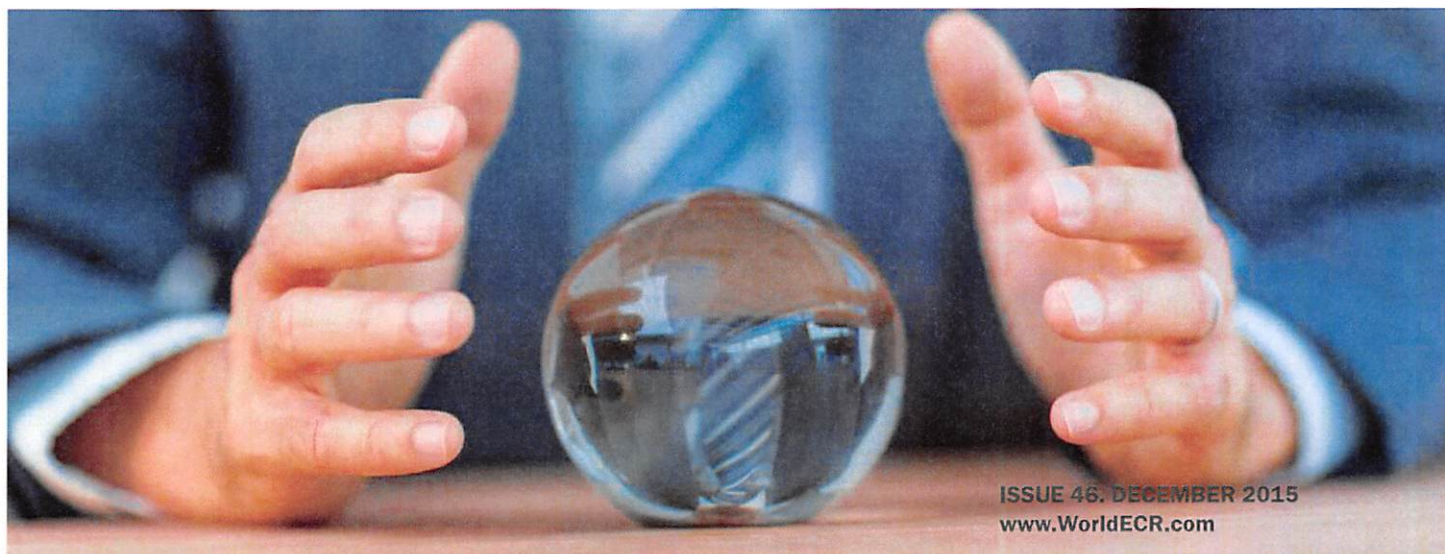


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'Sunny Days' for Canada in 2016?



Justin Trudeau's recently elected government campaigned on a platform for 'Real Change' in Canada. Cyndee Todgham Cherniak considers just what changes business might expect in the country's sanctions and export control regimes and policies.

In case you hadn't heard, on 19 October 2015, Canadians elected a majority Liberal government. Justin Trudeau is the new Prime Minister, Stéphane Dion¹ is the Minister of International Trade, Canada's Department of Foreign Affairs, Trade and Development Canada is now called Global Affairs Canada, former-Prime Minister Harper resigned as leader of the Conservative Party of Canada and the new Trudeau Government's motto is 'sunny days'. What does all this mean for Canada's export controls and economic sanctions regimes?

This article is predictive in nature. No-one has a crystal ball and can say with certainty at this point what will happen in 2016. However, it is possible to make a few educated guesses.

Canada currently imposes economic sanctions under the United Nations Act ('UNA') to implement UN Security Council resolutions and unilateral economic sanctions under the Special Economic Measures Act ('SEMA') or the Export and Import Permits Act, Area Control List. Previous governments have imposed economic sanctions against the following countries:

- Belarus (Area Control List)
- Burma (SEMA)
- Central African Republic (UNA)
- Côte d'Ivoire (UNA)
- Democratic Republic of Congo (UNA)
- Eritrea (UNA)
- Iran (UNA & SEMA)
- Iraq (UNA)
- Lebanon (UNA)
- Liberia (UNA)
- Libya (UNA & SEMA)
- North Korea (UNA & SEMA & Area Control List)
- Russia (SEMA)
- Somalia (UNA)
- South Sudan (UNA & SEMA)
- Sudan (UNA)
- Syria (SEMA)
- Ukraine (SEMA)

- Yemen (UNA)
- Zimbabwe (SEMA)
- Certain terrorist entities (UNA & SEMA)

Canada also imposes export controls pursuant to the Export and Import Permits Act, regulations thereto, including the Export Control List. As a general rule, export controls restrict the exportation of certain goods to any jurisdiction through the use of export permit/licence or certificate requirements.

