

Court File No. T-473-24

## FEDERAL COURT

BETWEEN:

HAMMAM FARAH, HIBA FARAH, AYMAN OWEIDA, X.Y.,  
CANADIAN LAWYERS FOR INTERNATIONAL HUMAN RIGHTS, and  
AL-HAQ – LAW IN THE SERVICE OF MAN

Applicants

-and-

MINISTER OF FOREIGN AFFAIRS and  
ATTORNEY GENERAL OF CANADA

Respondents

**AFFIDAVIT OF JUDY KORECKY**

I, Judy Korecky of the City of Ottawa, in the Province of Ontario, MAKE OATH AND SAY AS FOLLOWS:

1. I am a Deputy Director in the Export Controls Policy Division of Global Affairs Canada (GAC). I have been working in this position since 2005, and have been working with GAC since 2000. I obtained an LL.B degree in 1997 and an LL.L. degree in 1998. Amongst my responsibilities, I have been involved in amendments to the *Export and Import Permits Act* (“EIPA”), including amendments respecting the Arms Trade Treaty, as well as the creation of *General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States, SOR/2019-230* (“GEP No. 47”). As such, I have personal knowledge of the matters deposed in this affidavit.

**A. General Requirements for Exporting Goods from Canada**

2. Pursuant to the EIPA, export permits may be issued to any resident of Canada to export goods and technology included under the *Export Control List* (“ECL”), subject to certain terms and conditions.

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3. The ECL identifies specific goods and technology that are controlled for export from Canada to other countries. The ECL is divided into the following nine “Groups” of good and technologies:

- Group 1: Dual-Use List
- Group 2: Munitions List
- Group 3: Nuclear Non-Proliferation List
- Group 4: Nuclear-Related Dual-Use List
- Group 5: Miscellaneous Goods and Technology
- Group 6: Missile Technology Control Regime List
- Group 7: Chemical and Biological Weapons Non-Proliferation List
- Group 8: Repealed – January 2006 (historical section on the Export Control List)
- Group 9: Arms Trade Treaty

4. Each entry on the ECL under its respective “Group” is known as an “item” and each item is numbered. Items are further divided into sub-items. A list of the goods and technologies controlled on the ECL can be found in “A Guide to Canada’s Export Control List”, which is attached as **Exhibit “A”** to this Affidavit.

#### **B. Individual Export Permits**

5. Pursuant to section 7(1) of the EIPA, the Minister of Foreign Affairs (“Minister”) may issue to any resident of Canada a permit to export or transfer goods or technology included in the ECL or to a country included in an ACL. An individual export permit allows exports of goods and technologies to a specified consignee in a single country. A consignee is the foreign party who will be importing the goods or technology from the Canadian exporter into a foreign country. The export permit sets out, among other items, the quantity, technical description, nature of the goods or technology to be exported, as well as the final destination country and consignee.

6. The Export Controls Operations Division of GAC is responsible for issuing, suspending, cancelling, and reinstating export permits on behalf of the Minister. An application must be submitted to the Export Controls Operations Division of GAC in order

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to obtain an individual permit. That application must include, but is not limited to, the following information:

- The name and contact information of the exporter;
- The name and contact information for the consignee;
- The country in which the goods or technology are to be used or the country of final destination;
- The country of origin, the corresponding Item Number in the ECL, and the quantity and unit value, of the goods and technology; and,
- An end-use certificate, end-use statement, or other information to establish that the export of the goods or technology is consistent with the purpose for its control on the ECL.

7. Each application is reviewed on a case-by-case basis for consistency with the EIPA. Particular attention is given to the nature of the item, the country of destination, the purpose and intended use, the record and behaviour of the stated consignee and/or end-user, as well as the risk of diversion.

### **C. General Export Permits**

8. General Export Permits (GEPs) are issued pursuant to subsection 7(1.1) of the EIPA, which authorizes the Minister of Foreign Affairs to issue generally to all residents of Canada a permit to export specified goods or technology subject to the terms and conditions described in the permit.

9. A GEP allows for the export or transfer of certain specified items from Canada to certain eligible destinations by means of a simplified procedure, as opposed to applying for an individual export permit. An exporter must self-assess their export needs against the provisions of a particular GEP to determine if it meets the conditions of the GEP. The exporter need only cite the relevant GEP authority on their export declaration and meet any conditions set out in the GEP, such as reporting obligations. Currently, the Minister has issued 13 GEPs pursuant to section 7(1.1) of the EIPA, for various goods and technology destined to various destinations.

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**D. Military Goods and Technology Exports to the United States**

10. In this motion, the Applicants seek leave to amend their Notice of Application to include an Order declaring section 2(a) of the ECL to be invalid and unlawful, and an Order quashing GEP No. 47.

