

GETTING THE
DEAL THROUGH 

Trade & Customs 2017

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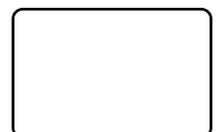


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Overview

1 What is the main domestic legislation as regards trade remedies?

The main domestic legislation for trade remedies is the Special Import Measures Act (SIMA), and the accompanying Special Import Measures Regulations (SIMR) (for anti-dumping and countervailing measures), the Customs Tariff and the Export and Import Permits Act (for safeguards) and the Canadian International Trade Tribunal Act.

2 In general terms what is your country's attitude to international trade?

Canada has a long-standing commitment to trade liberalisation across most sectors, as befits a country whose economy is heavily dependent on international trade. It has been a party to the General Agreement on Tariffs and Trade and member of the World Trade Organization (WTO) since their respective inceptions. It also is party to numerous bilateral and regional trade agreements, some more comprehensive than others, including the North American Free Trade Agreement (NAFTA) and with countries in Latin America (Chile, Colombia, Costa Rica, Honduras, Panama and Peru), the Middle East (Israel and Jordan) and the European Free Trade Association. The most recent addition to this list is the Canada-Korea Free Trade Agreement, which entered into force on 1 January 2015.

In February 2015, Canada and the European Union finalised the text of a landmark Comprehensive Economic and Trade Agreement (CETA), which could come into force in 2017. Canada was one of the 12 countries to negotiate and sign the Trans-Pacific Partnership (TPP) Agreement. However, Canada's new government has been more ambivalent toward the TPP Agreement than was its predecessor; it has been non-committal on ratification and appears likely to remain so until it is clear whether the United States will ratify and the Agreement will come into force. Canada also is a party to a number of bilateral trade negotiations, some more active than others, as well as the negotiation in Geneva of a plurilateral Trade in Services Agreement with 22 other countries.

In addition, Canada has been expanding its network of over 30 bilateral investment treaties (BITs), with a focus on countries of interest to Canadian resource sector companies, particularly in sub-Saharan Africa, and on certain other economies where Canadians have significant investment interests, such as Hong Kong.

Canada's track record on WTO compliance is good. Canada is a regular participant in WTO disputes, usually as a third party but also as a complainant or respondent.

Trade defence investigations

3 Which authority or authorities conduct trade defence investigations and impose trade remedies in your jurisdiction?

Trade defence and remedy investigations are conducted by the Canada Border Services Agency (CBSA) and the Canadian International Trade Tribunal (CITT). The CITT imposes anti-dumping duties and countervailing duties by way of order, and the Minister of Finance imposes safeguard measures. See the following websites for more information: www.cbsa-asfc.gc.ca/sima-lmsi/menu-eng.html, www.citt-tcce.gc.ca and www.fin.gc.ca.

4 What is the procedure for domestic industry to start a trade remedies case in your jurisdiction? Can the regulator start an investigation ex officio?

An anti-dumping or countervailing duty case is initiated by one of two methods: a written complaint by domestic producers, or by the president of the CBSA on his own initiative. A written complaint by domestic producers is more common.

To initiate a complaint, the president of the CBSA must have evidence that the complaint is supported by domestic producers whose production represents more than 50 per cent of the total production of like goods by domestic producers who either support or oppose the complaint. Further, the production of the domestic producers who support the complaint must represent at least 25 per cent of the total domestic production of like goods.

Once a complaint is received by the president of the CBSA, he or she must determine whether it is properly documented. A properly documented complaint must contain evidence of dumping, subsidisation, or both, as the case may be, and material injury in the form of one or more of lost sales, price erosion, price suppression or retardation of domestic production resulting from dumping or subsidisation, or both.

The initiation of a safeguard complaint is similar to an anti-dumping or countervailing duty case, except that the safeguards complaint must be filed with the CITT, which determines whether the safeguard complaint is properly documented. If so, the CITT conducts an inquiry and makes a recommendation to the Minister of Finance, who decides whether or not to effect safeguard measures in the manner recommended, or in another manner.

