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Delegation of Canada
to the OSCE

Délégation du Canada
auprès de l'OSCE

Note No. V-1965

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, 5 July 2023

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 the Minister of Foreign Affairs. 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.

With respect to sanctions, 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*. Canada also has autonomous measures against specific countries under the *Special Economic Measures Act*. These autonomous measures can include arms embargos and prohibit, among others, the export of specific goods and technology to sanctioned countries and/or to listed individuals and entities within those countries.

The Minister of Foreign Affairs may issue to any person in Canada or Canadian outside Canada a permit or certificate to carry out a specified activity or transaction, or any class of activity or transaction, that is restricted or prohibited pursuant to Canada's sanctions. The types of permits or certificates that may be applied for are set out in the relevant regulations. These permits and certificates are issued on an exceptional, case-by-case basis, at the Minister's discretion.

The EIPA places very strict controls on the export of prohibited firearms, prohibited weapons and prohibited devices (as defined in Canada's *Criminal Code*). Export permit applications for these items can only be issued if the destination country is included on Canada's *Automatic Firearms Country Control List* (AFCCCL).

The EIPA authorizes the Minister of Foreign Affairs to issue to any resident of Canada a permit to export items included on the ECL or to a country included on the *Area Control List*, subject to certain terms and conditions. In deciding whether to issue an export permit, the Minister must take into account whether 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.

These criteria are commonly referred to as the “Arms Trade Treaty (ATT) assessment criteria”. If, after taking into account all relevant considerations, including available mitigating measures, the Minister 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, the Minister is required to deny the export permit.

While “substantial risk” is not defined under the EIPA, it is understood as a direct and foreseeable risk that the specific good or technology proposed for export would result in one or more of these negative consequences. In order to establish “directness”, there needs to be a rational connection between the negative consequences and the specific goods or technology proposed for export. In terms of “foreseeability”, the risk must be well-grounded in the evidence and must be something more than mere possibility, theory or suspicion. In most cases, the threshold of “substantial risk” will be satisfied when it is more likely than not that the export would result in any of these negative consequences.

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, goods and 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 September 1, 2019, to ensure that Canada was fully compliant with the ATT, legislative amendments were made to the EIPA to regulate arms brokering in Canada and by Canadians abroad, to create a legal requirement for the Minister of Foreign Affairs to take into account the

ATT assessment criteria, along with other amendments to further strengthen Canada's export controls.

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>

The full text of the ECL 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 in 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 has been a State Party to the Arms Trade Treaty since 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 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 reviewed on a case-by-case basis under a robust risk assessment framework to ensure the consistency of the proposed export with Canada's foreign and defence policies, security interests and international obligations, including consistency with the Arms Trade Treaty criteria that are enshrined in Canada's EIPA.

Under the EIPA, arms, ammunition, implements or munitions of war cannot be exported from Canada where there is a substantial risk that they could be used to commit or to facilitate serious violations of international humanitarian law, international human rights law, or serious acts of gender-based violence or violence against women and children, amongst other criteria.

End-use assurances are an essential component of export permit applications and end-use documentation is carefully reviewed during the risk assessment process to ensure the goods or technology proposed for export are destined to a legitimate end-use and end-user. End-use assurances and relevant documentation are also assessed with a view to prevent the risk of diversion.

In order to fully assess the risks associated with a proposed export, the export permit application may also be sent for wide-ranging consultations with experts from across the Government of Canada. Consultation partners include geographic, human rights, international security and defence industry experts at Global Affairs Canada, including Canada's diplomatic posts abroad. It can also include consultations with the Department of National Defence and, where appropriate, with other government departments and agencies.