11. Due to Canada's close and long-standing trade relationships with the United States, Canada and the United States have reciprocal arrangements to ensure permit-free and licence-free movement of most military goods and technology, as well as other types of goods and technologies, between these two countries.

12. This is reflected in section 2(a) of the ECL, which states:

**2** The following goods and technology, when intended for export to the destinations specified, are subject to export control for the purposes set out in section 3 of the *Export and Import Permits Act*

(a) goods and technology referred to in Groups 1, 2, 6, and 7 of the schedule, except for goods and technology set out in items 2-1, 2-2.a., 2-2.b., 2-3, 2-4.a., 6-1, 6-2, 7-2, 7-3, 7-12 and 7-13 of the Guide, that are intended for export to any destination other than the United States... (emphasis added)

13. Despite section 2(a) of the ECL, pursuant to section 2(b) of the ECL certain types of military goods and technology require export permits if they are destined to a consignee in the United States, specifically goods and technology referred to in Groups 3, 4 and 9 of the schedule and goods and technology set out in items 2-1, 2-2.a., 2-2.b., 2-3, 2-4.a., 6-1, 6-2, 7-3 and 7-13 of the Guide.

**E. General Export Permit no. 47 (GEP No. 47)**

14. On September 1, 2019, GEP No. 47 issued by the Minister came into effect. GEP No. 47 allows for the following military goods and technology listed under section 2(b) of the ECL to be exported to the United States pursuant to this general permit:

- a) Group 2, Items 2-1: Smooth-bore weapons with a calibre of less than 20 mm, other arms and automatic weapons with a calibre of 12.7 mm (calibre 0.50 inches) or less and accessories, and specially designed components therefor.

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- b) Group 2, Items 2-3: Ammunition and fuse setting devices, and specially designed components therefor.
- c) Any goods referred to in Group 9 – “Arms Trade Treaty”.

15. The purpose of GEP No. 47 is to enhance domestic transparency and Canada’s fulfilment of its reporting obligations under the Arms Trade Treaty (“ATT”). The ATT established common standards for international trade in a broad range of conventional arms, with the ultimate goal of ensuring that states have effective national systems to review and control the arms trade. A copy of the Regulatory Impact Analysis Statement (“RIAS”) for GEP No. 47 is attached as **Exhibit “B”** to this Affidavit.

16. GEP No. 47 applies to the export of full system conventional arms and those small arms and light weapons (as opposed to parts and components) that are captured by the ATT and United Nations Conventional Arms Register. The making of GEP No. 47 reflected a balancing of the policy objective of increased transparency over the export of ATT items to the United States with the requirement for ease of movement of controlled items between our two countries given the integration of Canada’s defence production sector with that of the United States.

17. GEP No. 47 does not authorize the export of goods to a country other than the United States.

18. Group 2 of the ECL is comprised of items and components of items that are designed or modified for military purposes. These items have been added to the ECL pursuant to Canada complying with its obligations under the “Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-use Goods and Technology” (the “Wassenaar Arrangement”). The Wassenaar Arrangement was established in 1996. Its purpose is to contribute to regional and international stability by promoting transparency and greater responsibility in transfers of conventional arms and dual-use goods and technologies. There are 22 categories of items under Group 2, which can be found under “A Guide to Canada’s Export Control List,” attached as Exhibit “A” to this Affidavit.

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19. Group 9 was added to the ECL on June 17, 2019, pursuant to the *Order Amending the Export Control List (Arms Trade Treaty)*, SOR/2019-223. This amendment was part of a broader series of amendments to Canada's export regime to enable Canada's accession to the *Arms Trade Treaty* ("ATT"). The ATT was entered into force in 2014 with the objective of regulating international trade of conventional weapons for the purpose of contributing to international and regional peace, security and stability; reducing human suffering; and promoting co-operation, transparency, and responsible action in the international trade in conventional arms by and among states.

20. The purpose of Group 9 is to enhance transparency and facilitate Canada's international commitments on reporting with respect to ATT items to the United States. Group 9 includes full-system conventional arms in the following categories:

- Items 9-1: Battle tanks that are tracked or wheeled self-propelled armoured fighting vehicles.
- Items 9-2: Armoured combat vehicles 339.
- Items 9-3: Large-calibre artillery systems.
- Items 9-4: Military aircraft and related systems.
- Items 9-5: Military helicopters and related systems.
- Items 9-6: Vessels and submarines that are armed and equipped for military use.
- Items 9-7: Missiles and missile launchers.
- Items 9-8: Small arms.
- Items 9-9: Light weapons.

