



Legislative Summary

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

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF 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

1 BACKGROUND

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 (short title: Fighting Against Forced Labour and Child Labour in Supply Chains Act),¹ was introduced in the Senate by the Honourable Julie Miville-Dechéne and received first reading on 24 November 2021. The second reading was completed and the bill was referred for study to the Standing Senate Committee on Human Rights on 14 December 2021. After third reading, the bill was passed by the Senate with amendments on 28 April 2022.² On 1 June 2022, the bill passed second reading in the House of Commons and was referred to the House of Commons Standing Committee on Foreign Affairs and International Development.³

The purpose of Bill S-211 is to reduce the use of forced labour and child labour in supply chains by increasing transparency in these supply chains. Specifically, the bill imposes reporting obligations on government institutions and on certain private entities that produce or import goods or that control entities that do so. The bill requires these reports to be public and proposes fines for private entities that make false or misleading statements in their reports.

1.1 CANADA'S INTERNATIONAL COMMITMENTS

Forced labour and child labour are widely condemned around the world, yet these practices continue to occur. As of 2016, an estimated 25 million people were engaged in forced labour.⁴ Additionally, at the beginning of 2020, an estimated 160 million children were engaged in some form of child labour.⁵

Canada has ratified several international conventions that define and prohibit forms of forced labour and child labour. The *Forced Labour Convention, 1930*⁶ and the *Abolition of Forced Labour Convention, 1957*⁷ contain commitments to suppress the use of forced or compulsory labour within the shortest time possible. The definition of forced or compulsory labour set out in article 2 of the *Forced Labour Convention, 1930* includes any form of non-voluntary work or service that is undertaken under threat of penalty, subject to exceptions relating to criminal convictions, military service, minor civic obligations and emergencies.

Similarly, the definitions of forced or compulsory labour set out in the *Convention on the Rights of the Child*, the *Minimum Age Convention, 1973*⁸ and the *Worst Forms of Child Labour Convention, 1999* recognize the rights of persons under the age of 18 to be protected from economic exploitation and to be free from work that interferes with their education, is hazardous to their health or harms their physical, mental, spiritual, moral or social development. Article 3 of the *Worst Forms of Child Labour Convention, 1999* defines the worst forms of child labour as comprising:

- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
- (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
- (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
- (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.⁹

In addition, Canada has joined other countries in calling for further steps to end forced labour and child labour. Canada adopted the International Labour Organization's 1998 *ILO Declaration on Fundamental Principles and Rights at Work*¹⁰ which contains a commitment to encourage both the elimination of all forms of forced or compulsory labour and the effective abolition of child labour. Similarly, goal 8.7 of the United Nations (UN) Sustainable Development Goals calls for:

immediate and effective measures to eradicate forced labour, end modern slavery and human trafficking and secure the prohibition and elimination of the worst forms of child labour ... and by 2025 end child labour in all its forms.¹¹

Canada has also endorsed non-binding human rights guidelines for businesses, including the UN Guiding Principles on Business and Human Rights and the Organisation for Economic Co-operation and Development Guidelines for Multinational Enterprises.¹² Increasingly, the principles contained in these guidelines are being implemented in domestic legislation around the world, though the specific approaches vary. Legislation in some jurisdictions focuses on requiring greater transparency as a means of promoting responsible business practices. Other jurisdictions impose broader due diligence requirements.¹³

1.2 CANADIAN DEVELOPMENTS

According to research conducted by World Vision, more than 1,200 companies operating in Canada in 2015 imported goods that were at risk of being produced by forced labour or child labour. Further, it estimated that in 2016, approximately \$34 billion worth of goods at risk of being produced by forced labour or child labour were imported into Canada.¹⁴

In 2018, the House of Commons Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development (SDIR) released a report on child labour in supply chains. The report recommended building the capacity of Canadian businesses to monitor their supply chains and creating further incentives to eliminate forced labour and child labour from supply chains. Among other actions, the Committee recommended:

That the Government of Canada develop a strategy to incent businesses to thoroughly and continually monitor their supply chains for the use of child labour and forced labour, and to share best practices. The strategy should include tools, guidance and other forms of support, particularly for small and medium enterprises.