2016 predictions

We predict that there will be five areas to watch in 2016 with respect to Canada's economic sanctions and export controls regimes.

Burma/Myanmar

On 13 December 2007, the Harper government imposed unilateral economic sanctions against Burma pursuant to SEMA and the Special Economic Measures (Burma) Regulations in order to respond to the gravity of the human rights and humanitarian situation in Burma.

On 24 April 2012, Canada repealed some (not all) of its unilateral economic sanctions against Burma under the Special Economic Measures Act following positive steps towards reform in Burma. Then-Foreign Affairs Minister Baird indicated in a statement that Canada was easing the economic sanctions to recognise positive changes taking place in Burma. Not all sanctions were lifted in order to continue to apply pressure on Burma to make additional reforms.

Aung San Suu Kyi's National League for Democracy ('NLD') won a landslide victory in Burma/Myanmar after general elections on 8 November 2015.

We predict that the Trudeau government will celebrate the democratic vote and additional reforms in Burma with ending Canada's

Terrorist entities

Canada's current economic sanctions against terrorist entities focus more on the Taliban and Al-Qaida than on ISIS/ISIL. The schedule of entities/persons to the Regulations Implementing the United Nations Resolutions on the Suppression of Terrorism⁶ has not been updated/expanded since 2006. The Suppression of Terrorism Regulations⁷ do not focus on ISIS/ISIL.

The current threat is ISIS/ISIL. We predict that in 2016 the Trudeau government will impose unilateral sanctions pursuant to the SEMA against ISIS/ISIL. These economic sanctions will layer upon the current Iraq and Syria sanctions. Known ISIS/ISIL leaders, supporters and recruiters will be listed and the new sanctions will prohibit Canadians and residents of Canada, wherever they are located, to benefit in any manner whatsoever such designated persons.

We predict that the Trudeau government will consider all legal options and the constitutionality of new options to address the new terrorist threats. The simple first steps that the Trudeau government may take to flex their national security muscles is by promulgating targeted economic sanctions against ISIS/ISIL. The new government will look at new approaches to the issues. Economic sanctions will be on the table.

unilateral sanctions against Burma/Myanmar. This should happen in 2016. The concerns which gave rise to the sanctions appear to have passed. If unilateral economic sanctions are intended to change the behaviour of leaders, then the sanctions have served their purpose and are no longer needed. Repealing the remaining sanctions would be consistent with the Trudeau government's 'sunny days' motto.

Iran

The Harper government imposed a

series of escalating economic sanctions against Iran under the SEMA. The sanctions are some of the strictest sanctions imposed by Canada – imposed on somewhat ideological principles.

After the July 2015 Iran nuclear deal and the United Nations' call to unwind sanctions against Iran, then-Foreign Affairs Minister Rob Nicholson announced that Canada's economic sanctions would continue for the time being. Canada was to remain an outlier as the government was not prepared to warm relations with the Iranian regime.

In June 2015, Justin Trudeau (as leader of the Liberal Party and candidate preparing for a federal election) commented, 'I hope that Canada will reopen its mission in Iran' and, 'I'm fairly certain that there are ways to re-engage [Iran]'. After the 19 October election, Prime Minister Trudeau reiterated his desire to restore relations between Canada and Iran. We predict that a stepping stone in the restoration of diplomatic relations will be the lifting of the severe unilateral economic sanctions.

The Trudeau government came to power with a message of 'Real Change' – an element of which lies in ending the perceived negativity of its predecessor. We predict that it will signal that change by lifting the economic sanctions so that Canadian companies can join investors/businesses from the United States and participate in the opportunities in Iran.

A second important element of the 'Real Change' is that the Trudeau government will make it clear that it is not 'anti-Muslim'. By lifting the economic sanctions against Iran, the message will be that the Trudeau government is moving in a positive direction away from the anti-Muslim messages during the election campaign. The Trudeau government wants desperately to press the restart button to set a more positive tone.

Russia

We predict that in 2016, the unilateral economic sanctions against Russia will remain in place. In late November, at the G-20 Summit, Prime Minister Justin Trudeau informed President Putin that Canada stands with the

Ukrainian people and expects Russia to engage fully in the Minsk process.² The Global Affairs Canada website continues to refer to Russia's 'illegal occupation'³ of Crimea/Ukraine.

On 3 December 2015, Foreign Affairs Minister Dion stated in his

We predict that in 2016, the unilateral economic sanctions against Russia will remain in place.

remarks to the Organisation for Security and Co-operation in Europe: '[Canada] would love to reestablish friendly relations with Russia, but we cannot accept its attempts to control its neighbours.'

'We also want to remind all Minsk agreement signatories of their obligations, including the withdrawal of heavy weapons from the line of contact, the release of prisoners and the holding of elections.'

