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# INTERNATIONAL TRADE AND INVESTMENT

Canada is a member of the World Trade Organization (WTO) and a party to the *Canada-United States-Mexico Agreement* (CUSMA), the *Comprehensive Economic and Trade Agreement* (CETA) with the EU, the *Comprehensive and Progressive Trans-Pacific Partnership* (CPTPP) and numerous other regional trade and investment protection agreements. Through these agreements, Canadian suppliers have preferential access to markets in the Pacific Rim, the United Kingdom, the EU and the United States.

Due of the broad scope of these trade and investment agreements and their binding dispute settlement mechanisms, foreign investors establishing a business in Canada should be cognizant of Canada's obligations and the remedies available to them, particularly where they are facing discriminatory or otherwise harmful government measures.

## The World Trade Organization

As a member of the WTO, Canada is subject to a broad range of obligations that impact all sectors of the Canadian economy. These obligations govern Canadian measures concerning market access for foreign goods and services, foreign investment, the procurement of goods and services by government, the protection of intellectual property rights, the implementation of sanitary and phytosanitary measures and technical standards (including environmental measures), customs procedures, the use of trade remedies, such as anti-dumping and countervailing duties and the subsidization of industry.

These WTO obligations apply to Canadian government policies, administrative and legislative measures, and even judicial action. They apply to the federal government and also in many cases to provincial and other sub-federal governments.

Canada is an active participant in the WTO's dispute settlement system, both as complainant and respondent. As a result of WTO cases brought against Canada by other countries, Canada has had to terminate or amend offending measures in numerous sectors, including automotive products, magazine publishing, pharmaceuticals, dairy products, green energy and aircraft. On the other hand, Canadian successes under the WTO dispute settlement system have increased access for Canadian companies to markets around the world.

### *The Canada-United States-Mexico Agreement*

On July 1, 2020, CUSMA came into force and replaced the prior *North American Free Trade Agreement* (NAFTA). NAFTA, which originally came into effect on January 1, 1994, provided for the elimination of trade barriers among Canada, the United States and Mexico. Between Canada and the United States, the process of tariff elimination initiated pursuant to the *Canada-United States Free Trade Agreement* that came into effect on January 1, 1989, was continued under NAFTA. On January 1, 1998, customs duties were completely eliminated with respect to U.S.-origin products imported into Canada, with the exception of certain supply-managed goods (including dairy and poultry products). Effective January 1, 2003, virtually all customs tariffs were eliminated on trade in originating goods between Canada and Mexico. CUSMA has continued this process of tariff elimination between the parties.

While CUSMA eliminates tariff barriers among Canada, Mexico and the United States, each country continues to maintain its own tariff system for non-CUSMA countries. In this respect, CUSMA differs from a customs union arrangement of the kind that exists in the European Union, whereby the participating countries maintain a common external tariff with the rest of the world. A system of rules of origin has been implemented to define those goods entitled to preferential duty treatment under CUSMA. Goods wholly produced or obtained in Canada, Mexico or the United States, or all three countries, will qualify for preferential tariff treatment, as will goods incorporating non-CUSMA components that undergo a prescribed change in tariff classification, and that in some cases satisfy prescribed value-added tests. Some specific items, such as automobiles, have further restrictions on origin, requiring that certain wage levels be paid for labour used in constructing originating materials. Provided the CUSMA rules of origin are satisfied, investors from non-CUSMA countries may establish manufacturing plants in Canada through which non-CUSMA products and components may be further processed and exported duty-free to the United States or Mexico.

Outside of a three-year legacy investment window, which has now expired, CUSMA eliminates the NAFTA Chapter 11 obligations on Canada concerning its treatment of investors of other NAFTA countries. It also eliminates the investor-state dispute settlement (ISDS) mechanism, which permits a private investor of one NAFTA country to sue the government

of another NAFTA country for loss or damage arising out of that government's breach of its investment obligations as between Canada and the other parties. However, Canada maintains similar protections and ISDS mechanisms with regard to Mexico under the CPTPP (to which both are parties).

