



# Understanding Other Government Department (OGD) Regulations in Canada

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Presented by: Joy Nott (I.E. Canada) and Darrel Pearson (Bennett Jones LLP)



# Bennett Jones LLP - International Trade & Investment



- Canada's largest international trade practice
- Ranked as top-tier practice by Chambers Global and The Legal 500 (Canada)
- We advise on all aspects of international trade, including:
  - Customs valuation and transfer pricing
  - Tariff classification
  - Internal customs compliance reviews
  - Canada Border Services Agency audits and investigations
  - Transactional and corporate restructuring to minimize duties/taxes
  - Tariff preferences under bilateral, regional and multilateral trade agreements
  - Country of origin marking, labelling, packaging and other import requirements
  - Product regulation and standards
  - Import/export controls



# What is I.E.Canada?

83 Years and Counting.....



- Canadian Association of Importers and Exporters
- Network of 3,000+ individual trade professionals
- Members are companies not individuals
  - Pay up to \$40 billion per year in taxes not including GST or duties
  - Members employ approximately 1.6 million Canadians
  - 1 company membership dues covers all employees



# The Focus is on Members

## The 9 Focus Points of I.E.Canada

1

Represent Canadian Industry On The Global Stage With Respect To International Trade (Only one to represent importers and other partners in modern supply chain)

2

Influence Canadian International Trade Legislation And Policy With Elected Officials

3

Influence Canadian International Trade Policy Processes, Procedures With CBSA, DFATD and Relevant OGDs

6

Your Seat At The Table Where Trade Decisions Are Made That Directly Impact Your Company's Bottom Line

5

Information Programs for International Trade Professionals

4

Trade Diplomacy And Cooperation With Like Minded Industry Trade Associations Globally

7

Networking Venue for Canadian Trade Professionals Who Work For Importers/Exporters

8

Celebrating and Recognizing Canadian Talent and Expertise in International Trade

9

Professional Designation for Trade Professionals (Importer/Exporter)  
\*\*Pending

**ie** | canada



## Role of CBSA vs. OGD



The CBSA administers more than 90 acts, regulations and international agreements, many on behalf of other federal departments and agencies, the provinces and the territories.



## Learning the Lingo



- OGD = Other Government Departments
- OGA = Other Government Agencies
- PGA = Partnering Government Agencies (Single Window Initiative)
- Department of Foreign Affairs and Trade Development (DFATD) has become Global Affairs Canada (GAC)
- Canada Border Services Agency (CBSA) is unchanged



## Overview of OGD Regulations



- OGD regulations cover regulatory requirements of all Canadian government agencies other than the CBSA
- Objectives of OGD regulations
  - Meet international treaty obligations (e.g., import/export controls, sanctions, etc.)
  - Achieve domestic policy objectives (e.g., safety, marking/labelling, etc.).
- Sector/product specific regulations (e.g., oil & gas, food, pharmaceuticals, etc.) and broader-based regulations (e.g., consumer protection)
- Requirements vary depending on the applicable regulation(s)
  - Permits/licences
  - Product labelling
  - Product content
  - Reporting



## Overview of OGD Regulations

- Imported goods must be in compliance with OGD regulations at the time of importation
- Examples of OGD regulations commonly affecting Canadian importations:
  - Consumer product safety (*Hazardous Products Act* and *Canada Consumer Product Safety Act*)
  - Food and Drugs (*Food and Drugs Act*; *Narcotic Control Act*)
  - Cultural Property (*Cultural Property Export and Import Act*)
  - Ozone Depleting Substances and Products (*Ozone-depleting Substances Regulations*)
  - Hazardous Waste and Recyclables (*Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*)
  - Dangerous goods (i.e., Schedule VII of *Customs Tariff*)
  - Import Control List (textiles, dairy products, firearms, specialty steel products)