...

That the Government of Canada develop legislative and policy initiatives that motivate businesses to eliminate the use of any form of child labour in their global supply chains, and that empower consumers and investors to engage meaningfully on this important issue. The Government of Canada should draw on lessons learned by jurisdictions that have implemented supply chain legislation. The federal government should involve provincial and territorial leadership, the private sector, civil society and the broader public as much as possible to draft and implement legislation that is constitutionally sound, effective, and well-understood.¹⁵

In its response to the SDIR report, the government stated that it “broadly agrees with the recommendations of the committee’s report,” and that it “is currently studying the effectiveness of initiatives in other international jurisdictions that seek to motivate businesses to eliminate the use of any form of child labour in their global supply chains.”¹⁶ In 2019, Employment and Social Development Canada undertook a consultation on possible measures to address labour exploitation in global supply chains.¹⁷ In 2021, ministerial mandate letters indicated that the government intended to “introduce legislation to eradicate forced labour from Canadian supply chains and ensure that Canadian businesses operating abroad do not contribute to human rights abuses.”¹⁸

The federal government has launched several initiatives that aim to promote responsible business practices, including with respect to forced labour and child labour in supply chains. These initiatives include establishing the Canadian Ombudsperson for Responsible Enterprise and publishing the *Corporate Social Responsibility Toolkit* and An Implementation Guide for Canadian Business.¹⁹

In addition, as part of its implementation of Chapter 23 of the *Canada–United States–Mexico Agreement*, the government amended section 132(1)(m)(i.1) of the *Customs Tariff* and related tariff item No. 9897.00.00 to prohibit the importation of goods mined, manufactured or produced wholly or in part by forced labour.²⁰

Since the release of the SDIR report, a series of bills have been introduced to implement SDIR’s recommendations relating to business supply chains. Each of these bills died on the *Order Paper* before third reading and none were considered in committee:

- Bill C-423, An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff²¹ was introduced as a private member’s bill by the Honourable John McKay in the House of Commons on 13 December 2018. Bill C-423 would have created an obligation for certain entities to report on measures taken to address forced labour and child labour in their supply chains. It would also have amended the *Customs Tariff* to prohibit the importation of goods manufactured or produced through forced labour or child labour.
- Bill S-211, An Act to enact the Modern Slavery Act and to amend the Customs Tariff²² was introduced as a Senate public bill by Senator the Honourable Julie Miville-Dechêne and received first reading on 5 February 2020; it was substantially similar to the previous Bill C-423.
- Bill S-216, An Act to enact the Modern Slavery Act and to amend the Customs Tariff,²³ was introduced as a Senate public bill by Senator Miville-Dechêne on 29 October 2020. Although similar to the previous bills, it added a requirement that the Minister of Public Safety and Emergency Preparedness maintain an electronic registry of reports. It also contained somewhat broader definitions of “child labour” and “forced labour” to ensure that those terms would include child labour and forced labour as defined in the *Worst Forms of Child Labour Convention, 1999* and in the *Forced Labour Convention, 1930*, respectively.

Current Bill S-211 is similar to former Bill S-216, but has an added reporting obligation for government institutions. Three other bills introduced in the 44th Parliament, 1st Session also have similar objectives.²⁴

Lastly, although its focus is to “deter and detect corruption” in the extractive sector rather than forced labour and child labour, the *Extractive Sector Transparency Measures Act* (ESTMA)²⁵ contains reporting obligations for private entities that function similarly to those proposed in Bill S-211 and that carry similar penalties. Like Bill S-211, the ESTMA uses transparency to encourage responsible business practices. It requires certain oil, gas and mineral companies to file and publish reports with information on payments made to domestic and foreign governments.