While CUSMA contains many obligations similar to those found in WTO agreements, it is sometimes referred to as "WTO-plus," because of enhanced commitments in certain areas, including foreign investment, intellectual property protection, energy goods (such as oil and gas), financial services, telecommunications and rules of origin. CUSMA also establishes special arrangements for automotive trade, trade in textile and apparel goods and agriculture.

### *The Canada-European Union Comprehensive Economic and Trade Agreement*

On September 21, 2017, Canada and the European Union provisionally implemented the EU-Canada CETA. The agreement is now fully in force except for a few specific provisions — most notably enforcement provisions of the ISDS protections, obligations to impose criminal sanctions on copyright violations and certain market access protections for portfolio financial services.

As one of Canada's broadest and most significant trade agreements to date, CETA significantly liberalizes trade and investment rules applicable to economic relations between the two regions. CETA addresses trade in services (including financial services), movement of professionals, government procurement (including at the provincial and municipal levels), technical barriers to trade, investment protection and ISDS and intellectual property protections (including for geographical indications and pharmaceuticals).

On the day CETA entered into force, 98% of all EU tariff lines became duty-free for Canada. Canadian exporters also benefit from clear rules of origin that take into consideration Canada's supply chains to determine which goods are considered "made in Canada" and eligible for preferential tariff treatment. Similar to NAFTA, CETA also aims to foster regulatory harmonization, co-operation and information sharing between Canadian and EU authorities in order to put in place more compatible regulatory regimes. This includes co-operation on sanitary and phytosanitary

measures for food safety, animal and plant life and health. CETA also includes some sector-targeted provisions that recognize specific interests related to wines and spirits, biotechnology, forestry, raw materials, science, technology and innovation. Underscoring the agreement's co-operative objectives, CETA also promises to implement greater transparency and information sharing with respect to subsidies and trade remedies provided by governments to their respective countries' industries.

While not yet in force, CETA includes a novel mechanism for ISDS arbitration. Where a dispute arises under CETA, the parties have agreed to establish a permanent tribunal that utilizes the ISDS arbitration mechanism. The tribunal is to be comprised of 15 members: five nationals of Canada, five nationals of EU members states and five nationals of third countries — each of which must be a jurist in their home jurisdiction. Cases will be heard by panels of three tribunal members (one for each party's state and the third selected from a list of neutral members). CETA also establishes an appellate tribunal that may uphold, reverse, or modify a tribunal's award based on errors of law, manifest errors of fact, or on the basis that it has exceeded its jurisdiction.

### *The Comprehensive and Progressive Trans-Pacific Partnership Agreement*

The CPTPP is a trade agreement among 11 Pacific Rim countries, representing a major portion of the global economy. The agreement provides significantly enhanced access to Pacific markets for Canadian business.

The agreement has been finalized and was signed by ministers of Australia, Brunei, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore and Vietnam. It came into force in December 2018 and has been implemented by Mexico, Japan, Singapore, New Zealand, Canada, Australia and Vietnam. In July 2023, the United Kingdom signed the protocol of accession to join the CPTPP, and the agreement will enter into force once ratified by the United Kingdom and the CPTPP parties, which the U.K. expects to occur in the second half of 2024.

The CPTPP is a broad and comprehensive agreement in the mould of CETA. The CPTPP reduces trade barriers across a range of goods and services, which will, in turn, create new opportunities for businesses and consumers. The CPTPP addresses new trade issues and other contemporary challenges, such as labour and environmental issues. It reflects both tariff

and non-tariff barriers to trade and investment, with the goal of facilitating the movement of people, goods, services, capital and data across borders. The agreement also includes ISDS provisions to resolve disputes between parties and investors.

### Other Free Trade Agreements

In addition to CETA, CUSMA, and the agreements of the WTO, Canada has also negotiated free trade agreements with Colombia, Chile, Costa Rica, Honduras, Jordan, Korea, Israel, Panama, Peru, Ukraine and the European Free Trade Association (Iceland, Liechtenstein, Norway and Switzerland).