21. Exporters must notify the Export Controls Operations Division in writing of their intent to use the GEP No. 47 prior to exporting goods pursuant to this GEP. Further, within 30 days after each six-month period ending on June 30 and December 31 of a calendar year, the exporter must provide a report to that Division stating whether they exported a good under the GEP No. 47 during that period and, if a good was reported, they must provide the name and address of each consignee, a description of the good, the relevant Group of the ECL under which the good is captured, and the quantity and value of the good. The exporter must retain the corresponding records for each export pursuant to GEP No. 47 for a period of six years after the year in which the good is exported.

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22. Individual export permits are required for export to the United States of the remaining goods and technology listed under section 2(b) of the ECL. With respect to military goods and technology, these include:

- Group 2, Items 2-2.a.: Guns, howitzers, cannon, mortars, anti-tank weapons, projectile launchers, military flame throwers, rifles, recoilless rifles and smooth-bore weapons.
- Group 2, Items 2-2.b.: Projectors, specially designed or modified for military use, as follows: smoke canister projectors; gas canister projectors; and pyrotechnics projectors.
- Group 2, Items 2-4.a.: Bombs, torpedos, grenades, smoke canisters, rockets, mines, missiles, depth charges, demolition-charges, demolition-devices, demolition-kits, "pyrotechnic" devices, cartridges, submunitions therefor and simulators (i.e. equipment simulating the characteristics of any of these items), specially designed for military use.


23. All items exported from Canada to the United States are thereafter subject to American export controls, regardless of whether a Canadian export permit was required. The Export Controls Division of GAC has no authority over any subsequent export of those goods and technology.

SWORN BEFORE ME at the City of Geneva,

Switzerland, the 20<sup>th</sup> of August, 2024

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X   
\_\_\_\_\_  
Judy Korecky

X   
\_\_\_\_\_  
Eric Marin



Consciller (Gestion) et Consul | Counsellor (Management) and Consul  
Mission permanente du Canada | Permanent Mission of Canada

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**This is Exhibit A referred to in  
the Affidavit of  
JUDY KORECKY  
SWORN before me by affiant  
on this 20th day of  
AUGUST, 2024**

**Les présentes constituent la  
pièce A dont il est question  
dans l'affidavit de  
JUDY KORECKY  
assermenté devant moi ce  
20 jour de août 2024**

  
  
**Eric Marin  
Conseiller et Consul**



Government  
of Canada

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du Canada

[Canada.ca](#) > [International trade and investment](#) > [Export and import controls](#)

> [A Guide to Canada's Export Control List \(ECL\)](#)

## A Guide to Canada's Export Control List (ECL)

*A Guide to Canada's Export Control List* identifies the items included on the *Export Control List* that are controlled for export in accordance with section 3 of the *Export and Import Permits Act* and for which an export permit is required.

| <b>Date of entry into force</b> | <b>Last day in force</b> | <b>Backgrounder</b>                          | <b>Non-official HTML version</b>  |
|---------------------------------|--------------------------|--|---|
| May 2, 2024                     |                          | <a href="#">Backgrounder – January 2024</a>  | <a href="#">A Guide to Canada's Export Control List – January 2024</a>  |
| July 1, 2023                    | May 1, 2024              | <a href="#">Backgrounder – January 2023</a>  | <a href="#">A Guide to Canada's Export Control List – January 2023</a>  |
| December 21, 2022               | June 30, 2023            | <a href="#">Backgrounder – December 2021</a> | <a href="#">A Guide to Canada's Export Control List – December 2021</a> |
| July 24, 2021                   | December 20, 2022        |  | <a href="#">A Guide to Canada's Export Control List – December 2020</a> |

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A Guide to Canada's Export Control List (ECL)

| <b>Date of entry into force</b> | <b>Last day in force</b> | <b>Backgrounder</b>                                | <b>Non-official HTML version</b>   |
|---------------------------------|--------------------------|--|--|
| May 1, 2020                     | July 23, 2021            | <u><a href="#">Backgrounder: December 2018</a></u> | <u><a href="#">A Guide to Canada's Export Control List - December 2018</a></u> |
| May 17, 2019                    | April 30, 2020           | <u><a href="#">Backgrounder: December 2016</a></u> | <u><a href="#">A Guide to Canada's Export Control List - December 2016</a></u> |
| August 11, 2017                 | May 16, 2019             |  | <u><a href="#">A Guide to Canada's Export Control List - December 2015</a></u> |

**Date Modified:**

2024-06-04



**This is Exhibit B referred to in  
the Affidavit of  
JUDY KORECKY  
SWORN before me by affiant  
on this 20th day of  
AUGUST, 2024**

**Les présentes constituent la  
pièce B dont il est question  
dans l'affidavit de  
JUDY KORECKY  
assermenté devant moi ce  
20 jour de août 2024**



**Eric Marin  
Conseiller et Consul**





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> [Publications](#) > [Part II: Vol. 153 \(2019\)](#) > [June 26, 2019](#)

# General Export Permit No. 47 — Export of Arms Trade Treaty Items to the United States: SOR/2019-230

Canada Gazette, Part II, Volume 153, Number 13

Registration

SOR/2019-230 June 17, 2019

EXPORT AND IMPORT PERMITS ACT

The Minister of Foreign Affairs, pursuant to subsection 7(1.1) <sup>a</sup> of the *Export and Import Permits Act* <sup>b</sup>, issues the annexed *General Export Permit No. 47 — Export of Arms Trade Treaty Items to the United States*.

