



Delegation of Canada
to the OSCE

Délégation du Canada
auprès de l'OSCE

Note Number V-1452

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, 6 March 2020



To the Permanent Missions/Delegations to the OSCE and to the Conflict Prevention Centre

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.*

Canada controls the export of conventional arms and related technology under the *Export and Import Permits Act* (EIPA). The EIPA requires those who wish to export from Canada any items included on the Export Control List (ECL) to obtain, prior to shipment, an export permit issued by Global Affairs Canada. Conventional military goods and related technology are controlled in Group 2 of Canada's ECL. Given the potential defence, commercial, and employment benefits of such exports, Canada's export controls do not seek to hinder international trade unnecessarily, but to regulate and impose restrictions on exports in response to clear policy objectives.

Canada prohibits the export of arms and related materiel to countries that are under United Nations Security Council arms embargos via the *United Nations Act*, and also has autonomous sanctions in place against specific countries under the *Special Economic Measures Act*, which prohibit the export of specific goods and technology to those countries and/or to listed individuals and entities within those countries.

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 (AFCCL).

The EIPA authorizes the Minister of Foreign Affairs to issue to any resident of Canada a permit to export items included on the Export Control List or to a country included on the Area Control List, subject to certain terms and conditions. Pursuant to the EIPA, the Minister, in deciding whether to issue an export permit, must take into account the Arms Trade Treaty (ATT) assessment criteria for the potential that the goods or technology specified in the application:

- would contribute to peace and security or undermine it; and
- could be used to commit or facilitate
 - a serious violation of international humanitarian law,
 - a serious violation of international human rights law,
 - an act constituting an offence under international conventions or protocols relating to terrorism to which Canada is a party,
 - an act constituting an offence under international conventions or protocols relating to transnational organized crime to which Canada is a party, or
 - serious acts of gender-based violence or serious acts of violence against women and children.

The Minister shall not issue an export permit if, after taking into account all relevant considerations, including available mitigating measures, he or she determines that there is a substantial risk that the proposed transaction would result in any of the negative consequences referred to in the ATT assessment criteria. For there to be a substantial risk, there should be a connection, based on compelling evidence, between the negative consequences and the specific goods or technology proposed for export.

In addition to the ATT assessment criteria mentioned above, Canada closely controls the export of military goods and technology to countries that:

- pose a threat to Canada and to its allies;
- are involved in or under imminent threat of hostilities;
- are under United Nations Security Council sanctions; or
- 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.

Additional policy goals of Canada's overall export controls regime include:

- ensuring that exports do not contribute to the development of nuclear, biological or chemical weapons of mass destruction, or of their delivery systems;
- ensuring that exports are consistent with Canada's existing economic sanction provisions (see above and response to question six); and
- mitigating the possibility of unauthorized transfer or diversion of the exported goods and technology.

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 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: <https://laws-lois.justice.gc.ca/eng/acts/e-19/>

On December 13, 2018, 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)*) received Royal Assent. To ensure that Canada was fully compliant with the ATT before acceding, Bill C-47 amended to EIPA to regulate arms brokering in Canada and by Canadians abroad and to create a legal requirement for the Minister of Foreign Affairs to take into account the assessment criteria identified in the ATT. Bill C-47 came into force on September 1, 2019.

For further details on Canada's accession to the Arms Trade Treaty please see:

<https://www.canada.ca/en/global-affairs/news/2019/06/deposition-of-canadas-instrument-of-accession-to-the-arms-trade-treaty.html>

For a copy of Bill C-47, as approved by Parliament, please see:

<https://www.parl.ca/LegisInfo/BillDetails.aspx?Language=E&billId=8886296>

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

The *Wassenaar Arrangement Munitions List* has been incorporated into Group 2 of the ECL, which includes Small Arms and Light Weapons (SALW). The full system-conventional arms that fall under the scope of the Arms Trade Treaty (which include SALW when destined for police/military end-use) have also been added to a new Group 9 of the ECL, to facilitate reporting on the export of such items.

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.

Canada became a State Party to the Arms Trade Treaty on September 17, 2019.

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?*

Global Affairs Canada issues export permits (licences) as the department responsible for the implementation of the EIPA. The Minister of Foreign Affairs as the issuing authority, has delegated the authority to issue export permits to the Trade and Export Controls Bureau.

All applications for permits to export controlled goods and technology, including military items, are carefully reviewed for their consistency with Canada's foreign and defence policies. This review process includes extensive consultations with Canada's diplomatic posts abroad, the geographic division responsible for the destination country, including the human rights situation in the country, and experts responsible for regional security and defence relations within Global Affairs Canada. It also includes consultations with the Department of National Defence and, where appropriate, with other government departments and agencies. Careful attention is paid to end-use documentation to ensure the goods or technology proposed for export are indeed destined for a legitimate end-use and end-user and with very limited risk of diversion.

