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15 April 2025

## **Re: Tariffs Responses – Foreign Extraterritorial Measures Act**

### **The Issue**

The imposition of tariffs on Canadian goods by the US Government raises significant concerns for workers in the Canadian manufacturing industries. One of those concerns is that businesses currently producing goods in Canada for sale into the US market will move some or all of their production to the US – effectively “off-shoring” production – leading to job losses in Canada.

The current response by the Canadian Government has been to impose retaliatory tariffs<sup>1</sup> – with other measures potentially forthcoming. This approach has merit – but does not effectively target “off-shoring” or businesses currently operating in Canada who are planning to shift production (and jobs) out of Canada and into the US.

A different approach is necessary to address this problem. The *Foreign Extraterritorial Measures Act*, R.S.C., 1985, c. F-29 (“**FEMA**” or the “**Act**”) could, in certain circumstances, be a useful tool to address this problem.

### **The Proposal**

FEMA is a piece of federal legislation that empowers the Attorney General to identify and prohibit businesses in Canada from complying with “measures” taken by foreign states that adversely affect Canadian interests in relation to international trade/commerce in Canada or that infringe Canadian sovereignty.<sup>2</sup>

FEMA allows the federal government to identify foreign measures that interfere with Canadian trade and business. A measure can be a formal law or the judgment of a court – but it can also include informal instructions or communications by any agency, department, or level of government. Measures include “laws, judgments and rulings made or to be made by the foreign state or foreign tribunal and directives, instructions, intimations of policy

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<sup>1</sup> See for example: *United States Surtax Order* (2025-1), SOR/2025-15.

<sup>2</sup> The *Foreign Extraterritorial Measures Act*, R.S.C., 1985, c. F-29 (“**FEMA**”) was originally enacted in 1984 in response to the extraterritorial application of anti-Cuban legislation in the US. However, the legislation was drafted so as to capture all forms of extraterritorial measures.

and other communications issued by the foreign state or foreign tribunal.” This is very broad language.<sup>3</sup>

Once a measure has been identified, the federal government (specifically the Attorney General (“AG”) with the concurrence of the Minister of Foreign Affairs) can explicitly prohibit individuals and companies operating in Canada from complying with that foreign measure. In that case, the AG issues an order specifying the foreign measure and prohibiting compliance with the measure (“**blocking order**”). The blocking order may be directed to individuals or to a broad class.<sup>4</sup>

The blocking order needs to be served on the specified persons.<sup>5</sup> It then becomes a federal offence for those persons to comply with the measure. Violators can be prosecuted with a summary conviction or indictable offence – with penalties up to \$1,500,000 for companies and \$150,000 and 5-years imprisonment for individuals.<sup>6</sup>

This approach relies entirely upon existing legislation. Each step of the FEMA process is entirely within the jurisdiction of the federal government – blocking orders are eventually tabled as a routine proceeding in parliament. This means that FEMA can be applied quickly – requiring only an order by the Attorney General – and without the need for new legislation or legislative amendments.

## **Analysis**

### **Application of FEMA to US Tariffs**

In the context of US tariffs, FEMA could be applied to target “off-shoring” from Canada to the US. If the Attorney General identifies US measures that instruct businesses operating in Canada to “off-shore” production to the US – the government could impose a blocking order prohibiting compliance with that measure. This would make it an offence under the Act for businesses currently carrying on business in Canada to “off-shore” production to the US in response to the US Government’s recent measures.

Blocking orders serve as deterrents for businesses considering “off-shoring” production. They place an external cost on moving production – this cost can take the form of financial penalties, imprisonment, or any other the consequences that conviction for a federal offence may have on a company or individual. These penalties would disincentivize “off-shoring”, counteracting the financial pressures created by US trade policies.

The broad definition of measures provides significant leeway for the Attorney General to identify foreign measures. For example, it includes “intimations of policy,” a category of communication that could be easily understood to include written and oral statements of

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<sup>3</sup> FEMA, ss. 2 and 5.

<sup>4</sup> FEMA s. 5.

<sup>5</sup> FEMA s. 6.

<sup>6</sup> FEMA s. 7.

US policy by individuals within the US Administration.<sup>7</sup>

Once the Attorney General has identified the relevant “off-shoring” measures, they would be able to impose a blocking order prohibiting compliance – making “off-shoring” production a federal offence. This would put a price on “offshoring”. It would be within the Attorney General’s discretion to determine whether to target specific individuals or corporations, target a specific industry (such as automotive parts manufacturers), or target a very broad class (such as all manufacturers operating in Canada).

