



Note No. V-1083

The Delegation of Canada to the Organization for Security and Co-operation in Europe in Vienna presents its compliments to all Permanent Missions and Delegations to the OSCE and to the Conflict Prevention Centre and, has the honour to provide, in accordance with the Decisions FSC.DEC/14/95 and FSC.DEC/20/95 of the Forum for Security Co-operation, Canada's response to the Questionnaire on the Participating States' Policy and National Practices and Procedures for the Export of Conventional Arms and Related Technology.

The Delegation of Canada to the Organization for Security and Co-operation in Europe avails itself of this opportunity to renew to all Permanent Missions and Delegations to the OSCE and to the Conflict Prevention Centre the assurances of its highest consideration.

Vienna, 18 August 2017



Questionnaire on Participating States' Policy and/or National Practices
and Procedures for the Export of Conventional Arms and Related Technology

OSCE participating States are requested to provide details of:

1. *Their basic principles, policies and/or national practices on the export of conventional arms and related technology.*

The policy by which the Government of Canada controls the export of conventional military goods and related technology (as defined by goods and technology included in Group 2 of Canada's *Export Control List* (ECL)) has evolved over time to reflect changing circumstances and priorities. Given the potential defence, commercial, and employment benefits of such exports, the aim of Canadian policy has always been to control, rather than restrict, exports of military goods and technology. Pursuant to the *Export and Import Permits Act* (EIPA), the Minister, in deciding whether to issue a permit, may consider whether the goods or technology specified in an application for a permit may be used for a purpose prejudicial to the safety or interests of the State or the peace, security or stability in any region of the world or within any country.

The present policy criteria for the control of military exports under the EIPA were approved by Cabinet in 1986. Under this policy, military exports are closely controlled to:

- a. countries that pose a threat to Canada and to its allies;
- b. countries involved in or under imminent threat of hostilities;
- c. countries under United Nations Security Council sanctions; or
- d. countries whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that goods might be used against the civilian population.

2. *Their national legislation governing the export of conventional arms and related technology. If applicable, report changes and/or updates to the data provided in 1995, including any relevant subsidiary legislation.*

Under Section 3 of the EIPA, conventional arms and related technology may be placed on the *Export Control List* (ECL):

- to ensure that arms, ammunition, implements or munitions of war, naval, army or air stores or any articles deemed capable of being converted therein to or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada; or
- to implement an intergovernmental arrangement or commitment.

The full text of the EIPA may be found at: <http://lois-laws.justice.gc.ca/eng/acts/E-19/FullText.html>.

On April 13, 2017 Bill C-47 (An Act to amend the Export and Import Permits Act and the Criminal Code (amendments permitting the accession to the Arms Trade Treaty and other amendments) was introduced in Parliament.

For further details see: https://www.canada.ca/en/global-affairs/news/2017/04/canada_prepares_tojointhearmstradetreaty.html

For a copy of Bill C-47 see: <http://www.parl.ca/DocumentViewer/en/42-1/bill/C-47/first-reading>

The full text of the ECL may be found at: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-89-202/FullText.html>.

The *Wassenaar Arrangement Munitions List* has been incorporated into Group 2 of the ECL, which includes Small Arms and Light Weapons (SALW).

The EIPA places very strict controls on the export of prohibited firearms, prohibited weapons and prohibited devices (as defined in the *Criminal Code* of Canada). Export permit applications for these items are only considered to countries on Canada's *Automatic Firearms Country Control List* (AFCCCL).

3. *Any international agreements or guidelines, other than OSCE commitments, covering the export of conventional arms to which they are a party.*

In addition to the *Wassenaar Arrangement*, which lists the Munitions items subject to control under the EIPA, Canada fully subscribes to the United Nations' *Register of Conventional Arms* and its obligations under the 1997 Ottawa Convention (*Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on their Destruction*), banning the production, stockpiling, use and export of anti-personnel landmines.

4. *The procedures for processing an application to export conventional arms and related technology: - who is the issuing authority? - what other authorities are involved and what is their function? - who deals with compliance?*

Export permits (licences) are issued by Global Affairs Canada (GAC), which is the department responsible for the implementation of the relevant legislation (the EIPA). The issuing authority is the Export Controls Division of GAC.