At the Department of National Defence, consultations involve assessing the latest intelligence and providing 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 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, as well as Group 9 and certain portions of Group 4, Group 5, and Group 6. Group 2 reflects the Munitions List developed under the auspices of the *Wassenaar Arrangement* along with some additional controls on firearms. 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). In July 2021, Canada's *Export Control List* (ECL) was amended to include all changes agreed at multilateral export control regimes as of December 2020. At the time, the ECL was also amended to incorporate the Guide by reference within the ECL on an ambulatory basis. This means that moving forward, changes to the multilateral regimes control lists will be implemented in Canada via updates to the Guide itself, rather than via regulatory amendments to the ECL, reducing administrative burden and accelerating the implementation of new controls.

A copy of the Guide is available at the following web link: <https://www.international.gc.ca/trade-commerce/controls-controles/ecl-lec/index.aspx?lang=eng>

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)?*

While certain export prohibitions have been implemented under the authority of the EIPA, Canada also imposes arms-related sanctions measures in relation to certain countries or foreign nationals through the *United Nations Act* and the *Special Economic Measures Act*.

Canada implements decisions of the United Nations Security Council to impose sanctions, including arms embargos by way of regulations made under the *United Nations Act*. Prohibitions on the export of arms and related material are in place in relation to: Central African Republic; the Democratic Republic of Congo; Iran; Iraq; Lebanon; Libya; the Democratic People's Republic of Korea; Somalia; South Sudan; and, Sudan. In addition to prohibitions on the goods

themselves, there may also be prohibitions related to technical or financial assistance in relation to arms and related material, or military activities, with respect to certain countries.

Under the *Special Economic Measures Act*, Canada has imposed autonomous arms embargos as a sanctions measure in relation to: Syria; Myanmar; and, Zimbabwe. Canada also has broad bans on imports and exports in relation to other countries, these bans are outlined in each relevant regulation. For example, Canada has a ban on all imports and exports with the Democratic People's Republic of Korea, as well as Crimea and the occupied regions of Ukraine (linked to Russia's ongoing violations of Ukraine's sovereignty). Similar to measures imposed under the *United Nations Act*, in addition to prohibitions on the goods themselves, arms embargos may also include technical or financial assistance prohibitions.

Information concerning Canadian Economic Sanctions can be found at:

https://www.international.gc.ca/world-monde/international_relations-relations_internationales/sanctions/index.aspx?lang=eng

Certain destinations can also be subject to specific export controls policy. The Government of Canada has maintained a policy of presumptive denial on the issuance of permits for exports of military goods and technology destined for Pakistan since 1998. In the case of Iran, in addition to measures described above, there is also a presumptive denial policy in place for a number of controlled items, including military goods and related technology. A presumptive denial policy is in place for Guinea for all military and strategic exports destined to the armed forces, police or government. Changes to destination-specific export controls policies in a given calendar year are reflected in the annual *Report on Exports of Military Goods from Canada*, which is tabled annually in Parliament by May 31 of each year. The report can be found at:

<https://www.international.gc.ca/controls-controles/report-rapports/index.aspx?lang=eng>

Changes to export controls policies, including but not limited to destination-specific policies, are announced publicly by way of Notices to Exporters and Brokers. A complete list of these notices can be found at: https://www.international.gc.ca/controls-controles/notices_avis/exp/list_liste/index.aspx?lang=eng#mil

Regardless of whether a particular good or technology 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 shipment. Export permit applications are reviewed on a case-by-case basis and usually only permits for humanitarian items would be 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* (AFCCL) 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>. AFCCL-controlled items may only be exported to the government of, or to a consignee authorized by the government of, a country listed on the AFCCL. The EIPA prohibits the issuance of export permits for the export of AFCCL-controlled items to countries that are not listed on the AFCCL.

For exports destined to the United States, individual export permits are not required for most military goods and technology, 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 as part of the export permit application process. In some cases, government-to-government assurances may be required. These assurances are normally provided through a End-Use Certificate (EUC). Generally speaking, an End-Use Certificate (EUC) will contain: the end-use of the items in the country of destination; a declaration from the government of that country that it accepts responsibility to ensure that the items will not be diverted to uses other than those stated in the EUC; and a declaration from the government of the importing country that the goods will 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 in the country of destination.

