

Newsletter: Canadian Export/Domestic Controls and U.S. Export Controls

SECTION A: CANADIAN EXPORT CONTROLS

1. Export Control List
2. Area Control List
3. New Regulations (Iran & Syria) under the *Special Economic Measure Act* (SEMA), and amendments to existing sanctions against Burma (Myanmar)
4. EIPA Report: 2010

SECTION B: U.S. EXPORT CONTROLS

1. U.S. Brokering Changes under ITAR
2. U.S. Export Enforcement Coordination Centre/Information Triage Unit
3. Changes to the Canadian Exemptions in ITAR Part 126.5
4. Implementation of U.S./UK Defence Trade Exemptions
5. U.S. Bureau of Industry and Security Releases Two Export Control Reports
6. U.S. Export Control Reform: Update
7. AIA Issues Report on Satellite Export Policy
8. U.S. GAO Report Links Export Control Reform with Increased Enforcement

SECTION C: CONTROLLED GOODS PROGRAM

1. Controlled Goods Program: Changes
2. PWGSC Meets with Industry: 10 January 2012

SECTION D: CANADA BORDER SERVICES AGENCY (CBSA)

1. CBSA Implements Mandatory Electronic Reporting Policy for Exporters

SECTION E: MISCELLANEOUS

1. Wassenaar Arrangement Issues Best Practices Guidelines
2. Wassenaar Arrangement Welcomes Mexico
3. New EU Open General Licences
4. U.S. Company Fined for Discriminatory Hiring Practices
5. Australia Defence Export Control Reforms
6. UK Introduces New OGEL for De-controlled Goods & Technology

SECTION F: UPCOMING EVENTS

1. CANSEC
2. HB-CECS Training Seminars

This newsletter is designed to meet the needs of Canadian industry involved in Canadian export controls, U.S. export controls or Canada's Controlled Goods Program (CGP). It identifies amendments or proposed amendments to such programmes and, where appropriate, provides timely and useful assessments on such changes, especially on how such changes might impact Canadian domestic and trade interests.

This is not to be considered legal advice.



A. CANADIAN EXPORT CONTROLS

1. EXPORT CONTROL LIST

a. Order Amending the Export Control List

The December 16, 2012 amendment to the Export Control List was published in the Canada Gazette on January 4, 2012 under number [Registration SOR/2011-320 December 16, 2011](#).

b. A Guide to Canada's Export Controls - June 2010

The latest version of "A Guide to Canada's Export Controls", which is current to June 2010, is not yet available for website publication. However, pending its release on the DFAIT website, persons interested in receiving an electronic copy may request one by sending an email to: excol-ceed.epe@international.gc.ca.

2. AREA CONTROL LIST

In concert with a significant suspension of sanctions against the Burma/Myanmar (addressed below), the Canadian Government also announced the removal of Myanmar from the Area Control List (ACL) under the *Export and Import Permits Act* (EIPA). Because presence on the ACL involved an almost total prohibition of trade with Myanmar, this is a notable change. The implication of removal from the ACL is that exports to Myanmar of goods and technology that are not included on the Export Control List (ECL) will no longer require an export permit issued by Minister Baird under the authority of the EIPA. The announcement with respect to the ACL and other sanctions that have been amended can be found at this link:

http://www.canadainternational.gc.ca/thailand-thailande/bilateral_relations_bilaterales/canada-burma-birmanie.aspx?lang=eng&menu_id=10&menu=L&view=d

3. NEW REGULATIONS (IRAN & SYRIA) UNDER THE SPECIAL ECONOMIC MEASURE ACT (SEMA), AND AMENDMENTS TO EXISTING SANCTIONS AGAINST BURMA (MYANMAR)

a. Iran

Regulations Amending the Special Economic Measures (Iran) Regulations

To view the full extent of these Regulations please access the Canada Gazette under: SOR/2011-330 December 23, 2011 and, SOR/2012-7 January 31, 2012

b. Syria

Because of the continuing situation in Syria, there have been three recent SEMA Regulations re: Syria.

