

March 21, 2022

The Honourable Salma Atallahjan
Chair, Standing Senate Committee on Human Rights
Standing Senate Committee on Human Rights
The Senate of Canada
Ottawa, Ontario
Canada, K1A 0A4
Sent via email: ridr@sen.parl.gc.ca

The Honourable Julie Miville-Dechêne
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Sent via email: julie.miville-dechene@sen.parl.gc.ca

RE: Bill S-211, Fighting Against Forced Labour and Child Labour in Supply Chains Act

Dear Senator Atallahjan and Senator Miville-Dechêne:

Thank you for the opportunity to comment on Bill S-211 - *An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff*.

Retailers fully support the purpose of Bill S-211 – fighting against forced and child labour and ensuring that Canadian supply chains do not contribute to these global human rights abuses. We appreciate Sen. Miville-Dechêne’s dedication to this important issue and the collaborative spirit with which she has developed the proposed legislation, including several significant amendments from the previous iteration of the Bill. As Canada looks to introduce new legislation in this area, RCC supports the approach proposed in Bill S-211.

Canadian retailers are committed to sourcing responsibly and have zero tolerance for forced and child labour. Retailers take action within their supply chains to reduce the risk of human rights abuses – through supplier Codes of Conduct, compliance programs and formal and informal industry collaboration. This is challenging work driven by continuous improvement, as global supply chains are complex with varying degrees of visibility and issues often intentionally concealed. We support opportunities to work collaboratively with government on these important issues – such as through Bill S-211.

Supply chain transparency legislation is a relatively new policy tool for the promotion of responsible business conduct in this area. While we are seeing variations of this legislation appear globally, they are generally in the early stages of implementation and regulators around the world

are still wrestling with what design is the most effective. This approach will provide a strong foundation that starts Canada on this path, with opportunities to evolve as experience is gained.

We are offering the following recommendations and comments to promote compliance and ensure that the legislation can be effectively implemented by Canadian retailers.

Our comments are focused on the following areas, with further details and specific recommendations provided in the Appendix:

- 1. Support for including government** – RCC strongly supports the provisions in Part I that require governments to undertake similar reporting to entities, as they demonstrate fairness, strengthen the marketplace influence of the legislation, and further incentivize strong business practices.
- 2. Report contents** – RCC supports including requirements for report contents in the legislation. RCC is recommending amendments to:
 - Clarify that the information regarding an entity’s structure, activities and supply chain is intended to be a general description;
 - Ensure entities are not obligated to publicly share competitively sensitive business information; and
 - Prescribe the information required under s.11(3)(c) and 11(3)(d) by regulation rather than by legislation in order to address potential challenges related to different business structures and ensure strong compliance programs are encouraged.
- 3. Entity Thresholds and Definitions:** As a first step, the legislation should focus on larger businesses who are best equipped to comply with the reporting requirements being proposed. This is particularly important as companies are facing unprecedented supply chain challenges and focusing on recovery from the COVID-19 pandemic. RCC recommends that an \$80 million revenue threshold be applied, more in line with international precedents in the UK and Australia.

Furthermore, we recommend refining the definition of “entity” to address various business structures, including obligating only the franchisor in franchise operations, clearly exempting logistics providers, and adding regulation making authority to exempt other entities as appropriate if required.

- 4. Compliance promotion and proportionate enforcement powers and penalties** – In line with the intent of the Bill - increasing transparency to drive awareness and action – the enforcement approach should focus on education and promoting compliance. RCC is recommending that the Bill include a compliance-promotion enforcement strategy, require production of documents and information in place of powers of entry, and offering considerations to ensure penalties are focused on willful non-compliance or intentional provision of false information.

5. **Complimentary government actions** – The proposed legislation would require and benefit from complimentary government actions. This includes the development of guidance materials to support the preparation of reports, providing new resources for industry – such as country specific risk analysis and a repository of factories associated with forced or child labour – and complimentary policy initiatives that reflect the global nature of the issue.
6. **Implementation Timelines** – The implementation period will need to provide sufficient time for the development of guidance materials by government and subsequent report preparation by entities, particularly in the current context of the supply chain disruptions stemming from the COVID-19 pandemic. RCC is recommending that the coming into force period be established by regulation, and that industry be provided a minimum of two years for implementation following the issuance of both regulations and guidance.

RCC is also recommending several administrative adjustments that would increase the ease of implementation for businesses.

Again, we appreciate the opportunity to provide comments on Bill-S-211 and would be pleased to provide further information on any of our recommendations.

