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## North American countries finally align on forced labor regulations

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### Commentary

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A compendium of the United States-Mexico-Canada Agreement (USMCA) deal is seen at the Senate building in Mexico City, Mexico May 30, 2019. REUTERS/Carlos Jasso [Acquire Licensing Rights](#)

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April 28, 2023 - The United States-Mexico-Canada Agreement ("USMCA") is considered the strongest trade agreement regarding labor rights. One of the significant changes that the USMCA adopted to replace its old version, the 1994 North American Free Trade Agreement, was to include robust labor provisions showcasing a new commitment to enforce and protect workers' rights.

Specifically, the USMCA added provisions explicitly preventing violence against workers and workplace discrimination, and, most notably, prohibiting imports made with forced labor. These unprecedented provisions on labor rights meant that the United States, Mexico, and Canada ("Parties") were not only required to ensure fair labor practices within their respective trade industries but also to actively enact measures that ban the importation of goods produced wholly or



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importation of forced labor-made goods into the country.

Now that the three Parties are finally aligned on their anti-forced labor regulations, the question becomes: What does their alignment mean for international trade in North America?

### Overview of the parties' forced labor regulatory efforts

#### United States

The United States has a decades-old regulation banning the importation of goods produced with forced labor, the U.S. Tariff Act of 1930 (19 U.S.C. §1307) ("Tariff Act"). Specifically, Section 307 of the Tariff Act prohibits the importation of "[a]ll goods, wares, articles, and merchandise mined, produced, or manufactured wholly or in part in any foreign country by [...] forced labor."

Despite its humanitarian attributes, the Tariff Act was not passed to uphold human rights but to protect domestic producers from foreign competition. Meaning, when products were deemed to be produced with forced labor, they were not outright banned and were allowed to enter upon showing that no comparable product exists in the United States that could potentially be threatened by such importation.

Although on the books, the law was not strictly enforced since its passage, and only until forced labor was examined through the lens of human trafficking was the enforcement of the Tariff Act bolstered. Thus, for the United States, increased enforcement of the prohibition of forced labor in trade for humanitarian reasons became apparent in 2015, five years before the USMCA made such efforts a requirement.

Fast forward to the years when the USMCA was under negotiations — the United States legislators were simultaneously negotiating the passage of an even stricter forced labor law, the Uyghur Forced Labor Prevention Act ("[UFLPA](#)"). The UFLPA was introduced in 2020 but did not gain bipartisan support until being reintroduced in 2021.

By the end of 2021, and by the time the USMCA was in effect, the UFLPA was signed into law, making it an automatic presumption that any good coming from China's Xinjiang region is deemed produced with forced labor of Uyghur minority Muslims. Importers can challenge the ban of their goods under the UFLPA but only after rebutting this presumption, which is a significantly harder standard to meet than that under the Tariff Act.

#### Canada

Unlike the United States, Canada's legislative efforts in combating forced labor practices in trade arose after the signing of the USMCA in 2019. In February 2020, Canadian parliamentarians introduced Bill S-211 (the [Modern Slavery Act](#)) to "impose an obligation on certain entities to report on the measures taken to prevent and reduce the risk that forced labour or child labour is used at any step in the production of goods in Canada or elsewhere."

However, the ban on importing goods made by forced labor into Canada was introduced on July 1, 2020, through the amendments to Canada's Customs Tariff and the Schedule to the Customs Tariff ("[Memorandum D9-1-6](#)"). This is the only measure implemented in Canada that explicitly mentions the country's obligation under the USMCA and directly affects trade.

While they share the same humanitarian goal of eradicating forced labor, the other bills introduced by Canadian legislatures impose reporting obligations on private companies and require transparency in the supply chain but have no direct effect on the flow of goods into and out of the country.

#### Mexico

Mexico has been under the surveillance of its trade allies since the USMCA went into force because it remained the silent party while all these forced labor efforts were underway. Only recently, on March 17, 2023, Mexico published new [provisions](#) to ban the importation of goods into the country produced by forced labor, including child labor, to implement Article 23.6 of the USMCA. The new provisions will enter into force on May 18, 2023, 90 days after its publication in the Federal Gazette.

Feedback

In general, the new rules provide a blanket prohibition on imports into Mexico of goods produced, in whole or part, with forced labor. Specifically, the rules state that all goods found by the Ministry of Labor and Social Welfare ("MLSW") to be produced with forced labor will be included on a finding list that will be published on the MLSW's website (not yet available), thus making the importation of such goods explicitly prohibited from entering Mexico.

