

The Regulation of “International Trade” in Canada

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This article is part of a practical series written for international companies looking to establish, launch, operate or invest in a business Canada. Each article covers a major area of law in Canada – everything from employment laws to taxes. Access all the articles on the [“Doing business in Canada: A practical guide from ‘Eh’ to ‘Zed’” page](#).

Overall context: Canadian federalism

Canada is a federal state.

Canadian federalism is as dynamic as it can appear bewildering; it is complex, though not complicated, underwritten by a small number of foundational principles; it is flexible and responsive; it accepts regional differences and local experimentation as a critical element of the Canadian national identity. Canadian federalism forces policymakers and politicians into a permanent state of engagement and interconnectedness; it demands compromise and consensus for effective governance.

None of this is optimal for business; but Canadian federalism can give rise to good business outcomes - for those entities that understand it and use it effectively. When it comes to international trade, Canadian federalism gives rise to three key considerations.

First, Parliament has exclusive authority over matters that, in substance, fall under “international trade and commerce”, such as the customs tariff (and other border measures). Parliament also has competence to enact legislation in matters of general concern for the welfare of Canada as a whole - much of Canada’s environmental, food and drug legislation, and competition framework is predicated on Parliament’s general authorities. Parliament exercises indirect ‘regulatory’ authority in at least one other way: taxation (for example, excise taxes on tobacco or alcohol).

Second, although the federal Executive has sole authority to enter into treaties - including multilateral, regional, and bilateral trade agreements - the *implementation of treaties* to which Canada becomes Party is a matter of domestic legislative competence. Parliament may implement free trade agreements by, for example, reducing tariffs (within its jurisdiction), but not in areas of provincial competence.

Third, provinces have exclusive authority over ‘property and civil rights’, matters of a local nature, and ownership of natural resources within the province. In practice, this covers a wide range of economic activity: contract law, most labour legislation, securities regulation, health care, and professional accreditation all fall within provincial jurisdiction and are largely insulated from federal legislative activity. This is particularly relevant for trade agreements that cover services or that require mutual recognition of professional credentials.

Canada’s Trade and Investment Agreements

Canada is a Member of the World Trade Organization (WTO) and Party to a large number of free trade agreements covering nearly half the globe. Trade agreements reduce barriers to trade in goods, such as tariffs and certain non-tariff barriers. Some also address trade in services, investment, government procurement, and temporary entry for businesspersons. The administration of the Canadian customs framework (see [Employment Law](#) article) is governed by internationally agreed disciplines.

Canada is Party to more than 30 bilateral investment treaties, known as “foreign investment protection agreements” (FIPAs). FIPAs protect Canadian investment abroad and foreign investment in Canada against conduct such as unfair or discriminatory treatment or expropriation without adequate compensation, and include arbitration mechanisms under which investors can seek damages for breaches of the treaty protections by the host state.

The Canadian Customs Framework

Customs tariffs

The *Customs Act* imposes a general duty to report the importation of all goods into Canada. It also sets out:

- rules for the valuation of goods for duty purposes on importation to Canada;
- the basis for many tariff preferences from free trade agreements;
- exemptions from the payment of duty; and
- the authority of the Canada Border Services Agency (CBSA).

The *Customs Tariff* implements the Harmonized System for the tariff classification of goods and specific rates of duty that apply on the importation of goods into Canada. It is also the legal basis for:

- duty drawbacks;
- duty deferrals;
- duty remissions; and
- several types of import taxes, like some excise taxes and surtaxes.

Canada’s customs laws are administered by the **Canada Border Services Agency** (CBSA). The *Customs Act* establishes the procedures for contesting CBSA’s decisions regarding classification, origin, valuation and other customs issues relating to the

importation of goods. The **Canadian International Trade Tribunal** (CITT) hears appeals from CBSA decisions in customs matters.

Trade remedies

Where unfair trade practices such as dumping or subsidization causes material injury to Canadian manufacturers, additional duties may be imposed on injurious imports through Canada's trade remedy procedures.

Dumping is where the export price of a good is lower than its normal value, at the same level, in its domestic market. A product is **subsidized** where there is a financial contribution that confers a benefit, for example to its manufacturer, and that subsidy is specific to the firm or the sector.