5 What is the procedure for foreign exporters to defend a trade remedies case in your jurisdiction?

Defence of anti-dumping or countervailing duty or safeguard cases requires participation in two processes. The CBSA is responsible for determining dumping and subsidisation. The CITT is responsible for determining whether or not dumping or subsidisation (or safeguard conditions) have caused, or threaten to cause, injury.

The president of the CBSA publicly notifies the initiation of an investigation in the Canada Gazette, the official publication of the Canadian government. Known exporters and importers are individually notified, as are the governments in the countries of export and the secretary of the CITT.

If a party wishes to participate in an anti-dumping or countervailing duty case, it will be required to notify the CBSA of its intention to participate. The party will be sent a request for information from the CBSA containing detailed questions relating to general company and production information, export sales and conditions of sale, domestic sales and conditions of sale, and costs of production and sales. Importers of allegedly dumped and subsidised goods will also be sent a request for information containing detailed questions relating to terms and scope of purchases, export charges, and relationships between any exporters and the importer. Manufacturers' requests for information responses are due within 37 days of the date of initiation of the investigation. Importers' responses are generally due within 21 to 27 days of the date of initiation of the investigation. Supplementary requests for information are common and generally require responses within seven to 14 days.

The CITT conducts a preliminary injury inquiry immediately following the initiation of an investigation. At this stage, the CITT must inquire into whether the evidence on the complaint discloses a reasonable indication that dumping or subsidisation has caused injury or retardation, or threatens to cause injury. Parties to the proceeding are permitted to make

representations, usually in writing, although an oral hearing is possible in exceptional circumstances. The CITT makes a preliminary determination of injury within 60 days of the commencement of its inquiry. If the CITT finds there is no reasonable indication of injury, the president of the CBSA will terminate the investigation.

The president of the CBSA must make a preliminary determination of dumping or subsidisation within 90 days of the date of initiation of the investigation, although this may be extended to 135 days at the discretion of the president of the CBSA.

If the manufacturers' and importers' requests for information responses are complete, CBSA officials may travel to the country of export to conduct onsite verification of the responding exporters to verify the accuracy of responses submitted. Onsite verification may take place either prior to or after the preliminary determination. If onsite verification occurs after the preliminary determination, the margin of dumping or amount of subsidy estimates will be based on a responding exporter's unverified data or a combination of exporter data and data from other sources, including that provided by the complainants.

Exceptionally, the president of the CBSA will terminate the investigation at the preliminary determination stage when there is insufficient evidence of dumping or the margins of dumping or amounts of subsidy are negligible. For countervailing duty purposes, Canada has adopted the OECD list of developing countries in applying the amount of subsidy threshold for negligibility.

Where the president of the CBSA makes a preliminary determination of dumping or subsidy, the final injury inquiry is initiated by the CITT. The CITT final injury process lasts approximately 120 days, from commencement to the announcement of the CITT's findings in respect of injury.

The CITT's inquiry is economic in nature, and considers issues relating to like goods, the domestic industry and market, general economic conditions in the market for subject and like goods, financial performance of the domestic industry, and causal factors linking dumping and subsidisation to injury or retardation. The CITT has the jurisdiction to hear requests for product exclusions and has a specified process for doing so.

The CITT issues detailed questionnaires to domestic manufacturers, foreign manufacturers, importers and purchasers (and users). The questionnaires must be completed within four to six weeks. The CITT process concludes with a hearing which is conducted as an administrative trial, with direct evidence, cross-examinations, and written and oral argument. The CITT has its own rules and has many of the powers of a constitutional court, and may subpoena witnesses, hear motions and consider laws of evidence. Its hearings are conducted in public except when designated confidential information is raised, resulting in closed (in camera) sessions.

Members of the domestic industry, importers and purchasers typically participate in CITT hearings. Foreign manufacturers and trade associations or chambers of commerce participate as well, although not in all cases. Undertakings respecting protection of confidential information are provided to Canadian counsel only, and not directly to foreign counsel.