To view the full extent of these Regulations please access the Canada Gazette under: P.C. 2011-1727 December 22, 2011, P.C. 2012-8 January 25, 2012 & P.C. 2012-255 March 5, 2012

c. Myanmar/Burma

On April 24, 2012, amended Regulations came into force which significantly reduced the scope of Canada's sanctions with respect to Myanmar. In short, most of the prohibitions imposed in 2007 are now suspended. This includes the prohibitions on import, export, investment, the docking and landing of ships and aircraft and the provision or acquisition of financial services. An arms embargo, covering the export of arms and related material to Burma as well as the providing of associated technical and financial assistance, and an assets freeze and prohibition on designated persons remain in force.

These amendments relieve businesses wishing to export goods not subject to the arms embargo from the requirement of seeking a Permit Authorization from the Minister. The text of the amended legislation can be found at this link:

http://www.international.gc.ca/sanctions/Burma_developments-developpements_Birmanie.aspx?lang=eng&view=d

4. EIPA REPORT: 2010

Under the *Export and Import Permits Act* (EIPA) the Minister of Foreign Affairs must provide Parliament with an annual Report on the operations of the EIPA. The 2010 Report can be accessed at:

<http://www.international.gc.ca/controls-controles/report-rapports/report-rapport-2010.aspx?lang=eng&view=d>

B. U.S. EXPORT CONTROLS

1. U.S. BROKERING CHANGES UNDER ITAR

In a Federal Register Notice of December 19, 2011, the Directorate of Defence Trade Controls (DDTC), U.S. Department of State, proposed important changes to the brokering regulations in ITAR Part 129 (76 Fed. Reg. 78578). Among other issues associated with the proposed changes, once implemented, it appeared that anyone involved in the selling of USML defence goods or technology would be required to register as a broker with DDTC. This would be the case even in situations where a person does not meet the classic definition of “broker”, and this could potentially include the entire sales arms of defence companies, regardless of where they are located.

N.B. On February 27, 2012, DDTC published comments received from interested parties. One can access the comments on the following website:

<http://www.pmddtc.state.gov/archives.html>

Significant concerns were registered and as such the DDTC has withdrawn its proposed regulatory change and is re-considering its position.

2. U.S. EXPORT ENFORCEMENT COORDINATION CENTRE/INFORMATION TRIAGE UNIT

On March 7, 2012, and as part of the Obama Administration's Export Control Reform Initiative (ECRI), two new multi-agency centres were opened:

a. Export Enforcement Coordination Centre (E2C2):

The E2C2, administered by the Department of Homeland Security, is responsible for enhanced information sharing and coordination between law enforcement and intelligence officials regarding possible violations of U.S. export control laws.

b. Information Triage Unit (ITU):

The ITU, which is located in the Commerce Department's Bureau of Industry and Security (BIS), is responsible for assembling and disseminating relevant information, including intelligence, from which to base informed decisions on proposed exports requiring a U.S. Government licence.

3. CHANGES TO THE CANADIAN EXEMPTIONS IN ITAR PART 126.5

As reported in our January 2012 (Volume 1) Newsletter, in its effort to bring into effect two new exemptions, one for the United Kingdom (126.17) and one for Australia (126.16), some unforeseen but significant changes were proposed to the Canadian Exemptions in ITAR Part 126.5. In a meeting held in Ottawa on January 26, 2012, Steven Rice, Deputy Director (Policy), Directorate of Defence Trade Controls gave a presentation on the ITAR to CADSI members. During the meeting, CECS raised concerns that the proposed ITAR changes that appeared in the 22 November 2011 Federal Register would significantly impact ITAR Part 126.5. At the request of Mr. Rice, CECS submitted an impact paper to DDTC on the proposed changes.