This application of FEMA can be put into effect almost immediately – subject only to the identification of a specific US measure and which businesses operating in Canada will be targeted by the blocking order. FEMA does not require any legislative action or amendment to be effective. It could be applied relatively quickly and offers the ability to apply it very narrowly or target whole industries.

#### Reporting Requirements under FEMA

FEMA can also impose reporting obligations on businesses operating in Canada.

For example, the *Foreign Extraterritorial Measures (United States) Order, 1992*, SOR/92-584 (the “**1992 Order**”) was imposed in response to US legislation affecting trade between Canada and Cuba. The 1992 Order imposed an obligation on Canadian corporations and their directors to report “any directive, instruction, intimation of policy or other communication relating to an extraterritorial measure of the United States in respect of any trade or commerce between Canada and Cuba” from a “person who is in a position to direct or influence the policies of the Canadian corporation.” This mandated that businesses operating in Canada report communications from their US affiliates and management – in addition to measures from the US government.<sup>8</sup>

The 1992 Order also prohibited compliance with US measures and communications from their US parents relating to those measures. It applied “whether or not compliance with that measure or communication is the only purpose of the act or omission.” This expands the scope of what behaviour can be prohibited by blocking orders.<sup>9</sup>

A similar blocking order in the present circumstances would prevent businesses from using other pre-texts to evade blocking orders. Compliance with US measures – or communications relating to those measures – does not need to be the sole purpose of the “off-shoring” to be prohibited by a blocking order. It is sufficient that compliance with the US measures or communication was a factor in the decision to “off-shore” production in order to contravene FEMA.

A copy of the 1992 Order is included as Appendix A to this memo.

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<sup>7</sup> FEMA s. 5(2).

<sup>8</sup> *Foreign Extraterritorial Measures (United States) Order, 1992*, SOR/92-584 s. 3. (the “**1992 Order**”)

<sup>9</sup> 1992 Order s. 5.

### Proposed Amendments to FEMA

FEMA's effectiveness in the context of US tariffs could be improved with legislative amendments. There are three simple ways in which FEMA could be amended to improve its ability to effectively target "off-shoring."

First, FEMA could be amended to explicitly identify US "off-shoring" instructions as unenforceable measures.<sup>10</sup> FEMA could be amended to amend the definition of a measure to include US "off-shoring" instruction, inducements, or threats and provide special powers to specifically prohibit compliance with these instructions. This may make enforcement – including prosecution – easier.

Second, FEMA could be amended to increase the penalties for violating a blocking order. The current penalties for FEMA violations are limited in scope. While a \$1,500,000 fine is not insignificant, it may not be a sufficient deterrent for the largest manufacturing businesses – whose "off-shoring" would cause the greatest harm to the Canadian economy and workers.

Third, FEMA could be amended to permit a court that orders the payment of a fine to order the seizure and sale of property in Canada owned by the person who contravenes a blocking order. This would improve the federal government's ability to enforce fines currently allowed under FEMA and would make it more difficult for "off-shoring" businesses to escape penalties. The manufacturing assets that were previously used to manufacture in Canada could be seized to satisfy a judgment.<sup>11</sup>

Example language for these amendments is included as Appendix B to this memo.

### FEMA's Intersection with Customs Tariff

FEMA does not directly interact with the *Customs Tariff*, S.C. 1997, c. 36 ("**Customs Tariff**"). However, in some cases the application of FEMA and the Customs Tariff overlap.

Section 53 of the Customs Tariff empowers the Governor in Council to make orders "for the purpose of ... responding to acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on, trade in goods or services of Canada." Section 53 orders have the power to suspend rights and privileges under a trade agreement; impose additional, targeted tariffs on specified goods; include goods on the Import Control List; and the impose duties on specified goods.<sup>12</sup>

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<sup>10</sup> For example, FEMA was amended in 1996 to explicitly identify the US *Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996* as a foreign law that would not be recognized or enforceable in any manner in Canada.

<sup>11</sup> S.9(3) of FEMA currently permits the seizure of property to recover damages only in certain cases where the judgment of a foreign tribunal is declared unenforceable in Canada.

<sup>12</sup> *Customs Tariff*, S.C. 1997, c. 36, s.53(2).

In many cases, US government measures under FEMA will also constitute acts, policies or practices of the US government for the purposes of section 53 of the Customs Tariff. As with FEMA blocking orders, section 53 orders rely on existing legislation and are entirely within the jurisdiction of the federal government.