The president of the CBSA issues its final determination of dumping or subsidisation 90 days after the preliminary determination. The final determination coincides with the commencement of the CITT hearing. In the event the CITT makes an injury finding, trade remedies become effective immediately and are enforced by officers of the CBSA. Trade remedy measures remain in place for five years, unless adjusted or terminated earlier from a public interest inquiry, an interim review where circumstances have changed, or from an order of the Federal Court of Appeal resulting from an appeal from a CITT injury finding.

The procedure for and defence of safeguard measures substantially differs from anti-dumping and countervailing duty investigations. Complaints are made by complainants directly to the CITT. Complaints relating to global safeguards, China-specific market disruption or trade diversion safeguards are made by way of written questionnaire responses filed with the CITT. Global safeguard enquiries may also be made by referral from the Canadian government to the CITT. The CITT has 21 days to decide whether or not to accept the complaint and to commence an inquiry. If it commences an inquiry, it must prepare and submit a report to the government of Canada and the Minister of Finance generally within 70 days of the commencement of its inquiry for trade diversion inquiries, 90 days for market disruption inquiries, and longer for global safeguard inquiries. Parties with an interest in potential safeguard measures may participate either in writing or in writing and at an oral hearing. These parties include the domestic industry, importers, exporters, foreign governments, trade associations and customers.

6 Are the WTO rules on trade remedies applied in national law?

Canada is a WTO member and has adapted relevant WTO agreements including those on anti-dumping, subsidies and countervailing measures and safeguards into its domestic trade remedies legislation. Canada's domestic trade remedy laws take precedence over WTO agreements. Canada's legal regime for trade remedies is generally consistent with WTO norms, although it may not fully comply with recent WTO jurisprudence interpreting WTO trade remedies obligations such as that in DS 379 relating to countervailing measures.

The SIMA and SIMR have provisions for treating non-market economies for anti-dumping purposes, and the CBSA has issued its own administrative guidance in this regard. The People's Republic of China and Vietnam are prescribed countries for SIMA purposes and potentially subject to non-market economy treatment for anti-dumping. The CBSA's administrative guidance respecting prescribed countries for non-market economy treatment states that these countries are to be treated as market economies unless there is evidence to the contrary (ie, a rebuttable presumption in favour of being sufficiently market-oriented). That said, cases in recent years involving certain sectors, particularly steel and related products, have resulted in non-market economy determinations.

Canada has adopted China-specific safeguard measures as set out in China's WTO Accession Protocol and the Working Party Report on China's WTO Accession, both as to the type and scope of China-specific safeguard measures, and their direction.

7 What is the appeal procedure for an unfavourable trade remedies decision? Is appeal available for all decisions? How likely is an appeal to succeed?

The final decision on injury by the CITT is conclusive and can only be reviewed by the Federal Court of Appeal, or in the case of NAFTA parties, by a NAFTA panel.

CITT findings can be set aside only where there were jurisdictional errors, legal errors or material errors in its findings of fact. The Federal Court of Appeal and NAFTA panels are deferential towards the CITT and rarely overturn its decisions on review. In the event a CITT decision is set aside, it will be sent back to the CITT for reconsideration.

CBSA determinations are also subject to review and are subject to similar deference as CITT decisions. Preliminary determinations of dumping or subsidisation are generally not judicially reviewed as they are regarded as interlocutory and not final. Jurisdictional errors in initiating an investigation can be judicially reviewed. Final determinations of dumping and subsidisation can be reviewed by the Federal Court of Canada. The success rate for reviews of final determinations of dumping and subsidisation is low in Canada.

8 How and when can an affected party seek a review of the duty or quota? What is the procedure and time frame for obtaining a refund of overcharged duties? Can interest be claimed?

CITT findings remain in place for five years, subject to renewal. However, there are circumstances where a party may seek a review of the finding (interim review) prior to its expiration, or may seek a change to an anti-dumping duty amount before the CBSA by appealing a duty assessment, including underlying normal values and export prices. The SIMA has an administrative appeal regime which permits exporters to seek redeterminations of normal values, export prices and countervailing duties, among other issues, each time goods subject to anti-dumping and countervailing duties are imported. The appellant has the onus of providing evidence to the CBSA to support its appeal. The appeals must be made within 90 days of the initial determination of anti-dumping or countervailing duty determination. The president of the CBSA has one year from the date of the request for redetermination to make his decision. A decision of the president of the CBSA can be appealed to the CITT within 90 days of the president's redetermination decision. A subsequent decision of the CITT can be appealed to the Federal Court of Appeal on a question of law. The Federal Court of Appeal has the jurisdiction to declare what, if any, anti-dumping or countervailing duty is payable (arising from the appealed transactions) or to refer the matter back to the CITT for reconsideration.

