

SANCTIONS ENFORCEMENT RISING: BORDER SEIZURES AND FORFEITURES, ADMINISTRATIVE PENALTIES AND A NEW REPORTING OBLIGATION FOR SANCTIONS EVASION OFFENCES

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Amendments to Canada's sanctions regime will significantly increase scrutiny and enforcement on goods being imported and exported from Canada. [Bill C-59, \[1\]](#) which is anticipated to pass in the coming weeks, will bring significant changes to Canada's sanctions regime by amending the *Proceeds of Crime (Money Laundering) and Terrorist Financing Act* ("**PCMLTFA**").

The amendments would impose additional reporting requirements for Canadian importers and exporters, create an administrative monetary penalty regime for failure to report, provide new seizure and forfeiture powers for Canada Border Services Agency ("**CBSA**") officers, and significantly broaden the reporting obligations on reporting entities under the PCMLTFA, such that "sanctions evasion offences" would also be reportable.

The enactment of these new sanctions enforcement tools departs significantly from past Government of Canada practice. Whereas previous changes to Canada's sanctions regime have been made through amendments to the *Special Economic Measures Act* and other sanctions legislation under the primary purview of the Minister of Foreign Affairs, the government's approach in this case is to amend the *anti-money laundering and terrorist financing regime*, and thereby create a separate sanctions enforcement regime under the purview of the Minister of Public Safety and Emergency Preparedness and the Minister of Finance.

Businesses, including those importing or exporting goods from Canada, should understand and prepare for these new changes. In particular, the likely impact on importers bringing goods into Canada should not be underestimated.

We summarize the changes below.

1. The New Sanctions Evasion Offence

The Bill creates a new requirement to report a "sanctions evasion offence" under the PCMLTFA. That is, various financial institutions, insurance providers, dealers, and money services businesses will now be required to

report to the Financial Transactions and Reports Analysis Centre of Canada ("**FINTRAC**") financial transactions where there are reasonable grounds to suspect that the transaction is related to the commission or the attempted commission of a sanctions evasion offence. This provision^[2] currently applies to the attempted commission of a money laundering offence or a terrorist activity financing offence.

This sanctions evasion offence is triggered by contravening a restriction or prohibition under one of Canada's primary sanctions statutes, being the *United Nations Act*, the *Special Economic Measures Act* ("**SEMA**"), and the *Justice for Victims of Corrupt Foreign Officials Act*. In essence, a sanctions evasion offence will involve any action that attempts to circumvent or violate these restrictions or prohibitions. These restrictions are typically put in place to limit or even prevent trade, economic activity, or financial transactions with specific entities, individuals, or jurisdictions, or involving certain types of goods.

By significantly broadening the scope of reportable transactions, the Government of Canada is placing a significant burden on financial institutions and other reporting entities to monitor transaction partners for suspected sanctions breaches, including in respect of dealing with sanctioned persons, jurisdictions or activities, or in respect of the restricted import or export of goods, among other sanctions.

2. A New Border Reporting Requirement and Administrative Monetary Penalties ("AMPs")

The proposed amendments also introduce several new reporting requirements on importers and exporters. Going forward, companies and individuals must declare to a CBSA officer whether imported or exported goods are relating to sanctions evasion. Declarations will be made in writing and, subject to exceptions that may follow through regulations, this reporting requirement will apply to goods including those:

- in the possession of individuals arriving or departing Canada.
- imported or exported by courier or mail.
- on board a conveyance (e.g., truck, train or vessel) arriving in or departing from Canada.

In addition, the requirement to report to CBSA applies in respect of any financial transaction that is for the payment of imported or exported goods in respect of which a declaration is required.

Businesses will be required to maintain records at their place of business in Canada or a designated location as prescribed through future regulations. Upon request, these records must be made available to officers and include any relevant information about the imported or exported goods.

The proposed amendments also introduce AMPs under the PCMLTFA for failure to report on sanctions evasion upon import or export of goods. Regulations will follow to classify the violations that result in AMPs and determine the applicable penalties. Businesses, including companies importing or exporting goods, should stay apprised of these regulations.

3. Border Seizures and Forfeitures

The Bill also provides CBSA officers the power to seize goods at the border for sanctions evasion. This new seizure power may be triggered in the following circumstances:

- a. If a person fails to declare goods according to the new reporting requirements described above or fails to provide proper records, or if records provided indicate that the goods are tied to sanctions evasion; or
- b. If the officer has reasonable grounds to believe that the goods are related to sanctions evasion.

Although the proposed amendments do not define the "reasonable grounds to believe" threshold, FINTRAC has provided guidance on this threshold for the [seizure of monetary instruments](#). This FINTRAC guidance indicates that "reasonable grounds to believe" means that there are "verified facts that support the probability" that the conduct in question has occurred.

The expansion of the power to seize goods follows the existing framework under the PCMLTFA applicable to currency and monetary instruments. In particular, importers and exporters may wish to familiarize themselves with the Cross-Border Currency Reporting Program memorandum [\[3\]](#) outlining currency and monetary instruments provisions and subsequent guidance that could become relevant to understanding the enforcement on goods at the border.