Due to these similarities, FEMA and the Customs Tariff can be applied concurrently to address the risk of “off-shoring.” For example, a section 53 order could impose tariffs on or restrict US imports to Canada for businesses which contravene a blocking order. This approach enhances the penalties in FEMA and narrowly focuses section 53 orders on businesses that “off-shore” production.

Example language for this tariff item is included as Appendix C to this memo.

FEMA compliance could also be added as a factor in the *United States Surtax Order* remissions process. The current remissions process allows for remissions from retaliatory tariffs where goods cannot be sourced domestically/from non-US sources and in exceptional circumstances.<sup>13</sup> The remissions rules could restrict businesses which have contravened blocking orders from being granted tariff remissions.

### **Summary of Conclusions**

- FEMA is a piece of federal legislation that empowers the Attorney General to identify and prohibit businesses in Canada from complying with “Measures” taken by foreign states that adversely affect Canadian interests in relation to international trade/commerce in Canada or that infringe Canadian sovereignty.
- Process: Attorney General identifies a foreign “Measure” that adversely affects Canadian interests in international trade or commerce involving business carried out in Canada. There is a broad latitude on what counts as a “Measure” – i.e. US President Trump’s directives that companies operating in Canada should move production to the US.
- The Attorney General may make an order prohibiting any person (individual or corporation) from complying with the “Measure.”
- FEMA can be targeted broadly – i.e. prohibit any person at all from complying with the “Measure” – or can be highly targeted – i.e. prohibiting specific individuals or companies from complying with a specific “Measure.”
- Violating the Attorney General’s order is a federal offence. Violations can be prosecuted as a summary conviction or an indictable offence with different

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<sup>13</sup> *United States Surtax Order* (2025-1), SOR/2025-15.

penalties for non-compliance. The maximum penalties are \$1,500,000 for corporations and \$150,000 and 5-years imprisonment for individuals.

- FEMA relies on existing legislation. There is no need for new amendments – unless we want to increase penalties for non-compliance. This may be worth pursuing as a further project in the future.

Yours truly,  
Jacob Millar  
Logie & Associates



CANADA

CONSOLIDATION

CODIFICATION

**Foreign Extraterritorial  
Measures (United States) Order,  
1992**

**Arrêté de 1992 sur les mesures  
extraterritoriales étrangères  
(États-Unis)**

SOR/92-584

DORS/92-584

Current to March 3, 2025

À jour au 3 mars 2025

## OFFICIAL STATUS OF CONSOLIDATIONS

Subsections 31(1) and (3) of the *Legislation Revision and Consolidation Act*, in force on June 1, 2009, provide as follows:

### Published consolidation is evidence

**31 (1)** Every copy of a consolidated statute or consolidated regulation published by the Minister under this Act in either print or electronic form is evidence of that statute or regulation and of its contents and every copy purporting to be published by the Minister is deemed to be so published, unless the contrary is shown.

...

### Inconsistencies in regulations

**(3)** In the event of an inconsistency between a consolidated regulation published by the Minister under this Act and the original regulation or a subsequent amendment as registered by the Clerk of the Privy Council under the *Statutory Instruments Act*, the original regulation or amendment prevails to the extent of the inconsistency.

## LAYOUT

The notes that appeared in the left or right margins are now in boldface text directly above the provisions to which they relate. They form no part of the enactment, but are inserted for convenience of reference only.

## NOTE

This consolidation is current to March 3, 2025. Any amendments that were not in force as of March 3, 2025 are set out at the end of this document under the heading "Amendments Not in Force".

## CARACTÈRE OFFICIEL DES CODIFICATIONS

Les paragraphes 31(1) et (3) de la *Loi sur la révision et la codification des textes législatifs*, en vigueur le 1<sup>er</sup> juin 2009, prévoient ce qui suit :

### Codifications comme élément de preuve

**31 (1)** Tout exemplaire d'une loi codifiée ou d'un règlement codifié, publié par le ministre en vertu de la présente loi sur support papier ou sur support électronique, fait foi de cette loi ou de ce règlement et de son contenu. Tout exemplaire donné comme publié par le ministre est réputé avoir été ainsi publié, sauf preuve contraire.

[...]