2 DESCRIPTION AND ANALYSIS

Bill S-211 contains 28 clauses in five parts. It enacts the new Fighting Against Forced Labour and Child Labour in Supply Chains Act and amends the *Customs Tariff*. The key clauses are discussed below.

2.1 DEFINITIONS AND PURPOSE (CLAUSES 2 AND 3)

Clause 3 of Bill S-211 sets out the purpose of the new Fighting Against Forced Labour and Child Labour in Supply Chains Act, which is to address forced labour and child labour by imposing reporting obligations on government institutions and on certain other entities that produce or import goods.

In clause 2 of the bill, forced labour is defined according to either the definition of “forced and compulsory labour” given in article 2 of the *Forced Labour Convention, 1930*²⁶ or the broader definition proposed in clause 2:

[F]orced labour means labour or service provided or offered ... under circumstances that

(a) could reasonably be expected to cause the person to believe their safety or the safety of a person known to them would be threatened if they failed to provide or offer to provide the labour or service[.]²⁷

Similarly, “child labour” is defined as labour or services provided or offered by someone under the age of 18, where doing so is either contrary to Canadian law, performed under dangerous circumstances, interferes with schooling or constitutes “the worst forms of child labour” as defined in the *Worst Forms of Child Labour Convention, 1999*.²⁸

2.2 REPORTING OBLIGATIONS FOR GOVERNMENT INSTITUTIONS (CLAUSES 5 TO 8)

Part 1 of Bill S-211 sets out a new reporting obligation for government institutions. Clause 6(1) of the bill requires all government institutions that produce, purchase or distribute goods in Canada or elsewhere to submit an annual report to the Minister of

Public Safety and Emergency Preparedness (the minister). The report must outline the steps – if any – that the government institution has taken in the previous fiscal year to prevent and reduce the risk of forced labour or child labour being used in goods that it has produced, purchased or distributed.

Clause 6(2) sets out other information that is required in these reports, such as information about the government institution’s policies and due diligence processes, the relevant training provided to its employees and the government institution’s assessment of its own effectiveness at ensuring that forced labour and child labour are not being used in its activities and supply chains. Amendments made in the Senate add a requirement to provide information about any remediation efforts, including measures to compensate vulnerable families for lost income.

While government institutions must report on each of these items, they are not required to make any specific policy changes. Rather, the bill relies on transparency to encourage better practices. To that end, under clause 8 of the bill, the government institution’s report must be made publicly available, which includes publishing it in a prominent place on its website.

2.3 REPORTING OBLIGATIONS FOR OTHER ENTITIES
(CLAUSES 9 TO 13)

Part 2 of Bill S-211 sets out a new reporting obligation for private entities that produce, sell or distribute goods, or that import goods into Canada, and that meet certain threshold requirements. In clause 2, the bill defines an entity as a corporation, trust, partnership or other unincorporated organization that:

- (a) is listed on a stock exchange in Canada;
- (b) has a place of business in Canada, does business in Canada or has assets in Canada and that, based on its consolidated financial statements, meets at least two of the following conditions for at least one of its two most recent financial years:
 - (i) it has at least \$20 million in assets,
 - (ii) it has generated at least \$40 million in revenue, and
 - (iii) it employs an average of at least 250 employees; or
- (c) is prescribed by regulations.

Pursuant to clause 11, entities that meet this definition must submit an annual report to the minister, either individually or jointly with other entities. The report must outline the steps, if any, that the entity has taken in the previous fiscal year to prevent and reduce the risk of forced labour or child labour being used at any step of the production of goods by the entity or of goods imported into Canada by the entity.

Clause 11(3) outlines other details required in the report, such as information about the entity's policies and due diligence processes, the relevant training provided to its employees and the entity's assessment of its own effectiveness in ensuring that forced labour and child labour are not being used in its business and supply chains. Amendments in the Senate add a requirement to provide information about any remediation efforts, including measures to compensate vulnerable families for lost income.