9 What are the practical strategies for complying with an anti-dumping/countervailing/safeguard duty or quota?

Practical strategies are somewhat limited. If re-sourcing from other countries is possible that should be examined, subject to the concerns that the

president of the CBSA can self-initiate an anti-dumping or countervailing duty investigation at any time and another complaint could be made by the domestic industry. Canada's anti-dumping and countervailing duty system provides for exporter-specific normal values and amounts of subsidy, so switching suppliers in the country of export is another option. As the trade remedy system in Canada is prospective in nature, the CBSA is frequently required to recalculate normal values and amounts of subsidy but often does not do so. This means that appeals of anti-dumping and countervailing duty assessments can be an effective way to address trade remedy compliance.

Customs duties

10 Where are normal customs duty rates for your jurisdiction listed? Is there a binding tariff information system or similar in place? Are there prior notification requirements for imports?

Customs duty rates in Canada are listed in the Schedule to the Customs Tariff: www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2012/menu-eng.html.

Tariff-related information is contained in administrative policy guidance known as Customs D Memoranda: www.cbsa-asfc.gc.ca/publications/dm-md/menu-eng.html. There are no general prior notification requirements for imports into Canada, however, some particular categories of products may require permits that must be obtained prior to import. For more information about controlled products see www.international.gc.ca/controls-controles/prod/index.aspx and www.international.gc.ca/controls-controles/about-a_propos/impor/permits-licences.aspx. See question 31 for more details.

11 Where are special tariff rates, such as under free trade agreements or preferential tariffs, and countries that are given preference listed?

Preferential tariff rates and general tariff legislation is listed within the Customs Tariff and can be found at: www.cbsa-asfc.gc.ca/trade-commerce/tariff-tarif/2012/01-99/countries-pays-eng.pdf.

The abbreviations are defined in section 27 of the Customs Tariff.

12 How can GSP treatment for a product be obtained or removed?

Canada's version of GSP treatment is reflected in its implementation of the General Preferential Tariff (GPT), adopted in 1974, and Least Developed Country Tariff (LDCT) adopted in 2003 and extended to 2024. The Customs Tariff specifies which products (by tariff classification number, there are approximately 5,700 products subject to GPT preferences and 99 per cent of products from 46 LDCT countries enter Canada duty and quota-free) have the GPT or the LDCT preferences available. GPT and LDCT are obtained for qualifying products by complying with rules of origin provisions. GPT beneficiaries are allowed up to a maximum of 40 per cent (final value) imported content (subject to cumulation among GPT countries), and LDCT beneficiary country exporters may have a maximum of 60 per cent of imported content, or even greater, as up to 20 per cent of the remaining 40 per cent may come from GPT countries.

In September 2013, the government of Canada revised the GPT to withdraw entitlement from 72 higher-income and trade-competitive countries, effective 1 January 2015. The LDCT was also amended to withdraw entitlement from Equatorial Guinea and the Maldives, also effective 1 January 2015. The revised GPT and LDCT will remain in effect until 31 December 2024.

13 Is there a duty suspension regime in place? How can duty suspension be obtained?

Canada has limited duty suspension programmes, given that the vast majority of goods enter Canada duty-free. Canada has chosen tariff elimination rather than additional duty suspension in recent years. Duties relief is, however, legislated in sections 89 to 99 of the Customs Tariff and the Duties Relief Regulations (SOR/96-44).

Canada's general duties relief programmes are explained on Customs Memorandum D7-4-1: www.cbsa-asfc.gc.ca/publications/dm-md/d7/d7-4-1-eng.pdf.

