Better guidance equals better reporting: Navigating the Supply Chains Act for year 2 reporting

November 22, 2024

Updated guidance for entities (Guidance) has been published with respect to the reporting obligations under the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (the Supply Chains Act). The revisions provide significant clarification in several areas where there was previous uncertainty, including with respect to the definition of "assets" and the type of activities that will trigger a reporting obligation. The Guidance also includes tips for avoiding common errors observed by Public Safety Canada during the first reporting period ending May 31, 2024.

Change in "asset" definition

Foreign parent companies without a nexus to Canada other than the ownership of shares of their Canadian subsidiaries now have clarity that Public Safety Canada will not consider them "entities" under the Supply Chains Act. Whether an organization is an "entity" under the Supply Chains Act depends on whether it has a place of business in Canada, does business in Canada, or has assets in Canada. As a much-welcomed development, the Guidance clarifies that for the purposes of determining if an organization has "assets in Canada", "assets" refers only to tangible property and does not include intangible property like intellectual property, securities, or goodwill. Previously, Public Safety Canada had suggested that assets would be interpreted very broadly to include any property owned by an organization, including money, land, investments, and even goodwill.

Clarifications on activities triggering report requirement

Once an organization determines it is an "entity", its second step is determining whether it has reporting obligations based on its activities. The Supply Chains Act provides that entities (i) producing, selling, or distributing goods in Canada or elsewhere, (ii) importing goods produced outside of Canada, or (iii) controlling another entity that produces or imports goods into Canada must submit a report.

Though previously implied by the former guidance document, the Guidance now expressly indicates that Public Safety Canada will not enforce the Supply Chains Act against entities *solely* involved in distributing and selling (or whose good production or importation activities constitute very minor dealings). We expect this express carve-out will make it simpler for organizations to determine they do not have reporting obligations, even if they are unsure whether they meet the definition of "entity" under the first stage. Entities who reported in 2024 and are primarily engaged in selling or distributing goods in Canada may wish to reevaluate whether they have reporting obligations for the next reporting period.

To further assist entities determine whether they are engaged in captured activities, the Guidance also clarifies:

1. **"Goods"** refers only to tangible physical property. The term does not include real property, electricity, software services, or insurance plans;
2. an entity is **"importing goods"** when it causes the goods to be brought into Canada. Public Safety Canada does not generally consider customs brokers, express couriers, trade consultants, or third parties authorized to transact business on behalf of the importer or to account for goods in lieu of the importer to be the "importing" entity;
3. although there is no threshold for the minimum value of produced or imported goods that requires an entity to report, there is a **"very minor dealings"** exclusion that entities may interpret "in accordance with generally accepted principles of de minimis and evaluated within the context of each entity's business" to determine whether their activities are not significant enough to require reporting; and
4. an entity may consider the Office of the Superintendent of Financial Institutions' guidance on the concept of **"control"** to assess whether it controls an entity that produces or imports goods.

Common mistakes to avoid

The Guidance highlights common errors that Public Safety Canada observed in the first reporting period. An entity should ensure its report:

- is separate from the online submission questionnaire — completed questionnaire alone does not meet the Supply Chains Act requirements and cannot be used as a compliant submission;
- is only labelled "revised" if the entity has already submitted a report to the Minister of Public Safety in the same year and the resubmitted report contains changes;
- includes the mandatory attestation confirming the report was approved by the appropriate governing body or bodies, as evidenced by the signature(s) of one or more members of each governing body that approved the report;
- is signed with a wet ink or electronic signature (typing "signed" in the signature box does not constitute a signature);
- is submitted in PDF format only; and
- does not include personal information of employees or any other person other than the name and title of the official(s) signing the report.

Further, only federal government departments, agencies, or Crown corporations and their wholly-owned subsidiaries should indicate they are reporting as a “government institution”. Provincial and municipal governments and publicly-funded universities and hospitals are not “government institutions” under the Supply Chains Act.

Contact us

For more information on modern slavery reporting requirements, the Guidance, or how to strategically implement adequate policies and practices, please reach out to any of the authors or key contacts below, or any lawyer from BLG’s International Trade and Investment or International Business & Human Rights groups.

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