1919 S. Eads St.
Arlington, VA 22202
703-907-7600
CTA.tech

November 15, 2024

Hon. Mary Ng, P.C. M.P
Minister of International Trade, Export Promotion,
Small Business and Economic Development
Trade Strategy and Economic Security Division
Global Affairs Canada
125, Sussex Drive
Ottawa, Ontario, K1A 0G2

Re: Public consultations on measures to strengthen Canada's forced labour import prohibition

Dear Minister Ng:

The Consumer Technology Association (CTA) welcomes the opportunity to submit its views in response to the Government of Canada's consultation on potential measures to strengthen the prohibition of imports using forced labour under Article 23.6 of the Canada-United States-Mexico Agreement (CUSMA). We sincerely appreciate your consideration of our input and contribution to this important issue.

CTA represents over 1,300 U.S. and Canadian companies from every facet of the consumer technology industry and relies on broader supply chains built upon strategic arrangements with trusted Canadian trading partners. We also own and produce CES®, the world's most powerful technology event and in 2024, attracted more than 145,000 people, including 50,000-plus international visitors, with 3,761 from Canada.[1] Throughout its 100-year existence, CTA has remained steadfast in its mission to promote North American innovation and the adoption of new technologies that address significant global challenges.

Further to the Government of Canada's public consultation, CTA provides these comments in consideration of the proposed measures to strengthen Canada's forced labour import ban. CTA is well-positioned to contribute to Canada's efforts in this regard based on the experiences of our member companies with the increasingly developed U.S. forced labour regulatory and enforcement regime. We therefore offer our views on certain benefits and drawbacks of the U.S. regime that may help inform Canada's efforts to more effectively implement improvements to its own forced labour ban and related enforcement. This is particularly the case within the context of the CUSMA and its provisions related to forced labour enforcement under Article 23.6, which

[1] CES 2024 Attendance Audit Summary, https://cdn.ces.tech/ces/media/pdfs/2024/attendeeauditsummary_2024.pdf.

requires the CUSMA Parties to adopt a forced labour import ban and to establish cooperation to identify and stop the movement of goods produced with forced labour.[2]

CTA and its member companies have witnessed first-hand U.S. enforcement efforts in this context and are continuously building capacity towards forced labour compliance. CTA is happy to provide insight on these experiences so that it may support Canada's future approach. To that end, our comments outline three thematic recommendations: (1) establishing clear evidentiary standards communicated through official guidance and procedures; (2) prioritizing transparency and allying with industry; and (3) protecting procedural rights owed to importers.

Establishing Clear Evidentiary Standards

Canada should consider establishing clear evidentiary standards to guide forced labor enforcement that are well-communicated to the importing community through official guidance and procedures. CTA and its member companies have observed a lack of clear and consistent communication and lack of official standards guiding U.S. government decisions as to the designation of entities or products for forced labour concerns, creating challenges for industry to effectively respond to allegations.

For example, U.S. legal standards require importers to "prove a negative" with respect to the absence of forced labour in supply chains. While enhanced traceability capabilities provide opportunities for importers to verify the absence of forced labour at various stages along their supply chains (a task that is highly fact- and sector-specific), a fundamental lack of clarity on which documentation or evidence is acceptable persists for U.S. stakeholders. This ambiguity often leads to unnecessary supply chain disruptions. It also forces industry (which has already invested heavily in compliance measures) to expend significant resources to make these determinations. In many cases, "proving the negative" may be an impossible task that neither accomplishes the policy goals underlying the prohibition on forced labour nor creates an environment that allows stakeholders to proactively identify and remediate potential issues within their supply chains.

Considering these experiences in the U.S. context and to avoid undue impact on industry stakeholders who are committed to remaining in compliance with the law, CTA recommends that any improvements in Canada's forced labour regime include, at minimum, the establishment of clear legal and evidentiary standards that allow stakeholders to meaningfully engage with the Government when an allegation of forced labour arises.

For instance, one of the Government's proposals calls for the "publication of a list of goods at risk" of being produced by forced labour that is "informed by the [International Labour Organization] forced labour indicators and definitions." CTA notes that any listing mechanism pursuant to this proposal should be accompanied by cogent guidance on what importers must provide to effectively document their supply chains.

[2] CUSMA – Chapter 23 – Labor, https://ustr.gov/sites/default/files/files/agreements/FTA/USMCA/Text/23-Labor.pdf.

CTA further suggests that international guidelines and definitions, such as those under the International Labour Organization (ILO), should inform these standards, but not bind them, as international guidelines often do not provide sufficient specificity or certainty on evidentiary or legal questions.[3] While the ILO generally provides high-level information illustrating certain forced labour risks that may be present in supply chains, importers may have difficulty independently translating these into practical, usable guidance that can be leveraged day-to-day in a business context. CTA strongly urges Canada to consider consulting with industry to develop any such standards such that they conform with actual business practices.

More, U.S. customs authorities require voluminous traceability documentation when a shipment is detained, leading to a need for importers to maintain and submit thousands of documents to support the importation of a single product. In practice, U.S. authorities have experienced difficulty in reviewing this level of documentation, leading to substantial delays at ports and extensive detention and demurrage charges for importers. These costs are especially frustrating when U.S. authorities ultimately find shipments to be compliant and then released them, leaving the importer and its downstream customers to bear enormous costs.