### Incompatibilité — règlements

**(3)** Les dispositions du règlement d'origine avec ses modifications subséquentes enregistrées par le greffier du Conseil privé en vertu de la *Loi sur les textes réglementaires* l'emportent sur les dispositions incompatibles du règlement codifié publié par le ministre en vertu de la présente loi.

## MISE EN PAGE

Les notes apparaissant auparavant dans les marges de droite ou de gauche se retrouvent maintenant en caractères gras juste au-dessus de la disposition à laquelle elles se rattachent. Elles ne font pas partie du texte, n'y figurant qu'à titre de repère ou d'information.

## NOTE

Cette codification est à jour au 3 mars 2025. Toutes modifications qui n'étaient pas en vigueur au 3 mars 2025 sont énoncées à la fin de ce document sous le titre « Modifications non en vigueur ».



**TABLE OF PROVISIONS**

**Order Requiring Persons in Canada to Give Notice of Communications Relating to, and Prohibiting such Persons from Complying with, an Extraterritorial Measure of the United States that Adversely Affects Trade or Commerce Between Canada and Cuba**

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**Arrêté enjoignant à toute personne se trouvant au Canada de donner avis des communications se rapportant à une mesure extraterritoriale des États-unis qui porte atteinte au commerce ou aux échanges entre le Canada et Cuba et de se soustraire à ces mesures**

- 1 Titre abrégé
- 2 Définitions
- 3 Avis
- 5 Obligation

Registration

SOR/92-584 October 9, 1992

## FOREIGN EXTRATERRITORIAL MEASURES ACT

**Foreign Extraterritorial Measures (United States) Order, 1992**

Whereas the United States is proposing to adopt a measure, set out in section 1706(a)(1) of the *National Defense Authorization Act for Fiscal Year 1993*, as passed by the United States Congress on October 5, 1992, which affects section 515.559 of the *Cuban Assets Control Regulations*, 31 C.F.R., Part 515, and constitutes a measure affecting trade or commerce between Canada and Cuba;

And Whereas, in the opinion of the Attorney General of Canada, that measure is likely to adversely affect significant Canadian interests in relation to trade or commerce between Canada and Cuba involving business carried on in whole or in part in Canada or is otherwise likely to infringe Canadian sovereignty;

Therefore, the Attorney General of Canada, with the concurrence of the Secretary of State for External Affairs, pursuant to section 5 of the *Foreign Extraterritorial Measures Act*, hereby revokes the *Foreign Extraterritorial Measures (United States) Order (1990)*, made on October 31, 1990\*, and makes the annexed *Order requiring persons in Canada to give notice of communications relating to, and prohibiting such persons from complying with, an extraterritorial measure of the United States that adversely affects trade or commerce between Canada and Cuba* in substitution therefor.

Ottawa, October 9, 1992

KIM CAMPBELL  
Attorney General of Canada

Concurred:

BARBARA MCDOUGALL  
Secretary of State for External Affairs

Enregistrement

DORS/92-584 Le 9 octobre 1992

## LOI SUR LES MESURES EXTRATERRITORIALES ÉTRANGÈRES

**Arrêté de 1992 sur les mesures extraterritoriales étrangères (États-Unis)**

Attendu que les États-Unis se proposent de prendre une mesure contenue dans l'article 1706(a)(1) de la loi intitulée *National Defense Authorization Act for Fiscal Year 1993*, adoptée par le Congrès des États-Unis le 5 octobre 1992, qui touche l'article 515.559 du règlement intitulé *Cuban Assets Control Regulations*, 31 C.F.R., partie 515, et qui constitue une mesure dans le domaine du commerce ou des échanges entre le Canada et Cuba;

Attendu que la procureure générale du Canada estime que cette mesure est susceptible de porter atteinte, dans le domaine du commerce ou des échanges entre le Canada et Cuba, à d'importants intérêts canadiens touchant une activité exercée en tout ou en partie au Canada ou, d'une façon générale, est susceptible d'empiéter sur la souveraineté du Canada,

À ces causes, avec le consentement de la secrétaire d'État aux Affaires extérieures et en vertu de l'article 5 de la *Loi sur les mesures extraterritoriales étrangères*, la procureure générale du Canada abroge l'*Arrêté de 1990 sur les mesures extraterritoriales étrangères (États-Unis)*, pris le 31 octobre 1990\*, et prend en remplacement l'*Arrêté enjoignant à toute personne se trouvant au Canada de donner avis des communications se rapportant à une mesure extraterritoriale des États-Unis qui porte atteinte au commerce ou aux échanges entre le Canada et Cuba et de se soustraire à ces mesures*, ci-après.