'We call on Russia and the illegal armed groups it supports to cease their destabilising activities and work towards a peaceful and sustainable resolution to the conflict with due regard for Ukraine's territorial integrity within internationally recognised borders.'⁴

On 1 December 2015, Global Affairs Canada published the following statement: 'The OECE Ministerial Council is an opportunity to continue to press for a resolution of the conflict in Ukraine that fully respects the integrity of Ukraine's territory, including Crimea, and to reiterate that Canada supports the OSCE comprehensive approach to security, with human rights at its core. The meeting is expected to focus on Russia's interference in Ukraine...'⁵

In light of the statements made by Prime Minister Trudeau and Foreign Affairs Minister Dion, it is likely that the unilateral economic sanctions against Russia will continue until the Minsk agreement lines are restored. There is a large Ukrainian-Canadian population in Canada who will continue to lobby in favour of the sanctions against Russian and certain Ukrainians who supported the annexation of Crimea.

That being said, there are many Canadian companies with business in

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Links and notes

¹ Stephane Dion was the leader of the Liberal Party of Canada from 2006-2008.

² <http://news.gc.ca/web/article-en.do?mthd=index&crtr.page=9&nid=1022419>

³ <http://www.international.gc.ca/international/ukraine.aspx?lang=eng>

⁴ <http://news.gc.ca/web/article-en.do?mthd=index&crtr.page=1&nid=1023579>

⁵ <http://news.gc.ca/web/article-en.do?mthd=index&crtr.page=7&nid=1022629>

⁶ SOR/2001-360, as amended by SOR/2001-440, s. 1; SOR/2001-441, s. 4; SOR/2001-491, s. 1; SOR/2001-492, s. 1; SOR/2001-526, s. 1; SOR/2002-20, s. 1; SOR/2002-33, s. 1; SOR/2002-42, s. 1; SOR/2002-116, s. 1; SOR/2002-141, s. 1; SOR/2002-161, s. 1; SOR/2002-210, ss. 2, 3; SOR/2002-324, s. 1; SOR/2002-325, s. 2; SOR/2002-327, s. 1; SOR/2002-455, s. 1; SOR/2003-311, s. 1; SOR/2004-185, s. 1; SOR/2005-302, s. 1; and SOR/2006-165, s. 12.

⁷ SOR/2014-212

Russia. Foreign Affairs Minister Dion is a professorial, thoughtful person, not an ideologue. There is a process in place that permits persons who may be off-side the current sanctions to apply for a ministerial authorisation to do business in Russia or with designated persons contrary to the sanctions. Minister Dion is more likely to grant ministerial authorisations in circumstances where a reasonable business case is presented. He is less likely to 'punish' Canadian companies for the misdeeds of President Putin. This does not mean that the economic sanctions will likely become toothless. It merely means that the approach to granting ministerial authorisations may change and may take on a more reasonable, business-friendly approach rather than a negative approach.

Export controls

On 16 November 2015, the Canada Border Services Agency ('CBSA') issued Customs Notice 15-035 'Voluntary Disclosure of Unreported Goods Transiting Through the United States to a Subsequent Country', in which it signaled that Canada is stepping up enforcement against exporters with new audits focusing on exports of

product moving in transit through the United States.

There are two scenarios of concern to the CBSA:

- 1) An export declaration has not been filed with respect to goods transiting through the United States (the U.S. is not the final destination of the goods) and the value of the goods exceeds \$2000; or
- 2) An export permit has not been obtained with respect of controlled/restricted goods and the appropriate permit/licence/certificate has not been provided to the CBSA prior to export (value of the goods in this case is not relevant).

Goods controlled for export under the Export and Import Permits Act and the Export Control List are considered to be restricted goods for export reporting purposes.

The CBSA indicates that it will grant amnesty (grace period) if a voluntary disclosure is made between 1 December 2015 and 1 June 2016. Companies that report eligible unreported exported goods using the voluntary disclosure process will not be penalised. The grace period does not

apply to exports that did not transit through the United States. A voluntary disclosure could be made with respect to exports that were transported by air to export markets that exceeded the \$2,000 threshold or did not have an export permit/licence/certificate. However, the same level of penalty reduction may not be available.

Conclusion

There are winds of change blowing in Canada. The Trudeau government will take steps in the next 12 months to signal that it has a 'sunnier' disposition than its predecessors. Prime Minister Trudeau has stated that 'Canada is back' in terms of environmental concerns. The same motto will likely also be restated vis a vis its peace-keeping role. At the same time, the government will signal that it intends to take national security seriously.

There will be a balancing act to take place in 2016. In some areas, the economic sanctions will be repealed or softened. In some areas, the economic sanctions will stay the same. In the most serious of cases, the Trudeau government may impose new sanctions. Businesses should watch for changes in Canada's export controls and economic sanctions regimes in 2016 and be prepared to act when change occurs.

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