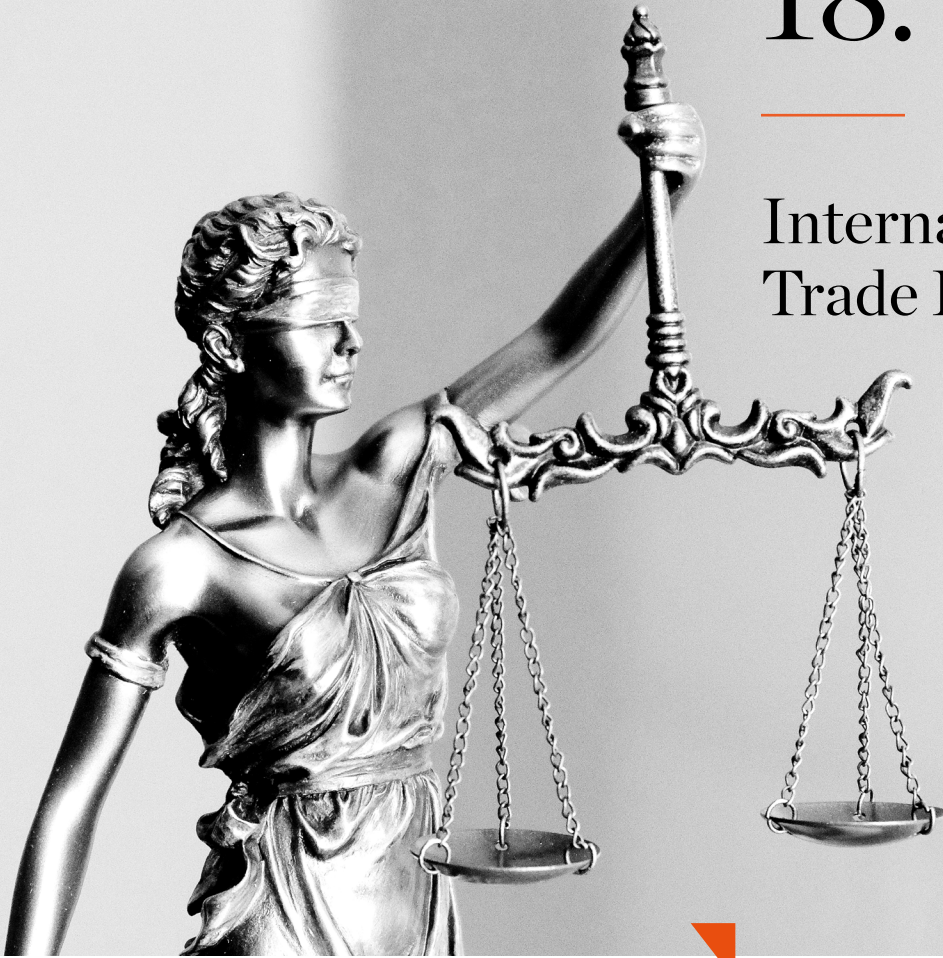


18.

International Trade Law



When considering entering the Canadian market, businesses should be aware of Canada's international trade laws that may have a significant impact on a business' success in entering and operating in Canada. A selection of these laws are examined below, including:

- Sanctions
- Forced labour
- Export and import controls
- National security reviews
- International trade agreements
- Government procurement
- Investment treaties

- Customs and border administration
- Trade remedies
- Anti-corruption laws

Sanctions

Canada imposes sanctions pursuant to five statutes:

- *Special Economic Measures Act (SEMA)* and associated regulations: The SEMA allows Canada to impose sanctions unilaterally in response to violations of international law or international human rights.

- *United Nations Act*: This act enables the Canadian government to give effect to decisions passed by the United Nations Security Council after determining that an act of aggression or a breach of peace has occurred.
- *Freezing Assets of Corrupt Foreign Officials Act*: Through this act, Canada may freeze the assets or restrain the property of certain politically exposed foreign persons (e.g., government officials or politicians), at the request of a country undergoing internal turmoil or political uncertainty.
- *Justice for Victims of Corrupt Foreign Officials Act*: This act allows Canada to impose an asset freeze and a dealings prohibition against individuals who are responsible for or complicit in acts of significant corruption or gross violations of internationally-recognized human rights.
- *Criminal Code*: The listing of terrorist entities under the *Criminal Code* enables Canada to apply appropriate criminal measures to these entities.