The seizure process begins with the initiation or trigger event, as described above. Whether and how the goods are released or forfeited to the Crown depends on the trigger for the seizure. For example:

- a. Where goods are seized because they were not properly declared, they are transferred to Public Works and Government Services Canada for a set period of time, and where the notice period expires, goods are forfeited to the Crown.
- b. If the goods are seized under a reasonable belief of sanctions evasion, the officer must immediately notify the President of the CBSA of the circumstances surrounding the seizure, and the goods will immediately be forfeited to the Crown at the time of the contravention (i.e., no act is necessary to effect the forfeiture). The legislation sets out the mechanism by which the Minister can cancel the seizure and forfeiture, provides for an appeal process, and describes how third-party claims will be treated, in order to address goods in which such third-parties will come forward and identify their interest as owner of the goods. A party generally has 30 days from the time they receive notification of the seizure to submit evidence regarding the seized goods.

These new proposed amendments to the PCMLTFA are not to be confused with the separate seizure and forfeiture regime under the SEMA and *Justice for Victims of Corrupt Foreign Officials Act*. This existing regime, on which we have previously commented, [\[4\]](#) relates to seizure and forfeiture of property belonging to

sanctioned persons under any of Canada's sanctions regulations.

The PCMLTFA regime relates to all goods being imported into Canada or exported out of Canada (for which there is reasonable grounds to believe are proceeds of crime, or relate to money laundering, the financing of terrorist activities, or sanctions evasion) and does not relate solely to property owned, held or controlled by sanctioned persons. The PCMLTFA regime is likely to have a far more significant impact on businesses. Understanding this distinction is crucial for companies to adapt their compliance strategies accordingly.

Conclusion

Businesses should prepare for increased reporting requirements at the border and ensure they have processes in place to make necessary declarations in respect of the application of sanctions on the goods they are importing or exporting. The increased enforcement efforts mean Canadian and international businesses should likely also take the opportunity to ensure their trade and sanctions compliance programs are robust and that they are not transacting with designated individuals or entities, or entities under their ownership or control.

Furthermore, institutions with reporting obligations under the PCMLTFA will be required to take significant actions to ensure they are incorporating Canada's sanctions regime into the reporting requirements arising from that statute.

McMillan's International Trade Group has published extensively on changes to Canada's sanctions regime^[5] and remains available to assist Canadian and international businesses navigate evolving compliance obligations.

We are also available to assist with any specific advice on how the proposed amendments may impact your business or with any developments in the evolving sanctions compliance landscape.

[1] The "Fall Economic Statement Implementation Act, 2023". For a discussion of Bill C-59's changes to the Competition Act, see: [Transformative Change: Your Guide to Canada's Breathtaking Competition Act Changes](#) and [Competition Act Amendments Proceed at Pace](#).

[2] Being section 7 of the PCMLTFA

[3] CBSA, Memorandum D19-14-1, Cross-border currency and monetary instruments reporting

[4] See for example: [Sanctions Pivot: Canada Seeks Forfeiture of Russian-Owned Assets to Fund Reconstruction of Ukraine and Adds Oil Price-Cap Restrictions](#) (December 22, 2022);

[5] Previous bulletins include the following:

- [Canada Strengthens Its Economic Sanctions and Export Controls Against Russia and Supports Russia's Removal from SWIFT](#) (February 25, 2022);

- [Canada Ratchets Up its Sanctions in Response to the Russia-Ukraine Crisis](#) (March 4, 2022);
- [Canada Further Expands its Sanctions Regime Against Russia](#) (March 29, 2022);
- [Canada Expands Sanctions on Russia and Proposes Broad Legislative Changes to its Sanctions Regime](#) (June 1, 2022);
- [Canada Clamps Down on Services Provided to Russia](#) (June 13, 2022);
- [Services, Sensitive Technologies, Luxury Goods, Gold and Disinformation Sanctions – Plus a Forfeiture Regimes: Canada’s Latest Responses to the Russian Invasion of Ukraine](#) (July 13, 2022);
- [Canadian Sanctions Revisited: More Russian and New Iranian Sanctions, Including Price Cap on Russian Oil](#) (October 4, 2022);
- [Sanctions Pivot: Canada Seeks Forfeiture of Russian-Owned Assets to Fund Reconstruction of Ukraine and Adds Oil Price-Cap Restrictions](#) (December 22, 2022);
- [One Year On: Economic Sanctions Have Become a Primary Tool of Canadian Foreign Policy and New Russian Sanctions are Imposed](#) (March 1, 2023);
- [Caught in the Sanctions Crossfire: Canada’s New Control Test Has Broad Repercussions on Businesses with Any Nexus to Russia](#) (April 26, 2023);
- [Russian Telecoms Newest Target of Canadian Sanctions and Canada’s \(non-\)Approach to General Permits](#) (August 16, 2023);
- [Sanctions Update: Countering Russian Evasion of Export Controls and New Sanctions Designations](#) (October 3, 2023); and
- [Two-Year Anniversary of Russia’s Illegal Invasion of Ukraine: New Sanctions Designations and Expansion of Export Prohibitions](#) (February 28, 2024).
- [Careful What You Wish For! Canada Issues Long-Awaited “Guidance” on Economic Sanctions](#) (March 28, 2024)

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A Cautionary Note

The foregoing provides only an overview and does not constitute legal advice. Readers are cautioned against making any decisions based on this material alone. Rather, specific legal advice should be obtained.

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