Canada also maintains a wide range of specific customs duties remission orders, both for temporary importations as well as certain goods remaining in Canada. These duty remissions arise from the legislative authority in section 17 of the Financial Administration Act and Orders in Council, which are administrative decisions made by the Cabinet of the Canadian government. Remission orders are published in the Canada

Gazette as they are made and are summarised at: www.cbsa-asfc.gc.ca/publications/dm-md/d8-eng.html.

14 Where can customs decisions be challenged in your jurisdiction? What are the procedures?

Customs decisions can be challenged by way of a system of administrative appeals, and subsequently by appeals to the CITT and the Federal Court of Canada, if necessary. Appeals, other than in respect of customs seizures or forfeitures or administrative monetary penalties, are made pursuant to section 60 of the Customs Act for issues of tariff classification, customs valuation and country of origin or tariff preference. The appeal is made by filing an adjustment request with a local CBSA office on a specified form, called a 'B2'. The B2 must be supported by relevant information giving rise to the appeal. The B2 can be filed retroactively for four years from the date of accounting of the goods in Canada, except for NAFTA-origin appeals, which must be filed within one year from the date of accounting. Customs decisions arising from assessments made prior to a party filing an adjustment request on its own initiative must be appealed within 90 days of the subject party having reason to believe there was a customs-based error, the reason-to-believe date usually coinciding with the assessment date. Outstanding customs duties and interest must be paid prior to an appeal.

Appeals from decisions made by the president of the CBSA are made to the CITT within 90 days of the president of the CBSA's appeal decision. Appeals from the CITT are made to the Federal Court of Appeal on any question of law. There are special provisions for accumulating interest and refunding interest depending on the timing and success of an appeal.

Trade barriers

15 What government office handles complaints from domestic exporters against foreign trade barriers at the WTO or under other agreements?

The Trade Agreements and Negotiations Branch of Global Affairs Canada (GAC) handles complaints against trade barriers. Depending on the nature of the barrier it may do so in conjunction with other departments or agencies with relevant sectoral expertise.

16 What is the procedure for filing a complaint against a foreign trade barrier?

Canada does not have a formal procedure for filing a complaint against foreign trade barriers. The GAC website suggests that those seeking to report a trade barrier do so by email at consultations@international.gc.ca. In most cases, it also will be worthwhile to directly contact officials of the Trade Agreements and Negotiations Branch or other GAC officials with responsibility for the country or territory in question.

17 What will the authority consider when deciding whether to begin an investigation?

There is no formal investigative process. In addition to a complaint's substantive merits and the availability of evidence to substantiate it, officials addressing a complaint are likely to consider such factors as the political and economic significance of the barrier, the existence of any similar or equivalent Canadian barriers, the interests of other Canadian importers or exporters, the broader political relationship between Canada and the country or territory in question, and the remedies available to address the barrier.

18 What measures outside the WTO may the authority unilaterally take against a foreign trade barrier?

In the event of 'acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on trade in goods or services of Canada', the Customs Tariff (section 53) authorises the government to take measures including suspension or withdrawal of statutory rights or privileges granted to that country or imposition of a surtax on its goods.

19 What support does the government expect from the private sector to bring a WTO case?

The government will expect affected domestic private sector interests to furnish relevant economic data and other evidentiary material that will substantiate the complaint. While there are no specific expectations of other material support, assistance from qualified private sector counsel and experts in preparing and reviewing arguments and obtaining and

Update and trends

- On the international level, three trends or hot topics can be noted:
- The government of Canada has in recent years been active in negotiating new trade and investment agreements, as described above at question 2, but has made relatively few concessions on its dairy and poultry supply management restrictions.
 - Trade remedy complaints in Canada have been on the rise, as they have elsewhere. The domestic steel industry has been particularly active in filing complaints and this is expected to continue as the global steel markets struggle with Chinese overcapacity issues and the China non-market economy discussion arising from China's WTO accession protocol.
 - Barring a late settlement, it appears that Canada and the United States soon will be embroiled in another dispute over exports of Canadian softwood lumber. The 2006 Softwood Lumber Agreement expired in October 2015. When a standstill provision under that agreement comes to an end in October 2016, a new round of trade remedy complaints and subsequent litigation is likely to follow.