Canadian sanctions laws may prohibit all individuals and businesses from dealing with designated persons, their property, or those acting on their behalf; dealing with specific jurisdictions (e.g., Iran, North Korea); or dealing within specific sectors (e.g., arms). Sanctions laws may also impose various screening, reporting, and asset-freeze obligations on regulated financial institutions. Lastly, Canada's principle sanctions law, the SEMA, allows the Canadian government to seize and liquidate assets held or controlled by or on behalf of sanctioned persons.

Sanctions is a complex and rapidly changing area of law that is increasingly used to respond to international developments and concerns. Violations of sanctions laws may involve significant fines, the loss of assets, and prison terms for individuals. It is therefore essential that businesses remain up to date and consider developing, as a best practice, a sanctions compliance program.

Forced Labour

Canada prohibits the importation of goods produced in whole or in part by forced labour pursuant to the *Customs Tariff*. This prohibition applies regardless of whether businesses source products directly or through third-parties.

This prohibition is enforced by the Canadian Border Services Agency (CBSA), who may seize goods if they have reason to believe that the goods were produced using forced labour. The CBSA may require importers to provide evidence that the goods were not produced with forced labour to refute this conclusion, failing which the goods may be inaccessible to importers.

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*, is presently before parliament and will enter into force in 2024 if passed. Bill S-211 would require subject companies to file an annual report concerning forced labour in their supply chains.

Export and Import Controls

Businesses planning to export prescribed products from, or import prescribed products into, Canada should be aware of Canada's *Export and Import Permits Act* (EIPA), which provides the authority to create various control lists and for the designated Minister to issue permits in relation to the import or export of the prescribed goods.

Import Controls

The Import Control List sets out a list of goods that are subject to import permit requirements, including firearms; specified chemicals; and specified agricultural products, such as meat and dairy. In some cases (e.g., firearms), a permit is required before the goods can be imported into Canada. In other cases (such as agricultural goods subject to a tariff rate quota), the products may be imported without a permit but will be subject to high tariff rates.

Export Controls

Export controlled goods or restrictions are detailed on the following lists:

- The Export Control List identifies goods and technology that require an export permit in order to be exported or transferred from Canada.
- The Brokering Control List identifies goods and technology for which a brokering permit is required. A brokering permit allows for arranging or negotiating a transaction that would result in the movement of controlled items (i.e., those on the Export Control List) from one foreign country to another foreign country.
- The Area Control List is a list of countries to which Canada maintains a virtual

prohibition of any exportation of goods, technology, and services. Currently, the Democratic People's Republic of Korea (i.e., North Korea) is the only country on the List.

- The Automatic Firearms Country Control List restricts the export of firearms, weapons, and devices and identifies countries for which Global Affairs Canada may issue export permits.

Controlled Goods Program

Companies and individuals dealing with goods or technology that are subject to the Defence Production Act must register under the Controlled Goods Program (CGP) prior to examining, possessing, or transferring the goods. The goods listed in the Controlled Goods Regulations are generally ones of strategic significance or that have national security implications for Canada. A business involved in the export of controlled goods from Canada should be aware that registration with the CGP is a prerequisite to receiving an export permit from Global Affairs Canada.

It is especially important to be aware of the Controlled Goods Regulations when considering a transaction involving a registered company as the CGP must be notified of specified corporate changes.

Nuclear Products

Pursuant to the Nuclear Non-proliferation Import and Export Control Regulations, a licence must be obtained from the Canadian Nuclear Safety Commission to import or export a controlled nuclear substance, nuclear equipment or controlled nuclear information, a risk-significant radioactive source, or any product designed or modified for a nuclear end use.

National Security Reviews

Acquisitions of control of Canadian businesses by non-Canadians, whether direct or indirect, are generally subject to either notification or ministerial review under the Investment Canada Act.

Acquisitions by non-Canadians of control of Canadian businesses that produce or export goods that are subject to export control, or that are on the list of highly sensitive items that are not subject to export control, will be subject to ministerial review because the goods have a military application or could be used for purposes that may threaten Canadian security. Acquisitions where the investment may involve or facilitate the activities of illicit actors or corrupt foreign officials will also be subject to review. An unsuccessful national security review could result in an order of divestiture.