All applications for permits to export controlled goods and technology, including military goods and technology, are carefully reviewed for their consistency with Canada's foreign and defence policies. The review process includes, as required, extensive consultations with Canada's diplomatic posts abroad, the geographic division responsible for the destination country, and experts responsible for regional security and defence relations within GAC, as well as with the Department of National Defence and, where appropriate, with other government departments and agencies. Within Global Affairs Canada, assessments are made with regard to regional peace and security, including civil conflict, and the human rights situation, including trends (such as signs of improvement or signs of deterioration). Careful attention is also paid to end-use documentation to ensure the goods or technology proposed for export are indeed destined for a legitimate end-user and will not be diverted.

At the Department of National Defence, these consultations involve assessing the latest intelligence and providing the best policy advice on the application's potential impact on Canada's national security interests, Canada's international commitments and obligations, defence relations with the recipient country, and the impact on Canada's defence industrial base.

The Canada Border Services Agency (CBSA) and the Royal Canadian Mounted Police (RCMP) are the primary enforcement arms of Canadian export controls. Under the *Customs Act*, CBSA enforces export control legislation at the border and undertakes investigations of suspected infractions.

5. *Lists of conventional weaponry under national export controls and the basis for their control. If applicable, report changes and/or updates to the data provided in 1995.*

Military goods and technology are controlled under Group 2 of the ECL. This list reflects the Munitions List developed under the auspices of the *Wassenaar Arrangement*. A complete list of conventional weaponry subject to export controls under the EIPA is available in the most recent version of “A Guide to Canada’s Export Controls (the Guide)”. A copy of the Guide is available upon request by contacting the Export Controls Division of GAC at tie.reception@international.gc.ca or electronically at the following web link: <http://www.international.gc.ca/controls-controles/assets/pdfs/documents/guide-2015-eng.pdf>

Group 2 of the ECL is updated on a regular basis as per Canada’s multilateral commitments.

6. *Principles and national regulations on the destination or end-user of the equipment. Is there a complete erga omnes system or a published list of*

- *destinations of concern?*
- *embargoed countries?*
- *differentiation between destinations (e.g., is there any preferential treatment of (groups of) countries)?*

The Government of Canada currently maintains an arms embargo on the export of military goods and technology destined for Pakistan, in effect since 1998. The export of heavy arms to Iran is prohibited by the *United Nations Act* regulations vis-à-vis Iran, which implement the ongoing restrictions imposed by the Security Council in Resolution 2231. Canada implements decisions of the United Nations Security Council imposing arms embargos by way of regulations under the *United Nations Act*. Prohibitions on the exports of arms and related material, and technical assistance related to military activities (*inter alia*) are in place in relation to: Central African Republic (2014); Cote d’Ivoire (2005); the Democratic Republic of Congo (2014); DPRK (2006); Eritrea (2010); Lebanon (2007); Libya (2011); Iraq (2004); Somalia (2009); Sudan (2004). Under the *Special Economic Measures Act*, (Canadian autonomous sanctions regime), Canada has imposed an arms embargo against Burma (2012) and Zimbabwe (2008). The Canadian Government also takes into consideration international commitments and obligations when exercising its review of export permit applications.

Information concerning Canadian Economic Sanctions can be found at: <http://www.international.gc.ca/sanctions/index.aspx?lang=eng>

Regardless of whether it is listed on the *Export Control List*, the export of any item to a country on the *Area Control List* (ACL) is prohibited unless approved by an export permit prior to the export. Export permit applications are reviewed on a case by case basis. (Please see: <http://lois-laws.justice.gc.ca/eng/regulations/SOR-81-543/FullText.html>).

The *Automatic Firearms Country Control List* (AFCCCL) is a list of countries established under the EIPA to which the export of prohibited firearms, weapons and devices, as defined by the *Criminal Code*, has been deemed appropriate by the Government of Canada. (Please see: <http://lois-laws.justice.gc.ca/eng/regulations/SOR-91-575/FullText.html>). AFCCCL-controlled items may only be exported to the government of, or to a consignee authorized by the government of, a country listed on the AFCCCL. The EIPA prohibits the issue of export permits for the export of AFCCCL-controlled items to countries that are not listed on the AFCCCL.