Ottawa, le 9 octobre 1992

La procureure générale du Canada  
KIM CAMPBELL

Consentement de :

La secrétaire d'État aux Affaires extérieures  
BARBARA MCDOUGALL

\* SOR/90-751, 1990 *Canada Gazette* Part II, p. 4918

\* DORS/90-751, *Gazette du Canada* Partie II, 1990, p. 4918

## Order Requiring Persons in Canada to Give Notice of Communications Relating to, and Prohibiting such Persons from Complying with, an Extraterritorial Measure of the United States that Adversely Affects Trade or Commerce Between Canada and Cuba

## Arrêté enjoignant à toute personne se trouvant au Canada de donner avis des communications se rapportant à une mesure extraterritoriale des États-Unis qui porte atteinte au commerce ou aux échanges entre le Canada et Cuba et de se soustraire à ces mesures

### Short Title

**1** This Order may be cited as the *Foreign Extraterritorial Measures (United States) Order, 1992*.

### Titre abrégé

**1** Arrêté de 1992 sur les mesures extraterritoriales étrangères (États-Unis).

### Interpretation

**2** In this Order,

**Canadian corporation** means a corporation that is registered or incorporated under the laws of Canada or of a province and that carries on business in whole or in part in Canada; (*personne morale canadienne*)

**extraterritorial measure of the United States** means

(a) the *Cuban Assets Control Regulations*, Code of Federal Regulations, Title 31, Part 515, as amended from time to time or replaced, and

(b) any law, statute, regulation, by-law, ordinance, order, judgment, ruling, resolution, denial of authorization, directive, guideline or other enactment, instrument, decision or communication having a purpose similar to that of the *Cuban Assets Control Regulations* referred to in paragraph (a), whether enacted, passed, made, done, voted, established, issued, rendered, given, taken or executed by any legislative, executive, administrative, regulatory, judicial or quasi-judicial authority or body of the United States, the District of Columbia or any of the member states or territories or possessions of the United States, or any municipality or other local authority in the United States or its territories or possessions,

to the extent that they operate or are likely to operate so as to prevent, impede or reduce trade or commerce between Canada and Cuba; (*mesure extraterritoriale des États-Unis*)

**trade or commerce between Canada and Cuba** means trade or commerce, including the free exchange of goods and services, between Canada, or Canadian nationals,

### Définitions

**2** Les définitions qui suivent s'appliquent au présent arrêté.

**commerce ou échanges entre le Canada et Cuba** Le commerce ou les échanges, y compris le libre-échange des biens et services, entre, d'une part, le Canada ou des nationaux canadiens, des personnes morales ou autres entités juridiques canadiennes ou des organismes gouvernementaux canadiens de niveau fédéral, provincial ou municipal et, d'autre part :

a) soit Cuba ou des nationaux cubains, des personnes morales ou autres entités juridiques cubaines ou des organismes gouvernementaux cubains d'ordre national, provincial ou local;

b) soit des personnes morales ou des nationaux canadiens qui, aux termes ou sous le régime d'une mesure extraterritoriale des États-Unis, sont déclarés ou réputés être des personnes morales ou des nationaux cubains ou, d'une façon générale, sont considérés comme tels, que ce soit par l'emploi des termes *designated national* ou *specially designated national* ou par tout autre moyen. (*trade or commerce between Canada and Cuba*)

**mesure extraterritoriale des États-Unis** L'un des textes suivants, dans la mesure où il a ou est susceptible d'avoir pour effet d'empêcher, d'entraver ou de diminuer le commerce ou les échanges entre le Canada et Cuba :

a) le règlement intitulé *Cuban Assets Control Regulations*, Code of Federal Regulations, titre 31, partie 515, compte tenu de ses modifications successives et de tout texte le remplaçant;

corporations or other legal entities or federal, provincial or local government institutions, and

**(a)** Cuba, or Cuban nationals, corporations or other legal entities or national, provincial or local government institutions, or

**(b)** Canadian nationals or corporations that are designated as, deemed to be, or otherwise treated as, Cuban nationals or corporations by or pursuant to an extraterritorial measure of the United States, whether by the use of the expression **designated national** or **pecially designated national** or in any other manner. (*commerce ou échanges entre le Canada et Cuba*)

SOR/96-84, s. 1.

