

Foreign Investment Review and *Investment Canada Act* Update

November 12, 2015

TPP to Increase Thresholds for Investment Canada Reviews to \$1.5 Billion in Enterprise Value

The text of the Trans-Pacific Partnership (TPP), released publicly on November 5, 2015, includes commitments by the Government of Canada to increase monetary thresholds (the “**Review Threshold**”) to C\$1.5 billion in enterprise value for the review of investments from TPP countries under the *Investment Canada Act* (ICA). The increase in the Review Threshold is expected to come into force in 2017.

Under the ICA, the Minister of Innovation, Science and Economic Development (formerly the Minister of Industry) will determine whether an investment that is subject to review is likely to be of “net benefit” to Canada. That determination will not be subject to the dispute settlement provisions under the TPP. Canada’s commitment to increase the Review Threshold for investors from TPP countries is similar to its commitment made in September 2014 under the Canada-European Union Comprehensive Economic and Trade Agreement.

On April 24, 2015, new regulations came into force to increase the Review Threshold for “net benefit” reviews of acquisitions of control by non-Canadians from WTO countries from \$369 million, based on the book value of the assets of the Canadian business being

acquired, to \$600 million, based on the enterprise value of the Canadian business being acquired. This Review Threshold for WTO investors will increase to \$800 million in two years’ time and to \$1 billion two years later.

As with the new threshold introduced for WTO investors, the increased Review Threshold for TPP and European Union (EU) investors will be subject to specific exceptions in the case of acquisitions by state-owned enterprises (SOE) and acquisitions of cultural businesses. SOEs from WTO, TPP and EU countries will remain subject to the current, lower Review Threshold, based on book value. Cultural businesses will continue to be subject to an even lower, and fixed, \$5 million book value Review Threshold, as will all acquisitions of control (of any Canadian business) by non-WTO, non-TPP and non-EU investors. In addition, the Government of Canada will preserve its ability to review investments of any size that could pose threats to Canada’s national security.

For the TPP provisions to come into force in Canada, Canada and a sufficient number of other signatories must ratify the treaty. If implemented, the change to the Review Threshold for TPP and EU investors will reserve foreign investment reviews for only the largest investments emanating from a growing list of Canada’s trading partners.

For further information regarding Investment Canada reviews of investments, contact any member of our Competition, Antitrust and Foreign Investment Group.