Ottawa, June 17, 2019

Chrystia Freeland

Minister of Foreign Affairs

# General Export Permit No. 47 – Export of Arms Trade Treaty Items to the United States

## Interpretation

### Definitions

1 The following definitions apply in this Permit.

**Act** means the *Export and Import Permits Act*. (*Loi sur les licences d'exportation et d'importation*)

**Export Controls Operations Division** means the Export Controls Operations Division of the Department of Foreign Affairs, Trade and Development. (*Direction des opérations des contrôles à l'exportation*)

**Guide** has the same meaning as in section 1 of the *Export Control List*. (*Guide*)

## General

### Authorization

2 Subject to sections 3 to 6, any resident of Canada may export any of the following goods from Canada to the United States:

- (a) any good referred to in item 2-1 of the Guide;
- (b) any good referred to in item 2-3 of the Guide;



(c) any good referred to in Group 9 of the schedule to the *Export Control List*.

### **Unauthorized goods**

**3** This Permit does not authorize

(a) the export of goods to a country other than the United States;

(b) the export of *prohibited ammunition, prohibited devices, prohibited firearms or prohibited weapons*, as defined in subsection 84(1) of the *Criminal Code*; and

(c) the export of any good referred to in item 2-2.a. or 2-4.a. of the Guide.

### **Conditions**

#### ***Firearms Act***

**4** A resident of Canada who exports a firearm under this Permit must

(a) hold a licence under the *Firearms Act* issued by the chief firearms officer of the province in which they reside; and

(b) if the firearm is a restricted firearm, hold a registration certificate for it issued under that Act.

### **Information**

**5 (1)** A resident of Canada who exports under this Permit a good referred to in Group 9 of the schedule to the *Export Control List* must provide in writing to the Export Controls Operations Division

(a) before exporting under this Permit in a calendar year, their name, address, telephone number, email address and any facsimile number;

(b) within 30 days after each six-month period ending on June 30 and December 31 of the calendar year for which the information in paragraph (a) was provided, a report stating

(i) whether they exported a good under this Permit during that period, and

(ii) if a good was exported,

(A) the name and address of each consignee,

(B) a description of the good, the provision of the schedule to the *Export Control List* that refers to it and the item number assigned to it by the Guide, and

(C) the quantity and value in Canadian dollars of the good; and

(c) within 15 days after the day on which the resident of Canada receives a request from the Export Controls Operations Division, any information referred to in paragraph

(b) that is requested by it in respect of exports during the period specified in the request.

### **Exception**

(2) Despite paragraph (1)(b), a resident of Canada who provides the information referred to in paragraph (1)(a) during the six month period ending on December 31 is not obliged to provide a report for the six-month period ending on June 30 during the same calendar year.

### **Temporary export**

(3) Subsection (1) does not apply to the export of a good if the good is to be returned to Canada and to the resident of Canada who exported it within two years after the day of export.

### **Good not returned within two years**

(4) If a good referred to in subsection (3) is not returned to the resident of Canada within two years after the day of export, the resident of Canada must provide in writing to the Export Controls Operations Division the information referred to in subsection (1) no later than 30 days after the day that is two years after the day of export.

### **Records**

6 A resident of Canada who exports a good under this Permit must retain, for a period of six years after the year in which the good is exported, the following records:



- (a) the date on which the good was exported;
- (b) the name and address of each consignee;
- (c) the quantity and value in Canadian dollars of the exported good; and
- (d) a description of the exported good, the provision of the schedule to the *Export Control List* that refers to it and the item number assigned to it by the Guide.

## Coming into Force

### S.C. 2018, c. 26

7 This Permit comes into force on the day on which section 6 of *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)*, chapter 26 of the Statutes of Canada, 2018, comes into force, but if it is registered after that day, it comes into force on the day on which it is registered.

# REGULATORY IMPACT ANALYSIS STATEMENT

*(This statement is not part of the Permit.)*

## Issues

The Government of Canada wishes to accede to the Arms Trade Treaty (ATT or the Treaty).

