. Because affected people and civil society organizations have far fewer resources than businesses to engage proactively, the authority will need to address this through its own outreach, including through established structures such as trade unions.

It will also need to decide which companies to prioritize for assessment and what features of due diligence to concentrate on. As in other areas of regulation, those decisions should be risk-based, and stakeholder input will be essential to making them credible. This could take several forms: bringing stakeholders together annually to consult on overall strategy, a standing advisory group, or specific challenge groups to test proposed approaches.

In regard to what the authority examines, assessing whether a company has taken appropriate due diligence measures requires a qualitative and outcomes-oriented form of supervision. External assessments of corporate due diligence tend to focus on the "observable basics" of what a company has in place: a policy, staff with responsibility for human rights, internal training, contract clauses, a grievance mechanism. An authority will certainly need to look at these more easily observable elements, but it will also need to consider how well a company works to meet the standard in practice.

Supervision should pay attention to the features of due diligence that indicate the seriousness of a company's efforts, and to signals of whether the company has an authentic and consistent intent to identify and address risks to people. Requests to companies should be proportionate and focus on whether due diligence is effective in practice, rather than primarily on documentary evidence that activities have been carried out.

Finally, **the authority needs to be able to seek insights from affected people into conditions on the ground**. Canadian embassies and consular offices in third countries could support this. For example, there is precedent in the National Contact Point system, where the German embassy in India reached out to workers and their representatives to gather information in a case before the German NCP. ILO country offices would be a natural source of credible insight into local labor rights conditions, and potentially into specific situations. Without access to information of this kind, the authority would be assessing companies largely on what those companies tell it about themselves.

Section 2: Civil liability

Providing for judicial remedy is part of the State duty to protect under the UNGPs (Questions 15 and 16)

We welcome the Government's explicit recognition that civil liability sits within the framework of the UNGPs as a State-based judicial process through which remedy can be sought, as well as its recognition of existing barriers to remedy for affected stakeholders.

The UNGPs recognize that states have a duty to consider the legitimate role of liability in setting a foundation for remedy for business-related human rights harms (in GP 25). They note that the robustness of a company’s due diligence should reasonably have an effect on potential liability (in the commentary to GP 17), but that doing due diligence, on its own, should not automatically absolve companies from liability. They also recognize that affected stakeholders often face a range of legal and practical barriers in accessing judicial remedy, and remind states that they should work to address these (in GP 26). We therefore support Option 1.

It is notable that while the Omnibus process removed the harmonization of conditions for civil liability in the CSDDD, the final text clarifies that companies will be able to be held liable for damage caused by a failure to comply with the Directive under national law, and will remain responsible for providing full compensation to victims in accordance with the principles of equivalence and effectiveness.

We would highlight three conditions that we believe are necessary for a civil liability provision to work as intended. First, grounding it in whether a regulated entity caused or contributed to harm through a due diligence failure provides a clear basis aligned

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with existing tort law concepts. (This was the proposed basis for harmonizing civil liability under the original CSDDD.)

Second, a liability provision should allow consideration of the quality of a company's efforts to respect human rights. Harm may occur despite extensive due diligence, and the occurrence of harm is not by itself proof that a company's due diligence was inadequate. Equally, the fact of having conducted due diligence (or relied on due diligence carried out by a third party) should not operate as an automatic ‘safe harbor’.

Third, civil liability and administrative supervision should be considered complementary rather than alternatives. Administrative supervision can address a failure to meet the duty whether or not harm has occurred, including problematic practices occurring across a sector as a whole or in relation to a new or emerging issue. It can therefore help drive up the quality of due diligence over time. Civil liability responds to harm where remedy is owed directly to those affected because of a causal connection of some kind. As we describe above, both the UNGPs and practice in other areas of business regulation demonstrate how these measures can be mutually supportive.

Section 3: Ways to maximize effectiveness and ensure coherence with the forced labor import prohibition

The import prohibition should reward fixing problems, not exiting relationships (Questions 17 and 18)

We agree with the paper's framing: the two regimes should work together, and the objective is to reduce duplication, provide greater certainty for business, and improve enforcement outcomes. We also agree with the paper's observation that conducting due diligence should help regulated parties avoid breaching the import prohibition. Our submission is that this will only hold true if the design of the prohibition makes due diligence the most efficient route to compliance.

The import prohibition should be designed to avoid incentivizing a company to change suppliers rather than fix the underlying problem and therefore risk undermining the due diligence duty. A company facing a detained shipment may find it quicker to drop a supplier than to investigate and address the problem. For workers, this is the worst outcome: the harm continues and remedy becomes far less likely.

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Three features would help the import prohibition support due diligence rather than work against it:

- First, evidence of due diligence should count. A company that can demonstrate it has identified, prevented, mitigated or remediated forced labor risk in relation to a product – or is in the process of doing so based on a time-bound plan that is proportionate to the severity of the risk – should be in a better position when its goods are assessed than one that cannot.
- Second, companies should be given a reasonable period to address an identified problem before goods are prohibited, taking account of the complexity of the situation, the number of parties involved, and other relevant factors.
- Third, evidence of remedy should be the basis on which restrictions are lifted and that evidence should include measures to prevent recurrence. Simply switching to a different supplier should not be sufficient, since it leaves the original situation unremediated.

With Bill C-35 still under consideration and the due diligence regime at the design stage, Canada is in a position to align both at once so that the two regimes form a single, consistent approach.

About Shift

Shift is a non-profit, mission-driven organization working globally to embed respect for human rights into business. We leverage the UN Guiding Principles on Business and Human Rights to shape the standards, incentives and practices that are needed for a fairer economic system in which everyone, not just the few, can thrive.

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