Following Brexit, the United Kingdom is no longer covered by the terms of CETA. However, Canada has negotiated a *Trade Continuity Agreement* that preserves similar treatment for the U.K. as if it continued to be covered by CETA while it negotiates a permanent replacement with the United Kingdom. Trade between Canada and the U.K. will also become governed by the CPTPP following the pending ratification of the United Kingdom's entry into that agreement.

Canada is currently in formal negotiations regarding free trade deals with the Dominican Republic, India, Indonesia, Japan, Morocco, Singapore, the Association of Southeast Asian Nations (ASEAN), the Caribbean Community (CARICOM), among others.

### Bilateral Investment Treaties

Bilateral investment treaties (BITs) between Canada and 38 countries are currently in force. These BITs govern a range of foreign investment issues, including the treatment of foreign investors and their investments, performance requirements, expropriation and compensation and government-to-government dispute settlement mechanisms.

To investors, perhaps the most important feature of these BITs is that they also contain private investor-state dispute settlement mechanisms that enable foreign investors to sue host governments, including Canada, for damages arising out of breaches of their investment treaty obligations. Foreign investors intending to establish a business in Canada are advised to determine whether their home state has a bilateral investment treaty with Canada. If so, their rights as an investor may be enhanced. Canadian-based businesses will also benefit from the BIT protections available for their foreign direct investment in developing countries.

Canada has also recently released a 2021 Model BIT which it will use for future negotiations. The provisions of the 2021 Model BIT draw heavily from the ISDS mechanisms and protections in the CPTPP and CETA. There is an enhanced focus on preserving regulatory flexibility, increasing transparency and creating a pseudo-court structure for any arbitral panel.

### ***Canadian Free Trade Agreement***

The federal government of Canada has negotiated the *Canadian Free Trade Agreement* (CFTA) with each of the governments of Canada's provinces and territories, an agreement which replaces the former interprovincial trade agreement, the *Agreement on Internal Trade* (AIT). The CFTA contains obligations pertaining to: restricting or preventing the movement of goods, services and investment across provincial boundaries; investors of a province; the government procurement of goods and services; consumer-related measures and standards; labour mobility; agricultural and food goods; alcoholic beverages; natural resources processing; communications; transportation; and environmental protection. The CFTA also provides for government-to-government and person-to-government dispute resolution.

The CFTA came into force in 2017, replacing the AIT, which had come into force in 1995 and had been updated since that time through 14 protocols of amendment.

### ***Forced Labour and Child Labour***

Since July 1, 2020, there has been a prohibition on the importation and distribution of any goods mined, manufactured or produced in whole or in part from forced labour. However, unlike in the United States, enforcement in Canada has generally been slow to date. Certain civil society organizations sought an order from the Federal Court requiring the government to presumptively prohibit goods imported from the Xinjiang region of the People's Republic of China on forced labour grounds, absent evidence to the contrary. The Federal Court held that the Canadian Border Services Agency did not have the legal authority to enact such a general presumptive ban and must instead make determinations on a case-by-case basis. This prohibition will be expanded to include goods mined, manufactured or produced in whole or in part from child labour on January 1, 2024.

On January 1, 2024, the *Fighting Against Forced Labour and Child Labour in Supply Chains Act* will also come into force. This act will implement

reporting requirements related to the presence of forced and child labour in the supply chain. The act applies broadly to most entities that produce, sell or distribute goods in Canada or elsewhere, and to entities that import into Canada goods produced outside Canada. It also applies to entities that control another entity engaged in such production, sale, distribution or importation. The key obligation under the act is the annual publication of a report on diligence processes implemented by entities subject to the legislation that are aimed at "[preventing and reducing] the risk that forced labour or child labour is used at any step of the production of goods in Canada or elsewhere by the entity or of goods imported into Canada by the entity." Given the broad range of entities that are covered, businesses should carefully review these new measures to determine if these obligations apply to them and, if so, take action to prepare the initial reports that are due in May 2024.

CANADA, FOR REASONS OF BOTH DOMESTIC POLICY AND INTERNATIONAL TREATY COMMITMENTS, MAINTAINS ECONOMIC SANCTIONS AND CONTROLS ON IMPORTS, EXPORTS AND TRANSFERS OF CERTAIN GOODS AND TECHNOLOGY.

