

THE FOOD, BEVERAGE
AND COSMETICS
LAW REVIEW

THIRD EDITION

Editors

Kara L McCall and Elizabeth M Chiarello

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PREFACE

Food, beverage and cosmetic companies provide products that are beneficial to consumers, important to the economy and in high demand. Consumers are not only seeking high-quality products at reasonable prices but also increasingly considering sustainability, methods of manufacture and use (or omission) of certain ingredients. These demands require companies to not only be looking ahead towards the ‘next big thing’ in these consumer industries but also considering how those attributes that are so important to customers (some of which have not been universally defined) can be communicated in a true and non-misleading way. Furthermore, companies need to act in compliance with the regulatory schemes of the locations in which they sell, and also make sure that their products – some of which are quite cutting edge – are safe and effective.

Regulatory, legislative and civil litigation frameworks vary dramatically from country to country and from locality to locality within each country. These laws and regulations may be similar or may be directly contradictory. Some types of products may be subject to extreme scrutiny, whereas others seem to be of less interest (and where on that spectrum your product falls may differ from day to day). Each jurisdiction is different, and advice from local legal experts is absolutely necessary before operating in (including selling into) any jurisdiction. This guide, however, is intended to provide a general overview of both the regulatory and civil legal frameworks in key countries for consideration by legal practitioners in these industries.

This is the third edition of *The Food, Beverage and Cosmetics Law Review*. It was developed because of the increase in class action litigation related to claims, particularly health benefit claims, made in the labelling and marketing of food, beverage and cosmetic products. This year brought continued litigation interest in the composition and labelling of food, beverage and cosmetic products, as well as regulatory changes in these areas, including the adoption of the Modernization of Cosmetics Regulation Act. This third edition covers nine countries and includes a high-level overview of each jurisdiction’s legal framework for food, beverage and cosmetic products, and a year in review, followed by discussions of legal frameworks related to food, beverage and cosmetic safety (including recalls); supply chain issues (including sustainability, anti-corruption, and labour and immigration); special legal issues related to sales and marketing (including whether regulatory approvals are required); general product liability and intellectual property laws; the role of trade organisations (including certifications) and unique issues related to financing and mergers and acquisitions in this space.

We hope that all readers find these chapters useful and informative. We wish to thank all of the contributors who have been so generous with their time and expertise. They have made this publication possible.

Kara L McCall and Elizabeth M Chiarello

Sidley Austin LLP

Chicago

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CANADA

*Chris Nyberg and Samer Awadh*¹

I OVERVIEW

The food, beverage and cosmetic industries are highly regulated in Canada. The manufacture and sale of food and beverage products are primarily governed by the federal Food and Drugs Act (FDA)² and Safe Food for Canadians Act (SFCA).³ Each province and territory has also enacted additional legislation concerning public health and agricultural and food production applicable to their jurisdiction.

Cosmetics are primarily regulated under Cosmetics Regulations issued pursuant to the FDA⁴ and the Consumer Packaging and Labelling Act (CPLA).⁵ The federal government regulates the manufacture, importation and labelling of cosmetics, whereas provinces and territories oversee the provision of cosmetic services and the establishments in which they are provided. Although provincial and territorial legislation generally does not regulate the production of cosmetics at this time, companies should be aware of any applicable local directives, such as public health regulations, which may be applicable to their business.

II YEAR IN REVIEW

The Canadian food, beverage and cosmetic industries are in a constant state of flux in Canada and a subset of updates from the previous year is set out below.

Canadian agribusiness and food activity slowed in 2022 due to increased interest rates, industry performance, increased commodity prices and other macro-economic factors.⁶ That

1 Chris Nyberg and Samer Awadh are partners at MLT Aikins LLP. The authors would like to acknowledge the significant contributions of Geena Holding and Gregory Holowka in preparing this chapter.

2 Food and Drugs Act, RSC 1985, c F-27 [FDA].

3 Safe Food for Canadians Act, SC 2012, c 24 [SFCA].

4 Cosmetics Regulations, CRC, c 869 [Cosmetics Regs].

5 Consumer Packaging and Labelling Act, RSC 1985, c C-38 [CPLA].

6 See Agriculture Quarterly Update - Q1 2022 (<https://www.mnp.ca/-/media/files/mnp/pdf/service/corporate-finance/middle-market-m-and-a-update/2022/agriculture-quarterly-update-q1-2022.pdf>), Agriculture Quarterly Update - Q2 2022 (<https://www.mnp.ca/-/media/files/mnp/pdf/service/corporate-finance/middle-market-m-and-a-update/2022/agriculture-quarterly-update-q2-2022.pdf>), Agriculture Quarterly Update - Q3 2022 (<https://www.mnp.ca/-/media/files/mnp/pdf/service/corporate-finance/middle-market-m-and-a-update/2022/agriculture-quarterly-update-q3-2022.pdf>) and Agriculture Quarterly Update - Q4 2022 (<https://www.mnp.ca/-/media/files/mnp/pdf/service/corporate-finance/middle-market-m-and-a-update/2022/agriculture-quarterly-update-q4-2022.pdf>) [Agriculture Updates].

said, venture capital investment in Canadian agribusiness thrived in 2022, supported by such government programmes as the C\$350 million Venture Capital Catalyst Initiative of the federal government⁷ and other federal and provincial incentives and tax credits.

A separate division was added under the Food and Drug Regulations (FDR)⁸ for supplemented foods, including foods and beverages with added vitamins and caffeinated energy drinks.⁹ Even though there was previously no regulatory framework for supplemented foods under the FDR, there are now specific requirements for the composition and labelling of supplemented foods, such as identifiers and cautionary statements.¹⁰

The Canadian Food Inspection Agency (CFIA) began verifying compliance and enforcing amendments made to the FDR labelling requirements in 2016.¹¹ These amendments include changes to the nutrition facts and serving size information and the labelling requirements for high-intensity sweeteners and foods high in saturated fats, sugars and sodium.¹² Health Canada also introduced a ban on the use of partially hydrogenated oils in certain products and made changes to the amount of vitamin D permitted in dairy products.¹³ Regulated parties have until 1 January 2026 to meet the new requirements.¹⁴

The Canadian government amended the FDR and Safe Food for Canadians Regulations (SFCR)¹⁵ to update the requirements for labelling prepackaged food products, including introducing a requirement for front-of-package nutrition labelling for prepackaged products containing, *inter alia*, saturated fat, sugars and sodium, and also updated the requirements for various nutrient content claims.

The federal Cannabis Act was amended to allow additional research and development activities to occur and also to recalculate the dried cannabis equivalency for cannabis beverages, allowing more beverages to be sold to consumers at a time.¹⁶

The Canadian government passed legislation that will prohibit the sale of cosmetic products that rely on animal testing data to establish safety.¹⁷ Prior to passing this legislation, Canada did not have any specific regulations governing the sale of cosmetic products produced using animal testing.