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

Under Canada's *Transshipment Regulations*, "transshipment" refers to the action of unloading goods or technology from the means of transportation through which they entered Canada, and reloading them onto the same or another means of transportation. It is therefore a subset of the concept of transit in Canada.

As regards the concept of "transit", Item 5401 of the ECL controls all goods and technology that originate outside Canada that are included in the ECL, whether in bond or cleared by the Canada Border Services Agency. However, this control does not apply to goods or technology that are in transit on a through journey on a billing that originates outside Canada, provided the billing indicates that the ultimate destination of the goods or technology is a country other than Canada.

For example, if an export of anti-ship missiles that originated in Norway is transiting through Canada and going to Chile, the items will be exempted from Canadian export controls if accompanied by corresponding documentation indicating that the destination of the anti-ship missiles is not Canada, but rather Chile. Nevertheless, if the shipping journey is broken (for example, if the controlled items are temporarily stored in Canada prior to being shipped abroad again) or if the items are customs-cleared by the Canada Border Services Agency and enters Canada, the goods or technology may then become subject to Canadian export controls.

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. Export permits are not necessarily linked to specific contracts. However, companies are encouraged to include export permits considerations early in their forward planning, marketing efforts and negotiations. Companies are also encouraged to seek an export permit before entering into contractual obligations, or to consider including clauses in their

contracts indemnifying themselves in the event a permit is denied.

With respect to brokering, 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 Public Services and Procurement Canada *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.

Subsection 10(1) of the EIPA provides the Minister with broad authority to amend, suspend, cancel or reinstate any export permit.

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. The type of penalty depends on how the prosecution elects to proceed to convict that offence. If the prosecution elects to proceed by way of summary conviction, the exporter is liable to a fine of up to \$250,000 CAD and/or imprisonment for a maximum period of 12 months. If the prosecution elects to proceed by way of indictable offence, the exporter is liable to a monetary penalty at the discretion of the court and/or imprisonment for a maximum period of ten years.

Under the *United Nations Act*, there are also two types of penalties: a summary conviction which carries a fine of up to \$100,000 CAD and/or imprisonment up to twelve months; or imprisonment up to 10 years for an indictable conviction.

The *Special Economic Measures Act* also includes two penalties: a summary conviction with a fine of up to \$25,000 CAD and/or imprisonment up to twelve months; or imprisonment up to five years for an indictable conviction.

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 permit exemption, apart from certain goods and technology 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 the export). They must be properly supervised while out of the country, and the exporter must provide confirmation 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 a given country of destination. A permit would no longer be valid once it reaches its expiry date or gets exhausted once the quantity/value of the items 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. Instead of having to obtain an individual export permit from the Minister of Foreign Affairs, Canadian exporters can simply invoke the relevant GEP at the border (provided they comply with the terms and conditions of the GEP). For example, as mentioned previously, GEP-47 authorizes the export of military goods and technology 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 permit applications that are complete, and provide all relevant and accurate information pertaining to the proposed export. 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 a period of 2 years. As long as the permit is valid, the exporter may export the controlled items listed on the permit, subject to the terms, conditions and limitations outlined in the permit. 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 further pursue their 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.

Approximately between 2,000 and 4,000 export permits are issued per year for items identified in Group 2 of the ECL. There are approximately 15 personnel directly involved in the export permitting 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 2019, the Minister of Foreign Affairs has a legal obligation to table a report on the “Export of Military Goods from Canada” in Parliament before May 31st of the following year. It provides statistics on the annual export of military goods. This report had previously been produced on a voluntary basis since 1990. In addition, the Minister is required under the EIPA to annually table before Parliament a report on the operation of the EIPA. 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. See: <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 regime. 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 Global Affairs Canada 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/trade-commerce/guides/export_control_list-liste_exportation_controlee.aspx?lang=eng). This document provides detailed information and technical specifications of all the items controlled under Canada’s ECL.