With respect to differentiation between destinations, military goods and technology destined for end-use in the United States are subject to a licence exception, apart from certain goods and controlled under Items 2-1, 2-2.a, 2-2.b, 2-3, and 2-4.a of the ECL, unless they are antique, non-restricted and restricted firearms as defined in the *Criminal Code*.

7. *Requirements for the provision of an end-user certificate in an export license application, or of non-re-exportation clauses, or of any other type of certification before and after delivery for conventional arms export contracts. If applicable, please specify any verification of the end-user certificate and/or non-re-exportation clauses before and after delivery.*

Pursuant to the *Export Permits Regulations*, Canada requires the provision of end-use assurances or end-use statements in support of proposed exports of arms. In some cases government-to-government assurances may be required. Generally speaking, it would be noted in the End-Use Certificate (EUC) that the goods would not be diverted en route or re-exported from the importing country without approval from the importing government. In certain cases, a Delivery Verification Certificate (DVC) may be requested to assure that the items have arrived. The Canadian Government does not subscribe to the extraterritorial application of its laws and therefore does not impose re-export conditions other than those noted.

8. *National definition of transit and transshipment (including free zones) of conventional arms, together with associated national legislation and compliance procedures.*

There is no legislated definition of transit or transshipment. For practical purposes, however, controlled *Goods in Transit*, in bond, on a through bill of lading are not subject to export controls or licensing. If direct shipment is broken, however, or the items are taken out of bond, then they become subject to both import and export permits.

Goods in Transit: All goods that originate outside Canada that are included in the ECL, whether in bond or cleared by Canadian Customs, other than goods that are in transit on a through journey on a billing that originates outside of Canada where the billing indicates that the ultimate destination of the goods is a country other than Canada.

9. *The procedures governing companies wishing to export arms. Are companies obliged to seek official governmental authority to enter into contract negotiations or to sign contracts with foreign customers?*

No authorization is required to enter into contract negotiations or to sign contracts with foreign customers, but companies are encouraged to seek, or discuss the likelihood of receiving, an export permit before they begin their marketing efforts or enter into contractual obligations. Export permits are not necessarily linked to specific contracts.

All persons or firms who possess, examine or transfer controlled goods, including conventional military goods and related technology, must be registered and comply with the department of Public Works and Government Services' *Controlled Goods Program* (CGP), established under the authority of the *Defence Production Act*. The CGP is a legislative-based industrial security program that strengthens Canada's national security and its defence trade controls through a process of registration, prevention, deterrence and detection. The goods controlled by this program comprise a specific subset of the goods and technology listed on the ECL. An exporter cannot export any goods controlled by the CGP unless they are registered in and are in full compliance with the export licences program.

10. Policy on the revocation of export licences once they have been approved; please list any published regulations.

Section 10 of the EIPA provides the Minister with the authority to amend, suspend, cancel or reinstate a permit at any time.

11. The penal and administrative implications for any exporter failing to comply with national controls. If applicable, report changes and/or updates to the data provided in 1995.

The penalties for violating the EIPA are contained in that legislation. There are two types of penalties: one for a summary conviction which carries a fine up to \$25,000 CAD and/or imprisonment up to twelve months; the other, an indictable conviction, carries a monetary penalty to be determined by the court and/or a prison sentence not to exceed ten years for each offence.

Under the *Customs Act*, items can be detained, seized and subjected to monetary penalties. As well, if goods are seized, they can be returned to the exporter upon payment of an administrative penalty. Such penalties vary depending on the circumstances surrounding the case and the severity of the infraction. The items can also be detained indefinitely and ultimately forfeited to the Crown under the *Customs Act*.

12. Any circumstances in which the export of arms does not require an export licence.

Military goods and technology destined for end-use in the United States are subject to a licence exception, apart from certain goods and controlled under Items 2-1, 2-2.a, 2-2.b, 2-3, and 2-4.a of the ECL, unless they are antique, non-restricted and restricted firearms as defined in the *Criminal Code*.