### Economic Sanctions

A number of nations, entities and individuals are subject to Canadian trade embargoes under the *United Nations Act*, the *Special Economic Measures Act*, the *Justice for Victims of Foreign Corrupt Officials Act* (Sergei Magnitsky Law), the Freezing Assets of *Corrupt Foreign Officials Act* and the *Criminal Code*. Canadian sanctions of varying scope apply to activities involving the following countries or regions: Afghanistan, Burma (Myanmar), Belarus, Central African Republic, the Democratic Republic of the Congo, Haiti, Iran, Iraq, Lebanon, Libya, Mali, Moldova, Nicaragua, North Korea, the People's Republic of China, Russia, Somalia, South Sudan, Sri Lanka, Sudan, Syria, Ukraine (generally targeting the Crimea region and other Russian-occupied areas in Ukraine), Venezuela, Yemen and Zimbabwe. Canada also maintains very significant prohibitions on dealings with listed "designated persons," terrorist organizations and individuals associated with such groups.

Since the Russian invasion of Ukraine in February 2022, Canada has imposed numerous rounds of sanctions measures on Russia, Belarus and the occupied regions of Ukraine. Canada has sanctioned over 1,000 individuals and 250 entities, including many Russian banks, oligarchs and

various significant government and private actors in the Russian and global economy. Additionally, in June 2022, Canada became the first G7 country to provide for the forfeiture and redistribution of assets of any person designated on its sanctions lists.

Canada's use of economic sanctions since the Russian invasion has been unprecedented in modern history, with the imposition of over 70 rounds of sanctions measures. Although many of these have focused on Russia and the occupied regions of Ukraine, recent measures have also targeted Iran, Haiti, Sri Lanka and Moldova, among others. This dramatic escalation in the use of economic sanctions has placed a strain on the governmental authorities that administer Canada's sanctions regime, and in May 2023, the Canadian Senate's Standing Committee on Foreign Affairs and International Trade proposed 19 recommendations to improve the effectiveness of Canada's sanctions regime, including supporting the creation of a specialized sanctions bureau that had previously been announced by the Canadian government.

In a number of areas, these Canadian economic sanctions measures are more onerous than those imposed by the United States, the United Kingdom, and the European Union. This makes it important to consider sanctions-related compliance on a country-by-country basis and to calibrate compliance programs accordingly.

Unlike the United States, Canada does not maintain a general trade embargo against Cuba. Indeed, an order issued under the *Foreign Extraterritorial Measures Act* makes it a criminal offence to comply with the U.S. trade embargo of Cuba and requires that the Attorney General of Canada be notified of communications received in respect of these U.S. embargo measures.

**Export and Import Controls on Goods and Technology**

Canada, for reasons of both domestic policy and international treaty commitments, maintains controls on imports, exports and transfers of certain goods and technology and, in the case of exports, their destination country. The federal *Export and Import Permits Act* (EIPA) controls these goods through the establishment of four lists: the Import Control List (ICL), the Export Control List (ECL), the Area Control List (ACL) and the Brokering Control List (BCL).

Goods identified on the ICL require an import permit, subject to exemptions (including for goods from certain countries of origin). These include steel products, weapons and munitions and agricultural and food products, such as turkey, beef and veal products, wheat and barley products, dairy products and eggs.

The ECL identifies those goods and technology that may not be exported or transferred from Canada without obtaining an export permit, subject to exemptions for certain destination countries. Controlled goods and technology are categorized into the following groups: dual-use items, munitions, nuclear non-proliferation items, nuclear-related dual-use goods, miscellaneous goods and technology (including all U.S.-origin goods and technology, certain medical products, forest items, agricultural and food products, prohibited weapons, nuclear-related and strategic items), missile equipment and technology, chemical and biological weapons and related technology and items controlled under the United Nations *Arms Trade Treaty.*

Canada has also implemented certain controls on "brokering" of arms and arms related technologies identified in the BCL. These restrictions control the ability of Canadians and persons in Canada to arrange or negotiate the transfer of defence items and technology between foreign countries.