As with government institutions, entities must report on each of these items but do not necessarily need to make other policy changes. Instead, the bill again relies on transparency to encourage responsible business practices.

The entity's report must be approved by its governing body and signed by one or more members of the governing body.

Clause 13 provides that the entity must make its report publicly available, which includes publishing it in a prominent place on its website, and in the case of entities incorporated under the *Canada Business Corporations Act* or under any other Act of Parliament, distributing it to each shareholder.

2.4 ADMINISTRATION, ENFORCEMENT AND PENALTIES (CLAUSES 14 TO 21 AND 23)

Bill S-211 outlines several new offences and enforcement powers that operate to ensure that entities meet their annual reporting obligations and do not provide false or misleading information. The enforcement powers set out in this bill are similar to those contained in the ESTMA. Natural Resources Canada – the designated department for ESTMA enforcement – states that it “will be taking a risk-based approach to compliance verification,”²⁹ using an internal risk assessment framework to determine when compliance audits or requests for information are required.

Clause 14 allows the minister to designate persons or classes of persons to administer and enforce the Act (designated persons). As part of their tools for verifying compliance with the Act, designated persons have broad powers under clause 15 to enter any place where they have reasonable grounds to believe anything relating to an entity's reporting obligations is kept. A designated person's powers upon entry include the power to examine documents and computer data, take photographs and remove items from the place for examination, and the power to prohibit or limit access to all or part of the place. All persons in such places are required to give all reasonable assistance and to provide any documents, information or access to any data that are reasonably required.

In order to enter a home or dwelling-house without consent, a justice of the peace must issue a warrant allowing designated persons to enter; the process for issuing this warrant is set out in clause 16.

Clause 18 allows the minister to order an entity to comply with its reporting obligations, based on information obtained through a search under clause 15.

Clause 19 makes it an offence for a person or entity to fail to meet their annual reporting obligations, fail to comply with an order from the minister to meet these obligations, obstruct or fail to give reasonable assistance to designated persons, or provide a false or misleading statement to the minister or to designated persons. Each of these is a summary conviction offence which carries a fine of up to \$250,000.

Under clause 20, when an entity commits an offence under the Act, persons such as directors, officers and agents of the entity are a party to the offence and can be held personally liable if they participated in, directed or authorized the offence. This would appear to include, for example, a director who signs off on a report that contains false or misleading information.

Further, under clause 21, employees and agents of an entity are presumed to act on behalf of their employer when they commit offences under the Act, unless the employer can establish that they exercised due diligence to prevent the commission of the offence.

Finally, clause 23 allows the Governor in Council to make regulations for carrying out the purposes and provisions of the Act, including classifying additional entities, setting out the circumstances in which an entity is considered to be under the control of another entity, and “prescribing anything that may, by this Act, be prescribed.”

2.5 AMENDMENTS TO THE *CUSTOMS TARIFF* (CLAUSES 26 AND 27)

The *Customs Tariff* provides authority for the Governor in Council to make regulations prohibiting the importation of certain categories of goods or to set conditions under which such goods may be permitted. Existing tariff item No. 9897.00.00 allows the Governor in Council to make regulations for several categories of goods, including goods produced by forced labour. Clause 27 of the bill adds goods produced by child labour to this tariff item and clarifies that the definitions of both “forced labour” and “child labour” for purposes of the *Customs Tariff* are the same as those in clause 2 of the Fighting Against Forced Labour and Child Labour in Supply Chains Act.

Clause 26 of the bill amends section 132(1)(m)(i.1) the *Customs Tariff* to authorize the Governor in Council to make further regulations with respect to goods produced by forced labour and child labour under this tariff item.

2.6 PUBLIC REGISTRY, STATUTORY REVIEW AND COMING INTO FORCE (CLAUSES 22, 24, 25 AND 28)

Clause 22 requires the minister to maintain a public registry of reports and to publish this registry on the website of the Department of Public Safety and Emergency Preparedness.