Canada Bread was issued a C\$50 million fine under the Competition Act¹⁸ for entering into agreements with other bread producers to increase the price of bread to grocery retailers.¹⁹

7 See <https://ised-isde.canada.ca/site/sme-research-statistics/en/venture-capital-catalyst-initiative>.

8 Food and Drug Regulations, CRC, c 870 [FDR].

9 *Ibid*, Division 29.

10 *Ibid*, s B.29.020-B.29.021.

11 Health Canada, 'Food labelling changes' (24 March 2023) online: Government of Canada <<https://www.canada.ca/en/health-canada/services/food-labelling-changes.html>>.

12 'Regulations Amending the Food and Drug Regulations (Nutrition Labelling, Other Labelling Provisions and Food Colours)' (December 14, 2016) Canada Gazette Part II: Vol 150, No. 25; 'Regulations Amending the Food and Drug Regulations (Nutrition Symbols, Other Labelling Provisions, Vitamin D and Hydrogenated Fats or Oils)' (20 July 2022) Canada Gazette Part II: Vol 156, No. 15.

13 *Ibid*.

14 *Ibid*.

15 Safe Food for Canadians Regulations, SOR/2018-108 [SFCR].

16 Cannabis Act, SC 2018, c 16 [Cannabis Act].

17 Bill C-47, An Act to implement certain provisions of the budget tabled in Parliament on 28 March 2023, 1st Sess, 44th Parl, 2023, cl 505 (assented to 22 June 2023, cl 505 CIF 22 December 2023).

18 Competition Act, RSC 1985, c C-34 [Competition Act].

19 *R v. Canada Bread Company Limited*, 2023 ONSC 3790.

Canada Bread's actions were determined to constitute price-fixing, which is prohibited under the federal Competition Act.²⁰ The C\$50 million fine is the highest price-fixing fine imposed in Canada to date.²¹

III FOOD AND COSMETIC SAFETY

i Regulatory framework

Health Canada is typically responsible for establishing standards for food safety, nutritional requirements and other related matters at the federal level under FDA, while the CFIA enforces certain legislation through inspections and investigations.²² The CFIA and the Canada Border Services Agency (CBSA) are authorised under the SFCA to inspect food establishments or conveyances and seize any food or beverage products that are traded interprovincially or internationally.²³

Provinces and territories are also responsible for regulating agricultural and food products that are produced and distributed within their borders. Provincial ministries of agriculture typically regulate the production and marketing of agri-food products, including meat, dairy, fish, seafood, eggs and foods of plant origin, and public health agencies are responsible for enforcing food safety for all other food and beverage products and services. Each province has generally empowered municipal governments to inspect and regulate local food establishments through agricultural and public health legislation.²⁴ Additionally, several provinces maintain separate regulatory bodies for liquor and cannabis products and services.

Cosmetics are primarily regulated under the FDA and the Cosmetic Regulations²⁵ and Health Canada is the primary regulator.²⁶ Health Canada maintains an Ingredient Hotlist for ingredients that are prohibited or limited in cosmetics, and industry is responsible for ensuring that all cosmetic products that they import or sell are compliant.²⁷ All cosmetic products

20 Competition Act, *supra* note 18, Section 45(1).

21 Competition Bureau Canada, 'Canada Bread sentenced to \$50 million fine after pleading guilty to fixing wholesale bread prices' (21 June 2023) online: Government of Canada <<https://www.canada.ca/en/competition-bureau/news/2023/06/canada-bread-sentenced-to-50-million-fine-after-pleading-guilty-to-fixing-wholesale-bread-prices.html>>.

22 Health Canada, 'Canada's Food and Drugs Act and Regulations' (July 30, 2008), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/food-nutrition/legislation-guidelines/acts-regulations/canada-food-drugs.html>>.

23 SFCA, *supra* note 3, Section 24.

24 Meat Inspection Act, RSA 2000, c M-9; Public Health Act, RSA 2000, c P-37; Food Safety Act, SBC 2002, c 28; Health Act, RSBC 1996, c 179; Public Health Act, CCSM c P210; Livestock and Livestock Products Act, CCSM c L170; Public Health Act, SNB 1998, c P-22.4; Food Premises Act, SNL 2013, c F-21.1; Meat Inspection Act, RSNL 1990, c M-2; Health Protection Act, SNS 2004, c 4; Food Safety and Quality Act, 2001, SO 2001, c 20; Livestock and Livestock Products Act, RSO 1990, c L.20; Public Health Act, RSPEI 1988, c P-30.1; Food Products Act, CQLR, c P-29; Animal Products Act, RSS 1978 (Supp), c A-20.2; Public Health Act, 1994, SS 1994, c P-37.1; Public Health Act, SNWT 2007, c 17; Public Health Act, SNU 2016, c 13; Agricultural Products Act, RSY 2002, c 3; Public Health and Safety Act, RSY 2002, c 176.

25 Cosmetic Regs, *supra* note 4.

26 *Ibid*, s 3.

27 Health Canada, 'Cosmetic Ingredient Hotlist' (2022), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/consumer-product-safety/cosmetics/cosmetic-ingredient-hotlist-prohibited-restricted-ingredients/hotlist.html>>.

are subject to regular inspections and risk assessments of their production, distribution and use under Health Canada's Consumer Product Safety Program (CPSP).²⁸ Where industry members fail to comply with these procedures, Health Canada may issue orders for recalls and may also impose fines or other penalties.²⁹

Each province and territory has implemented public health legislation that may be applicable to activities in the cosmetic industry.³⁰ For example, several provinces regulate the provision of cosmetic services and procedures, such as beauty parlour services, cosmetic laser services, esthetics and spa services.³¹ Regulations vary depending on the province or territory, and it is important to consult any applicable policies and procedures prior to engaging in activities that may be regulated.

ii Supply management

In Canada, the production and marketing of certain dairy, poultry and egg products are controlled through a comprehensive supply management system. Supply managed commodities are subject to oversight and administration at the national level, with federal agencies responsible for implementing marketing plans, allocating production quota and market shares, and imposing levies and penalties.³² Provincial marketing boards work in conjunction with these agencies to distribute quota within provinces and control the entry and exit of producers. Each province has its own policies and procedures that must be consulted prior to engaging in the production or distribution of supply-managed commodities. For example, the Dairy Farmers of Ontario, Chicken Farmers of Ontario and Egg Farmers of Ontario each regulate the production and marketing of their respective agricultural products, and may carry out inspections of regulated facilities.

The federal government restricts the import of supply-managed commodities through the Export and Import Permits Act³³ by setting tariff rate quotas (TRQs).³⁴ Trading partners are granted a 'minimum level of access' to imports through TRQs in accordance with various

28 Health Canada, 'Evaluation of the Consumer Product Safety Program' (11 January 2022), online: Government of Canada <<https://www.canada.ca/en/health-canada/corporate/transparency/corporate-management-reporting/evaluation/consumer-product-safety-program.html>>.

