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**The Same Instrument:
Section 301, Forced Labour Supply Chains, and Canada's Unrealized
Leverage in the 2026 CUSMA Joint Review**

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The Same Instrument: Section 301, Forced Labour Supply Chains, and Canada's Unrealized Leverage in the 2026 CUSMA Joint Review

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As the United States Trade Representative convened Section 301 hearings on April 28, 2026, examining forced labour embedded in Chinese critical minerals supply chains, a significant and underappreciated question confronts Canadian policymakers: what is Canada doing with its position as the most credible rule-of-law alternative to those same supply chains?

Section 301 of the Trade Act of 1974 authorizes the USTR to investigate and respond to foreign government practices that are "unreasonable or discriminatory" and that "burden or restrict" U.S. commerce.¹ In the context of this week's hearings, the instrument addresses the systematic coercion of Uyghur and other minority populations in Xinjiang as industrial labour.² The consequences reach directly into polysilicon, graphite, lithium, and rare earth supply chains that currently supply the United States' electric vehicle transition, AI infrastructure, and defence industrial base.³

Canada holds the mineral endowment that could serve as a trusted alternative. Canada also holds something rarer: the legal and institutional architecture to demonstrate that its supply chains are verifiably free from the practices that Section 301 is now targeting. That architecture has not been deployed as leverage. It should be.

Balsillie School Research on Critical Minerals and Supply Chain Security

The Balsillie Legal Advisory Centre has been engaged with the structural dimensions of allied critical minerals supply chains since the emergence of allied reshoring policy as a dominant U.S. strategic concern. On March 19, 2026, the Centre submitted formal comments to the USTR on the design of a plurilateral critical minerals agreement, under the title *Allied by Design, Vulnerable by Default: Why a Durable Plurilateral Critical Minerals Agreement Must Address Security, Digital Sovereignty, and Institutional Reliability*, co-authored by Centre Interim Director Barry Appleton,

* The Balsillie Legal Advisory Centre provides research and technical expertise at the intersection of international trade, economic statecraft, supply chains, innovation, and the digital economy. The Centre is a unit of the Balsillie School of International Affairs, a joint graduate school of Wilfrid Laurier University and the University of Waterloo, Waterloo, Ontario, Canada. The views expressed in individual faculty analyses are personal views and do not represent the official positions of the Balsillie Legal Advisory Centre or the Balsillie School of International Affairs.

Balsillie School of International Affairs (BSIA) Director Ann Fitz-Gerald, and BSIA Fellow Jim Hinton.³

That submission argued that any durable critical minerals framework must address four structural dimensions that physical extraction agreements alone cannot resolve: the security relationship that makes allied supply chains trustworthy; the digital and data governance architecture that makes them operationally resilient; the institutional capacity that makes allied commitments durable across administrations; and the clean energy infrastructure that makes allied processing economically viable and strategically independent.

The supply chain integrity dimension addressed in yesterday's Section 301 hearings sits within that framework. The United States is building, through domestic enforcement, a supply chain certification architecture that a North American critical minerals agreement should be establishing through treaty. Canada has the domestic legislation and institutional capacity to participate in that architecture as a standard-setter rather than as a subject of compliance.

Canada as a Standard-Setting State

The analytical argument for Canada's role as a standard-setter, rather than a mineral supplier, is developed in a new working paper from the Centre's Interim Director: *Know Your Ground: Canada's Strategic Imperatives and Red Lines for the 2026 CUSMA Review* (Working Paper, April 24, 2026),⁴ which synthesizes the legal and economic analysis of Canada's negotiating position into nine specific recommendations for action before July 1.

Canada's *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, in force since January 1, 2024,⁵ gives Canada statutory supply chain transparency architecture that the United States is only now building through enforcement action. Canada's Magnitsky legislation⁶ and the enforceable labour standards Canada secured in CUSMA's Labour chapter, including the Rapid Response Mechanism,⁷ represent the institutional architecture of a state with genuine standing to propose continental supply chain standards rather than comply with them after the fact.

The *Know Your Ground* paper proposes a concrete mechanism: a mutual recognition arrangement under which Canadian-origin critical minerals would receive presumptive compliance status under the Uyghur Forced Labor Prevention Act and analogous U.S. forced labour enforcement regimes, in exchange for Canadian adoption of reciprocal due diligence standards and joint enforcement mechanisms. This is not a concession Canada should request as a favour. It is strategic infrastructure that U.S. industrial and defence procurement programs need and cannot currently source from Chinese-origin supply chains.