DDTC has now revised 126.5 ensuring that the Canadian Exemptions would remain unchanged. A copy of the final rule (Federal Register Volume 77, No. 55, Public Notice 7828), which also covers the U.S./Australia and U.S./UK Defence Trade Treaties, can be found at:

<http://www.gpo.gov/fdsys/pkg/FR-2012-03-21/pdf/2012-6825.pdf>

4. IMPLEMENTATION OF U.S./UK DEFENCE TRADE EXEMPTIONS

In a March 21, 2012 Federal Register Notice (FRN), the U.S. Department of State's Directorate of Defence Trade Controls (State/DDTC) issued a final rule amending ITAR Parts 120, 123, 124, 126, 127, and 129 of the International Traffic in Arms Regulations (ITAR) to implement the Defense Trade Cooperation Treaties between the U.S. and the UK, and the U.S. and Australia.

The FRN changes announced on 21 March 2012, came into effect on 13 April 2012 which is the date on which the UK/U.S. Defence Trade Cooperation Treaty came into effect. The Australian/U.S. Treaty is expected to come into effect later this year.

5. U.S. BUREAU OF INDUSTRY AND SECURITY RELEASES TWO EXPORT CONTROL REPORTS

The Bureau of Industry and Security, U.S. Department of Commerce (BIS/DOC) released two reports on Foreign Policy-based Export Controls: one for 2011 and one for 2012. These can be accessed at:

www.bis.doc.gov/news/2012/bis_annual_report_2011.pdf and www.bis.doc.gov/news/2012/2012_fpreport.pdf

The Reports describe particular categories of foreign policy controls and set out modifications that have taken place over the respective years. Approximately 21,000 export licences are issued annually by BIS/DOC.

6. U.S. EXPORT CONTROL REFORM: UPDATE

As reported in the January 2012 (Volume 1) Newsletter, the U.S. continues to move forward on export control reform. Although it was expected that many of the reforms would be in place by March 31, 2012, final rules have yet to be published in the Federal Register. According to the State Department, the comment period has now been completed for most USML Categories. It is expected that Congress will be briefed on 2-3 Categories at a time. The goal is to complete the Congressional review of all Categories by the end of 2012.

We will continue to follow this issue very closely.

7. AIA ISSUES REPORT ON SATELLITE EXPORT POLICY

The U.S. Aerospace Industries Association (AIA) recently issued a Report on U.S. satellite export control policy and U.S. national security. Since 1999, when export controls for all satellites was moved from the Department of Commerce to the Department of State under ITAR, the U.S. space sector has lost its majority control over the global satellite industry – especially in the commercial satellite sector. The Report concludes that the U.S. space industry continues to lose ground to foreign competitors and that a major overhaul of the U.S. export control system is needed to stem these losses. The AIA estimates that from 1999 to 2009, the U.S. lost \$21 billion in satellite manufacturing revenue and approximately 9,000 annual jobs.

The Report can be found at: *Competing for Space: Satellite Export Policy and U.S. National Security*

8. U.S. GAO REPORT LINKS EXPORT CONTROL REFORM WITH INCREASED ENFORCEMENT

The Government Accountability Office (GAO) released a report entitled *Export Controls: Proposed Reforms Create Opportunities to Address Enforcement Challenges* (GAO-12-246 – March 27, 2012 – Highlights). The Report notes that there is a direct correlation between an increase in export control enforcement and export control liberalisation. However, the newly created the Export Enforcement Coordination Centre noted in B.5. above may help to address most of the negative impacts of these changes.

C. CONTROLLED GOODS PROGRAM

1. CONTROLLED GOODS PROGRAM: CHANGES

Major changes have occurred to the Controlled Goods Program (CGP) and those changes were reported in our January 2012 (Volume 1) Newsletter. Since the last newsletter several recent developments have taken place, including:

- Clarification of some elements of the Enhanced Security Strategy (ESS) and
- The establishment of an industry-led Working Group to review the ESS and how it could become more palatable to industry members

2. PWGSC MEETS WITH INDUSTRY: 10 JANUARY 2012

On January 10, 2012 the Controlled Goods Directorate of Public Works and Government Services Canada (PWGSC) called a meeting in Ottawa of interested parties to discuss the continuing roll-out of the Enhanced Security Strategy (ESS).