29 Health Canada, 'Compliance and enforcement policy framework' (May 15, 2018), online: Government of Canada <<https://www.canada.ca/en/health-canada/corporate/mandate/regulatory-role/what-health-canada-does-as-regulator/compliance-enforcement-framework.html>>.

30 Public Health Act, RSA 2000, c P-37; Public Health Act, SBC 2008, c 28; Health Protection and Promotion Act, RSO 1990, c H.7; Public Health Act, SQ 2001, c 60; Public Health Act 1994, SS 1994, c P-37.1; The Public Health Act, CCSM c P210; Public Health Act, RSPEI 1988, c P-30.1; Public Health Act, SNWT 2007, c 17; Public Health Act, SNU 2016, c 13; Public Health and Safety Act, RSY 2002, c 176 [Provincial Public Health Legislation].

31 Personal Services Regulation, Alta Reg 1/2020; Personal Service Settings, O Reg 136/18; Personal Service Establishments Regulation, BC Reg 202/83; The Health Hazard Regulations, c P-37.1, Sask Reg 10.

32 Khamla Heminthavong, 'Canada's Supply Management System' (2018), online: Parliament of Canada <https://lop.parl.ca/sites/PublicWebsite/default/en_CA/ResearchPublications/201842E> [Heminthavong]. Dairy is managed by the federally-appointed Canadian Dairy Commission (CDC), while poultry and eggs are managed by national agencies overseen by the Farm Products Council of Canada.

33 Export and Imports Permit Act, RSC 1985, c E-19.

34 Heminthavong, *supra* note 32, 3.3 Import Control.

trade agreements,³⁵ and any imports beyond that amount are subject to a high customs tariff. The allocation of TRQs has been a matter of controversy, with the United States successfully challenging Canada's allocation practices under the Canada-United States-Mexico Agreement (CUSMA)³⁶ and New Zealand raising a similar challenge under the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP).³⁷ For now, importers must apply for a permit through Global Affairs Canada to import any supply managed commodities, including dairy products such as cheese, yogurt and butter.³⁸

iii Food safety

Subject to a few general exceptions,³⁹ most food businesses require a licence or registration under the SFCA to carry out activities with respect to food, including importing,⁴⁰ exporting,⁴¹ manufacturing, processing, treating, preserving, grading,⁴² packaging⁴³ and labelling food to be sold at retail locations.⁴⁴ A business does not generally need a licence if its sole activity

35 See the Comprehensive and Progressive Agreement for Trans-Pacific Partnership; Canada-European Union Comprehensive Economic and Trade Agreement; Canada-United States-Mexico Agreement.

36 CANADA-UNITED STATES-MEXICO AGREEMENT ARBITRAL PANEL ESTABLISHED PURSUANT TO ARTICLE 31 CANADA – DAIRY TRQ ALLOCATION MEASURES (CDA-USA-2021-31-010) Final Panel Report (20 December 2021), online: <<https://ustr.gov/sites/default/files/enforcement/USMCA/Canada%20Dairy%20TRQ%20Final%20Panel%20Report.pdf>>.

37 New Zealand Foreign Affairs & Trade, 'Canada – Dairy Tariff Quotas under CPTPP' (2023), online: Government of New Zealand <<https://www.mfat.govt.nz/en/trade/trade-law-and-dispute-settlement/current-wto-disputes/>>.

38 Global Affairs Canada, 'Import Controls and Import Permits' (30 November 2021), online: Government of Canada <https://www.international.gc.ca/controls-controles/about-a_propos/import/permits-licences.aspx?lang=eng>.

39 General exemptions from the SFCA licensing requirements include food for personal use and not intended for commercial use, food that is carried on any conveyance that is intended for the crew or passengers, food that is intended and used for analysis, evaluation, research, or a trade show provided that the food is part of a shipment that weighs 100kg or less or, in the case of eggs, is part of a shipment of five or fewer cases, food that is not intended or sold for human consumption, food that is imported in bond for use by crew or passengers of a cruise ship or military ship, food that is traded between federal penitentiaries, and transporting a food commodity, if that is the sole activity of a person; see SFCR, *supra* note 15, s 20(1); 21; 23(1), (a)-(c), (d)(i) and (e).

40 There is an exemption for the import of food additives, alcoholic beverages and food listed in Schedule 1 of the SFCR if the food is not processed, is labelled 'For Further Preparation Only' and is not a consumer prepackaged food; see *ibid*, s 11(2).

41 There is an exemption for businesses that obtain an export certificate, or another export permission such as being on an export eligibility list, from the CFIA, and for businesses that only export and do not need an export certificate or other export permission from the CFIA; see *ibid*.

42 There is an exemption for grading fresh fruits or vegetables if they are only sold and consumed intraprovincially; see *ibid*, s 7(2)(a)(i)(B).

43 There are exemptions for palletising a food and placing fully labelled prepackaged foods in a prepackage, other than a consumer prepackage, for the sole purpose of shipping; see CFIA, '4.3 Packaging', Food business activities that require a licence under the Safe Food for Canadians Regulations, online: Government of Canada <https://inspection.canada.ca/food-licences/food-business-activities/eng/1524074697160/1524074697425>>.

44 SFCR, *supra* note 15, s 7, 11(1), 15(1), 18(3), 19(2), 22(1), 25. There is an exemption for food sold directly to consumers, such as in supermarkets, grocery stores, bakeries, butcheries, and restaurants and similar enterprises; see s 11(2).

is to trade food intraprovincially, but it must ensure that any food traded across provincial borders has been manufactured, processed, treated, preserved, graded, packaged or labelled by a licence holder.⁴⁵ Businesses can file applications for licences and export certificates through the CFIA, and may need to apply for multiple licences, depending on the nature of operations.⁴⁶

Food safety standards are also governed and enforced at the provincial level. Provincial public health legislation enables regional and municipal health authorities to carry out inspections and minimum standards enforcement within their respective provinces.⁴⁷ Local health authorities are also responsible for providing food handler training programmes, investigating foodborne illness outbreaks, and issuing licences and permits for restaurants and food service businesses.⁴⁸

iv Food additives and contaminants

Food additives and other substances may be used in or on a food, provided that they are listed in one or more of the Lists of Permitted Food Additives and comply with any limits or other requirements specified in the FDA.⁴⁹ It is an offence to sell a substance as a food additive unless the substance is listed in one or more of the Lists of Permitted Food Additives.

Under the SFCA, operators must identify and analyse the biological, chemical and physical hazards that present a risk of contamination of a food.⁵⁰ Operators are further required to prevent, eliminate or reduce to an acceptable level any identified hazards by using control measures that are shown by evidence to be effective.⁵¹ The holder of a licence to import must comply with these requirements in respect of a food that is imported.⁵²

v Recalls

Most recalls of food, beverage and cosmetic products in Canada are voluntary in nature. The recalling party is responsible for meeting the requirements of the Canada Consumer Products Safety Act (CCPSA)⁵³ and the applicable voluntary recall guides published by the regulator. This may include designating a contact, communicating, controlling the product, developing a corrective action plan, identifying the level of the recall and timelines to communicate, notifying supply chain customers, notifying Canadians and determining the effectiveness of the recall. Even when a business carries out a voluntary recall, Health Canada may nonetheless exercise its compliance and enforcement tools to ensure that products of concern will be removed timely and effectively from the marketplace.