The ATT establishes common standards for international trade in a broad range of conventional arms with the goal of ensuring that states have effective national systems to review and control the arms trade. Accession to the ATT gives Canada the opportunity to further strengthen its export control regime. Article 13 of the ATT requires that States Parties report on the export of eight categories of full-system conventional arms listed in article 2(1): battle tanks, armoured combat vehicles, large-calibre artillery systems, combat aircraft, attack helicopters, warships, missiles and missile launchers, and small arms and light weapons. Canada hitherto controlled the export of all ATT-listed items to all destinations other than the United States and only required permits for the export of certain ATT items to the United States (e.g. prohibited firearms and missiles).

On December 13, 2018, *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)* [the Act] received royal assent. However, in line with concerns raised by stakeholders during parliamentary debate on the Act, and with a view to increasing transparency and ensuring full compliance with the ATT, the Government of Canada is

implementing regulatory changes that allow it to collect data to report on exports of ATT items to the United States without requiring individual permits.

Through a separate regulatory package submitted to the Governor in Council (see the Regulatory Impact Analysis Statement for the *Brokering Control List*) an amendment to the *Export Control List* is being implemented to require a permit for the export of ATT-listed items to the United States. This General Export Permit (GEP) facilitates that process and reduces the administrative burden on Canadian companies and the impact on the Canadian economy, while ensuring reporting on the export of ATT items to the United States.

## Background

The *Export and Import Permits Act* (henceforth referred to as “the EIPA”) authorizes the Governor in Council to establish a list of goods and technology called the *Export Control List*, which identifies goods and technology that are controlled for export or transfer from Canada to other countries. Most items on the *Export Control List* derive from Canada’s commitments to like-minded countries that participate in multilateral export control regimes or from Canada’s obligations as a signatory to bilateral or multilateral international agreements (Wassenaar



Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, Australia Group, and the Arms Trade Treaty, amongst others).

The principal objective of Canada's export control regime is to ensure that exports of goods and technology included on the *Export Control List* are in accordance with Canada's foreign and defence policies. Unless otherwise stated, exports or transfers of goods and technology included on the *Export Control List* require a permit issued under the authority of the Minister of Foreign Affairs in order to be lawfully exported or transferred from Canada.

Subsection 7(1.1) of the EIPA authorizes the Minister of Foreign Affairs to issue to all residents of Canada a general permit to export or transfer goods or technology included in the *Export Control List* subject to such terms and conditions as described in the permit. These general export permits allow the export or transfer of certain specified items from Canada to certain eligible destinations by means of a simplified procedure as opposed to the more burdensome and lengthier process of applying for an individual export permit. When making use of a general export permit, exporters must abide by all associated terms and conditions, including any pre-notification or reporting requirements.



During the debates surrounding Canada's accession to the ATT and recent public consultations on "Global Affairs Canada's proposed strengthening of Canada's export controls regime" (December 13, 2018, to February 11, 2019), civil society and certain academic stakeholders called for increased transparency over the export of ATT items to the United States. Industry stakeholders indicated that the permit-free movement of most controlled items between Canada and the United States is vital for the preservation of the Canadian defence industry. Parliamentarians recognized both points of view and the Government of Canada committed to explore options to increase transparency that would not involve a requirement for new individual permits for exports to the United States.

## Objective

The objective of *General Export Permit No. 47 — Export of Arms Trade Treaty Items to the United States* (GEP-47 or *General Export Permit No. 47*) is to provide a streamlined permitting process for the export of most ATT items to the United States. The reporting requirements in GEP-47 enable the Government of Canada to fill a significant reporting gap and increase transparency by reporting on the permanent export of ATT items to the United States.

## Description

Canada currently controls all ATT-listed items for export to all destinations, other than the United States. Controls on the export of ATT items to the United States are currently limited to items such as prohibited firearms and certain missiles. While all ATT items are captured in different parts of Group 2 of the *Export Control List*, a new Group 9 (Arms Trade Treaty) of the *Export Control List* is being established through a separate regulatory package submitted to the Governor in Council in order to capture all ATT items in one distinct identifiable group.

The current reciprocal permit-free movement of most military items between Canada and the United States has been in place since World War II, pursuant to various arrangements between the governments of both countries. A series of Exchanges of Notes between Canada and the United States stemming from the Hyde Park Agreement of 1941 reference the need and the general principles required for greater economic and defence integration. One such Exchange of Notes, dated October 26, 1950, states that “[b]arriers which impede the flow between Canada and the United States of goods essential for the common defense efforts should be removed as far as possible.” The combined regulatory amendments to the *Export Control List* and the creation of the new *General Export Permit No. 47* are not intended to alter this existing and long-standing permit-free movement of such military goods. Canada continues to benefit

from its close defence and security relationship with the United States and continues to have confidence in the highly rigorous nature of the U.S. export control system. This is not impacted by the U.S. administration's recent decision to "un-sign" the ATT. Many of our key ATT partners and allies have expedited licensing measures to the United States, reflecting the high level of confidence in the U.S. export controls system, even though the U.S. is not an ATT State Party.