Clause 24 requires the minister to table an annual report in each house of Parliament containing information on the administration and enforcement of the Act. This includes a general summary of government institutions' and private entities' activities that carry a risk of forced labour or child labour being used, steps taken to manage any such risk and information on any orders or charges that occurred under the Act in the previous year. This report must also be posted in a prominent place on the Department of Public Safety and Emergency Preparedness website.

Clause 25 requires that a parliamentary committee review the Act early in the fifth year after it comes into force and table a report within one year after the review is undertaken.

Clause 28 provides that the bill comes into force on 1 January of the year following the year in which it receives Royal Assent.

NOTES

1. [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](#), 44th Parliament, 1st Session.
2. Senate, Standing Committee on Human Rights, [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, with amendment and observations](#), First report, 6 April 2022.
3. House of Commons, [Vote No. 113: 2nd reading of 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](#), 44th Parliament, 1st Session, 1 June 2022.
4. International Labour Organization (ILO) and Walk Free Foundation, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 2017, p. 5. The term "forced labour" is defined as "all work or service that is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily." See ILO and Walk Free Foundation, [Global Estimates of Modern Slavery: Forced Labour and Forced Marriage](#), 2017, p. 16; and ILO, [CO29 – Forced Labour Convention, 1930 \(No. 29\)](#), *Labour standards*, art. 2.
5. United Nations Children's Fund (UNICEF) and ILO, [Child Labour: Global estimates 2020, trends and the road forward](#), June 2021. The term "child labour" is defined as "work that children are too young to perform and/or work that, by its nature or circumstances, is likely to harm children's health, safety or morals." See UNICEF and ILO, [Child Labour: Global estimates 2020, trends and the road forward](#), June 2021, p. 18. This is consistent with children's rights. See United Nations, Office of the High Commissioner for Human Rights, [Convention on the Rights of the Child](#), 20 November 1989. It is also consistent with the definition of "the worst forms of child labour." See ILO, [C182 – Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#), art. 3.
6. ILO, [CO29 – Forced Labour Convention, 1930 \(No. 29\)](#).
7. ILO, [C105 – Abolition of Forced Labour Convention, 1957 \(No. 105\)](#).

8. ILO, [C138 – Minimum Age Convention, 1973 \(No. 138\)](#).
9. ILO, [C182 – Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#), art. 3.
10. ILO, [ILO Declaration on Fundamental Principles and Rights at Work](#).
11. United Nations (UN), General Assembly, “[Transforming our World: The 2030 Agenda for Sustainable Development](#),” Resolution adopted by the General Assembly on 25 September 2015, 21 October 2015.
12. Government of Canada, [Guidelines and standards for responsible business conduct](#).
13. Jurisdictions with supply chain transparency legislation include Australia, California, India and the United Kingdom. See Australia, [Modern Slavery Act 2018](#), No. 153; United States, California, [California Transparency in Supply Chains Act of 2010](#), Senate Bill No. 657, c. 556; Securities and Exchange Board of India, [Business responsibility and sustainability reporting by listed entities](#), Circular, 10 May 2021; and United Kingdom, [Modern Slavery Act 2015](#), U.K. Public General Acts, 2015, c. 30.