The economic dimensions of Canada's position are developed in two companion working papers. *The Exits Exist: Canada's Strategic Case for the 2026 CUSMA Review* (SSRN, March 2026)⁸ identifies five levels of legal exit within CUSMA's existing treaty architecture, including the Article 32.2 essential security exception that encompasses critical minerals supply chain security as a qualifying interest. *No Going Back: Five Economic Scenarios for the 2026 USMCA-CUSMA Joint Review* (SSRN, April 2026)⁹ presents quantitative analysis of the five review scenarios, drawing on CIGI/Ciuriak Computable General Equilibrium modeling alongside Bank of Canada LENS/TOTEM

projections, and identifies the 15 percent tariff threshold as an irreversibility point for North American automotive supply chain realignment. A U.S.-focused economic analysis, *The Price of Disruption*, has been accepted for publication this spring by the Brookings Institution in Washington, D.C.¹⁰

The Double-Edged Character of Section 301

Canadian policymakers face a dimension of these upcoming U.S. hearings that has received little attention in domestic coverage. Section 301 is the same instrument USTR Greer has threatened to deploy against Canada for digital services taxation and provincial liquor board decisions. The USTR's 2026 National Trade Estimate Report documents active Section 301 preparations against every jurisdiction that has enacted a digital services tax, including Canada.¹¹

The same statutory authority applied yesterday to documented human rights violations in authoritarian supply chains is simultaneously threatened against a democratic treaty ally for sovereign policy decisions. These are not equivalent uses of the same policy space. Canada's record as a standard-setting state, its forced labour legislation, its Magnitsky framework, and its insistence on enforceable CUSMA labour standards, is precisely what distinguish Canada's sovereign regulatory authority from the practices that Section 301 is legitimately designed to address.

Canada should make that distinction explicit as a legal and policy position, not a rhetorical one. A Canada that is actively engaged in building supply chain integrity standards, which has passed forced labour legislation, and that is proposing North American certification frameworks, is a Canada whose digital sovereignty measures fit coherently within a broader rule-of-law framework. Conceding on digital governance to avoid Section 301 scrutiny would undermine the very standard-setting role that gives Canada its most durable form of leverage in the CUSMA review.

CIGI Research Context

The Centre's analytical framework draws on a body of research from the Centre for International Governance Innovation that has addressed the structural deficiencies in Canada's digital and data trade architecture over several years. Dan Ciuriak's work on the "barter trade" in digital services, developed in *Digital Trade: Is Data Treaty-Ready?* (CIGI Paper No. 162, 2018)¹² and extended through subsequent CIGI analysis,¹³ established the foundational argument that CUSMA's Chapter 19 architecture creates an asymmetric value transfer from Canadian users to U.S. platform shareholders that does not appear in conventional trade statistics and cannot be recovered on exit. That argument is directly relevant to the supply chain integrity question: if Canada cannot protect the value of its digital economy under CUSMA's current architecture, it is ill-positioned to extract full value from its physical critical minerals endowment either.

The economic modeling in *No Going Back* relies on Ciuriak and CIGI's Computable General Equilibrium framework, which provides the most granular available quantitative analysis of the CUSMA review scenarios and their permanent GDP-level effects on the Canadian economy.

The Analytical Papers

The following working papers from persons affiliated with the Balsillie Legal Advisory Centre address Canada's position in the 2026 CUSMA review:

- *Allied by Design, Vulnerable by Default: Why a Durable Plurilateral Critical Minerals Agreement Must Address Security, Digital Sovereignty, and Institutional Reliability*, Submission to the Office of the U.S. Trade Representative, Docket No. USTR-2026-0034 (March 19, 2026) (Appleton, Fitz-Gerald, and Hinton). Available at www.balsillieschool.ca
- *The Exits Exist: Canada's Strategic Case for the 2026 CUSMA Review* (Working Paper, SSRN Abstract No. 6491461, March 29, 2026). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6491461
- *No Going Back: Five Economic Scenarios for the 2026 USMCA-CUSMA Joint Review* (Working Paper, SSRN Abstract No. 6570764, April 2026). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6570764
- *Know Your Ground: Canada's Strategic Imperatives and Red Lines for the 2026 CUSMA Review* (Working Paper, April 24, 2026).
- *The Price of Disruption* (forthcoming, Brookings Institution, Spring 2026).