Sincerely,

Jason McLinton
VP, Grocery Division and Regulatory Affairs
Retail Council of Canada

About Retail Council of Canada

Retail is Canada's largest private-sector employer with over 2 million Canadians working in our industry. The sector annually generates over \$78 billion in wages and employee benefits. Core retail sales (excluding vehicles and gasoline) were over \$400B in 2020. Retail Council of Canada (RCC) members represent more than two-thirds of core retail sales in the country. RCC is a not-for-profit industry-funded association that represents small, medium, and large retail businesses in every community across the country. As the Voice of Retail™ in Canada, we proudly represent more than 45,000 storefronts in all retail formats, including department, grocery, specialty, discount, independent retailers, and online merchants.

APPENDIX

The Retail Council of Canada fully supports the purpose of Bill S-211 – contributing to the fight against forced labour and child labour. We offer the following recommendations and comments to enhance clarity, promote compliance and ensure that the proposed requirements can be effectively implemented by Canadian retailers.

1. Support for including government (Part I)

RCC members are pleased to see that the new iteration of the proposed legislation includes requirements for government institutions that are similar to those proposed for the private sector. Ensuring that government follows the same rules is worthwhile in and of itself, and will also have important influences on the overall marketplace. As one of the country's largest purchasers of goods, the application of the same standards to government institutions will help normalize marketplace practices supportive of the legislative intent, benefitting all Canadian companies. For example, Canadian retailers report facing pushback from suppliers on requests for due diligence, as their relative share of business is smaller. Ensuring that government procurement is seeking similar information and practices from suppliers will support all retailers by increasing businesses in the market who are applying these standards.

Furthermore, with government institutions required to report annually on their efforts, it can be anticipated that they will prioritize suppliers who can provide a higher degree of transparency and certainty. Canadian businesses who also serve as potential government suppliers will thus be incentivized and rewarded for strong practices in this area.

- **Recommendation:** Maintain Part I requirements for reporting by government institutions.

2. Report Contents

RCC supports having clear guidelines for the contents of the reports and appreciates the general consistency with approaches in the UK and Australia. There is an opportunity to provide further clarity in the legislation and a need to allow for regulatory authority to address potential issues.

Scope of s. 11(3)(a)

As drafted, s.11(3)(a) could be interpreted as we believe is the intent – to provide a reasonable general overview of the stipulated elements in order to provide context for the report. However, the section risks being misinterpreted as requiring detail on a company's operations that are not relevant to the subject matter of the legislation and could be harmful from a competition perspective.

- **Recommendation:** Amend s.11(3)(a) to clarify that the intent is to provide a general description.

Competitively Sensitive Business Information

There is concern that reports might obligate companies to share confidential or competitively sensitive information – such as supplier names and details or specific structures of transportation and distribution.

- **Recommendation:** Include a new subsection indicating that for greater clarity, nothing that is considered confidential or competitively sensitive in nature is required to be included in the reports.

Providing for Regulatory Authority

As we consider the application of this proposed legislation on Canadian retailers, it is important to assess how it would apply in different retail business structures. A retailer may sell solely their own-brand products, solely other brands products, or a mix of both. Some retailers rely in whole or in part on specialty importers and distributors.

Retailers have significantly more influence over the supply chains for their own-brand products than over those of other brands they carry, or products sourced from distributors and importers. Indeed, for competitive reasons, brands, importers and distributors are often understandably unwilling to share specific details about their supply chains and sourcing practices with their retail partners. As a result, retailers’ programs and practices to ensure their responsible sourcing standards are met will vary depending on the business structure. While none of these business models would prevent a retailer from preparing a report on their practices, it does impact what they might reasonably be expected to include in such a report. Situations such as this will require further consideration to ensure that the reporting obligations on entities reflect these different scenarios. The proposed legislation should define these requirements through regulation so as to allow for consultation with affected parties and flexibility to adapt to changing circumstances.

Retailers are also concerned with how the content of reports – particularly related to “measures taken to remediate any forced labour or child labour,” outlined in s.11(3)(d) – have the potential to be taken out of context and serve as a disincentive to greater transparency. We note that this section does not appear in either the UK or Australian legislation. For example, a retailer with a rigorous supply chain responsibility program may discover through their audits or through information shared with them that a vendor is not in compliance. The retailer would then take appropriate and commensurate action – from working with the vendor to resolve concerns all the way to immediately terminating the commercial relationship. This scenario demonstrates a compliance program that is effective. Under the proposed legislation, a retailer would be required to provide information on this action in their public reporting. Unfortunately, these stories can be and have been brought forward without context to imply that forced labour or child labour are present in a

retailer's supply chain, while they in fact represent effective compliance programs. There is a need to ensure that the outcome of the legislation is not adversely punitive on business who undertake appropriate due diligence and remediation. Requirements on how this information is presented will need to be carefully considered, and then monitored for these potential adverse consequences following implementation. Again, the ability to refine these requirements through regulatory authority would provide an opportunity to address this potential issue.

