Canada Finalizes Its Promised Single-use Plastic Ban



Introduction

On June 22, 2022, the Government of Canada published the *Single-use Plastics Prohibition Regulations* (the Regulations) under the *Canadian Environmental Protection Act, 1999* (CEPA). The Regulations prohibit the manufacturing, importing, sale and exporting of six categories of single-use plastic (SUP) items with some exemptions crafted to ease businesses into the transition or provide access to certain SUPs for Canadians with disabilities. The Regulations aim to deliver on Canada's 2019 commitment to ban harmful single-use plastics.

What you need to know

- The Regulations prohibit the manufacture, import, sale and exporting of checkout bags, cutlery, foodservice ware made from or containing problematic plastics, ring carriers, stir sticks, and straws (with exceptions).
- SUPs are plastic manufactured items designed to be discarded after a single use. The target SUPs are either environmentally problematic, value-recovery problematic, or both.
- The Regulations will come into effect on a staggered timeline, with deadlines starting on Dec. 20, 2022. The timelines for the prohibitions vary based on SUP item types (*e.g.,* cutlery vs. six pack rings) and industrial

activities (*e.g.*, manufacturing vs. exporting).
- The Regulations make exemptions for SUPs that are (1) required for accessibility needs, (2) waste or intended to hold waste, (3) intended to be exported, or (4) transiting through Canada.

Background

Plastic is a versatile and durable material that to date is associated with a lower cost of manufacturing for new products or packaging. Due to these properties, plastics are widely available to consumers and, at times, unavoidable. An estimated half of the plastics produced each year are single use-items, and SUPs make up a significant portion of the material that is littered in the environment.

In October 2020, the Government of Canada released its Science Assessment of Plastic Pollution. The Science Assessment examined hundreds of scientific studies on the harmful impacts of plastic pollution in the environment. It recommended that the Government take action to reduce the prevalence of plastics in the environment. Canada originally published draft regulations to ban SUPs under CEPA on Dec. 25, 2021, with a 70 day comment period. In June 2022, Canada published the final regulations in the Canada Gazette.

The new prohibitions on single-use plastics

The Regulations prohibit the manufacturing, importing, sale and exporting of six categories of SUPs: checkout bags, cutlery, foodservice ware made from or containing problematic plastics, ring carriers, stir sticks, and straws (with exceptions). The six SUPs selected represent a significant portion of plastic waste in Canada and globally that is found littered in the environment or has other negative environmental consequences such as easily fragmenting into

micro or macroplastics. These items can also be challenging to recycle with current recycling technologies, some even harming or hampering current recycling systems.

The Regulations fail to provide an exhaustive list of "plastics" that are captured in the definitions of SUPs, thus allowing them to encompass not only SUPs produced from conventional fossil fuel feedstock but also those derived from plant-based materials.

A notable change in the final regulation is the accelerated timeline for the Regulations coming into force. The Regulations will come into force in December 2022 rather than June 2023. However, not all of commercial activities involving SUPs will be prohibited by December. By December 20, 2022, the prohibition on the manufacturing or importing for sale of SUP checkout bags, cutlery, straws, foodservice ware and stir sticks will kick in. Bans are staggered based on material type and commercial activity as indicated in Table 1.

Table 1

SUP Item	Manufacture and import for sale prohibition date	Sale prohibition date	Manufacture, import, and sale for export prohibition date
Checkout bags, cutlery, straws, foodservice ware, stir sticks	Dec. 20, 2022	Dec. 20, 2023	Dec. 20, 2025
Ring carriers	June 20, 2023	June 20, 2024	Dec. 20, 2025

Flexible straws packaged with beverage containers	N/A	June 20, 2024	Dec. 20, 2025

For more information, the federal government has also published Technical Guidelines to help those affected better understand the Regulations.

Notable exemptions

Notably, the Regulations distinguish between SUP straws and SUP flexible straws, with the latter described as having a corrugated section that allows the straw to bend and maintain its position at various angles. Flexible straws are treated separately to ensure accessibility options for Canadians with disabilities.

While restrictions on SUP straws commence on Dec. 20, 2022, the manufacturing and importing of SUP flexible straws is not prohibited. However, the sale of SUP flexible straws is restricted in certain circumstances. The sale of flexible straws is not banned in non-commercial, non-industrial and non-institutional settings. Hospitals, medical facilities, long-term care facilities, or other care institutions can use these items with patients or residents. Retailers can also sell SUP flexible straws in packages of 20 or more so long as they are kept out of customers' view and requested by customers. Similar albeit modified exemptions also apply to online retail.

Other exemptions

- **Export**: The manufacture, import, and sale for the purpose of export of all six categories of SUPs has a temporary exemption until December 2025 to minimize business disruption. However, manufacturers or importers for the purpose of export must comply with record

keeping requirements.

- **Waste SUP**: The Regulations do not apply to plastic manufactured items that are waste, nor do they apply to items that are intended to hold waste.
- **In-Transit SUP**: SUPs that are only in transit through Canada for final shipping to another destination are exempted by the Regulations.

Developments, challenges and criticisms

An industry coalition lawsuit against the Government of Canada was launched on May 18, 2021. Among other things, the lawsuit argues that the federal government is extending its regulatory powers into exclusive areas of provincial jurisdiction. On November 12, 2021, a number of plastics industry organizations and public interest environmental groups were granted intervener status in the proceeding. If successful, the lawsuit could result in the Regulations being struck for being outside of the authority of the federal government under CEPA.

Furthermore, in February 2022, the federal government introduced Bill S-5 to modernize CEPA. A notable aspect of the proposed amendments to CEPA is the recognition of every Canadian's right to a healthy environment. In June 2022, a collection of industry associations wrote a letter the Speaker of the Senate opposing CEPA amendments. The letter asserts that many of the changes are outside the scope of the Act.

Takeaways

By restricting SUPs through the Regulations, Canada takes a step forward towards fulfilling Canada's national and international commitments to reduce plastic waste under the Ocean Plastics Charter, the United Nationals Sustainable Development Goals, and Canada's Strategy on Zero Plastic Waste.

The ban will affect a wide array of organizations and

individuals including manufacturers, importers, retailers, restaurants, healthcare facilities and care institutions. The government's transition timelines recognize the complexity associated with adapting to the regulatory changes, depleting current SUP supplies and even retooling manufacturing lines for these products. To ease the transition, Canada has also provided a Guidance for selecting alternatives.

As organizations and individuals begin preparing for a transition away from SUPs, the Government will start consulting on approaches to a federal public plastics registry and the development of labelling rules for plastics. Those developments are expected to take place in the summer of 2022. Organizations should prepare for an expanded list of banned plastic products in the future, and should consider how to effectively select plastic alternatives in their operations.

by Denisa Mertiri and Jonathan Cocker
Borden Ladner Gervais LLP