Health Canada may issue mandatory recalls for cosmetic or cannabis products that may pose a harm or injury to consumers, and the CFIA may issue mandatory recalls for food

45 Ibid, s 7(1).

46 CFIA, '2.0 Getting a Safe Food for Canadians licence', What to consider before applying for a Safe Food for Canadians licence, online: Government of Canada <<https://inspection.canada.ca/food-licences/obtain-a-licence/eng/1543359915240/1543360663242#a2>>.

47 Provincial Public Health Legislation, *supra* note 30.

48 Ibid.

49 Ibid, s 10.

50 SFCA, *supra* note 15, s 47(1).

51 Ibid, s 47(2). In the case of a meat product, the appropriate control measures are set out in the Preventive Control Requirements for Biological Hazards in Meat Products.

52 Ibid, s 47(3).

53 Canada Consumer Products Safety Act, SC 2010, c 21 [CCPSA].

products where there is reason to believe that consumption of the food may affect the health of consumers.⁵⁴ Recalls are usually initiated by a trigger, such as a suspected foodborne illness outbreak, test result, consumer complaint or audit, and a follow-up investigation and risk assessment.⁵⁵

IV SUPPLY CHAINS

i Labour and immigration

There are a wide range of labour issues relevant to supply chains in Canada. Immigration, Refugees and Citizenship Canada (IRCC) is responsible for the development and implementation of most immigration-related policies, programmes and services in Canada. Specifically, IRCC shares responsibility with the CBSA for the administration and enforcement of the Immigration and Refugee Protection Act (IRPA),⁵⁶ Canada's primary federal legislation governing immigration and refugee matters.

IRCC has implemented a variety of programmes aimed at expediting the process through which skilled foreign workers can obtain Canadian citizenship or a temporary work permit.⁵⁷ Many of these programmes were implemented as a means to address, among other things, labour shortages in Canada's food and beverage industries.⁵⁸ Additionally, international trade agreements, such as CUSMA,⁵⁹ also allow for an expedited process for certain skilled foreign workers.

Regarding forced labour and human rights compliance, Canada recently passed the Fighting Against Forced Labour and Child Labour in Supply Chains Act.⁶⁰ Under this legislation, which will come into force in 2024, numerous businesses and governments conducting business in Canada will be required to file an annual report outlining the steps that they have taken to prevent and 'reduce the risk that forced labour or child labour is used at any step' in the production process.⁶¹

54 Canadian Food Inspection Agency Act, SC 1997, c 6, ss 19(1) [CFIAA].

55 CFIA, 'How we decide to recall a food product' (9 August 2022), online: Government of Canada <<https://inspection.canada.ca/food-safety-for-consumers/canada-s-food-safety-system/how-we-decide-to-recall-a-food-product/eng/1332206599275/1332207914673>> [Recall procedure].

56 Immigration and Refugee Protection Act, SC 2001, c 27.

57 See e.g. Government of Canada, 'How Express Entry Works', online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/immigrate-canada/express-entry/works.html>> ; Government of Canada, 'Global Skills Strategy: About the process', online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/work-canada/hire-temporary-foreign/global-skills-strategy.html>> ; Government of Canada, 'Economic Mobility Pathways Pilot', online: <<https://www.canada.ca/en/immigration-refugees-citizenship/services/refugees/economic-mobility-pathways-pilot.html>> .

58 Food and Beverage Ontario, 'Skilled Trades Study & Recommendations' (August 2022), online: <<https://foodandbeverageontario.ca/wp-content/uploads/2022/08/Skilled-Trades-Study.pdf>> .

59 Canada-United States-Mexico Agreement Implementation Act, SC 2020, c 1.

60 Fighting Against Forced Labour and Child Labour in Supply Chains Act, SC 2023, c 9.

61 Bill S-211, An Act to enact the Fighting Against Forced Labour and Child Labour in Supply Chains Act and to amend the Customs Tariff, 1st Sess, 44th Parl, 2023, cl 11(1) (assented to 11 May 2023, CIF 1 January 2024).

ii Interprovincial trade barriers

In addition to common challenges faced with developing and maintaining international supply chains, there are various interprovincial trade barriers in place across Canada that continue to be a challenge for businesses. These barriers may be natural, prohibitive, technical or regulatory; however, they each have an impact on the growth and competitiveness of Canadian businesses.

To provide a few examples, there are significant restrictions on:

- a the transport of liquor, with less than half of Canadian provinces allowing unrestricted transport across provincial borders;
- b the export of live seafood from various eastern provinces, as most require it to be processed in province; and
- c recognition of professional credentials between provinces.

These interprovincial barriers have been recognised as an impediment to growth by most levels of government, and the federal government entered into the Canada Free Trade Agreement (CFTA) in 2017 in an effort to reduce some of these self-made barriers to trade. Specifically, the CFTA establishes a regulatory reconciliation process that is led by the FPT Regulatory Reconciliation and Cooperation Table (RCT). The RCT collects feedback from industry stakeholders and has helped facilitate a number of reconciliation agreements between provinces since its inception.

iii Organic certifications

Food products that are imported or traded interprovincially must be certified under the Canada Organic Regime (COR) if they claim to be 'organic'.⁶² Additionally, the SFCR specifies that, for a food to obtain organic certification, it must adhere to the Canada Organic Standards (COS),⁶³ which 'are a detailed set of principles, guidelines, and permitted substances that are used in the organic certification process'.⁶⁴ To obtain certification, food producers are required to apply to one of the many CFIA accredited certification bodies.⁶⁵

Under the SFCR, food products cannot bear the Canada Organic Logo, or be labelled or advertised as 'organic,' unless its organic content is 95 per cent or more.⁶⁶ Regarding foods that contain 70 to 94 per cent organic content, organisations are only permitted make declarations such as 'contains X% organic ingredients'.⁶⁷ Additionally, the United States and

62 CFIA, 'Canada Organic Regime', Organic claims on food labels, online: Government of Canada <<https://inspection.canada.ca/food-labels/labelling/industry/organic-claims/eng/1623967517085/1623967517522>> [Canada Organic Regime].

63 See SFCR, supra note 15, Part 13; Canada Organic Regime, supra note 62.

64 The Organic Council of Ontario, 'Canada's Organic Standards,' online: <<https://organiccouncil.ca/organics/standards-regulations/>>.