At the meeting PWGSC advised that it would not be making any substantive changes to the CGP, and that the ESS will not change appreciably from what was introduced in October 2011. However, PWGSC did strike a Working Group (the CGP-Industry Continuous Improvement Working Group) designed to look at ways of making the ESS more “industry friendly”. To date, two meetings have been held.

It was also noted that an Interdepartmental Working Group had been established to examine the Schedule of “controlled goods” to see if it could be pared back in line with the US Munitions List (USML). Industry emphasised that the CGP was established to address almost exclusively the Canadian Exemptions (126.5) and the impact the USML has on those Exemptions.

Subsequent to the initial meeting the Controlled Goods Directorate (CGD) issued a Bulletin announcing the use of personal security clearances as a basis for the CGP security assessments. Specifically, as part of the security assessment the “**DOs may, at their discretion and with the written consent of the individual, accept a valid Government of Canada security clearance of Secret or higher as a means to expediently collect and validate the information required as part of the security assessment process...**” DO is the abbreviation for Designated Official.

NOTE: This does not relieve the individual from completing most of the new sections contained in the revised Security Assessment Application form. Persons will still be required to disclose certain personal information, which may be made available to foreign governments as well as any Canadian Government department or agency without further consent from the applicant.

D. CANADA BORDER SERVICES AGENCY (CBSA)

1. CBSA IMPLEMENTS MANDATORY ELECTRONIC REPORTING POLICY FOR EXPORTERS

Under Customs Notice 12-001 dated January 8, 2012, and effective April 1, 2012, CBSA will eliminate the manual reporting process on form B13A and implement its Mandatory Electronic Reporting Policy for exporters. In summary, all export shipments to countries other than the U.S. will soon have to be notified electronically. These changes do not impact exporters who have been approved to report their exports using Summary Reporting. However, when electronic permit reporting options are not available, exporters will be required to present a paper copy of the electronic export declaration and other government department permits/authorisations to the CBSA office closest to the point of exit. How soon in advance of an export an electronic report is required depends on the mode of transport being used.

Electronic reporting may occur in one of two ways:

1. Via the Canadian Automated Export Declaration (CAED). The CAED software may be downloaded free of charge at www.statcan.gc.ca/exp; or
2. Via the G7 Export Reporting Electronic Data Interchange (G7-EDI). The G7-EDI option requires an investment from the exporting company. Information on becoming an EDI-G7 participant may be obtained at www.cbsa.gc.ca/eservices.

If you require more information on how to report your goods electronically using CAED or G7-EDI contact the CAED/G7 helpline at: 1-800-257-2434. Details of this new policy can also be found at: <http://cbsa-asfc.gc.ca/publications/cn-ad/cn12-001-eng.pdf>

E. MISCELLANEOUS

1. WASSENAAR ARRANGEMENT ISSUES BEST PRACTICES GUIDELINES

During the December 2011 Plenary meeting of the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies (WA) held in Vienna, Austria, the Participating States adopted Best Practices Guidelines ("Guidelines") on Internal Compliance Programmes for Dual-use Goods and Technologies encouraging exporters, including companies and academic institutions located in WA Participating States, to develop and implement export-related compliance programmes. The details of this decision can be found at the Wassenaar Arrangement website at www.wassenaar.org.

Although the "Guidelines" are not mandatory for any WA participating country, some form of the Guidelines already exists in various countries, including Canada. Canadian companies may wish to structure their Export Compliance Programmes along the lines suggested in the Guidelines as it is expected that DFAIT will move to more formally implement the Guidelines nationally. It is recommended that the basic elements of an internal compliance programme for dual-use items should consider:

- a. Commitment to Compliance
- b. Structure and Responsibility
- c. Export Screening Procedures
- d. Shipment Control
- e. Performance Review
- f. Training
- g. Record Keeping
- h. Reporting and Corrective Action

2. WASSENAAR ARRANGEMENT WELCOMES MEXICO

At the December 2011 Plenary, and effective 25 January 2012, the Wassenaar Arrangement welcomed Mexico as its 41st participating country.