## Notice

**3 (1)** Every Canadian corporation and every director and officer of a Canadian corporation shall forthwith give notice to the Attorney General of Canada of any directive, instruction, intimation of policy or other communication relating to an extraterritorial measure of the United States in respect of any trade or commerce between Canada and Cuba that the Canadian corporation, director or officer has received from a person who is in a position to direct or influence the policies of the Canadian corporation in Canada.

**(2)** The notice referred to in subsection (1) may be given by an authorized agent of the Canadian corporation, director or officer.

SOR/96-84, s. 1.

**4** The notice referred to in section 3 shall be sent by registered mail to the Attorney General of Canada at Ottawa and set out

**(a)** the name or names and capacity of the person or persons giving notice under subsection 3(1) or on whose behalf notice is given under subsection 3(2), and in the latter case the name, capacity and address of the agent;.

**(b)** the name or names and capacity of the person or persons from whom the communication originated;

**(c)** the full text or, if it is not in writing, the purport of the communication;

**b)** toute loi ou tout règlement, règlement administratif, décret, arrêté, ordonnance, ordre, jugement, résolution, refus d'autorisation, directive, ligne directrice ou autre texte, acte, décision ou communication dont l'objet est semblable à celui du *Cuban Assets Control Regulations* mentionné à l'alinéa a) et qui émane d'une entité ou autorité législative, exécutive, administrative, réglementante, judiciaire ou quasi-judiciaire des États-Unis, du district de Columbia ou de l'un des États membres, territoires ou possessions des États-Unis, ou d'une municipalité ou autre administration locale aux États-Unis ou dans leurs territoires ou possessions. (*extraterritorial measure of the United States*)

**personne morale canadienne** Personne morale enregistrée ou constituée sous le régime des lois du Canada ou d'une province qui exerce son activité en tout ou en partie au Canada. (*Canadian corporation*)

DORS/96-84, art. 1.

## Avis

**3 (1)** Toute personne morale canadienne ainsi que tout administrateur et tout dirigeant d'une personne morale canadienne doivent sans délai informer le procureur général du Canada des directives, instructions, indications d'orientation ou autres communications se rapportant à une mesure extraterritoriale des États-Unis dans le domaine du commerce ou des échanges entre le Canada et Cuba qu'ils ont reçues d'un tiers en situation de diriger ou d'influencer les activités au Canada de la personne morale canadienne.

**(2)** L'avis destiné au procureur général du Canada peut être transmis par le mandataire — autorisé à cette fin — de la personne morale canadienne, de l'administrateur ou du dirigeant.

DORS/96-84, art. 1.

**4** Cet avis est envoyé par courrier recommandé au procureur général du Canada, à Ottawa, et contient les renseignements suivants :

**a)** les nom et qualité de la personne ou des personnes qui l'envoient ou le font envoyer selon les paragraphes 3(1) ou (2) ainsi que, dans le dernier cas, les nom, qualité et adresse du mandataire;

**b)** les nom et qualité de la personne ou des personnes de qui émane la communication;

**c)** le texte intégral de la communication ou le message communiqué dans le cas où elle n'était pas par écrit;

**(d)** the date or dates when the communication was received; and

**(e)** the period during which the communication is intended to be in effect.

SOR/96-84, s. 1.

## Prohibition

**5** No Canadian corporation and no director, officer, manager or employee in a position of authority of a Canadian corporation shall, in respect of any trade or commerce between Canada and Cuba, comply with an extraterritorial measure of the United States or with any directive, instruction, intimation of policy or other communication relating to such a measure that the Canadian corporation or director, officer, manager or employee has received from a person who is in a position to direct or influence the policies of the Canadian corporation in Canada.

SOR/96-84, s. 1.

**6** Section 5 applies in respect of any act or omission constituting compliance, in respect of any trade or commerce between Canada and Cuba, with an extraterritorial measure of the United States or a communication referred to in that section, whether or not compliance with that measure or communication is the only purpose of the act or omission.

SOR/96-84, s. 1.

**d)** la date ou les dates de réception de la communication;

**e)** la période pendant laquelle la communication est censée demeurer en vigueur.

DORS/96-84, art. 1.

## Obligation

**5** Toute personne morale canadienne ainsi que tout administrateur, dirigeant ou cadre d'une personne morale canadienne et tout employé qui y exerce des fonctions de gestion sont tenus de se soustraire, relativement au commerce ou aux échanges entre le Canada et Cuba, à toute mesure extraterritoriale des États-Unis ainsi qu'aux directives, instructions, indications d'orientation ou autres communications se rapportant à une telle mesure qu'ils ont reçues d'un tiers en situation de diriger ou d'influencer les activités au Canada de la personne morale canadienne.