The Government of Canada believes that it continues to be in Canada's best interest to ensure an expedited process for the movement of military goods between Canada and the United States. Therefore, in parallel with the amendments to the *Export Control List* that require individual permits for the export of all Group 9 items to the United States, the Minister of Foreign Affairs has created this General Export Permit. *General Export Permit No. 47* allows Canadian companies and residents intending to export the majority of goods listed in Group 9 of the *Export Control List* in order to export the goods without applying for an individual permit, if they pre-notify Global Affairs Canada of their intent to export these items in a calendar year. Exporters using GEP-47 are required to report biannually on their exports.

*General Export Permit No. 47* authorizes, subject to certain terms and conditions, the export of certain goods listed in the new group. The requirement to report on permanent exports of Group 9 items increases transparency on Canadian ATT exports



to the United States. This is in line with the Government of Canada's commitment to further strengthen the rigour and transparency of Canada's export controls.

## **Regulatory development**

### ***Consultation***

Results from the public consultations

Global Affairs Canada has proactively consulted stakeholders interested in this proposal. There are, broadly speaking, three main groups of stakeholders: the Canadian security, defence and aerospace industry; Canadian civil society organizations, including academics, whose work focuses on the global arms trade, human rights, and conflict prevention and mitigation; and Canadian firearms owners and users. These groups were consulted during the recent online consultation entitled "Global Affairs Canada's proposed strengthening of Canada's export controls regime" that was undertaken from December 13, 2018, until January 31, 2019. In addition to the online consultation, departmental officials met with representatives from industry and civil society through a series of meetings, workshops, webinars and round-table discussions that took place across the country between December 13, 2018, and February 11, 2019. Beyond these recent consultations, these groups of stakeholders



were actively consulted throughout the parliamentary process for the amendments to the *Export and Import Permits Act* and in the negotiations of the ATT.

During these consultations, industry stakeholders were supportive of the Government of Canada's intention to join the ATT and were supportive of the proposal to create a general export permit with reporting requirements for the export of ATT-listed items to the United States. Civil society stakeholders also welcomed Canada's desire to accede to the ATT and have urged the Government of Canada to apply further rigour and transparency in its assessments of Canada's controlled exports. During the legislative process, some civil society stakeholders expressed concerns about the existing practice of not requiring permits for the export of all ATT items to the United States. During both parliamentary consideration of the Act and the recent consultations, they asked the Government of Canada to increase its transparency by reporting on ATT exports at least to the same level of rigour as ATT exports to all other destinations.

Canadian firearm owner groups have expressed concerns that the ATT could be used to reintroduce a gun registry and that ATT reporting requirements might include details of individual gun owners, thus leading to a *de facto* gun registry. Officials have sought to clarify that neither the ATT nor its implementation in Canada would result in such changes.

## Results from the public comment period following prepublication of the Regulations

The Regulations were published in the *Canada Gazette*, Part I, for public comment from March 16 to April 15, 2019. Emails and notifications of this comment period were sent to over 3 500 groups and individuals including all the participants in the December 2018/January 2019 public consultations on “Global Affairs Canada’s proposed strengthening of Canada’s export controls regime,” industry members, industry associations, non-governmental organizations, and other stakeholders. In-person and telephone engagement sessions were held during the public comment period to provide information and to answer questions about the Regulations.

A total of 12 responses (via emails, meetings and telephone calls) were received during the 30-day public comment period. All responses supported Canada’s steps to accede to the Arms Trade Treaty or were neutral about the broad lines of the Regulations. The Canadian Association of Defence and Security Industries (CADSI) and the Aerospace Industries Association of Canada (AIAC) issued a joint letter of support stating they remain committed to continue working with Global Affairs Canada to assist in a smooth transition to implement the new controls. A joint civil society submission from the Canadian Red Cross and

International Committee of the Red Cross was supportive of the ongoing consultations and steps taken to move towards ATT compliance.

Some concerns and questions, however, were raised about specific elements of the Regulations. Similar to the feedback received during the earlier public consultations, concerns identified by industry included the potential unintended impacts related to the scope of the Regulations. Similar to the feedback received during the parliamentary study of the Act and the earlier public consultations, civil society organizations' set out how they would like to see the Government of Canada do more in certain areas to further strengthen the Regulations and Canada's adherence to the ATT, particularly with respect to increasing transparency and addressing diversion concerns. These comments were articulated in a joint submission from Amnesty International, Canadians for Justice and Peace in the Middle East, Oxfam Quebec, Project Ploughshares and The Rideau Instituted and in a joint submission from the Canadian Red Cross and the International Committee of the Red Cross.