Export permits must also be obtained for the export or transfer of any goods or technology, regardless of their nature, to countries listed on the ACL. The only country on the ACL is North Korea at the present time.

In addition to the EIPA, other Canadian legislation regulates import and export activity, including in respect of rough diamonds, nuclear-related goods and technology, cultural property, wildlife, food and drugs, hazardous products and environmentally sensitive items.

### *Defence Production Act* — Controlled Goods Program

The Canadian government has established the Controlled Goods Program under the authority of the *Defence Production Act.* This program is a domestic industrial security regime for certain goods and technology that have a military application, including but not limited to items subject to the *U.S. International Traffic in Arms Regulations.* It provides for defence trade controls to regulate and control the examination, possession and transfer in Canada of controlled goods and technology.

Anyone who deals with controlled goods and technology in Canada must register with the Controlled Goods Directorate and comply with numerous employee screening, security and other requirements.

### Anticorruption Legislation

The federal *Corruption of Foreign Public Officials Act* (CFPOA) makes it a criminal offence for any person to offer or pay a bribe to a foreign public official. The CFPOA prohibits Canadians from directly or indirectly (i.e., through an agent or other representative) giving, offering, or agreeing to give or offer a loan, reward, advantage, or benefit of any kind to a foreign public official in order to obtain or retain an advantage in the course of business. Canadian companies must therefore carefully scrutinize their activities abroad, including the actions of their agents and other business partners in other countries to ensure compliance with the CFPOA.

In recent years, Canadian corporate culture has been undergoing significant change in response to increased enforcement of the CFPOA by the Royal Canadian Mounted Police (RCMP) and Crown prosecutors. The widely publicized criminal penalties against Niko Resources Ltd. in 2011 and Griffiths Energy in 2013 — and ongoing RCMP investigations into the activities of a number of other Canadian companies — serve as stark warnings of the very significant costs of non-compliance. In light of this, many Canadian companies are moving quickly to design and implement anticorruption policies and procedures, as well as transactional risk mitigation strategies. Canada has also seen three recent successful prosecutions of individuals for CFPOA violations. Most notably, in 2020 a former SNC-Lavalin executive received an eight-and-a-half-year prison sentence for his role in the company providing over C$100 million in payments to government officials to secure contracts in Libya. He was also fined over C$24 million and was required to forfeit the property he had obtained with proceeds from the offence. SNC-Lavalin was also subject to a C$280 million fine pursuant to a plea agreement for charges under Canada's *Criminal Code* for these payments.

In addition, Canada has enacted sector-specific legislation to increase transparency and deter corruption for Canadian companies operating outside of its borders. For example, the *Extractive Sector Transparency Measures Act* (ESTMA) was brought into force on June 1, 2015. ESTMA requires extractive entities active in Canada to publicly disclose, on an annual basis, specific payments made to all governments in Canada and abroad.

Similarly, the federal government has also put in place a series of integrity policies (collectively referred to as the "Integrity Regime") to ensure that the government itself conducts its business with ethical suppliers both in Canada and abroad. The Integrity Regime ranks among the world's most aggressive debarment programs for the disqualification of companies seeking to do business with the federal government. It aims to promote and enforce ethical business practices in government, ensure due process for the government's suppliers and service providers and uphold trust in the public procurement process.

Under its *Criminal Code*, Canada also prohibits bribery and related activities in respect of domestic government officials and bribery in the context on non-government parties (i.e., secret commissions).

In the United States, there is a well-established process that allows companies to voluntarily disclose *Foreign Corrupt Practices Act* violations and negotiate deferred or non-prosecution agreements with the U.S. authorities providing for the payment of fines and the imposition of monitors who oversee remediation, all without there having to be a criminal conviction of the company. The U.K. has also adopted a similar deferred prosecution agreement process.

In 2018, Canada adopted a similar regime, which it calls "Remediation Agreements." There was an attempt to use the Remediation Agreement process by SNC-Lavalin with regard to pending charges related to alleged bribes paid to Libyan government officials. This attempt was rejected by the Public Prosecution Service of Canada, which then proceeded with the prosecution. It has been noted that Canada's Remediation Agreement framework is statutory in nature (as opposed to being a matter of policy flowing from prosecutorial discretion as it is in the United States), which greatly restricts flexibility for the PPSC in deciding whether or not to allow a Remediation Agreement to go forward.