65 SFCR, supra note 15.

66 Ibid, s 353(1).

67 Ibid, s 353(2)(a).

Canada have an equivalency agreement allowing foods products certified by the United States Department of Agriculture (USDA) or COR to be labelled and sold as organic in both countries.⁶⁸

Food products that are produced and sold within the same province are not subject to the regulations established under the SFCA. As a result, numerous provinces have enacted legislation that mirrors the federal legislation regulating the use of the term 'organic'.⁶⁹

In the absence of federal or provincial legislation governing the use of the term 'natural' or 'organic' for non-food products such as cosmetics, many cosmetic businesses choose to obtain organic certification under the USDA/NOP standards.⁷⁰

iv Sustainability

The federal government has implemented a variety of legislation aimed at supporting sustainability, including the federal Canadian Environmental Protection Act (CEPA),⁷¹ and the Fisheries Act. The CEPA is broad legislation that establishes, for example, the Single-Use Plastics Prohibition Regulations (SUPPR), which will ban the sale of various single-use plastics, such as checkout bags, by 2025.⁷² The Fisheries Act establishes the Fishery (General) Regulations, which contain provisions that require the development of a plan to rebuild depleted major fish stocks.⁷³

In addition to the relevant federal legislation, all Canadian provinces and territories have enacted various regulations aimed at protecting the environment and human health. For example, most provinces and territories have enacted some form of deposit return scheme for bottled products⁷⁴ and many Canadian businesses have voluntarily developed their own sustainability initiatives as a marketing initiative.

68 USDA, 'International Trade Policies: Canada', online: United States Government <<https://www.ams.usda.gov/services/organic-certification/international-trade/Canada#:-:text=The%20equivalence%20arrangement%20grants%20USDA,the%20terms%20of%20the%20arrangement>>.

69 See Supporting Alberta's Local Food Sector Act, SA 2018, c S-23.3, s 8; Food and Agricultural Products Classification Act, SBC 2016, c 1; The Organic Agricultural Products Act, CCSM c O77; Act respecting reserved designations and added-value claims, CQLR c A-20.03; Organic Grade Regulation, NB Reg 2014-50; Organic Grade Regulations, NS Reg 340/2015.

70 The Organic Council of Ontario, 'Making Sense of 'Organic' Labels For Non-Food Products,' online: <<https://organiccouncil.ca/making-sense-of-organic-labels-for-non-food-products/>>.

71 Canadian Environmental Protection Act, 1999, SC 1999, c 33 [CEPA].

72 Single-use Plastics Prohibition Regulations, SOR/2022-138.

73 Fishery (General) Regulations, SOR/93-53, s 70 [Fishery Regs].

74 See Beverage Container Recycling Regulation, Alta Reg 101/1997; Recycling Regulation, BC Reg 449/2004; Waste Management Regulations, 2004, NLR 59/03; General Regulation, NB Reg 99-66; Beverage Container Regulations, NWT Reg 067-2005; Solid Waste-Resource Management Regulations, NS Reg 25/96; The Environmental Management and Protection Act, 2010, SS 2010, c E-10.22; Recycling Fund Regulation, YOIC 1992/135; Packaging and Printed Paper Stewardship Regulation, Man Reg 195/2008; Regulation respecting the development, implementation and financial support of a deposit-refund system for certain containers, CQLR c Q-2, r 16.1.

v Anti-corruption rules

Canada has three primary anti-bribery statutes. First, the Criminal Code prohibits the bribery of various public officials, including members of the judiciary, and municipal officials, and government employees.⁷⁵ Second, the Corruption of Foreign Public Officials Act prohibits the bribery of foreign public officials to obtain ‘an advantage in the course of business’.⁷⁶ Third, the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (PCMLTF) is the primary legislation concerning money laundering.⁷⁷ Under the PCMLTF, various organisations, such as financial institutions, are required to implement a compliance programme that includes a risk assessment of money laundering occurring within their business operations.⁷⁸

These statutes can become especially relevant in the food industry where there are a number of government or crown corporations that participate in various parts of the supply chain, both inside Canada and outside. Significant care should be taken when structuring deals and payment terms with these entities to ensure that no untoward, or unintentional, benefits are provided to restricted parties. Additionally, when importing products from high risk jurisdictions, parties should ensure to perform due diligence to ensure that providers are not restricted parties or subject to sanctions.

V SALES AND MARKETING

i Food and beverage

Under the FDA and the federal Competition Act, food businesses are required to, inter alia, describe their food products in a manner that is not misleading, does not make prohibited claims and complies with a variety of provisions outlining labelling requirements, such as by providing a list of ingredients, and listing allergen information.⁷⁹

Liquor and cannabis products are also subject to significant restrictions on promotion and marketing. The restrictions on liquor advertising typically vary by province and manufacturers can seek pre-clearance of promotions from Ad Standards Clearance Services, which will review beverage broadcast advertising to ensure compliance with the Canadian Radio-television and Telecommunications Commission Code for Broadcast Advertising of Alcoholic Beverages and certain other provincial codes. Subject to a few limited exceptions for places where minors are prohibited by law, there is a general prohibition on public cannabis advertising under the federal Cannabis Act.

Regarding the enforcement of organic claims, the CFIA accredits organic certification bodies who will, among other things, conduct unauthorised inspections, collect samples and investigate complaints made against organic certificate holders.⁸⁰

75 Criminal Code, RSC 1985 c C-46, s 119-126 [CC].

76 Corruption of Foreign Public Officials Act, SC 1998, c 34, s 3(2).

77 Proceeds of Crime (Money Laundering) and Terrorist Financing Act, SC 2000, c 17.

78 Government of Canada, ‘Compliance program requirements’, online: <<https://fintrac-canafe.canada.ca/guidance-directives/compliance-conformite/Guide4/4-eng>>.

79 FDR, supra note 8, s B.01.008.1, B.01.010.4(1).

80 CFIA, ‘Organic claims enforcement’, online: Government of Canada <<https://inspection.canada.ca/organic-products/organic-claims-enforcement/eng/1628602441612/1628602442252>>.

ii Cosmetics

The labelling, packaging and advertising of cosmetics is regulated by the FDA, the Cosmetic Regulations, the CPLA and the Competition Act.⁸¹ Under the FDA, cosmetic products cannot be advertised as a preventative cure or treatment for a disease and cannot pose a serious risk to human health.⁸² Producers may also be required to issue warning statements and directions for use when appropriate.⁸³

The CPLA includes requirements for bilingual labelling, packaging, misleading advertising and the standardisation of container sizes and measuring units, and is administered and enforced by the federal Competition Bureau.⁸⁴ Products sold in Quebec may be subject to further bilingual labelling requirements.⁸⁵

iii Consumer protection and false advertising

The FDA, SFCA and CPLA each include prohibitions in respect of the labelling, packaging, treating, processing, selling or advertising of food and cosmetic products in a manner that is false, misleading or deceptive to consumers.⁸⁶ In addition, the Competition Act provides for consumer protection and prohibits all misleading representations through criminal and civil adjudicative regimes.⁸⁷ Under the civil regime, individuals can face a fine of up to C\$750,000 for a first offence, and C\$1 million for any subsequent offence for making a false or misleading representation. For corporations, the fine can be as much as C\$10 million for a first offence. Under the criminal regime, if one knowingly or recklessly makes a representation to the public that is false or misleading, that individual could be imprisoned for a term of up to 14 years and subject to a fine at the discretion of the court.⁸⁸

Additionally, there is also a variety of provincial legislation that provides consumer protection.⁸⁹ For example, a representation using exaggeration might constitute a misleading representation under Ontario's Consumer Protection Act.⁹⁰

81 FDA, *supra* note 2; Cosmetics Regs, *supra* note 4; CPLA, *supra* note 5.

82 *Ibid*, s 3(1) and 16.