3. NEW EU OPEN GENERAL LICENCES

On January 7, 2012 the European Union announced new EU General Export Authorisations (General Export Licences). The new licences can be found at:

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:326:0026:0044:EN:PDF>

Specifically, there are five (5) separate General Export Authorisations, as follows:

- a. Export of Certain Dual-use Items (similar to many Items in Canada's ECL Group 1);
- b. Export after Repair/Overhaul (similar to many Items in Canada's ECL Groups 1, 4, 6 and 7);
- c. Export for Exhibition (similar to many Items in Canada's ECL Groups 1, 4, 6 and 7);
- d. Export of Telecommunication Equipment (similar to many Items in Canada's ECL Group 1, Category 5, Part 1); and
- e. Export of Chemicals (similar to Canada's ECL Group 7 chemicals).

These licences, subject to certain conditions, provide specific licensing coverage for certain dual-use items being exported to specific non-EU destinations. The use of these General Export Authorisations (GEA) save exporters time and money in their export planning. Many EU countries, including major competitors of Canadian industry like those in the UK, have taken steps to implement similar controls. The U.K. Government's Export Control Organisation (UK ECO) has published Notice to Exporters 2012/01 which covers these changes.

4. U.S. COMPANY FINED FOR DISCRIMINATORY HIRING PRACTICES

BAE Systems Shipyards Alabama was fined over \$50,000 for discrimination when it imposed greater employment requirements on lawful permanent U.S. residents by requiring all newly hired lawful permanent residents to present "green cards" as a condition of employment notwithstanding the fact that the individuals were authorised to work in the U.S. and met the definition of U.S. Person in both the ITAR and the EAR. The *Immigration and Nationality Act* (INA) requires employers to treat all work-authorised persons similarly and therefore, imposing unnecessary and additional documentary requirements on work-authorised non-U.S. citizens was unacceptable.

http://www.kbimmigration.com/immigration/Webline/DOJ_BAE.pdf

5. AUSTRALIA DEFENCE EXPORT CONTROL REFORMS

In Canberra, the Defence Trade Controls Bill 2011, which is designed to implement the Australia-United States Treaty on Defence Trade Cooperation, has been making its rounds through Parliament and various Australian Committees. Once it has passed the Committee stage it will be referred back to Parliament for promulgation. It is expected that the new law will come into effect by the end of 2012. Once in place, the U.S. will be able to implement the long-awaited Exemption under ITAR Part 126.16.

6. UK INTRODUCES NEW OGEL FOR DE-CONTROLLED GOODS & TECHNOLOGY

The UK issued OGEL “*International Non-Proliferation Regime De-controls: Dual-Use Items*”. This new OGEL allows, subject to certain conditions, the export of specified dual-use items without UK Government authorisation. This OGEL was

promulgated as a short-term measure that allows goods and technology no longer controlled in the various export control regimes to be exported under an OGEL until such time as the UK Strategic Export Control List can be updated and the items are removed from controls. We anticipate that many EU countries avail themselves of similar procedures.

The amended licence entered into force on 16 February 2012 and a copy can be accessed at:

<http://www.businesslink.gov.uk/bdotg/action/detail?itemId=1086960589&r.l1=1079717544&r.l2=1084228483&r.l3=1084228524&r.l4=1084287557&type=RESOURCES>

NOTE: Perhaps a similar ‘fix’ could be considered by Canadian officials.

F. UPCOMING EVENTS

1. CANSEC

The Canadian Association of Defence and Security Industries (CADSI) is holding its annual trade show, CANSEC, at the new CE facilities at the Ottawa airport May 30-31, 2012. Consider marking these dates on your calendar.

2. HB-CECS TRAINING SEMINARS

Although specific dates have not yet been selected, we expect to run training seminars in Montreal and Toronto this fall.

Montreal: September TBA

Toronto: December TBA