DORS/96-84, art. 1.

**6** L'obligation prévue à l'article 5 vaut pour toute action ou omission que nécessite, relativement au commerce ou aux échanges entre le Canada et Cuba, le respect de la mesure extraterritoriale des États-Unis ou des communications mentionnées à cet article, que ce respect en soit ou non l'unique motif.

DORS/96-84, art. 1.

***Foreign Extraterritorial Measures Act, R.S.C., 1985, c. F-29*****Orders of Attorney General relating to measures of a foreign state or foreign tribunal**

5 (1) Where, in the opinion of the Attorney General of Canada, a foreign state or foreign tribunal has taken or is proposing or is likely to take measures affecting international trade or commerce of a kind or in a manner that has adversely affected or is likely to adversely affect significant Canadian interests in relation to international trade or commerce involving business carried on in whole or in part in Canada or that otherwise has infringed or is likely to infringe Canadian sovereignty, the Attorney General of Canada may, with the concurrence of the Minister of Foreign Affairs, by order,

(a) require any person in Canada to give notice to him of such measures, or of any directives, instructions, intimations of policy or other communications relating to such measures from a person who is in a position to direct or influence the policies of the person in Canada; or

(b) prohibit any person in Canada from complying with such measures, or with any directives, instructions, intimations of policy or other communications relating to such measures from a person who is in a position to direct or influence the policies of the person in Canada.

**Measures**

(2) For the purposes of subsection (1), measures taken or to be taken by a foreign state or foreign tribunal include laws, judgments and rulings made or to be made by the foreign state or foreign tribunal and directives, instructions, intimations of policy and other communications issued by or to be issued by the foreign state or foreign tribunal.

**Form of orders**

(3) An order made under this section may be directed to a particular person or to a class of persons.

**Sample Amended Language**

5(4) Where the measures or directives, instructions, intimations of policy or other communications relating to such measures referred to in subsection 5(1) include an inducement or requirement to transfer assets from Canada or refrain from carrying on business in Canada, the Attorney General of Canada may, with the concurrence of the Minister of Foreign Affairs and Minister of Finance, make an order:

(i) prohibiting any person from removing or attempting to remove any or all assets from Canada; or

(ii) requiring a person to resume carrying on business in Canada.

(5) For greater clarity, an inducement or requirement for the purposes of subsection 5(3) may include any statement, instructions, measure, threat, decision, coercion, intimation, policy or other communication which the Attorney General of Canada determines was made on behalf of

or by a state and that has adversely affected or is likely to adversely affect significant Canadian interests in relation to international trade or commerce involving business carried on in whole or in part in Canada or that otherwise has infringed or is likely to infringe Canadian sovereignty.

...

## **Offences**

### **Offence and punishment**

7 (1) Every person who contravenes an order made under section 3 or 5 that is directed to the person and that has been served on the person in accordance with section 6 is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to a fine not exceeding \$1,500,000, and

(ii) in the case of an individual, to a fine not exceeding \$150,000 or to imprisonment for a term not exceeding five years, or to both; or

(b) on summary conviction,

(i) in the case of a corporation, to a fine not exceeding \$150,000, and

(ii) in the case of an individual, to a fine not exceeding \$15,000 or to imprisonment for a term not exceeding two years, or to both.

### **Offence outside Canada**

(2) A contravention of an order made under paragraph 3(1)(a) or (c) or 5(1)(a) or (b) that would be punishable as an offence under subsection (1) if committed in Canada is, if committed outside Canada, an offence under this Act that may be tried and punished in Canada as if it were committed in Canada, and proceedings in respect of such an offence may be instituted, tried and determined at any place in Canada.

### **Consent to prosecution required**

(3) No proceedings with respect to an offence under this Act may be instituted without the consent of the Attorney General of Canada.

### **Factors to take into account**

(4) In taking into account the circumstances of the offence when determining the sentence for an offence referred to in subsection (1), the court shall have regard, among other things, to the degree of premeditation in its commission, the size, scale and nature of the offender's operations and whether any economic benefits have, directly or indirectly, accrued to the offender as a result of having committed the offence.