83 *Ibid* at s 21.2, and 22.

84 CPLA, *supra* note 5.

85 See the Charter of the French Language, CQLR c C-11.

86 FDA, *supra* note 2, ss 5(1); SFCA, *supra* note 3, ss 6(1), CPLA, *supra* note 5, ss 7(1).

87 Competition Bureau Canada, 'Choice of criminal or civil track', *Misleading Representations and Deceptive Marketing Practices: Choice of Criminal or Civil Track under the Competition Act*, online: Government of Canada: <<https://ised-isde.canada.ca/site/competition-bureau-canada/en/how-we-foster-competition/education-and-outreach/publications/misleading-representations-and-deceptive-marketing-practices-choice-criminal-or-civil-track-under>>.

88 Competition Act, *supra* note 18, s 74.01, 74.1, 52, 52(5).

89 See e.g. Consumer Protection Act, RSA 2000, c C-26.3; Business Practices and Consumer Protection Act, SBC 2004, c 2; Consumer Protection and Business Practices Act, SNL 2009, c C-31.1; Consumer Protection Act, 2002, SO 2002, c 30; Business Practices Act, RSPEI 1988, c B-7; Consumer Protection Act, CQLR, c P-40.11; Consumer Protection and Business Practices Act, SS 2013, c C-30.2; Business Practices and Consumer Protection Act, SBC 2004; Consumer Protection and Business Practices Act, SNL 2009, c C-31.1; Consumer Protection Act, 2002, SO 2002, c 30; Business Practices Act, RSPEI 1988, c B-7.

90 *Ibid*, Consumer Protection Act, 2002, SO 2002, s 14(2).

VI PRODUCT LIABILITY

Product liability in Canada is governed through statutory, contract and tort law depending on the circumstances. As noted above, the FDA, SFCA and CPLA each include specific prohibitions in respect of selling non-compliant food and cosmetic products or advertising products in a manner that is false, misleading or deceptive to consumers.⁹¹ The FDA further requires that food products are prepared and stored in sanitary conditions and free from contaminants or adulteration.⁹² Contraventions of these acts can incur steep penalties, such as fines of up to C\$250,000 or imprisonment, or both.⁹³

Food and cosmetic product manufacturers and distributors may also be subject to a private law action and liable for compensatory, non-pecuniary or punitive damages. Product liability law in Canada is governed by the common law in all provinces and territories, except in Quebec, which is a civil law jurisdiction. Canadian courts have routinely recognised the existence of a duty of care between manufacturers of food and consumers⁹⁴ and have generally found a very high standard of care in food products manufacturing and processing. For example, courts may impose liability as a result of negligent manufacture, negligent design or failure to warn.⁹⁵ Where it is difficult to pinpoint a breach of the standard of care in the manufacturing process, courts are entitled to infer a breach from the existence of a defect in a product of that operation.⁹⁶ Accordingly, manufacturers and distributors should be aware of the legal risks associated with defective, non-compliant or contaminated products that may cause harm to consumers.

VII INTELLECTUAL PROPERTY

In Canada, intellectual property (IP) is regulated by the federal government and is primarily governed by the Patent Act,⁹⁷ Trademarks Act,⁹⁸ Copyright Act⁹⁹ and Industrial Design Act (IDA).¹⁰⁰ The Canadian Intellectual Property Office (CIPO) administers these statutes and issues and registers patents, trademarks and copyrights.¹⁰¹

IP rights are particularly important in Canada's food and agricultural industries, and they differ in certain important respects from other jurisdictions. For example, Canada does

91 FDA, supra note 2, ss 5(1); SFCA, supra note 3, ss 6(1), CPLA, supra note 5, ss 7(1).

92 FDA, supra note 2, s 4, 7.

93 FDA, supra note 2, s 31.1; SFCA, supra note 3, ss 39(1), CPLA, supra note 5, s 20.

94 This principle dates back to *Donoghue v. Stevenson*, [1932] UKHL 100, where the UK House of Lords formulated the 'neighbour principle' under which persons must take reasonable care to avoid acts or omissions they ought to reasonably foresee would be likely to injure their neighbour. Under Canadian law, the neighbour principle has been interpreted to apply to users and consumers of manufactured or processed food products.

95 See *Hollis v. Dow Corning Corp.*, [1995] 4 SCR 634 (SCC).

96 See *Shandloff v. City Dairy Ltd and Moscoe*, 1936 CanLII 68 (ON CA).

97 Patent Act, RSC 1985, c P-4.

98 Trademarks Act, RSC 1985, c T-13.

99 Copyright Act, RSC 1985, c C-42.

100 Industrial Design Act, RSC 1985, c I-9 [IDA].

101 Canadian Intellectual Property Office, 'Canadian Intellectual Property Office' (23 June 2023), online: Government of Canada <<https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en>>.

not provide statutory protection for trade secrets and has significant restrictions on the ability to patent living inventions (generally with no ability to patent living inventions in respect of higher life forms).

Regarding agricultural crops and other plant-based foods, plant breeders' rights (PBRs) are a form of IP protection specifically designed for new plant varieties introduced into agricultural markets. PBRs are governed by the Plant Breeders' Rights Act (PBRA).¹⁰² The PBRA protects new, distinct, uniform and stable plant varieties generated by breeding existing varieties or through genetic modification techniques. However, PBRs are subject to 'farmers' privilege', which allows farmers to save and reuse seeds from a protected variety on their own farm for subsequent plantings,¹⁰³ and do not apply to private acts carried out for non-commercial, experimental or other breeding purposes.¹⁰⁴ Compared to similar US legislation, the PBRA is more restrictive in terms of eligible crops and propagation methods.¹⁰⁵

VIII TRADE ORGANISATIONS

There are a variety of trade organisations that operate in the Canadian food and beverage industry, and they frequently engage in activities, including lobbying, advocating on behalf of their members and proposing health initiatives. For example, the Canadian Beverage Association, which represents most companies producing non-alcoholic beverages in Canada, and Restaurants Canada played a central role in the development of the Code for Children's Food and Beverage Advertising,¹⁰⁶ which prohibits the marketing of certain beverages to children under the age of 12.¹⁰⁷

The Canadian government has also published various steps that trade organisations and their members can take to reduce the risk of contravening the Competition Act, including the establishment of a programme to ensure members comply with the Competition Act, appointment of a compliance officer, setting and adhering to a strict agenda at organisation meetings, and implementing measures to ensure sensitive information is not disclosed to organisation members.¹⁰⁸

102 Plant Breeders' Rights Act, SC 1990, c 20 [PBRA].

103 *Ibid*, s 6(1).