Jurisdictions that impose further due diligence requirements include France, Germany and Norway. See France, [Loi n° 2017-399 du 27 mars 2017 relative au devoir de vigilance des sociétés mères et des entreprises donneuses d’ordre](#) [AVAILABLE IN FRENCH ONLY]; Germany, [Act on Corporate Due Diligence Obligations in Supply Chains](#); and Norway, [Act relating to enterprises’ transparency and work on fundamental human rights and decent working conditions \(Transparency Act\)](#).
14. World Vision Canada, [Child Labour and Modern Slavery: Submission to The Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development](#), November 2017, p. 7.
15. House of Commons, Subcommittee on International Human Rights of the Standing Committee on Foreign Affairs and International Development, [A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains](#), Nineteenth report, October 2018, p. 6.
16. Marie-Claude Bibeau, Minister of International Development, [Full Government of Canada Response to the Nineteenth Report of the Standing Committee on Foreign Affairs and International Development, “A Call to Action: Ending the Use of All Forms of Child Labour in Supply Chains”](#).
17. Employment and Social Development Canada, [Consultation on labour exploitation in global supply chains](#).
18. See, for example, Prime Minister of Canada, Justin Trudeau, [Minister of Labour Mandate Letter](#), 16 December 2021.
19. Government of Canada, [Canadian Ombudsperson for Responsible Enterprise](#); Government of Canada, “[CSR toolkit](#),” [Corporate Social Responsibility \(CSR\)](#); and Government of Canada, “[An Implementation Guide for Canadian Business](#),” [Corporate Social Responsibility \(CSR\)](#).
20. Article 23.6 of the [Canada–United States–Mexico Agreement](#) requires each party to “prohibit the importation of goods into its territory from other sources produced in whole or in part by forced or compulsory labor, including forced or compulsory child labor.” See Government of Canada, [Canada–United States–Mexico Agreement \(CUSMA\) – Chapter 23 – Labor](#). CUSMA was implemented through Bill C-4. See [Bill C-4, An Act to implement the Agreement between Canada, the United States of America and the United Mexican States](#), 43rd Parliament, 1st Session (S.C. 2021, c. 1).
21. [Bill C-423, An Act respecting the fight against certain forms of modern slavery through the imposition of certain measures and amending the Customs Tariff](#), 42nd Parliament, 1st Session.
22. [Bill S-211, An Act to enact the Modern Slavery Act and to amend the Customs Tariff](#), 43rd Parliament, 1st Session.
23. [Bill S-216, An Act to enact the Modern Slavery Act and to amend the Customs Tariff](#), 43rd Parliament, 2nd Session.
24. See [Bill C-243, An Act respecting the elimination of the use of forced labour and child labour in supply chains](#), 44th Parliament, 1st Session; [Bill C-262, An Act respecting the corporate responsibility to prevent, address and remedy adverse impacts on human rights occurring in relation to business activities conducted abroad](#), 44th Parliament, 1st Session; and [Bill C-263, An Act to establish the Office of the Commissioner for Responsible Business Conduct Abroad and to make consequential amendments to other Acts](#), 44th Parliament, 1st Session.
25. [Extractive Sector Transparency Measures Act](#), S.C. 2014, c. 39, s. 6.

26. In article 2 of the *Forced Labour Convention, 1930*, the definition of “forced or compulsory labour” includes any form of non-voluntary work or service that is undertaken under threat of penalty, subject to exceptions relating to criminal convictions, military service, minor civic obligations and emergencies. See ILO, [C029 – Forced Labour Convention, 1930 \(No. 29\)](#), art. 2.
27. [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](#), 44th Parliament, 1st Session, cl. 2.
28. Article 3 of the *Worst Forms of Child Labour Convention, 1999* states that the worst forms of child labour include
- (a) all forms of slavery or practices similar to slavery, such as the sale and trafficking of children, debt bondage and serfdom and forced or compulsory labour, including forced or compulsory recruitment of children for use in armed conflict;
 - (b) the use, procuring or offering of a child for prostitution, for the production of pornography or for pornographic performances;
 - (c) the use, procuring or offering of a child for illicit activities, in particular for the production and trafficking of drugs as defined in the relevant international treaties;
 - (d) work which, by its nature or the circumstances in which it is carried out, is likely to harm the health, safety or morals of children.
- See ILO, [C182 – Worst Forms of Child Labour Convention, 1999 \(No. 182\)](#), art. 3.
29. Government of Canada, [Extractive Sector Transparency Measures Act \(ESTMA\) FAQs](#).