Ultimately, SNC-Lavalin entered into a plea agreement that saw a subsidiary plead guilty to a fraud related offence and required SNC-Lavalin to undergo rigorous remediation and monitoring. It was also required to pay a fine of C$280 million over five years. This outcome largely replicated what would have been done under a Remediation Agreement.

The second-ever Remediation Agreement was approved by the Superior Court of Québec in May 2023. The first Remediation Agreement in Canada

to deal with offences under the federal *Corruption of Foreign Public Officials Act*, the agreement arose from allegations that Ultra Electronics Forensic Technology Inc. bribed Philippine officials to secure government contracts. A notable element of the Court's approval decision is its view that a high level of deference is owed to a Remediation Agreement.

**Duties and Taxes on the Importation of Goods**

Importers are required to declare imported goods upon entry into Canada and to pay customs duties and excise taxes, if applicable, to Canada's customs authority, the Canada Border Services Agency (CBSA). Goods are subject to varying rates of duties depending upon the type of commodity and its country of origin. As a member of CUSMA, Canada accords preferential tariff treatment to goods of U.S. and Mexican origin; in most cases, these goods may be imported duty-free. Canada's other trade agreements also offer preferential tariff treatment to goods.

In Canada, the importer of record is the person identified on importation documentation including the "B3" Canada Customs Coding Form used for this purpose. This person is not necessarily the 'true importer' that is liable to pay duties, however. A recent decision from Canada's International Trade Tribunal ruled that a customs broker acting as the importer of record was not the true importer since they merely provided freight-forwarding services and never purchased the goods, took title or possession of them, nor participated in their sale. The broker was therefore not liable for additional duties assessed by the Canada Border Services Agency. It is important that this distinction be taken into account when drafting contractual agreements that may involve the importation of goods into Canada.

The amount of customs duties payable is a function of the rate of duty (determined by the tariff classification and the origin of the goods, as set out in the Schedule to Canada's Customs Tariff) and the value for duty. Canada has adopted the World Customs Organization's Harmonized System of tariff classification, as have all of Canada's major trading partners.

In accordance with Canada's obligations under the WTO's agreement regarding customs valuation, the value for duty of goods imported into Canada is, if possible, to be based on the price paid or payable for the imported goods, subject to certain statutory adjustments. This primary basis of valuation is called the "transaction value method:"

- An example of an adjustment that would increase the value for duty of the goods is a royalty payment, if the royalty is required to be paid by the purchaser of the imported goods as a condition of the sale of the goods for export to Canada.
- An example of an adjustment that would allow for a deduction from the price paid or payable is the transportation cost incurred in shipping the goods to Canada from the place of direct shipment, if such costs are included in the price paid or payable by the importer.

If for one reason or another (e.g., where there has been no sale of the goods) the transaction value of the goods may not be used as a basis for the declared customs value, Canadian legislation provides alternative methods for valuation. These methods must be applied sequentially. In addition to customs duties, Goods and Services Tax (GST) in the amount of 5% is also payable upon the importation of goods. This GST rate is applied to the duty-paid value of the goods. Provided that they have acquired the goods for use in commercial activity, importers registered under the *Excise Tax Act* will be able to recover GST paid upon importation by claiming an input tax credit. See **Sales and Other Taxes — Federal Goods and Services Tax**.

### Other Requirements for Imported Goods

Certain imported goods are required to be marked with their country of origin. These generally fall within the following product categories: goods for personal or household use; hardware, novelties and sporting goods; paper products; wearing apparel; and horticultural products. Certain types of goods, or goods imported under specific conditions, are exempt from the country-of-origin-marking requirement.

Prepackaged products (i.e., products packaged in a container in such a manner that it is ordinarily sold to or used or purchased by a consumer without being repackaged) imported into Canada are also subject to requirements under the federal *Consumers Packaging and Labelling Act*. Consumer textile articles are subject to the requirements of the federal *Textile Labelling Act*.