- **Recommendation:** Provide regulation making authority to prescribe the information that must be included in reports in regards to s.11(3)(c) and 11(3)(d) by regulation and not by legislation.

3. Definition of Entity (s.2; s.23)

RCC strongly supports exempting small businesses who would not have the capacity to comply with the proposed reporting requirements. With Canada's recently introduced ban on the import of goods made in whole or in part with forced labour and the proposed expansion to include child labour in the Customs Tariff prohibition, all Canadian businesses are held to this standard. An exemption from the proposed legislation is only an exemption from issuing public reports. The government may consider partnering with industry to provide tailored educational resources for small and medium businesses who fall under the threshold to learn about supply chain risks related to forced and child labour, including region and product specific information, and best practices in managing their supply chains.

A focus on larger businesses who are best able to comply with the legislation should be the first step, particularly in light of the ongoing recovery from the COVID-19 pandemic. The proposed threshold should be increased to focus on larger businesses and be more in line with international precedents in the UK and Australia. To this end, RCC recommends that an \$80 million revenue threshold be applied. Under this threshold, approximately half of the 45,000 storefronts represented by RCC would be covered under the legislation.

- **Recommendation:** Amend the reporting threshold to include businesses that have generated at least \$80 million in revenue.

In the case of franchises, only the franchisor, and not the individual franchisees, should be obligated to report. The activities of the franchisee would be reported by the franchisor, so requiring both to report would be unnecessarily duplicative.

- **Recommendation:** Add a new subsection to clarify that in the case of franchises, the franchisor is the obligated reporting party.

S.9(a) indicates that the law applies to entities distributing goods in Canada or elsewhere. This could capture companies that are providing logistics or delivery services for other parties who are selling

or producing goods. These logistics and delivery services would not have the capacity to report on these goods and should not be obligated to report on goods for which they solely serve as a distributor.

- **Recommendation:** Clarify that the law does not apply to the extent an entity is providing logistics or delivery services for other entities.

As noted above, the different business structures enable differing levels of visibility and influence into supply chains, and thus different approaches to compliance. A potential solution to this challenge is to refocus the definition of entity with respect to imported items on Importers of Record. RCC also notes that the Bill allows entities to be designated via regulation but does not similarly allow for entities to be exempted via regulation. We suggest that the Bill should allow for entities to similarly be exempted by regulation to provide flexibility to address potential future challenges.

- **Recommendation:** Include regulation making authority to exempt entities.

4. Complementary Government Actions

Implementation of this legislation would benefit from government support in several ways.

First, the Government must work with industry to develop clear guidance materials that will facilitate industry compliance. This guidance material must be available well in advance of the legislation coming into force to allow business sufficient time to comply. Similarly, industry would benefit from additional guidance on the proposed changes to the Customs Tariff, ensuring industry has clear information on how to demonstrate compliance if required.

Second, the Government of Canada must collaborate with industry on new programs and supports that would facilitate industry's ability to address the risks of forced and child labour in their supply chains that would then be reported on under this proposed legislation. The Government has access to information and insights on global labour and political risks that go beyond the reach of individual Canadian businesses. For example, retailers would benefit from reliable, clear, actionable information on risks of forced and child labour by country and product category, and available repository of factories and/or suppliers where forced labour and child labour has been identified. The government should also work with industry to explore opportunities to support Canadian retailers' efforts to access information from suppliers by raising awareness among importers. We would be pleased to work with the government on information sharing programs that would facilitate retailers' efforts to manage risks in their supply chains.

This is not a challenge that can be addressed by business in isolation, or by Canada alone. The government must also continue to support the purpose of this legislation through ongoing global collaboration – such as continuing to pursue supportive provisions in trade agreements and seeking

collaborative and aligned approaches through organizations such as the G7 and the International Labour Organization.

5. Compliance promotion and proportionate enforcement powers and penalties (s.12)

As the intent of the Bill is greater transparency, the intent of the enforcement regime should be to promote and achieve that transparency. RCC appreciates the new option for a revised report in s.12.