Of note in the development of customs law in 2015 was the release of the Canadian International Trade Tribunal's (CITT) appeal decision in *Bri-Chem Supply Ltd. President of the Canada Border Services Agency*. While

the legal subject matter of the appeal was mundane (an amendment of tariff classification), the appeal is noteworthy because of the strong and unprecedented rebuke issued to the Canada Border Services Agency (CBSA) by the presiding member, finding that its actions constituted an abuse of process that was deliberate and involved an elaborate design. The Tribunal found that the CBSA deliberately ignored the authority of a higher decision-making body, the CITT by improperly re-litigating a previous CITT decision, and called into question the CBSA's commitment to the rule of law and the administration of justice. The CBSA has appealed the CITT's decision.

Canada's government tabled Bill C-21 in June 2016, proposing a number of key amendments to the Customs Act consequent to the Canada US Beyond the Border initiative announced in 2011. Most of the amendments relate to customs-related border exit requirements designed to harmonise Canada's customs and information collection requirements with those of the United States and elsewhere. There is a new offence for 'export smuggling', although Canada's existing export declaration requirements already make it an offence to not declare many controlled goods and money over C\$10,000. The proposed amendments add on a Customs Act offence to existing provisions, presumably as an additional deterrent.

reviewing evidence is likely to be welcomed. To the extent that such assistance will reduce the government's resource burden in bringing the case, it may have a bearing on whether the government proceeds with the case.

20 What notable trade barriers other than retaliatory measures does your country impose on imports?

A consequence of Canada's decentralised federal structure is the persistence of internal trade barriers at the provincial and territorial levels, notably in the areas of government procurement, labour mobility, regulation of some services sectors and trade in agricultural and agri-food products. The Agreement on Internal Trade (essentially an internal trade liberalisation agreement) has done relatively little to reduce these barriers since it came into effect in 1996. Canada's three western provinces (British Columbia, Alberta and Saskatchewan) have taken more ambitious steps to eliminate internal trade barriers among themselves, by entering into an agreement called the New West Partnership Trade Agreement (NWPTA). The NWPTA took effect in 2010. It was fully implemented on 1 July 2013.

Export controls

21 What general controls are imposed on exports?

Goods that are exported from Canada must be reported to the CBSA in accordance with Part V of the Customs Act and the Reporting of Exported Goods Regulations. Exportations must generally be reported if the goods being exported are valued at C\$2,000 or more and the final destination of the goods is other than the US, Puerto Rico or the US Virgin Islands. Export reporting is also required for goods that are controlled or regulated by Canadian legislation.

The export documentation that must be presented to the CBSA depends on the type of goods being exported and the country of export. The required documentation will vary from export to export and may include the following: an export declaration; an export permit, if the goods are controlled; and documentation required by other departments or agencies of the Government of Canada. Exporters (or their legal counsel) should identify the applicable reporting requirements on a case-by-case basis.

22 Which authorities handle the controls?

Export reporting in the ordinary course is made to the CBSA. In addition, under the Export and Import Permits Act (EIPA), Canada maintains export controls on specific goods and technology and on exports to certain countries. These are set out in, respectively, the Export Control List and the Area Control List. The Export Controls Division of GAC administers export permitting under the EIPA. Procedures for obtaining permits are set by regulation. Enforcement of the EIPA is handled by the CBSA and the Royal Canadian Mounted Police. Other government departments and agencies, including Agriculture and Agri-Food Canada, the Canadian Nuclear Safety Commission, Canadian Heritage, Canadian Food Inspection Agency, Environment Canada, Health Canada, the National Energy Board and

Natural Resources Canada, impose controls on the exportation of certain items. Export of these items may require additional permits.