Notes

1. Trade Act of 1974, Pub. L. No. 93-618, § 301(b) (codified at 19 U.S.C. § 2411). Section 301(b) authorizes the USTR to determine whether any act, policy, or practice of a foreign country is unreasonable or discriminatory and burdens or restricts United States commerce, and to take appropriate action in response.
2. Documentation of forced labour practices in Xinjiang industrial facilities includes: Australian Strategic Policy Institute, *Uyghurs for Sale* (March 2020); Sheffield Hallam University Helena Kennedy Centre for International Justice, *Forced Labour in China's Uyghur Region* (2021); United Nations Office of the High Commissioner for Human Rights, *Assessment of Human Rights Concerns in the Xinjiang Uyghur Autonomous Region* (August 2022).
3. Balsillie Legal Advisory Centre of the Balsillie School of International Affairs, [*Allied by Design, Vulnerable by Default: Why a Durable Plurilateral Critical Minerals Agreement Must Address Security, Digital Sovereignty, and Institutional Reliability*](#), Submission to the Office of the U.S. Trade Representative, Docket No. USTR-2026-0034 (March 19, 2026) (authored by Barry Appleton, Ann Fitz-Gerald, and James W. Hinton).
4. Barry Appleton, *Know Your Ground: Canada's Strategic Imperatives and Red Lines for the 2026 CUSMA Review* (Working Paper, April 24, 2026). <http://dx.doi.org/10.2139/ssrn.6643319>
5. *Fighting Against Forced Labour and Child Labour in Supply Chains Act*, S.C. 2023, c. 9 (Canada), in force January 1, 2024. The Act requires government institutions and private sector entities meeting prescribed size thresholds to report annually on measures taken to prevent and reduce the risk of forced labour and child labour in their supply chains.
6. Justice for Victims of Corrupt Foreign Officials Act (Sergei Magnitsky Law), S.C. 2017, c. 21 (Canada). The Act authorizes the Governor in Council to impose asset freezes and travel bans on foreign nationals responsible for gross violations of internationally recognized human rights or significant acts of corruption.
7. Agreement Between the United States of America, the United Mexican States, and Canada (USMCA/CUSMA), Chapter 23 (Labour); Annex 31-A (Facility-Specific Rapid Response Mechanism Between the United States and Mexico). On the Mechanism's operation: U.S. Trade Representative, *Report on the Operation of the Rapid Response Mechanism under Annex 31-A of the USMCA* (2025).

- 8.** Barry Appleton, *The Exits Exist: Canada's Strategic Case for the 2026 CUSMA Review* (Balsillie Legal Advisory Centre Working Paper, SSRN Abstract No. 6491461, March 29, 2026). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6491461.
- 9.** Barry Appleton, *No Going Back: Five Economic Scenarios for the 2026 USMCA-CUSMA Joint Review* (Working Paper, SSRN Abstract No. 6570764, April 2026). Available at SSRN: https://papers.ssrn.com/sol3/papers.cfm?abstract_id=6570764. The CIGI/Ciuriak Computable General Equilibrium modeling framework is described in Dan Ciuriak and colleagues' work published through the Centre for International Governance Innovation, Waterloo, Ontario.
- 10.** Barry Appleton, *The Price of Disruption* (forthcoming, Brookings Institution, Spring 2026).
- 11.** Office of the U.S. Trade Representative, *2026 National Trade Estimate Report on Foreign Trade Barriers* (March 2026), at 67 (documenting Canada's digital services tax enacted June 20, 2024 and the associated U.S. trade concerns; identifying Canada's digital governance measures, including the Shared Services Canada sovereign cloud initiative, as trade barriers; and documenting active Section 301 investigations against digital services taxes maintained by France, Austria, Italy, Spain, Turkey, and India, with the February 2025 Presidential Memorandum "Defending American Companies and Innovators From Overseas Extortion and Unfair Fines and Penalties" identified as the policy authority for these actions). USTR Jamieson Greer confirmed at testimony before the House Committee on Ways and Means (April 22, 2026) that Section 301 actions against digital services taxes have been drafted and stand ready.
- 12.** Dan Ciuriak, *Digital Trade: Is Data Treaty-Ready?*, CIGI Paper No. 162 (Centre for International Governance Innovation, February 2018). The paper establishes the barter trade analytical framework: U.S. digital platforms export free services to Canadian users who pay with data, generating value for U.S. shareholders that does not appear in bilateral trade statistics and cannot be recovered on exit.
- 13.** Dan Ciuriak, *The Invisible Elements of GDP: How Much do They Matter in International Comparisons?*, SSRN Abstract No. 6194638 (February 15, 2026) (arguing that invisible data rents understate U.S. economic advantages and carry direct implications for data-related commitments in the CUSMA review); Dan Ciuriak, "Data Flows and Critical Technologies," in *USMCA Forward 2023*, Brookings Institution (2023) (identifying Chapter 19 data provisions as the primary source of U.S. economic gain from the USMCA).
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