104 *Ibid*, s 5.3(1).

105 See the Plant Variety Protection Act, 7 USC, s 2321-2582.

106 Ad Standards, 'Code for the Responsible Advertising of Food and Beverage Products to Children', online: <<https://adstandards.ca/resources/library/code-responsible-advertising-food-beverage-products-to-children/#:-: text=The%20Code%20and%20Guide%20debuted,food%2C%20food%20choices%20and%20consumption>>.

107 Canadian Beverage Association, 'Guidelines', online: <<https://www.canadianbeverage.ca/industry-initiatives/guidelines/>>.

108 Competition Bureau Canada, 'Trade Associations and the Competition Act', online: Government of Canada <<https://ised-isde.canada.ca/site/competition-bureau-canada/en/bid-rigging-price-fixing-and-other-agreements-between-competitors/trade-associations-and-competition-act>>.

IX FINANCING AND M&A

Generally, the agribusiness and food sector has seen slowed activity in 2022 due to factors such as interest rates, industry performance, commodity prices and macro-economic factors.¹⁰⁹ That is no surprise after a record-breaking year in 2021 where over C\$349 billion worth of M&A deals were announced in the sector.¹¹⁰ That said, venture capital investment in Canadian agribusiness thrived in 2022, supported by such government programmes as the C\$350 million Venture Capital Catalyst Initiative of the federal government¹¹¹ and other federal and provincial incentives and tax credits.

Persons interested in Canadian M&A transactions should be aware that the Competition Act gives the Competition Bureau the authority to review transactions that may pose a risk to competition in Canada.¹¹² The purpose of the Competition Act is to ‘maintain and encourage’ competition in Canada to meet the following goals:

- a* promoting the efficiency and adaptability of the Canadian economy;
- b* expanding opportunities for Canadian participation in world markets while at the same time recognising the role of foreign competition in Canada;
- c* ensuring that small and medium-sized enterprises have an equitable opportunity to participate in the Canadian economy; and
- d* providing consumers with competitive prices and product choices.¹¹³

Therefore, transactions may raise competition concerns if they would be likely to cause, among other things, higher prices, reduced output, reduced quality of goods or services, or less innovation.¹¹⁴ In its review, the Competition Bureau may consider the level of economic concentration in the relevant industry, the market shares of the merging parties, the conditions of entry and barriers to entry in the market, and the likely anti-competitive effects of the proposed transaction.¹¹⁵ Parties to a proposed merger must notify the Competition Bureau and wait for a specified period of time before closing if the transaction meets certain financial thresholds and criteria set out in the Competition Act.¹¹⁶ The Competition Act also includes specific provisions that target transactions designed to avoid notification.¹¹⁷ Even though the federal government exercises its powers mainly through the Competition Act, provincial governments may legislate with respect to certain matters impacting competition, such as intra-provincial competition. However, to date, the provinces have not sought to regulate competition generally but have addressed aspects of anti-competitive business practices in the marketplace through business practices and consumer protection legislation.

109 See Agriculture Updates, *supra* note 6.

110 See <https://www.reuters.com/markets/us/after-record-ma-2021-canada-set-another-strong-year-dealmaking-2022-01-06/> citing data from Refinitiv.

111 See <https://ised-isde.canada.ca/site/sme-research-statistics/en/venture-capital-catalyst-initiative>.

112 Competition Bureau Canada, ‘Mergers and acquisitions’ (20 January 2022), online: Government of Canada <<https://ised-isde.canada.ca/site/competition-bureau-canada/en/mergers-and-acquisitions>>.

113 Competition Act, *supra* note 18, s. 1.1.

114 Competition Bureau Canada, ‘Overview of the merger process’ (20 January 2022), online: Government of Canada <<https://ised-isde.canada.ca/site/competition-bureau-canada/en/mergers-and-acquisitions/overview-merger-review-process>>.

115 *Ibid.*

116 Competition Act, *supra* note 18, Part IX.

117 *Ibid.*, s 113.1-123.1.

In addition to the Competition Act, the acquisition of control of an existing Canadian business or the establishment of a new Canadian business by a foreign investor is subject to notification or review under the Investment Canada Act.¹¹⁸ The federal and provincial governments not only regulate foreign investment directly, by requiring investment approval or by limiting the percentage of foreign ownership in a business, but also regulate foreign investment indirectly. For example, in certain jurisdictions, there are restrictions on foreign ownership of farmland.¹¹⁹

X SPECIAL ISSUES FOR CERTAIN PRODUCTS

i Cosmeceuticals

Canada categorises products that may share the characteristics of both a ‘cosmetic’ and ‘drug’ as Products at the Cosmetic-Drug Interface (PCDI).¹²⁰ PCDIs may include goods such as acne therapy, anti-perspirants, anti-dandruff products, fluoride-containing anti-caries products, medicated skin products, diaper rash products, antiseptic skin cleansers, sunburn protectants, skin whiteners and tooth whiteners. Such products are regulated by the FDA and, depending on their classification, the Cosmetics Regulations,¹²¹ FDR¹²² or Natural Health Products Regulations.¹²³ Health Canada is responsible for classifying PCDIs and assesses the representation (claims made about what the product does), composition (the ingredients of the product and their function), level of action (how the product is administered or absorbed) and any other considerations relating to the product, such as any associated risks and the classification schemes of other regulatory agencies.¹²⁴

ii Cannabis

In 2018, Canada passed the Cannabis Act¹²⁵ legalising the use of cannabis for recreational purposes. The Cannabis Act provides a national legal framework for controlling the production, distribution, sale and possession of cannabis, including the packaging and labelling requirements for cannabis products, and is administered by Health Canada.¹²⁶ In 2019, edible cannabis, cannabis extracts and cannabis topicals were permitted for purchase and are subject to the same requirements under the Cannabis Act.¹²⁷

118 Investment Canada Act, RSC 1985, c 28 (1st Supp).

119 See for example The Saskatchewan Farm Security Act, SS 1988-89, c S-17.1.

120 Health Canada, ‘Cosmetic-Drug Interface’ (March 28, 2014), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/consumer-product-safety/cosmetics/cosmetic-drug-interface.html>>.

121 Cosmetics Regs, *supra* note 4.

122 FDR, *supra* note 8.

123 Natural Health Products Regulations, SOR/2003-196 [NHPR].

124 Health Canada, ‘Guidance Document: Classification of Products at the Cosmetic-Drug Interface’ (2008), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/consumer-product-safety/reports-publications/industry-professionals/guidance-document-classification-products-cosmetic-drug-interface.html>>.