23 Are separate controls imposed on specific products? Is a licence required to export such products? Give details.

Yes. The Export Control List divides controlled goods into seven groups:

- dual-use, which are goods or technologies that have both civilian and military applications;
- munitions;
- nuclear non-proliferation;
- nuclear-related dual-use;
- miscellaneous goods and technology, which includes certain weapon, spacecraft and satellite technologies, US-origin goods and technology that has not been further processed or manufactured and certain forest products (particularly raw logs) and agricultural and food products;
- missile technology control regime; and
- chemical and biological weapons non-proliferation.

As a participant in the Wassenaar Arrangement, Canada implements its commitments with respect to arms and dual-use goods through the first two of these Export Control List groups and implements other international commitments with respect to non-proliferation and weapons of mass destruction through other parts of the Export Control List. Goods and technology on the Export Control List may not be exported or transferred from Canada without a permit, although there are exceptions for certain exports and transfers to certain destination countries, notably the United States.

24 Has your jurisdiction implemented the WCO's SAFE Framework of Standards? Does it have an AEO programme or similar?

Yes. The CBSA's Partners in Protection (PIP) programme is a voluntary AEO initiative with private industry to enhance trade chain security. PIP was introduced in 1995 to promote awareness of and compliance with customs regulations among members. It has been enhanced to meet the WCO SAFE Framework standards to assist in the detection and prevention of smuggling of contraband goods and to combat organised crime. Through a memorandum of understanding, the CBSA and PIP partners develop joint action plans, conduct assessments of security measures, participate in security awareness sessions and improve trade chain security through security enhancements to members' infrastructure. PIP membership is a prerequisite, along with membership in the Customs Self Assessment Program, for access to Free and Secure Trade lanes at Canada-US border crossings. The implementation of these changes, particularly in security infrastructure, made it possible for the CBSA and the US Customs and Border Protection to agree to mutual recognition of site validations and security measures conducted as part of the PIP and Customs-Trade Partnership Against Terrorism programmes.

25 Where is information on countries subject to export controls listed?

Information on countries subject to export controls under the EIPA is listed in the Export Controls Handbook, the principal reference tool for information about Canada's export control regime, available on the GAC website at www.international.gc.ca/controls-controles/export-exportation/TOC-exp_ctr_handbook-manuel_ctr_exp.aspx?lang=eng. Only two countries, Belarus and North Korea, are currently subject to comprehensive EIPA-based restrictions (under the Area Control List) on the export or transfer of goods or technology. However, exports, particularly of military or dual-use goods, to numerous countries are subject to partial restrictions under the EIPA and Canada separately maintains economic sanctions against certain countries, including Iran, Russia and Syria, under separate legal instruments. Canada's economic sanctions regime is described in more detail in questions 28 to 30.

26 Does your jurisdiction have a scheme restricting or banning exports to named persons and institutions abroad? Give details.

Export controls under the EIPA do not target named persons or institutions. However, Canada's economic sanctions regime does in certain cases. This regime is described in more detail in questions 28 to 30.

27 What are the possible penalties for violation of export controls?

Export of controlled goods without an export permit can result in significant penalties. Contravention of the EIPA may result in (for each illegal export and at the election of the prosecutor):

- a fine of up to C\$25,000 or imprisonment for up to 12 months, or both; or
- a fine of an unlimited amount (at the discretion of the court) or imprisonment for up to 10 years, or both.

Where the offence is committed by a corporation, any officer or director of the corporation who directed, authorised, assented to, acquiesced in or participated in the commission of the offence can be held personally responsible.

An individual may also be subject to the Administrative Monetary Penalty System (AMPS), which may be imposed by the CBSA for non-compliance with customs laws and programme requirements. AMPS penalties for failing to report goods subject to export controls prior to export are as follows:

- first violation: C\$2,000;
- second violation: C\$4,000; and
- third and subsequent violations: C\$8,000.

AMPS penalties in excess of C\$1 million have been imposed for non-compliance.

Financial and other sanctions and trade embargoes

28 What government offices impose sanctions and embargoes?

Canada's economic sanctions regime is administered by regulations made under the United Nations Act, which permits implementation of UN Security Council resolutions, and under the Special Economic Measures Act (SEMA), which permits the imposition of economic sanctions in the absence of or in addition to UN Security Council resolutions. The prohibitions under these measures apply to the activities of businesses and individuals in Canada and Canadians abroad. For more information see www.international.gc.ca/sanctions/index.aspx?lang=eng.