13. Licences for temporary export (e.g., demonstrations or testing), the period allowed and any special conditions attached to the licence, including verification of return procedures.

The same conditions apply as if the goods were to be exported permanently. However, goods exported temporarily must be returned to Canada by a certain specified date (usually within twelve months of exports). They must be properly supervised while out of the country, and the exporter must provide verification that the goods have been returned to Canada at the conclusion of the demonstration or testing.

14. Licence documents and any standard conditions attached to it (copies to be provided).

The majority of applications are submitted through an on-line system called EXCOL (<https://www.excol-ceed.gc.ca/default.aspx>).

Paper applications are also available:

- i) Application for Permit to Export Goods (Controlled Goods Details Form)
(EXT 1042-1: <http://www.international.gc.ca/controls-controles/assets/pdfs/forms/documents/EXT1042-1.pdf>)
- ii) Application for Permit to Export Goods (Firearm Details Form)
(EXT 1042-2: <http://www.international.gc.ca/controls-controles/assets/pdfs/forms/documents/EXT1042.pdf>).

Holders of permits for military goods must make quarterly reports on the utilization of these permits.

15. *Different types (e.g. individual, general, restricted, full, permanent, etc.) of licences and what they are used for.*

All permits issued for arms would be individual export permits. These permits may authorize single or multiple shipments to one or more consignees in one or more countries of destination. A permit becomes invalid once it reaches its expiry date or the quantity/value of the arms authorized for export has been reached.

16. *Advice given to exporters as to licensability, such as the likelihood of approval for a possible transaction.*

Exporters are informed of their responsibility in ensuring that intended exports are compliant with export controls and with other economic sanctions imposed by Canada, including performing an evaluation regarding the legitimacy and credibility of foreign customers. Exporters are required to prepare and submit complete and correct permit applications. They are also encouraged to apply as early in the export process as possible in order to avoid unnecessary delays to shipment schedules. Export permits are typically valid for multiple shipments over 2 years. As long as the permit is valid, the exporter may export the controlled items. However, only single shipment permits are commonly issued for the export of firearms, artillery and their ammunition. Exporters can approach GAC for a ruling on the control status of the specific goods proposed for export.

17. *The average number of export licences issued annually and the staff engaged in the export licensing procedure.*

2204 export permits were issued in 2016 for items identified in Group 2 of the ECL. There are approximately 20 personnel involved in the export licensing process. As well, numerous officials in other divisions at GAC and other government departments and agencies provide input on a regular basis when assessing permit applications.

18. *Any other relevant information pertaining to the export of conventional arms and related technology, e.g., additional laws, reports to Parliament, special procedures for certain goods.*

Since 1990, GAC has issued a report on the “Export of Military Goods from Canada” providing statistics on the annual export of military goods. This report is a voluntary transparency measure and not subject to any domestic legislative requirements. In addition, the Minister is required under the EIPA to table before Parliament a report on the operation of the EIPA annually.

The Report can be found at: <http://www.international.gc.ca/controls-controles/report-rapports/mil-2016.aspx?lang=eng>

The *Defence Production Act* and the CGP regulations govern the possession, examination and transfer of military and other sensitive goods and technologies. <http://laws-lois.justice.gc.ca/eng/acts/d-1/>

19. *Are all guidelines governing conventional arms transfers nationally published?*

GAC publishes two documents which contains information regarding the transfer of conventional arms. The first document “The Export Controls Handbook” is designed to be the main reference tool to assist exporters with questions about the administration of Canada’s

export controls. This document is published in both electronic and hard copy format (Please see: <http://www.international.gc.ca/controls-controles/military-militaires/handbook-manuel.aspx>).

The second document published by GAC is called “A Guide to Canada’s Export Controls” (the Guide), which is updated on a regular basis and like the Export Controls Handbook, is published in both electronic and hard copy formats (An electronic copy can be obtained by contacting the Export Controls Division at tie.reception@international.gc.ca). This document provides detailed information and technical specifications for all the items contained on Canada’s current ECL. Each new edition of the Guide includes any changes to the regulations or administrative policies. On request, GAC also provides copies of the EIPA and all regulations relating to export controls.