# Overview of OGD Regulations

- OGD requirements also apply to exporters (including non-resident exporters)
- Examples of OGD regulations commonly affecting Canadian exportations:
  - Export Control List (e.g., military goods and technology, U.S.-origin goods, etc.)
  - Area Control List (Belarus and the Democratic People's Republic of Korea)
  - Economic Sanctions (e.g., *Special Economic Measures (Russia) Regulations*)
  - Cultural Property (*Cultural Property Export and Import Act*)
  - Ozone Depleting Substances and Products (*Ozone-depleting Substances Regulations*)
  - Hazardous Waste and Recyclables (*Export and Import of Hazardous Waste and Hazardous Recyclable Material Regulations*)
- Additional considerations if your company has a physical presence in Canada
  - Regulatory requirements unrelated to border
  - Increased liability exposure (post-importation)
  - Need to continuously monitor and adapt



## Non Resident Importer (NRI) Considerations



**Non-Residents cannot always act as a importer/exporter of record**



Examples of the above:

### Food Importers

- Expected later in 2016
  - CFIA introducing new importer licensing for any company importing food into Canada
    - Fixed place of business in Canada, or
    - Fixed place of business in a country that CFIA recognizes as having a food safety system that provides similar level of protection as Canada, and
      - Importer must send or convey the food to Canada directly from the foreign country in which the importer has a fixed place of business

### Import /Export Controls

- Global Affairs Canada (GAC)
  - To apply for either an import permit or an export permit from GAC, the applicant must be a resident of Canada

Global Affairs:  
Import & Export Controls  
[Click Here for Link](#)