With respect to GEP-47, the aforementioned civil society organizations raised concerns that through issuing a general permit to all Canadians, the Government would not be able to adhere to the ATT requirement to assess the potential risk individual exports under articles 6 and 7 of the ATT. The ATT requires that states implement their obligations in a consistent,



objective and non-discriminatory manner, but it does not prohibit expedited licensing and many allies have also put in place similar measures. It should be noted that Canada's long-standing policy of not requiring individual permits for most items to the United States is based on a thorough assessment of the U.S. as a trusted export destination with a highly robust and rigorous system of export controls. Should circumstances change, the Government maintains the ability to amend the regulations underpinning any general export or brokering permit.

Civil society also requested that the Government amend the record keeping requirement for exporters using the GEP from six years to ten to reflect the requirement in article 12 of the ATT that records be kept for ten years. It should be noted that the article 12 obligations apply only to States Parties and not to individual exporters. Canada will maintain electronic records of all reports received from exporters for the mandated ten-year period. With respect to records held by exporters, the six-year obligation in these Regulations flow from EIPA subsection 10.3(6) and are the standard for export control related regulations under the EIPA.

An industry stakeholder also raised the suggestion that the reporting requirements of the GEP should be waived for those items that have been temporarily imported into Canada from the U.S. and are being returned unmodified. The Government



understands the reasoning behind this suggestion and is considering potential future general export permits to address the export of items that have been temporarily imported into Canada for trade shows, for repair or for return.

Outreach and engagement actions including further face-to-face meetings will be undertaken to clarify the implications of the Regulations, and to help address any questions or concerns.

#### *Instrument choice*

Although other non-regulatory instruments were considered, Global Affairs Canada determined that the most effective mechanism to capture data on the export of ATT items to the United States, while still maintaining the free movement of those items and not unduly burdening industry, was through an amendment to the *Export Control List* to require a permit for the export of ATT items to the United States, and the creation of a related general export permit for these newly listed items, with reporting requirements.

One non-regulatory option that was considered was to draw on data already available through Statistics Canada on the export of defence material to the United States. These figures are derived from data collected by the Canada Border Services Agency based on the Harmonized Commodity Description and Coding System (HS codes). However, since there is no correlation between the HS codes used by Statistics Canada and the ATT classifications of

conventional arms, a meaningful comparison of the information from these sources is not possible. For instance, the same HS code may include both controlled ATT items and non-military goods, such as civil-certified aircraft, or guns designed exclusively for industrial uses such as those used in the lighting of gas flares at oil wells. Global Affairs Canada also spoke with international partners who had also attempted to use HS codes for this purpose without success.

Some stakeholders recommended that the Government of Canada consider instituting a policy of voluntary reporting for exporters of ATT items. There are a limited number of companies whose line of business includes exporting such items to the United States and that are already familiar with the export controls system. However, a policy of voluntary reporting would lack rigour as the absence of a legal requirement to report would make it difficult for Global Affairs Canada to follow up with exporters and ensure compliance, particularly individuals and entities not familiar with Canada's export controls and reporting mechanisms.

## **Regulatory analysis**

### *Costs and benefits*

The incremental costs to businesses and individuals of the *Order Amending the Export Control List (Arms Trade Treaty)* derive from the requirement to apply for individual permits for the export of

ATT items to the United States that did not previously require individual export permits (prohibited firearms, prohibited weapons, prohibited devices and items in items 2-4.a and 2-2.a of the *Export Control List*, which includes large calibre weapons, bombs, torpedoes, and missiles). These costs are mostly negated by *General Export Permit No. 47*. However, there is a small new additional pre-notification and reporting requirement for businesses or individuals permanently exporting ATT items to the United States.

As ATT items are controlled by both Group 2 and Group 9 of the *Export Control List*, exporters of ATT items that are exported to non-U.S. destinations are encouraged to also assess the goods they intend to export in light of the new Group 9 when completing their individual permit application, in accordance with the existing practice. Around 25 companies apply for permits to export ATT items to non-U.S. destinations. Global Affairs Canada will advise these companies and work with them to ensure that they understand this minor change that should result in no incremental costs (no new field/box will be added to the export permit application).

The companies that export the larger full-system conventional arms that fall under the scope of the ATT are already familiar with the process for reporting on their exports and imports of these items, and therefore already have administrative procedures in place to address this requirement. There may be



modest costs to those not accustomed to reporting on their exports, such as those in the film industry exporting ATT items to the United States. This is expected to be a small number of cases. With respect to exports of firearms, measures have been put in place to limit the burden with respect to the reporting requirement, as exporters only have to report on permanent exports that are destined for end use by police or military forces in the United States. This scope is compliant with the reporting requirements of the ATT (article 13.3) and the UN Register of Conventional Arms.