International Trade Agreements

Canada is a trading nation that is committed to a multilateral rules-based system and is an active promoter of plurilateral and bilateral trade agreements. Canada is a party to dozens of trade agreements, including the *Comprehensive Economic and Trade Agreement* (CETA), the *Canada-United States-Mexico Agreement* (CUSMA), the *Comprehensive and Progressive Agreement for Trans-Pacific Partnership* (CPTPP) and the *Canadian Free Trade Agreement* (CFTA).

These trade agreements impose numerous obligations upon Canada, including as relates to immigration, tariff rates, and investment protections. The Canadian government may act in response to a complaint filed against it or respond to another government further to a complaint concerning the violation of a

trade agreement obligation owed to Canadian businesses. Businesses should therefore be aware of what trade agreements may be applicable to their operations.

Government Procurement

Many of Canada's trade agreements contain provisions concerning government procurement that increase access to procurement opportunities by requiring procuring entities to ensure fair and open procurement, as well as by providing access to dispute resolution mechanisms. When foreign suppliers believe that a Canadian procurement entity has not complied with its trade agreement obligations, they may challenge the conduct at the Canadian International Trade Tribunal (CITT) for federal procurement entities or within provincial courts for the conduct of sub-federal entities subject to the applicable trade agreement.

Investment Treaties

Canada is a party to numerous investment treaties, which generally seek to ensure that foreign investors are treated in a non-discriminatory way, are given fair and equitable treatment, and that their investments are protected from expropriation without compensation. Virtually all of Canada's investment treaties provide a dispute settlement process that allows the foreign investor to challenge a government measure before an arbitral panel appointed by both the investor and the defending government. Awards ordered by arbitral panels are enforceable against Canada under international law.

Investment treaties may provide an additional layer of protection not otherwise available. However, to qualify for the additional protections

provided by these treaties, foreign investors must meet specified criteria and it is therefore important to consider these treaties prior to finalizing any investments.

Customs and Border Administration

Canada has a highly technical and detailed series of laws that impact importations. Failure to comply with importation requirements may cause disruptions, result in seizures, or lead to administrative fines.

The *Customs Act* imposes a general duty to report the importation of all goods into Canada and specifies how goods are valued for duty purposes, provides the tariff preferences granted under free-trade agreements, and regulates the authority of the CBSA. The Schedule to the *Customs Tariff* lists the customs duty for each item in accordance with its classification under the harmonized classification system, and importers are required to correctly classify their goods and pay the appropriate duties and taxes.

The CBSA administers Canada's customs laws, along with a myriad of other laws that regulate how goods may be imported and sold on the Canadian market. In addition to levying duties, the CBSA also administers duty-relief programs and the collection of several other taxes (such as the GST/HST, excise taxes, and surtaxes) as required. The CBSA's decisions on most issues – such as valuations, classifications, or tariff preference eligibility – may be appealed both within the CBSA and, eventually, to the CITT.

Trade Remedies

The *Special Import Measures Act* protects Canadian producers from the injurious effects of dumped or subsidized imports by providing rules and procedures for investigations into complaints of dumping and subsidies and the imposition of anti-dumping or countervailing duties in response. Dumping occurs when a product is imported into Canada at a price that is lower than the profitable selling price of the product in the exporting country or at a price that is lower than the cost of producing the product. A subsidy is a financial or other benefit granted to the manufacturer of the exported goods by the government of the exporting country. Provisional anti-dumping and countervailing duties may be applied within 90 days of an investigation, but final duties will only be imposed where the CBSA has determined that the goods have been dumped and/or subsidized and the CITT has determined that the dumping and subsidization caused, or threatened to cause, material injury to the Canadian industry.

Anti-Corruption Laws

Canada has a number of laws to combat both foreign and domestic corruption. The *Corruption of Foreign Public Officials Act* prohibits the payment of bribes to foreign public officials for the purpose of obtaining a business advantage as well as certain accounting practices to conceal the bribes. Domestically, the Act applies to both Canadians and non-Canadians. It also applies to Canadian citizens, permanent residents, and Canadian corporations in their activities outside of Canada. The *Criminal Code* prohibits the payment of bribes to Canadian officials, including judges, members of Parliament, police officers, and government officials. This prohibition applies to both Canadians and non-Canadians.