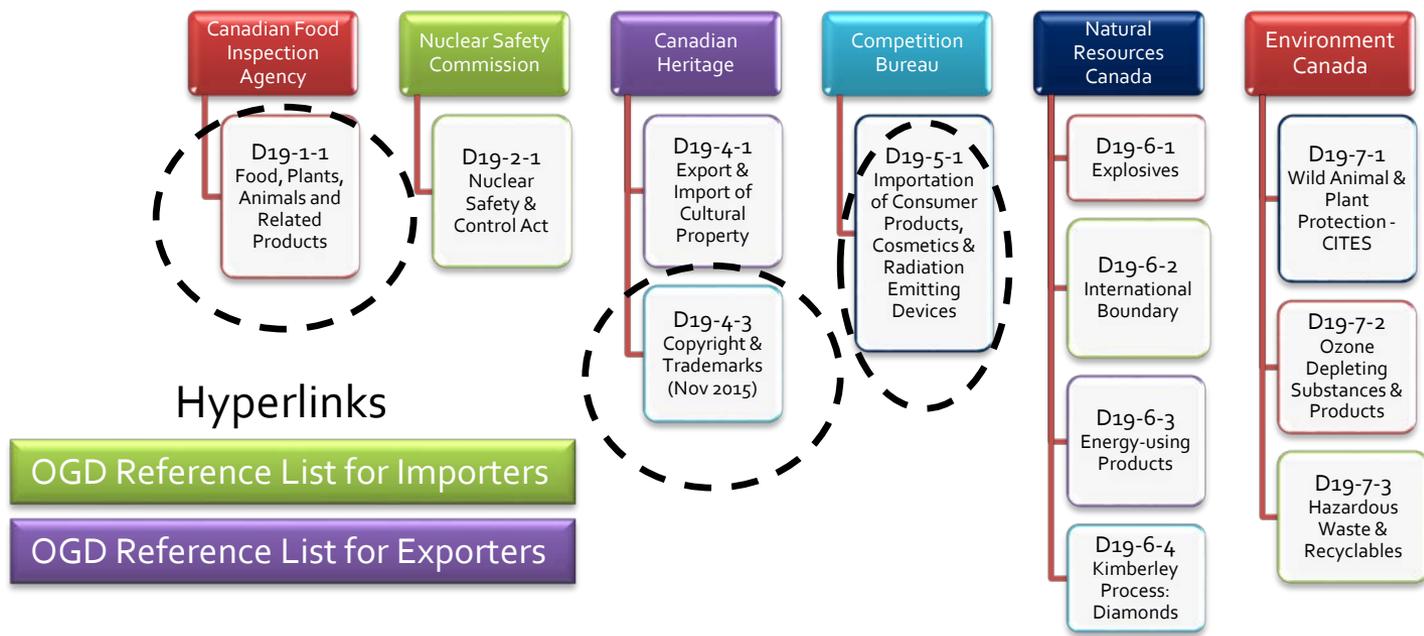


# OGDs and Global Affairs Canada

Regulated Goods	Prohibited Goods	Controlled Goods
<ul style="list-style-type: none"> <li>• OGD               <ul style="list-style-type: none"> <li>• Legislation belongs to various “other government departments” (OGDs)</li> </ul> </li> <li>• Global Affairs Canada (GAC)               <ul style="list-style-type: none"> <li>• Issues the permit documents</li> </ul> </li> <li>• Canada Border Services Agency (CBSA)               <ul style="list-style-type: none"> <li>• regulates and enforces the above legislation on behalf of OGDs for all relevant import and export shipments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• OGD               <ul style="list-style-type: none"> <li>• Legislation belongs to various “other government departments” (OGDs)</li> </ul> </li> <li>• Canada Border Services Agency (CBSA)               <ul style="list-style-type: none"> <li>• regulates and enforces the above legislation on behalf of OGDs for all relevant import and export shipments</li> </ul> </li> </ul>	<ul style="list-style-type: none"> <li>• Global Affairs Canada (GAC)               <ul style="list-style-type: none"> <li>• Issues the permit documents</li> </ul> </li> <li>• Public Works and Government Services Canada (PWGSC)               <ul style="list-style-type: none"> <li>• Registrar for the Controlled Goods Program (CGP)</li> </ul> </li> <li>• Communication Security Establishment (CSE)               <ul style="list-style-type: none"> <li>• Issues permit approval for goods with cryptographic technology</li> </ul> </li> <li>• Canada Border Services Agency (CBSA)               <ul style="list-style-type: none"> <li>• Enforces the use of permits at the time of export for relevant shipments</li> <li>• Issues penalties for non-compliance</li> </ul> </li> </ul>
<p><b>Monitored and enforced by Canada Border Services Agency (CBSA)</b></p>		
<p><b>Also Enforced by the RCMP</b></p>		

