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## **Memorandum: Canadian Inaction on Forced Labour as a Potential Loophole to the United States' Uyghur Forced Labour Prevention Act (UFLPA)**

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### THE UNITED STATES' UFLPA

The United States passed the UFLPA, which went into effect on Tuesday, June 21, 2022. The UFLPA established a presumption that “any goods, articles mined, produced, or manufactured wholly or in part in the Xinjiang Uyghur Autonomous Region of the People’s Republic of China” and all products of forced labour “are not entitled to entry to the United States.” The importer must demonstrate to the U.S. Custom and Border Protection (CBP) tantamount evidence to prove otherwise to be allowed in.

The CBP has been taking strong action even prior to the entry into force of the UFLPA. Over the last two years, the CBP has seized more than 1,300 shipments from China that are believed to have been made using forced labour.<sup>1</sup>

### CANADA’S INACTION

In contrast, Canada has seized only one shipment from China believed to have been made using forced labour – and that one seized shipment was ultimately released.

Canada Border Services Agency (CBSA) does not have the capacity to effectively prevent goods made using forced labour from entering the country.<sup>2</sup> A presumptive ban of the type that the United States now has in place would assist with this problem, because presently, CBSA has taken the position that they must investigate shipments on an individual basis, and they have placed the onus on themselves, rather than on the importer, to obtain evidence that an individual shipment from Xinjiang (East Turkestan) is produced using forced labour.<sup>3</sup>

Legislation has been proposed in Canada to remedy this, but of the four forced labour bills proposed, the Government of Canada is only supporting the weakest proposals.

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<sup>1</sup> See: <https://www.theglobeandmail.com/politics/article-canadas-forced-labour-import-interception-lags/>.

<sup>2</sup> *Ibid.*

<sup>3</sup> In a recent court case heard by the Federal Court of Canada, the Hon. David Kilgour et al. argued that this method is improper, that the onus can and should be placed on the importer, and that instituting a rebuttable presumption is something that the CBSA can presently do pursuant to the existing provisions of the Customs Act and the Customs Tariff. URAP intervened in the case. The CBSA took the position that they could not institute a rebuttable presumption absent legislative change. The court sided with CBSA. The case is currently under appeal.

Bill S-204, introduced by Senator Leo Housakos, would amend the Customs Tariff to prohibit the importation of any and all goods produced in the Uyghur region on the basis that they are produced using Uyghur forced labour. Based on present wording of Bill S-204, it would not impose a rebuttable presumption, but rather an outright ban (*i.e.*, the importer would not have the chance to provide evidence that its goods are not produced using forced labour). However, based on our discussions with Senator Housakos, we believe he would be willing to adjust this so that the bill mirrors the UFLPA and imposes only a rebuttable presumption and not an outright ban. Bill S-204 does not presently have the support of the Canadian government. Based on present levels of support, it is not likely to become law.

Bill C-262, introduced by Peter Julian, would impose corporate accountability for adverse impacts on human rights occurring in relation to business activities conducted abroad. In comparison to Bills S-211 and C-243 (discussed below), Bill C-262 has teeth in the sense that it imposes responsibility and liability on corporations. Bill C-262 does not presently have the support of the Canadian government.

Bills S-211 and Bill C-243 –which are nearly identical to each other– are not Uyghur-specific but would generally impose reporting obligations on government institutions and private-sector entities to “report on the measures taken to prevent and reduce the risk that forced labour or child labour is used [in their supply chains]”. If passed, these bills are unlikely to do much to ensure that forced labour goods do not enter Canadian markets. These bills do have Canadian government support.

#### CANADA’S INACTION AS UFLPA LOOPHOLE

It is in the United States’ interest that Canada takes stronger action. As discussed, of the four bills on forced labour recently proposed in Canada, two are general reporting bills that are quite weak, and the other two that are stronger do not have government support from the Liberals. **Especially as the UFLPA is now in force in the United States, there is a serious risk that Canada will become a dumping ground for forced labour products that can no longer enter the United States directly. There is also a serious risk that if Canada does not take effective action on this issue, forced labour goods will simply reroute to Canada and then reach United States’ markets via the U.S.-Canada land border. The UFLPA guidance is silent on this issue.**

#### UYGHUR RIGHTS ADVOCACY PROJECT NEEDS ASSISTANCE

Uyghur Rights Advocacy Project (URAP) is a Canadian-based non-profit organization advocating on behalf of the Uyghur community in Canada. URAP has been successful over many years in building cross-party consensus on Uyghur issues<sup>4</sup>, and is presently advocating for the Canadian government to take strong legislative action on forced labour. URAP would greatly benefit from the United States’ assistance in these efforts. Among other things, we ask that the United States officials raise this issue in bilateral discussions with their Canadian counterparts.

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<sup>4</sup> Successes include: the building of a Uyghur parliamentary friendship group; Canada’s recent commitment to welcome 10,000 Uyghur refugees; and the hearing conducted by the Subcommittee on International Human Rights in 2020 and the subsequent parliamentary motion recognizing the Uyghur genocide.