Certain of Canada's proposals would appear to require similar levels of documentation and review. For example, one proposed measure suggests the creation of a supply chain "minimum traceability" process, under which importers of goods that appear on a published list of "at risk goods" would have the "reverse onus to provide additional documentation regarding the imported goods' supply chain journey." Canada should consider resource constraints when developing its evidentiary standards and enforcement mechanisms. At minimum, Canada should issue clear guidelines relating to required documentation and standards for goods both on the proposed "at risk goods" list, along with the burden on the importers for those not listed. Based on CTA members' experience with the U.S. enforcement regime, failure to design the standards with sufficient specificity will only hamstring Canada's effective enforcement by creating unnecessary obstacles for industry.

Prioritizing Transparency and Collaboration with Industry

CTA and its members often experience a severe lack of transparency from U.S. authorities regarding their decision-making processes on forced labour enforcement, both when detaining products allegedly at risk of forced labour (for example, in the Uyghur Forced Labor Prevention Act, or UFLPA, context) or when listing entities and/or regions for Withhold Release Orders ("WRO")[4] or the UFLPA Entity List. This creates substantial challenges for industry in effectively responding to these allegations and demonstrating compliance. Allegations from U.S. authorities

[3] *See, e.g.,* International Labour Organization, ILO Indicators of Forced Labour, https://www.ilo.org/sites/default/files/wcmsp5/groups/public/@ed_norm/@declaration/documents/publication/wcms_203832.pdf.

[4] U.S. customs issues a WRO when it has "reasonable suspicion" of the use of forced labour in the manufacturing or production of goods entering the U.S. However, the evidence relied upon to issue these WROs is often unclear and not directly communicated to those impacted by the decision. *See* U.S. Customs and Border Protection, Withhold Release Orders and Findings Dashboard (last visited Nov. 12, 2024), https://www.cbp.gov/trade/forced-labor/withhold-release-orders-and-findings.

are frequently unclear, obscured as a result of ill-defined "law enforcement" privileges, or subject to standards that shift over the life of a given case.

CTA recognizes that certain sensitive information may need to be protected by law in this context. However, CTA urges the Government of Canada to recognize that companies have a clear interest in rooting out labour violations from their supply chains – and any lack of transparency in this area limits importers' ability to take action to address issues that may be known to the Government, but not known to the importer (though no lack of diligence). In this vein, Canada should consider industry as a partner in achieving its policy objectives and, as a result, closely evaluate mechanisms available for information-sharing and the extent of disclosures permitted when suspicions of forced labour arise.

For example, in the context of the UFLPA in the United States, CTA made recommendations suggesting the creation of a strong best practices framework for compliance, including information-sharing and a bank of resources for industry to utilize.[5] Canada may consider collaborating with industry to develop a similar framework, including clear guidelines on the information that can and will be shared with importers if an allegation arises. This framework may include concrete examples of the documentation and steps required – informed by real-world enforcement scenarios – that can be used effectively by industry to plan their compliance. These types of resources are particularly important for small and medium-sized businesses, who may otherwise lack the compliance resources available to larger businesses.

Protecting Procedural Rights Owed to Importers

CTA members and other U.S. stakeholders have reported the difficulty of effectively proving an absence of forced labour in their supply chains because there is no well-established, transparent, or available process for doing so. U.S. laws and regulations do not provide for adequate specificity, leading to decentralized decision-making across U.S. ports of entry and application of a variety of standards and procedures among these ports. Indeed, many of the issues described above contribute to the deficit of procedural protections, which hampers both compliance and enforcement alike.

For any measure that Canada considers implementing, clear documentation of the procedural steps required at every level in the process is paramount. In this regard, CTA urges Canada to consider the following:

- **Developing a mechanism to standardize enforcement across ports of entry.** In light of the difficulties of the decentralized approach experienced by importers in the United States, CTA suggests that Canada consider developing a mechanism to standardize enforcement efforts across different entry points that may be implicated in enforcement in Canada.[6] To this end, Canada should consider ensuring that the steps for notice to the

[5] Consumer Technology Association, *Uyghur Forced Labor Prevention Act's Consumer Tech Industry Impact* (June 2024) at 9.
[6] Consumer Technology Association, *Uyghur Forced Labor Prevention Act's Consumer Tech Industry Impact* (June 2024) at 10.

importer and the relief available should be articulated in a clearly defined manner, made public, and regularly reviewed considering any evolutions in the law.

- **Designing a procedure for forward-looking certification and/or accreditation.** Canada may also consider an approach that could identify compliant companies, serving as a forward-looking, proactive due diligence effort. This type of mechanism could enable stakeholders to take advantage of a direct opportunity to demonstrate their compliance to the Government of Canada, prior to any potential allegations or specific issues arising. CTA recommended a potential certification approach to the U.S. Government in the UFLPA context, and we believe a similar mechanism could be appropriate for Canada's consideration as well.[7]

- **Thoroughly documenting any design of a dispute settlement mechanism.** Further to Canada's proposal to create a "streamlined mechanism to settling disagreements between importers and the Government on decisions that prevented the entry into the market of specific goods," CTA urges the Government to ensure that any applicable legal review mechanism is thoroughly documented and designed with industry input in mind. The mechanism should account for the concerns highlighted above by adopting clear, transparent, and predictable procedures.

Conclusion

CTA is pleased to provide the above specific recommendations on issues relating to strengthening Canada's forced labour ban, particularly in light of the clarifying experiences of its members in the U.S. forced labour enforcement context. We look forward to serving as a resource for the Government of Canada during this review.

Sincerely,

Ed Brzytwa
Vice President of International Trade
Consumer Technology Association

Michael Petricone
Senior Vice President of Government Affairs
Consumer Technology Association

[7] *Id*.