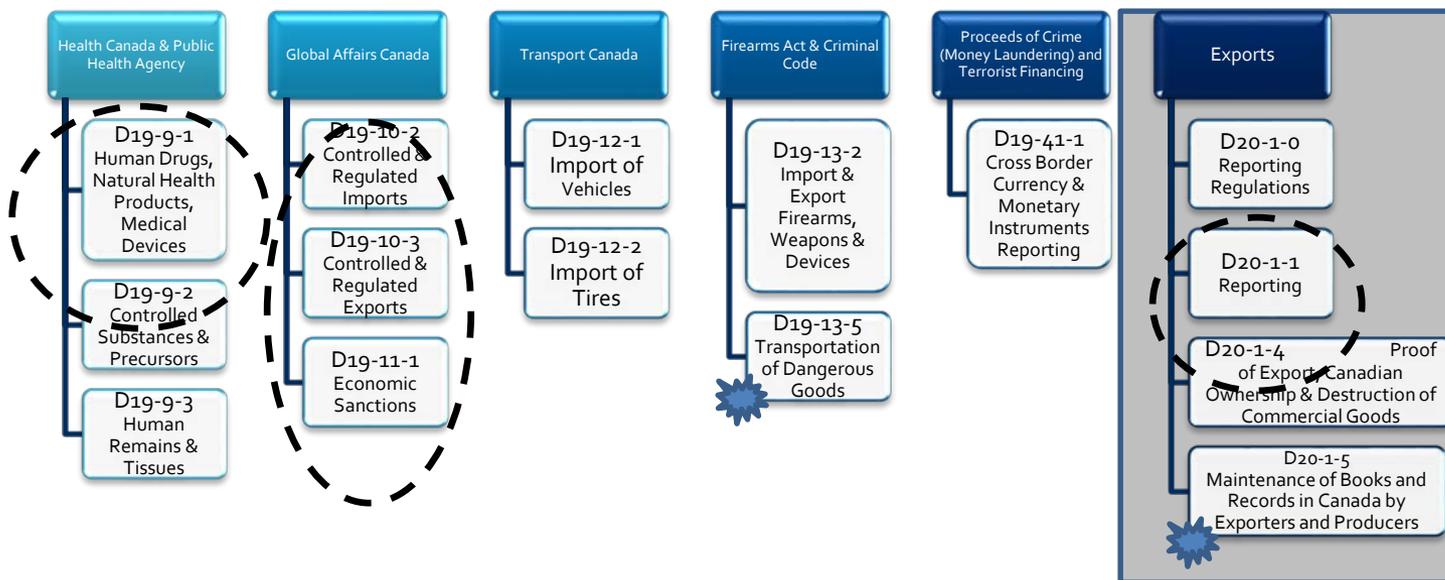


# Acts and Regulations of OGDs: CBSA D Memoranda (as of January 2016)





# Acts and Regulations of OGDs: CBSA D Memoranda (as of January 2016)



Non-CBSA – information could be out of date



# Compliance Considerations

## Proactive Identification:

- Proactive identification of applicable regulations before import/export is critical
  - Require time to obtain necessary approvals, permits, etc.
- The challenge is dealing with the volume of information and understanding the interplay between law, regulation and policy
  - Enforceable legislation (statutes/regulations) versus non-enforceable guidelines/policies
  - Various sources of information



# Compliance Considerations

## Sources of Information:

- The best information is at the source
  - Be wary of third party information sources
- Canadian laws and regulations are published by Justice Canada:  
<http://laws.justice.gc.ca/eng/>
- Changes to Federal laws and regulations are published in the *Canada Gazette*:  
<http://www.gazette.gc.ca/gazette/home-accueil-eng.php>
- Also should consider applicable provincial regulations (generally, provincial requirements will only be applicable to companies conducting business in Canada)





# Compliance Considerations

Sources of information:



- Government Agency Websites, for example:
  - Global Affairs Canada: <http://www.international.gc.ca/international/index.aspx?lang=eng>
  - Health Canada: <http://www.hc-sc.gc.ca/index-eng.php>
  - Natural Resources Canada: <http://www.nrcan.gc.ca/home>
  - Environment and Climate Change: Canada: <https://www.ec.gc.ca/?lang=En>
- These agencies post guidelines and updates on changes to the laws, regulations and policies that they enforce
- Agencies representatives are also available for additional guidance



# Compliance Considerations

## Sources of Information:

- Industry Associations

- Can be an excellent source for ongoing updates on applicable regulations
- IE Canada provides its members with the most current information on import/export requirements: <http://www.iecanada.com/>



- External Advisors

- External advisors recommended when first entering the Canadian market
- Can provide a shortcut to distilling the impact of regulatory changes
- Understanding Canadian laws is important – It is not sufficient to review government policies/guidelines





# Single Window Initiative



## Summary

- The Single Window Initiative (SWI) went live on March 29, 2015.
- The new Integrated Import Declaration (IID) release service option further expands the ability for importers/brokers to submit and obtain electronic release for goods regulated by Participating Government Departments and Agencies (PGAs):
  - submission of an IID is voluntary;
  - the IID only includes the data required for the CBSA and PGAs to make a border-related decision;
  - the IID can be used for PGA and non-PGA-regulated goods; and
  - a complete submission of a PARS or IID within proposed mode specific timeframes will satisfy both pre-arrival (ATD) and release requirements.
  - SWI allows a single IID release transaction to be associated to multiple Cargo Control Numbers (CCNs)

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2

If your goods involve OGD requirements, talk to your customs broker about how to register for SWI

“ Importers, customs brokers and service providers must first register with the CBSA; including those currently providing release information electronically via PARS, OGD PARS and RMD. ”



# Single Window Initiative



## PGA Programs – In Production

As of Feb 4/16 Now Live

June 29/15



Nov 2/15



Health Canada	Consumer Products, Cosmetics, Radiation Emitting Devices and Pest Control Products Human Drugs, Natural Health Products, and Medical Devices Regulated by the Food and Drugs Act Controlled Substances and Precursors
Natural Resources Canada	Energy-Using Products, Kimberley Process (Rough Diamonds)
Transport Canada	Vehicles (with the exception of the Appendix F process)
Department of Foreign Affairs, Trade and Development Canada	Agriculture, Steel, Textiles and Clothing
Public Health Agency of Canada	Human and Terrestrial Pathogens and Biological Toxins
Environment Canada	Hazardous Waste and Hazardous Recyclable Material
Canadian Food Inspection Agency	Animal Health, Feed, Fertilizer Safety, Plant Health, Plant with Novel Traits, Seed, Food (including Agrifood, Fish and Seafood, Meat, Imported and Manufactured Food)