The Freezing Assets of Corrupt Foreign Officials Act (FACFOA) also allows restrictions on dealing in the property of, entering into financial transactions with, or providing financial services to, politically exposed persons. In addition, certain provisions of Canada's Criminal Code contain prohibitions on the financing of terrorism, including dealing in property with listed persons. For the list of names currently included in the anti-terrorist financing list, see www.osfi-bsif.gc.ca/eng/fi-if/amlc-clrhc/atf-fat/Pages/default.aspx.

Economic sanctions are enforced by the CBSA and the Royal Canadian Mounted Police. Exceptions to permit requirements may exist in the relevant regulations for certain categories of goods and services, such as food, medical or humanitarian supplies and individual permits may be available on an ad hoc basis. Applications for permits to carry out an activity or transaction that is prohibited by sanctions may be made to the Economic Law Section of GAC at sanctions@international.gc.ca.

29 What countries are currently the subject of sanctions or embargoes by your country?

At the time of writing, Canada had economic sanctions in place against the following countries or certain individuals and entities from those countries: Belarus, Central African Republic, Democratic Republic of the Congo, Eritrea, Iran, Iraq, Ivory Coast, Lebanon, Liberia, Libya, Myanmar, North Korea, Russia, Somalia, South Sudan, Sudan, Syria, Tunisia, Ukraine, Yemen and Zimbabwe. Canada also maintains economic sanctions targeting individuals or entities linked with terrorist groups. For a current list of Canada's economic sanctions, see www.international.gc.ca/sanctions/countries-pays/index.aspx?lang=eng. The government of Canada recently announced that the restrictions on trade with Belarus, which take the form of an export ban, will be lifted imminently.

Canada's imposed sanctions against Russia and Russian-supported interests in Ukraine are similar to those imposed by United States and the European Union. They target Russian oil exploration activities and certain Russian and Ukrainian individuals and entities, including financial institutions. In response to the Joint Comprehensive Plan of Action and UN Security Council Resolution 2231 Canada has removed its formerly wide-ranging economic sanctions against Iran, but maintains more targeted sanctions against individuals and entities with close ties to the Iranian regime and on military and nuclear-proliferation-related items.

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30 Are individuals or specific companies subject to financial sanctions?

Yes. As noted above, financial and trade sanctions may be imposed under the SEMA, the United Nations Act or the FACFOA on individuals and entities, including specific companies.

Miscellaneous

31 Describe any trade remedy measures, import or export controls not covered above that are particular to your jurisdiction.

Canada maintains import controls on a variety of goods, including weapons and firearms, certain agricultural and food products, steel and textiles and apparel. These goods are listed on the Import Control List of the EIPA. In some cases the controls exist to allow for the orderly administration of tariff rate quotas and tariff preferences. Dairy and poultry products in particular are the subject of a system of domestic supply management, which is supported by very high or prohibitive out-of-quota duty rates on imports. The import permitting system is administered by GAC's Trade Controls Division.

Certain exports, notably raw logs and unprocessed fish, may also be the subject of export restrictions or prohibitions at the provincial level.

32 What effects are mega-regional trade agreements, such as the TPP, TTIP and RCEP, expected to have on your jurisdiction?

As noted (question 2) Canada is one of the 12 countries to negotiate and sign the TPP Agreement. Canada already has fairly comprehensive free trade agreements in place with the other TPP parties in the Western Hemisphere, but if the TPP enters into force it will deepen Canadian commercial ties with one of the world's largest economies (Japan) and two important emerging markets (Vietnam and Malaysia), including by eliminating significant tariffs in those countries on key Canadian exports such as food and agricultural goods, forestry products, metals and minerals and chemicals and plastics. It also will encourage and protect the involvement of Canadian businesses in North American and Asia-Pacific value chains. At the same time, it can be expected to put additional competitive pressures on some sectors of the Canadian economy, notably automotive manufacturing, due to the TPP's rules of origin, which are more flexible than those in the NAFTA.

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