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) is 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 Control List*" (the Guide). A copy of the Guide is

available at the following web link: https://www.international.gc.ca/controls-controles/about-a_propos/expor/guide-2016.aspx?lang=eng

Group 2 of the ECL is updated on a regular basis to implement Canada's multilateral commitments in the *Wassenaar Arrangement*.

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 items included in Group 2 of the ECL 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: Iran (2016); Central African Republic (2014); 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: Ukraine (2014 - linked to Russia's ongoing violations of Ukraine's sovereignty in the Crimea Region of Ukraine); Syria (2012); Myanmar (2012); Zimbabwe (2008) and bans all exports to North Korea with limited exceptions (2011). 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:

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/types.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 is prohibited unless approved by an export permit prior to the export. Export permit applications are reviewed on a case-by-case basis and usually only permits for humanitarian items are issued. Currently, the only country listed on the ACL is North Korea. (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 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 issuance 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, most military goods and technology destined to the United States are subject to a permit exemption, unless they are controlled under

Group 9 or items 2-1, 2-2.a, 2-2.b, 2-3, or 2-4.a of the ECL (which consists of firearms, large-caliber weapons, ammunition and munitions such as bombs, torpedoes etc.) For exports of Group 9 items and non-prohibited firearms and ammunition, Canadian exporters may use General Export Permit – 47 under the condition that they pre-notify Global Affairs Canada of their intent to export these items and report on any permanent exports they undertake.

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) the end-use of the items in that country, confirms that the government of that country accepts responsibility to ensure that the items will not be diverted to uses other than those stated, and 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 impose any further re-export conditions, unless subsequent transfers are brokered in Canada or by a Canadian citizens or organizations abroad. In this case, brokers must apply for a brokering permit for Global Affairs Canada, prior to engaging in such brokering activities.

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?*

When dealing with the export of arms from Canada, 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.

However, anyone in Canada, or any Canadian or Canadian organization abroad, is required to receive a brokering permit prior to arranging or negotiating the transfer of controlled military

items (or other controlled strategic items with a potential WMD end-use) between two foreign countries.

All persons or companies who possess, examine or transfer controlled goods in Canada, 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 program assists companies in achieving and maintaining compliance with the requirements in safeguarding controlled goods in Canada and supporting Canada's export control regime. 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 in full compliance with Canada's export controls.

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 an export 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 \$250,000 CAD (increased from \$25,000 through Bill C-47) 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, 2-4.a and Group 9 of the ECL. Canadian exporters may use General Export Permit – 47 to export items controlled under items 2-1, 2-3 and Group 9 (so long as they are not prohibited firearms, weapons, ammunition or divisions) under the condition that they pre-notify Global Affairs Canada of their intent to export these items and report on any permanent exports undertaken.

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 most military goods and technologies 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.*

Individual export 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.

General Export Permits (GEPs) are, by order, issued generally to all residents of Canada by the Minister of Foreign Affairs. They allow the export of certain items from Canada to certain eligible destinations by means of a simplified administrative procedure as opposed to the standard procedure of having to obtain an individual export permit. As mentioned previously, GEP-47 authorizes the export of military goods and technologies to the United States, subject to certain terms and conditions.

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

Exporters are informed of their responsibility to ensure 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 Global Affairs Canada for a non-binding advisory opinion on the control status of the specific items proposed for export.

Permit applications may be withdrawn either at the request of the exporter (e.g., if the permit is no longer required because the commercial deal falls through or if the company becomes aware of political, commercial, or other types of risk that may affect their application, and decides not to pursue the opportunity), or by Global Affairs Canada (e.g., if the goods or technology

proposed for export are not controlled, the items are controlled but a permit is not required for their export to the U.S., or if a GEP applies).

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

3560 export permits were issued in 2018 for items identified in Group 2 of the ECL. There are approximately 25 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, the Minister of Foreign Affairs has tabled in Parliament a report on the “Export of Military Goods from Canada” providing statistics on the annual export of military goods. Though the report was previously produced on a voluntary basis, as of the entry into force of Bill C-47, the annual report must now be tabled in Parliament before the May 31st of the following year. In addition, the Minister is required under the EIPA to table before Parliament a report on the operation of the EIPA annually. These two reports can be found online at: <https://www.international.gc.ca/controls-controles/report-rapports/index.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?*

Global Affairs Canada publishes two documents that contain information regarding the transfer of conventional arms. The first document “The Export and Brokering Controls Handbook” is designed to be the main reference tool to assist exporters with questions about the administration of Canada’s export and brokering controls. This document is published online at: https://www.international.gc.ca/trade-commerce/controls-controles/reports-rapports/ebc_handbook-cce_manuel.aspx?lang=eng

The second document published by is called “A Guide to Canada’s Export Control List” (the Guide), which is updated on a regular basis and like the Export and Brokering Controls Handbook, is published in both electronic and hard copy formats (https://www.international.gc.ca/controls-controles/about-a_propos/expor/guide-2016.aspx?lang=eng). 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.