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3



# Single Window Initiative



## PGA Programs – At a Later Date

Dec 18/15



Transport Canada	Tires – (December 2015)
Natural Resources Canada	Explosives - (First quarter of 2016)
Environment Canada	New Substances, Transportation Division, Wildlife Enforcement, Environmental Enforcement, Ozone Depleting Substances
Fisheries and Oceans Canada	Trade Tracking , Aquatic Invasive Species, Aquatic Biotechnology / New Substances Notification
Canadian Nuclear Safety Commission	Nuclear Substances and Equipment



## Compliance Considerations

- Having identified the applicable OGD regulations, the next step is an assessment of the impact of those regulations and the implementation of a compliance strategy
- Determine how the regulation will impact your operations and what must be taken to comply:
  - Pricing
  - Manufacture/Design
  - Labeling/Packaging
  - Safety/Compliance
  - Country Risk





# Compliance Considerations

## Key Elements of a Compliance Strategy:

- Assign responsibility for the identification of laws and policy changes that impact your business
- Develop written policies and procedures with support of legal and operational staff (e.g., procedures on how to obtain import/export permits)
- Employee training is important, particularly on the identification of risks so that concerns respecting controlled goods can be brought to the attention of management/legal
- Implement record keeping practices to maintain documents related to OGD requirements (e.g., permits/licences filed with CBSA)
- Ongoing monitoring and assessment of regulatory change



## Contractual Considerations

- Reps and warranties in purchase/distribution agreements
  - Cooperation in government agency enforcement actions
  - Compliance with Canadian laws and regulations
- Enforcement mechanisms - Termination and indemnity clauses
- Delineation of responsibilities for OGD requirements (e.g., which party will act as IOR and obtain applicable import permits?)
- Canadian residency or other OGD requirements may dictate contractual arrangements





## Consequences of Non-Compliance: AMPS

- Administrative Monetary Penalty System (AMPS)
  - 152 individual penalties
  - Divided into 24 different categories
- D22-1-2 is the Master Penalty Document
  - <http://www.cbsa-asfc.gc.ca/publications/dm-md/d22/d22-1-1-eng.html>





# Consequences of Non-Compliance

- **Detention**

- According to section 101 of the Act, goods that are **imported** or about to be **exported** may be detained until an officer is satisfied that the goods have been dealt with in accordance with the Act, and any other Act of Parliament that prohibits, controls or regulates the exportation of goods, and any regulations made there under
  - All costs related to detentions are the responsibility of the importer/exporter

- **Seizure**

- is a legal action, which may result in certain goods becoming the property of the Government of Canada
- is invoked when reasonable grounds exist to conclude legislative requirements pertaining to a suspected infraction call for the goods to be seized pursuant to Section 110 of the Act

- **Ascertained Forfeiture**

- is the legal process used when seizure would be impractical or, impossible, as in the case of goods that have already been exported
- is used under the same conditions as a seizure; an ascertained forfeiture may result in the assessment of a monetary penalty, **in an amount equal to, or lesser than the value of the goods** pursuant to Section 124 of the Act



Canada Border Services Office/Bureau des services frontaliers du Canada	
Seizing Officer/Agent de la saisie	Seizure No./No de saisie



## Voluntary Disclosure



- CBSA recently issued Memorandum D11-6-4 entitled “***Relief of Interest and/or Penalties Including Voluntary Disclosure***” setting out new guidelines for voluntary disclosures of errors in customs declarations or failure to report at all (“New VDP”)
  - The new guidelines and policy are included in Departmental Memorandum D11-6-4 revised on November 25, 2015



## Questions?

I think because we're such a trading nation, I think Canadians understand that first and foremost we're part of the global economy.

Stephen Harper

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# Thank You



Canadian Association of  
Importers and Exporters

Association canadienne des  
importateurs et exportateurs

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