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April 6, 2020

**Calvin Neufeld**  
57 Foster Street P.O. Box 2012  
Perth, ON  
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Dear Mr. Neufeld,

***Re: Prison labour goods exported***

You asked for a review of any domestic or international issues that would arise from prisoner-produced goods being sold to a Chinese-operated baby-formula factory operating in Ontario which will be selling the formula internationally.

For the purposes of this letter, we understand the relevant facts as follows:

- Evolve Our Prison Farm is an advocacy group that wants to structure the purpose of prison farms to return them to what it was originally meant to do. Prison farms were used as rehabilitation tools so that prisoners would learn skills they can use to establish themselves once discharged from prisons.
- Most prison-produced labour would be used internally in the Canadian government and in the prisons.
- Recently prison farms are being re-instated. However they will operate differently than before.
- A prison farm in Kingston will be primarily operated as a goat farm which will produce raw milk to be sold to a Chinese-operated-baby-formula company also located in Kingston, ON. The baby formula produced will be sold in China.

*If our understanding of the facts or underlying issues is incorrect or incomplete, please let us*

*know as soon as possible as any inaccuracy may affect the relevance of the information provided below.*

### **Issues**

- 1) What agencies, organizations or law can be used to invalidate the use of prison labour goods being sold to a private company?

### **Analysis**

#### ***General Agreement on Tariffs and Trade (“GATT”)***

GATT is an international legal agreement between 23 countries. The purpose of this agreement was to facilitate international trade with minimized barriers, tariffs, quotas to help with the world economy post-WWII.<sup>1</sup> GATT has since then been expanded into the World Trade Organization (“WTO”), which governs over one hundred countries including China and Canada.<sup>2</sup> As such, both parties would be subject to the rules enforced by the WTO.

Article XX(e) of GATT states:

“Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures: ... (e) Relating to the products of prison labour; ...”

Article XX are general exceptions that justify certain situations from being considered a GATT violation.<sup>3</sup> However, the exception, if invoked, should not go against the preamble of the section

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<sup>1</sup> Christina Majaski, “General Agreement on Tariffs and Trade (GATT)”, (2019) *Investopedia*, online: <<https://www.investopedia.com/terms/g/gatt.asp>>.

<sup>2</sup> *Ibid.*

<sup>3</sup> Xixue Shang and Guido Van Limberghen, “How Could Prison Products Come into the International Market? Analysis of the Consistency between WTO and ILO Rules,” (2017) *Journal of Arts & Humanities*, 3-6 p 70.

which mandates that the exceptions must not be used arbitrarily to restrict trade with another country unjustifiably.<sup>4</sup> In other words, if a country is using one of these exceptions to restrict trade with another country, they must be able to demonstrate that the restriction was not arbitrary or unjust.

It seems that GATT's exception is not a valid solution to preventing prison labour goods to be sold to a Chinese company which will eventually be traded internationally. The reason being GATT's exemption must be invoked by the importing party. Since Canada will essentially be exporting the manufactured baby-formula, this exception will have no effect on Canadian prison farms. As long as China is willing to purchase the product, Canada will be able to trade without problems.

Canada does not seem to have laws prohibiting prison-produced goods to be exported from the country. Legislation and government sites/ documents are silent about the exporting of prison labour goods. However, Canada does have strict laws against importing prison-produced goods. Tariff No. 9897.00 prohibits the importation "of goods manufactured or produced wholly or in part by prison labour."<sup>5</sup> Any imported goods found to have been produced by prison labour are refused entry unless they are imported by a non-resident of Canada or if the resident is returning to Canada after visiting another country and the product will be used for personal use only.<sup>6</sup> Canada does enforce this law heavily as there are many case where products were banned entry.

### ***International Labour Organization (ILO)***

The ILO is an agency of the United Nations and it strives to improve labour conditions worldwide. They provide guidance on labour conditions to employers and try to create an even field. The ILO provides a handbook for businesses regarding forced labour.<sup>7</sup> According to this guide, forced labour is any such work or service involuntarily done by an individual "under the menace of a

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<sup>4</sup> *Ibid.*

<sup>5</sup> Canada, "Memorandum D9-16," (2012) *Canada Border Service Agency*.