**Sample Amended Language**

**7(1.1)** In addition to the penalties provided for under subsection 7(1), every person who contravenes an order made under paragraph 5(4)(i) and that has been served on the person in accordance with section 6 is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to an additional fine not exceeding twenty times the value of the assets the person removed or attempted to remove from Canada, and

(ii) in the case of an individual, to an additional fine not exceeding five times the value of the goods the person removed or attempted to remove from Canada; or

(b) on summary conviction,

(i) in the case of a corporation, to an additional fine not exceeding five times the value of the assets the person removed or attempted to remove from Canada;

(ii) in the case of an individual, to an additional fine not exceeding three times the value of the goods the person removed or attempted to remove from Canada; and

**(1.2)** In addition to the penalties provided for under subsection 7(1), every person who contravenes an order made under paragraph 5(4)(ii) and that has been served on the person in accordance with section 6 is guilty of an offence and liable

(a) on conviction on indictment,

(i) in the case of a corporation, to an additional fine not exceeding \$1,500,000 for each day of the contravention, and

(ii) in the case of an individual, to an additional fine not exceeding \$50,000 for each day of the contravention; or

(b) on summary conviction,

(i) in the case of a corporation, to an additional fine not exceeding \$150,000 for each day of the contravention; and

(ii) in the case of an individual, to an additional fine not exceeding \$5,000 for each day of the contravention.

...

**(5)** A court that fines an offender under subsections (1), (1.1) or (1.2) may, in addition to any other means of enforcing judgment available to the court, order the seizure and sale of any property in which the person against whom the judgment is rendered, or any person who controls or is a member of a group of persons that controls, in law or in fact, that person, has a direct or indirect beneficial interest. The property that may be seized and sold includes shares of any



## Appendix B – Sample Amendment Language

corporation incorporated by or under a law of Canada or a province, regardless of whether the share certificates are located inside or outside Canada.

***Customs Tariff (S.C. 1997, c. 36).*****Special Measures****Governor in Council may make orders**

53 (2) Notwithstanding this Act or any other Act of Parliament, the Governor in Council may, on the recommendation of the Minister and of the Minister of Foreign Affairs, by order, for the purpose of enforcing Canada's rights under a trade agreement in relation to a country or of responding to acts, policies or practices of the government of a country that adversely affect, or lead directly or indirectly to adverse effects on, trade in goods or services of Canada, do any one or more of the following:

- (a) suspend or withdraw rights or privileges granted by Canada to any country under a trade agreement or Act of Parliament;
- (b) make goods that originate in any country or that are entitled to a tariff treatment provided for by regulations made under section 16, or a class of such goods, subject to a surtax in an amount, in addition to the customs duty provided in this Act and the duties imposed under any Act of Parliament or in any regulation or order made under any Act of Parliament, for those goods or that class of goods;
- (c) include on the Import Control List established under section 5 of the Export and Import Permits Act goods that originate in any country or are entitled to a tariff treatment provided for by any regulations made under section 16, or a class of such goods; and
- (d) notwithstanding any regulations made under section 16, levy, in respect of goods or a class of goods that originate in any country, a duty that varies from time to time as the quantity of those goods imported during a period specified in the order equals or exceeds totals set out in the order.

...

**Regulations**

(5) The Governor in Council may, on the recommendation of the Minister, make such regulations as the Governor in Council considers necessary for the carrying out of the purposes of this section and for its enforcement.

...

**Schedule**

...

**Sample New Tariff Item and Note**

**9896.00.00:** Subject to any exemptions made by the Minister, any goods imported from the United States if the goods are produced at a facility owned, operated, or controlled by a person who has been found liable of an offence under subsection 7(1) of the *Foreign Extraterritorial Measures*

## Appendix C – Sample New Tariff Item Language

Act, R.S.C., 1985, c. F-29 or by a person affiliated with a person who has been found liable of an offence under subsection 7(1) of the *Foreign Extraterritorial Measures Act*, R.S.C., 1985, c. F-29.

**Note to 9896.00.00:**

For the purposes of heading 9896.00.00:

“facility” means the facility that performs the production step which determines the good’s origin under section 16 of the *Customs Tariff*;

“a person affiliated” includes, but is not limited to:

- (a) A person that is an associate within the meaning under subsection 2(1) of the *Canada Business Corporations Act*;
- (b) A person that is an affiliate within the meaning under subsection 2(2) of the *Canada Business Corporations Act*; and
- (c) A person that is controlled by a person within the meaning under subsection 2(3) of the *Canada Business Corporations Act*.

“a person” includes, but it not limited to, an individual, corporation, partnership, trust, joint venture, association, organization, personal representative, or other body corporate.