An education-first compliance approach should be afforded for in the Bill. The first step in a potential non-compliance should be educational engagement by the designated party and an opportunity for the entity to take corrective action by a specified date to come into compliance if required. Investigations, charges and other penalties should be limited to willful and intentional non-compliance, or intentionally providing false information.

- **Recommendation:** Include provisions that enable a compliance promotion approach and provide entities an opportunity to come into compliance before investigations or charges are considered.

With regards to the powers of investigation, the proposed provisions go beyond what is required to support compliance. We would suggest that enabling a designated person(s) to request any documentation or information, within a specified timeframe, to support enforcement of the legislation would be a more commensurate approach.

- **Recommendation:** Amend the powers of investigation to provide for powers commensurate to the legislation, such requiring the production of documents and other evidence within an established timeframe. For example:

Provision of documents or information

A designated person may, for a purpose related to verifying compliance or preventing non-compliance with the provisions of this Act or the regulations, order a person to provide, on or before the date and time specified by the designated person and at the place and in the manner specified by the designated person, any document or information specified by the designated person.

Duty to provide

A person that is ordered by a designated person to provide a document or information shall do so on or before the date and time, and at the place and in the manner, specified by the designated person.

In general, the publication of any charges laid against an entity under the legislation will serve as a significant incentive for compliance, given the potentially severe reputational damage of non-compliance. RCC recognizes the need for consequences for intentional non-compliance (failure to submit a required report) and the intentional provision of false information. While we appreciate that the objective is for the penalties to compel entities to submit prompt and accurate reports, there

is concern that these penalties could apply to those who made best efforts to provide compliant reports that were judged to not fully meet the criteria set out in s.11(3).

- **Recommendation:** Ensure that financial penalties and personal liability apply only in cases of intentional non-compliance or intentional provision of false information.

6. Sufficient Implementation Timelines (s.28)

This legislation would establish a new process for how Canadian retailers share information with the public on their efforts to ensure that the products on shelf meet Canadians' expectations that they are free of forced labour and child labour. Following royal assent, there will remain substantial work to be done to support the first reporting period. As noted above, industry will require guidance materials and sufficient time following the release of those guidance materials for companies to develop and approve their first reports. Preparing the first report will require more time than subsequent ones, as businesses gather and compile information from within the organization and implement new processes to support the development and approvals of the reports. As currently proposed, entities could have significantly less than a year from the date the legislation receives royal assent to the date that first reports must be submitted. Even under ideal circumstances, this is not sufficient time for industry to develop and submit their first reports.

This is particularly critical in the context of the current exceptional circumstances impacting Canadian supply chains. As businesses are working to manage the impact of the COVID-19 pandemic and internal resources are already strained, implementing new reporting requirements under tight timelines would pose a significant challenge.

- **Recommendation:** The coming into force date should be established via regulation, and industry should be provided a minimum of two years for implementation following the issuance of both regulations and guidance.

Administrative Recommendations

RCC recommends the following administrative adjustments that would increase the ease of implementation for businesses.

Definition of Child Labour (s.2): RCC appreciates the amendments from the previous iteration of the Bill to provide further clarity on the definition of *child labour* and provide for better alignment with the International Labour Organization (ILO). However, we suggest that the definition specifically reference both applicable ILO standards. The ILO definitions are internationally recognized standards upon which many companies already base their policies and are leveraged globally in sourcing programs. This will provide clarity to business and support the integration of existing initiatives into a new reporting regime.

- **Recommendation:** Fully align the definition of “child labour” with the ILO definitions in the ILO Convention on the Worst Forms of Child Labour (No. 182), and the ILO's Minimum Age Convention (No. 138).

Duplicative Reporting: The proposed legislation should avoid the need for duplicative reporting. For example, a parent company should not be required to report on the activities of a subsidiary that it controls if that subsidiary is reporting under s.11.

- **Recommendation:** Clarify the reporting obligations of parent companies and subsidiaries in s.11(2) such that duplicative reporting is not required.

Allowance for CSR Reports: In many cases, RCC members provide information on their responsible sourcing initiatives in their annual Corporate Social Responsibility (CSR) Reports. These broader CSR reports should be considered acceptable under s.11, so long as they clearly contain all of the prescribed information.

- **Recommendation:** Include a new subsection to allow for the use of CSR reports so long as they meet the requirements outlined in s.11.

Allowance for Electronic Signatures: RCC members have noted that the use of electronic signatures is current standard practice in many organizations and request that this be allowed for in 11(5)(b).

- **Recommendation:** Allow for electronic signatures or remove manual signature requirement in 11(5)(b).