#### *Small business lens*

Overall, no significant or disproportionate impacts are anticipated for small business. The number of exporters of ATT items from Canada is very low (less than 25 exporters for export to non-U.S. destinations). The new permit aims to lower the administrative burden on business, particularly on small businesses, which are also able to benefit from this streamlined process. Small businesses do not manufacture the items for which the export to the United States requires reporting under this regulatory amendment, except for certain small arms and light weapons.

There are fewer than 10 small businesses that export firearms to the United States. There may also be small businesses operating in other sectors, such as the film industry, that may export ATT



items to the United States. Global Affairs Canada understands that small businesses have special needs, and officials are prepared to assist these businesses in understanding whether they are impacted by the new obligations imposed by this permit and to support them in complying with their reporting obligations under this General Export Permit.

In addition, small businesses will benefit from measures that Global Affairs Canada will implement to support all businesses in their compliance efforts with Canada's export controls. These include

- providing assistance to applicants who need guidance on permit applications and processes through a telephone helpline; and
- a proactive outreach campaign, including updating departmental information resources (such as the Export Controls Handbook).

#### *"One-for-One" Rule*

These Regulations are tied to the *Order Amending the Export Control List (Arms Trade Treaty)*, which was approved by the Governor in Council. The "One-for-One" Rule is triggered for the *Order Amending the Export Control List (Arms Trade Treaty)* for increasing the administrative burden under existing regulations. The General Export Permit decreases the additional burden imposed by the *Export Control List* amendment as the General

Export Permit streamlines the authorization process for such exports. Rather than being required to apply for an individual permit, exporters only have to notify Global Affairs Canada of their intention to use the General Export Permit and to report twice a year on actual exports undertaken against the permit or advise that no exports took place. As the increased administrative burden on business associated with the *Order Amending the Export Control List (Arms Trade Treaty)* was exempted from the “One-for-One” Rule because it is required in order to meet Canada’s international obligations under the ATT, Global Affairs Canada will not be given a credit for the OUT associated with the General Export Permit.

#### *Regulatory cooperation and alignment*

This permit aligns with the practices of almost all of Canada’s main allies, who maintain expedited measures for low-risk transactions to certain destinations, while remaining in compliance with the requirements of the ATT. For instance, in the United Kingdom, the *Open General Export Licences (OGELs)* are a form of general licence open to any company registered in the United Kingdom to export certain military items to select destinations, including Canada and the United States. Most OGELs require companies using them to report on any exports undertaken during the previous calendar year. Similarly, European Union *Directive 2009/43/EC* allows for the establishment of common general licences in defined

circumstances where the exports are deemed low-risk. European Union companies making use of these general licences also have to report on the exports undertaken under the licence.

#### *Strategic environmental assessment*

In accordance with *The Cabinet Directive on the Environmental Assessment of Policy, Plan and Program Proposals*, a preliminary scan concluded that a strategic environmental assessment is not required. The approved preliminary scan determined that the Regulations are unlikely to result in important environmental effects and that further analysis is not required.

#### *Gender-based analysis plus*

An assessment indicates that there are no gender-based analysis plus (GBA+) impacts in this permit. However, there are relevant considerations in the broader context of Canada's accession to the ATT. The ATT is the first international treaty that specifically mentions gender-based violence as an outcome to prevent. By acceding to the Treaty, Canada is supporting this objective.

#### *Rationale*

Canada's export control regime aims to balance national and international security concerns associated with the export of strategic and military goods and technology with Canada's interests as a trading nation. The introduction of this streamlined process for exports to the United States allows the Government



of Canada to provide Canadian businesses with a mechanism to remain competitive in the global marketplace while at the same time increasing transparency and ensuring that Canada clearly meets all its obligations under the Arms Trade Treaty.

### **Implementation, compliance and enforcement, and service standards**

Global Affairs Canada's Export Controls Operations Division, which is responsible for issuing export licences, now includes a dedicated compliance section. This section will promote compliance with this permit through its regular mechanisms, such as documentation reviews. Global Affairs Canada is currently exploring additional mechanisms to increase compliance, including through communication products and in-person outreach.

There are certain conditions associated with GEP-47, and exporters need to comply with those conditions in order to lawfully export under this General Export Permit. It is a condition of the General Export Permit that exporters pre-notify their intention to use this permit on an annual basis and report on a semi-annual basis on any permanent exports that have been carried out under the authority of the permit.

Non-compliance with any condition of this General Export Permit could lead to prosecution under the relevant provisions of the Act. The Canada Border Services Agency and the Royal Canadian



Mounted Police are responsible for the enforcement of export controls.

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## Footnotes

- a S.C. 2004, c. 15, s. 56
- b R.S., c. E-19
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