There are also significant legislative requirements relating to the importation of foods, agricultural commodities, aquatic commodities and agricultural inputs. They are all subject to the inspection procedures of the Canadian Food Inspection Agency (CFIA).

Counterfeit trademark or pirated copyright goods may be detained upon importation into Canada. In accordance with the *Copyright Act* and the *Trademarks Act*, the owner of a valid Canadian copyright or a Canadian trademark holder registered with the Canadian Intellectual Property Office (CIPO) is eligible to file a Request for Assistance (RFA) application with the CBSA. This RFA provides an important enforcement tool for intellectual property rights. Using the RFA, the CBSA can identify and detain commercial shipments suspected of containing counterfeit trademark or pirated copyright goods. When the CBSA detects such goods, the CBSA can use the information contained in the RFA to contact the rights holder. The rights holder may then pursue a court action if necessary. The RCMP is responsible for undertaking any criminal investigations related to commercial scale counterfeiting and piracy.

In addition to the prohibitions on goods made with forced labour or child labour noted above, certain other goods are prohibited from being imported into Canada. These include: materials deemed to be obscene under the *Criminal Code*; base or counterfeit coins; certain used or second-hand aircraft; goods produced wholly or in part by prison labour; used mattresses; any goods in association with which there is used any description that is false in a material respect as to their geographical origin; certain used motor vehicles; certain parts of wild birds; certain hazardous products; white phosphorus matches; certain animals and birds; materials that constitute hate propaganda; and certain prohibited weapons and firearms.

**Trade Remedies**

Canada maintains a trade remedy regime that provides for the application of additional duties and/or quotas to imported products, where such products have injured or threaten to injure the production of like goods in Canada.

The federal *Special Import Measures Act* provides for the levying of additional duties on “dumped” products (i.e., products imported into Canada at prices lower than the comparable selling price in the exporting country) if they have caused or threaten to cause injury to Canadian industry. The process by which a determination is made as to whether duties should be applied to products that are alleged to be dumped is divided between the CBSA and the CITT, with the CBSA investigating whether the products in question are being dumped and

the CITT determining if such dumping is causing harm to the Canadian industry. Affirmative findings are required from both institutions for non-provisional duties to be applied to dumped products.

Duties may also be levied in instances of countervailable subsidies being provided by the government in the country of export, and if such subsidized products injure or threaten to injure Canadian industry. Further, Canada may apply safeguard surtaxes or quantitative restrictions on imports where it is determined that Canadian producers are being seriously injured or threatened by increased imports of goods into Canada. These measures may be applied regardless of whether the goods have been dumped or subsidized.

**Government Procurement of Goods and Services**

Canada is party to a number of trade agreements that impose restrictions and requirements on government procurement. Among other things, these agreements restrict the extent to which governments may favour domestic goods and services in their procurement processes.

The *WTO Agreement on Government Procurement*, CETA (Chapter 19), CPTPP (Chapter 15) and the CFTA (Chapter Five) all set out numerous requirements for procurement of goods and services that must be satisfied by the parties to those agreements, including Canada. These requirements include provisions that address technical specifications; the qualification of suppliers; the design and issuance of requests for proposals; selective tendering procedures; tender documentation; negotiations that may occur during the tender; the process of submitting, receiving and opening tenders and awarding contracts; limited tendering procedures; and bid challenges. They apply to federal government departments and entities, as well as to various government enterprises and Crown corporations. In certain circumstances, they also apply to provincial government entities, including municipalities, municipal organizations, school boards and publicly funded academic, health and social service entities.

Pursuant to its obligations, Canada's bid challenge authority for federal procurement is the Canadian International Trade Tribunal (CITT). Where the CITT finds that a procurement complaint is valid, it may recommend that a new solicitation be issued, the bids re-evaluated, the existing contract terminated and the contract awarded to the complainant or

the complainant compensated for its loss of the contract. The CITT may also award costs incurred by the complainant in preparing a response to the solicitation.

As noted above, CETA contains significant government procurement obligations that apply not only at the federal level, but also at the provincial and municipal levels of government. See **Government Procurement**.

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