The *Special Import Measures Act* provides for investigations into alleged dumping or subsidization, and injury they cause. The **CBSA** conducts an investigation into dumping or subsidization, and the **CITT** determines whether each practice causes material injury to Canadian producers. As required by Canada's WTO obligations, dumping (or subsidization) and injury to domestic producers must both be found before final duties can be imposed. Final duties may be imposed for five years and may be renewed for successive five-year periods.

There are other trade remedy investigations such as **emergency safeguards** that are conducted under the authority of the Minister of Finance.

Export and Import Controls

Global Affairs Canada (GAC) administers Canada's export and import controls pursuant to the *Export and Import Permits Act* (EIPA). Exports of goods or technology listed on the Export Control List, including military and dual-use goods, require a permit from the Minister of Foreign Affairs. Similarly, goods listed on the Import Control List are regulated under the EIPA and are subject to permits, quotas or other requirements.

Economic Sanctions

GAC administers Canada's economic sanctions. Canada imposes economic sanctions on a number of countries, organizations, and individuals. Sanctions giving effect to UN Security Council resolutions are imposed under the authority of the *United Nations Act*. Unilateral Canadian sanctions are imposed under the *Special Economic Measures Act* and *Justice for Victims of Corrupt Foreign Officials Act*. The Minister of Foreign Affairs may, in certain circumstances, issue permits authorizing transactions otherwise prohibited by the sanctions.

Foreign Corrupt Practices

The *Corruption of Foreign Public Officials Act* (CFPOA) prohibits the payment of bribes to foreign public officials for the purpose of obtaining a business advantage. The CFPOA applies to all persons (including non-Canadians) in regard to activities that have a "real and substantial connection" to Canada. In addition, it applies extraterritorially to

all Canadian corporations and Canadian citizens in regard to activities conducted globally, whether connected to Canada or not. Investigations under the CFPOA are conducted by Canada's federal police force, the Royal Canadian Mounted Police.

Anti-slavery Legislation

The *Fighting Against Forced Labour and Child Labour in Supply Chains Act* (Supply Chains Act) requires certain organizations and government institutions to report annually on the steps they are taking to address forced and child labour in its operations and supply chains.

The Supply Chains Act applies to “entities” that produce goods anywhere in the world or import goods into Canada, or control another entity that does one of those things. An “entity” a defined term under the Act, and mostly covers Canadian listed public companies and organizations doing business in Canada who meet certain size thresholds. Each entity is required to provide a report detailing the steps it has taken in its last financial year to prevent and reduce the risk that forced or child labour is used “at any step of the production of goods” in its global operations and supply chains. The Supply Chains Act sets out criminal fines for noncompliance, which apply to both the entity and its directors and officers.

In addition to reporting legislation, Canada bans the importation of goods produced with forced or child labour and importers may be subject to additional enforcement measures under the *Customs Act* including seizure and forfeiture of goods.

Practical Advice

Trade is regulated by a variety of complex domestic laws, regulations, and policies, and international agreements. Legal instruments, administrative practices, requirements, and defences evolve over time. If you are looking to engage in trade in Canada or with Canadian businesses or individuals, reach out to a BLG professional for tailored legal advice.

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BLG Offices

Calgary

Centennial Place, East Tower
520 3rd Avenue S.W.
Calgary, AB, Canada
T2P 0R3

T 403.232.9500
F 403.266.1395

Ottawa

World Exchange Plaza
100 Queen Street
Ottawa, ON, Canada
K1P 1J9

T 613.237.5160
F 613.230.8842

Vancouver

1200 Waterfront Centre
200 Burrard Street
Vancouver, BC, Canada
V7X 1T2

T 604.687.5744
F 604.687.1415

Montréal

1000 De La Gauchetière Street West
Suite 900
Montréal, QC, Canada
H3B 5H4

T 514.954.2555
F 514.879.9015

Toronto

Bay Adelaide Centre, East Tower
22 Adelaide Street West
Toronto, ON, Canada
M5H 4E3

T 416.367.6000
F 416.367.6749

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