Although the rules are seen as a step in the right direction, one cannot avoid pointing out a key feature in its text that makes it uniquely different from the laws currently in place in the United States and Canada. Specifically, as noted above, when an investigation is initiated on a product from a country with an interagency agreement with Mexico, MLSW will request the country's authorities to verify whether the good was produced by forced labor. Put differently, the rules allow MLSW to give high deference to whatever resolution the authority of the foreign country would issue on the subject good.

This feature differs from the regulations underway in the United States and Canada because the appointed agency in those countries must independently conduct the investigation and issue a determination based on its own findings.

Below is a comparison of the existing anti-forced labor legal framework of the three countries.

	United States	Canada	Mexico
<b>Relevant Agency</b>	The U.S. Customs and Border Protection ("CBP")	Canada Border Services Agency ("CBSA")	The Ministry of Labor and Social Welfare ("MLSW")
<b>Enforcement Process</b>	Under the <u>Tariff Act</u> , CBP issues <b>withhold release orders</b> ("WRO"). Under the <u>UFLPA</u> , CBP will target shipments using various sources, such as the law's <b>Entity List</b> .	If CBSA suspects that imported goods are made with forced labor, it will detain the goods and <b>reclassify</b> them as prohibited goods.	MLSW will request the authorities of the importing country to verify the product's compliance and <b>adopt whatever resolution that country reaches</b> . Otherwise, MLSW will require verification documents from the importer directly.
<b>Statistics</b>	Under the <u>Tariff Act</u> , <b>54</b> WROs (1930 – 2016) and <b>16</b> WROs after 2016. Under the <u>UFLPA</u> , <b>3,237</b> shipments were targeted, <b>424</b> of which were denied entry, and <b>1,090</b> shipments were released.	As of 2023, Canada intercepted only <b>one</b> shipment, released after the importer appealed.	Yet to follow after the rules go into effect in May 2023.
<b>Budget and Resources</b>	For the 2023 fiscal year, the Department of Homeland Security allocated CBP \$70.3 million specifically for UFLPA enforcement and required the hiring of 300 additional positions.	CBSA requested a budget of <b>\$2.3 billion</b> for 2023, but there is no specificity on budget allocation within the agency.	There is no publicly available information on MLSW's overall budget.

Source: Aristeo Lopez, Sally Alghazali

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**What to expect from this regulatory alignment in North America?**

It is clear from the efforts outlined above that the three Parties are harmonizing their fight against forced labor in North America under the USMCA. But the regulatory alignment is likely to be the initial phase. Whether actual and effective enforcement across the region will occur is a question yet to be answered.

For instance, the United States has banned the importation of several goods made by forced labor by specific companies. But Canada does not seem to target the same goods and companies, let alone Mexico. Thus, while some goods could not be imported into the United States, they could still be imported into Canada or Mexico. Furthermore, while the United States has enacted comprehensive and rigorous laws and allocated substantial resources to implement them, and Canada is in the process of adopting additional legislation, it remains to be seen how Mexico prepares to start implementing its regulations as of May 2023.

But the USMCA requires that Parties coordinate efforts for the "identification and movement of goods produced by forced labor." Accordingly, the trade industry will likely witness joint efforts by the Parties in the coming months. For instance, in the case of Mexico, under its new rules, MLSW could initiate an investigation ex officio and eventually impose restrictions like those imposed by the United States based on the information exchanged with CBP. In Canada, additional regulations on forced labor could be approved soon.


Therefore, companies in North America are encouraged to implement effective due diligence and tracing in their supply chain to ensure compliance with the relevant regulation, particularly amid the "nearshoring" phenomenon to relocate companies from Asia to North America, mainly Mexico and the Southern U.S.

The efforts outlined above seem to signal that more intense coordination can be expected among the USMCA Parties in the fight against forced labor.

One issue that could potentially impact the region is a recent [report](#) by Sheffield Hallam University last year alleging that most of the global auto industry is tainted with forced labor from China's Xinjiang region. Although it is a non-governmental organization report, legislators, and customs officials, specifically in the United States, have put significant weight on its importance and are investigating the evidence. "Senate Finance Committee Chair Wyden Expands Investigation of Auto Supply Chain Links to Forced Labor in Xinjiang, China," U.S. Senate Committee on Finance, March 28, 2023.

If the United States determines the allegations are plausible and decides to issue a WRO or detain goods under the UFLPA, the impact could be significant on the other two USMCA partners, especially because the auto industry in North America is highly integrated.

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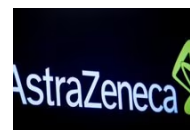


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