<sup>6</sup> *Ibid.*

<sup>7</sup> ILO, "Combatting Forced Labour: Employers' Frequently Asked Questions," (2015) online:<  
[https://www.ilo.org/wcmsp5/groups/public/---ed\\_norm/---  
declaration/documents/instructionalmaterial/wcms\\_099624.pdf](https://www.ilo.org/wcmsp5/groups/public/---ed_norm/---declaration/documents/instructionalmaterial/wcms_099624.pdf)>.

penalty.”<sup>8</sup> Work that is forced for fear of penalty in the form of violence or sexual abuse is considered to be forced labour. The ILO further states that prison labour is not forced labour just because of its nature. “Workers should be hired to companies on a voluntary basis” and their conditions should be comparable to free workers.<sup>9</sup> Generally prison labour is not considered forced labour in the international law realm unless involuntary work is being done by prisoners who have not been convicted or “involuntary work performed by a prison for the benefit of a private undertaking.” The work must be supervised by public authority and prisoners are not to be forced to work for private enterprises.<sup>10</sup> However private companies are allowed to employ prisoners in their facilities as long as the prisoner is able to voluntarily enter the relationship.<sup>11</sup>

“Some examples of how prison labour may be associated with the private sector include:

- Prisoners may work with a private entity as part of an educational or training scheme;
- Prisoners may work in workshops within the prison to produce goods sold to private entities in the open market;
- Prisoners may work outside the prison for a private entity as part of a pre-release scheme;
- Prisoners may provide labour within prisons, contributing to the running of correctional facilities managed by private entities; and
- Prisoners may work with private firms outside the prison during the day, returning at night.”<sup>12</sup>

In regard to Prison Farms, again the ILO does not provide definitive rules that Canada would be subject to. However it does provide a list of criteria that labour must meet to not be considered forced labour. These are

- Voluntariness (not coerced for fear of penalty)
- Comparable wages, security and benefits as free workers,
- Prisoners are supervised by prison administration or public authority

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<sup>8</sup> *Ibid.*

<sup>9</sup> *Ibid.*

<sup>10</sup> *Ibid.*

<sup>11</sup> *Ibid.*

<sup>12</sup> *Ibid.*

- Prisoners are not hired by private companies for their use
- The individual must have been found guilty of an offence

If any of these points are not met then a plausible argument can be made that the labour used is forced labour and as such constitutes as a criminal offence and violates fundamental human rights under ILO.<sup>13</sup> To stop the use of prison farms in Kingston to supply milk for the manufacture of baby-formula, it is possible to raise these factors as an issue. From the above list, the stronger points would be voluntariness and benefits/ wages.

### ***Voluntariness***

As mentioned above, the prisoner must have entered into the work on a voluntary basis. They should not have been coerced or forced to do the task for fear of penalty, violence etc. The ILO suggests one way to ensure prisoners volunteered for the job is to get them to provide a written consent.<sup>14</sup> However, it also recognizes that a formal consent does not mean that the prisoner was not coerced or forced to sign. Evidence from prisoners on the practice of indirect threats or penalties or not agreeing to work would help establish the involuntariness argument to demonstrate forced labour.

### ***Benefits***

Another argument that can be put forward is the poor work environment. The benefits and wages should be comparable to free workers. Countless amounts of data, articles and research papers demonstrate the dismal conditions enforced onto prisoners. Using this data, it is possible to bring an argument stating that the conditions imposed on prison labourers are not comparable to free workers and as such the prison labour constitutes as forced labour and which is a criminal offence.

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<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

## Conclusion

Prison farms are not heavily sanctioned or monitored. A lot of prison-produced goods are mainly used internally in the government or the country. However, this new model of selling prison labour goods to private companies is uncharted territory. There seems to be no legal rules around the produce from prison farms, nor are there rules regarding prison-produced exports from Canada. As such, this memo relied on international organizations to determine if a valid argument is possible. If enough evidence can be procured, the ILO would work the best. If it can be proved that the labour is forced, the ILO would deem it criminal and would have to improve conditions for prisoners and re-think the new prison farm model.

If you need any further clarification or information regarding this letter, please feel free to contact QBLC at [qbhc2@queensu.ca](mailto:qbhc2@queensu.ca) or 613-533-2102.

Yours truly,



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Student Caseworker



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