125 Cannabis Act, *supra* note 16.

126 *Ibid*, Subdivision B. Cannabis Act, *supra* note 16.

127 Cannabis Regulations, SOR/2018-144 [Cannabis Regs].

A licence from Health Canada is required to produce, process, test and sell cannabis products and drugs containing cannabis, and to import or export cannabis.¹²⁸ Different licences are required depending on the planned activities, and further licensing may be required by provinces and territories. Cultivators and processors of cannabis products are also required to obtain a licence from the Canada Revenue Agency (CRA).¹²⁹ Cannabis may generally only be imported or exported for research and development or medical or scientific purposes, and permits are required for each shipment.¹³⁰

Although Health Canada is responsible for licensing cannabis producers, provincial and territorial authorities are responsible for regulation of wholesale and retail cannabis operations. Most provinces and territories have specific regulatory bodies for activities related to liquor, gaming and cannabis; while others are dealt with through various ministries.¹³¹ Private retailers, where permitted, must obtain a licence from the province or territory they operate in and meet the cannabis retail requirements of the applicable jurisdiction.

iii Alcohol

Alcoholic beverages are subject to the requirements of the FDA and the SFCA and its associated regulations. The federal government regulates the labelling and packaging, compositional standards, geographical indications (GIs) and excise duties of alcohol produced and sold in Canada.¹³² The FDR provides the compositional standards and labelling requirements for alcoholic beverages,¹³³ and there are additional regulations for the labelling of spirits and wine¹³⁴ and beer¹³⁵ packaged in Canada. GIs are a form of IP that inform consumers that a product is produced in a certain location, such as ‘Champagne’ or ‘Canadian Whisky’.¹³⁶ Manufacturers and importers may request GI protection through the CIPO, which ensures they are entered onto a list of protected GIs maintained by the Registrar.¹³⁷

The federal government is also responsible for the importation of alcoholic beverages through the Importation of Intoxicating Liquors Act (IILA)¹³⁸ and, depending on the type

128 Health Canada, ‘Cannabis licensing application: Cultivation, processing and sale for medical purposes licence’ (5 August 2022), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/drugs-medication/cannabis/industry-licensees-applicants/licensing-summary.html>>.

129 CRA, ‘Cannabis duty – Apply for a cannabis licence from the CRA’ (8 March 2023), online: <<https://www.canada.ca/en/revenue-agency/services/tax/businesses/topics/excise-duties/levies/cannabis-duty/apply-cannabis-licence.html>>.

130 Cannabis Regs, *supra* note 127, Part 10.

131 See, for example, the New Brunswick Liquor Corporation Act, RSNB 2016, c 105 and Cannabis Management Corporation Act, SNB 2018, c 3, which enable, respectively, the New Brunswick Liquor Corporation and the New Brunswick Cannabis Management Corporation.

132 Internal Trade Secretariat Corporation, ‘Canada Alcohol Laws’ (2020), online: Canadian Free Trade Agreement <<https://alcohollaws.ca/canada/>> [ITSC].

133 FDR, *supra* note 8, Division 2.

134 Excise Act, 2001, SC 2002, c 22 [Excise Act, 2001]; Regulations Respecting the Information to be Displayed on Alcohol Containers and Their Packaging, SOR/2003-201.

135 Excise Act, RSC 1985, c E-14 [Excise Act]; Brewery Regulations, CRC 565, s 7.

136 *Ibid.*

137 Canadian Intellectual Property Office, ‘IP roadmap – Geographical indications in Canada’ (15 February 2021), online: Government of Canada <<https://ised-isde.canada.ca/site/canadian-intellectual-property-office/en/ip-roadmap-geographical-indications-canada>>.

138 Importation of Intoxicating Liquors Act, RSC 1985, c I-3 [IILA].

of the beverage, the Spirit Drinks Trade Act (SDA).¹³⁹ Even though the IILA may apply to any form of liquor deemed to be intoxicating,¹⁴⁰ the SDA applies only to certain spirits, such as grappa, ouzo, tequila and bourbon whiskey.¹⁴¹ Excise duties on the production or importation of alcohol are imposed federally through the Excise Act, 2001 for spirits wine produced in Canada, the Excise Act for beer produced in Canada and the Customs Tariff for spirits, wine and beer imported into Canada.¹⁴²

In addition to federal regulation, alcoholic beverages are subject to provincial and territorial legislation that may also govern manufacturing, distribution and sale. Each province and territory maintains separate regulatory bodies for the production and sale of liquor, with varying levels of government intervention.

iv Natural health products

Natural health products (NHPs) are generally naturally occurring substances that are used to restore or maintain good health. All NHPs sold in Canada, including supplements, probiotics, vitamins and herbal remedies, are subject to and governed by the Natural Health Products Regulations, which are administered by Natural and Non-prescription Health Products Directorate.¹⁴³ To be legally sold in Canada, all NHPs must have a product licence, and facilities in Canada that manufacture, package, label and import NHPs must have site licences. Applicants may obtain a licence from Health Canada once they have provided detailed information about the NHP, including its ingredients and recommended usage, and have met specific labelling and packaging requirements.¹⁴⁴ Applicants must also establish that they follow good manufacturing practices and provide proper safety and efficacy evidence.¹⁴⁵ Once approved, NHPs can typically be sold directly to consumers without a prescription.

XI OUTLOOK AND CONCLUSIONS

Over the past year, the Canadian food, beverage and cosmetic industries have faced a variety of significant challenges, including reduced consumer purchasing power, lingering supply and labour challenges, regulatory changes and trade obstacles resulting from international tensions.¹⁴⁶ While each of these industries are subject to national oversight, there are also varying levels of provincial, territorial, municipal, and regional regulation that can make responding to such changes difficult in a short timeframe. When coupled with the fragmented yet extensive regulatory framework across the country, it remains important for industry participants to consult Canadian legal counsel before undertaking commercial activities in these sectors. This is especially true given the number of regulatory updates expected from various regulators in the coming years.

139 Spirit Drinks Trade Act, SC 2005, c 39 [SDA].

140 IILA, *supra* note 138, s 2 ‘intoxicating liquor’.

141 SDA, *supra* note 139, s 1-14.

142 Excise Act, 2001, *supra* note 134; Excise Act, *supra* note 135; Customs Tariff, SC 1997, c 36.

143 NHPR, *supra* note 123.

144 Health Canada, ‘About Natural Health Product Regulation in Canada’ (6 July 2022), online: Government of Canada <<https://www.canada.ca/en/health-canada/services/drugs-health-products/natural-non-prescription/regulation.html>>.

145 *ibid.*

146 Farm Credit Canada, ‘FCC Food and Beverage Report 2023’ (28 March 2023), online: <<https://www.fcc-fac.ca/fcc/resources/e-2023-food-beverage-report.pdf>>.

