



## **Public consultation** **Global Affairs Canada’s Proposed Strengthening of Canada’s Export Controls Regime**

The Government of Canada is committed to promoting peace and security here at home and around the world. As part of Canada’s support for a stronger and more rigorous export control system, the Government has committed to joining the Arms Trade Treaty (ATT).

On April 13, 2017, the Minister of Foreign Affairs introduced [Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code \(amendments permitting the accession to the Arms Trade Treaty and other amendments\)](#). Bill C-47, which was passed by the Senate on December 6, 2018, makes the legislative amendments required by the ATT to regulate brokering activities and create a requirement to take into account criteria identified in the ATT before authorizing the export of arms, ammunition, or implements or munitions of war.

The ATT explicitly recognizes “the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law”. Bill C-47, correspondingly, does not affect domestic gun control regulation.

In preparation for the entry into force of Bill C-47, Global Affairs Canada is launching a public consultation on proposed changes to Canada’s export controls regime. Your feedback is very important as the outcome of this consultation will help shape Canada’s export controls policies, procedures, and regulations.

Global Affairs Canada wants to hear from you. It welcomes your ideas, your experiences and your comments through this consultation.

### **PRIVACY NOTICE**

For more information on how information will be collected and used,  
please read the [privacy statement](#).

**Canadians have until 11:59 p.m. (Pacific Time) on January 31, 2019, to submit their responses, comments and suggestions.**



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### BACKGROUND INFORMATION

As part of Canada’s support for a stronger and more rigorous export control system, the Government has committed to joining the [Arms Trade Treaty](#) (ATT). Joining the ATT gives Canada an opportunity to formalize its current practices, while increasing the rigour and transparency of its export permitting process.

Canada’s export controls are consistent with those of our principal allies and partners in the major export controls regimes ([Wassenaar Arrangement](#), [Nuclear Suppliers Group](#), [Missile Technology Control Regime](#), and [Australia Group](#)). These multilateral regimes determine the vast majority of the goods and technologies that Canada and its international partners control for export.

Export controls are meant to regulate and impose certain restrictions on exports in response to clear policy objectives, including ensuring that exports from Canada are consistent with Canada’s foreign, defence, and national security policies, including protection of human rights and international peace and security.

Export controls are not meant to hinder international trade unnecessarily.

### Arms Trade Treaty (ATT) – Assessment criteria and substantial risk test

On April 13, 2017, the Minister of Foreign Affairs introduced [Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code \(amendments permitting the accession to the Arms Trade Treaty and other amendments\)](#). Bill C-47 was passed by the Senate on December 6, 2018. The date of entry into force will be determined soon.

The ATT explicitly recognizes “the legitimate trade and lawful ownership, and use of certain conventional arms for recreational, cultural, historical, and sporting activities, where such trade, ownership and use are permitted or protected by law”. **Bill C-47, correspondingly, does not affect domestic gun control regulation** and it does not apply to domestic trade in arms.

Under the changes to the [Export and Import Permit Act](#) in Bill C-47, the minister shall not issue an export or brokering permit if, after taking into account all relevant considerations, including available mitigating measures, he or she determines that there is a substantial risk that the proposed transaction would result in any of the negative consequences referred to in the ATT assessment criteria. There will also be circumstances where an export will not be allowed to occur on grounds deriving from Canada’s foreign, defence or national security policies.

The substantial risk test and the ATT assessment criteria, as defined by Bill C-47, will be applied to export and brokering permits for strategic goods and technology included in the Export Control List and in the Brokering Control List in respect of arms, ammunition, implements or munitions of war or having an end-use related to weapons of mass destruction (WMDs).

For there to be a substantial risk<sup>1</sup>, there should be a connection, based on compelling evidence, between the negative consequences and the specific goods or technology proposed for export

<sup>1</sup> Under the ATT, State Parties must assess full system conventional arms against a number of specific considerations and must not issue permits when there is an “overriding” risk of any of the listed negative



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or brokering. The minister will judge whether to issue export or brokering permits based on an assessment of all relevant information available at the time of a permit application, including the nature of the goods and their end-use, the country of destination, the record and behaviour of the stated consignee, and the possibility of unauthorized diversion, as well as various other criteria established in law and policy.

In assessing the ATT criteria within the context of the substantial risk test, the government could take into account factors, such as the following.

### Peace and security

- Is the nature and quantity of the proposed export consistent with the stated end-use and end-user?
- Is the destination country experiencing armed conflict, internal or regional tension, aggression by a neighbouring country, political repression or instability, and would the proposed transaction have a substantial (positive and/or negative) impact on the overall situation?
- Would the proposed export introduce a new capability into a regional or internal conflict, and would this exacerbate or contribute to resolving the situation?
- Are any of the parties named in the application involved in armed conflict?
- Are any of the parties named in the application associated with or known to have a history of illicit procurement or diversion of controlled goods or technology?
- Is there a strong likelihood that the proposed export may be diverted from its stated end-use or end-user?

### Serious<sup>2</sup> violations to international human rights and humanitarian law

- Are any of the parties identified in the permit application known to have a persistent record of serious violations of human rights or international humanitarian law?
- Have any of the parties identified in the permit application been the subject of a formal investigation regarding violations of international humanitarian and human rights law by relevant bodies (such as the International Criminal Court, the United Nations, etc.)?
- Is there substantiated information to indicate that the items have been, or may be, used to commit serious violations of international human rights and humanitarian law?
- Is there substantiated information to indicate that the same or similar items have been, or may be, used by any of the parties identified in the permit application commit serious human rights violations?
- Do the past actions of any of the parties named in the permit application indicate a significant risk of diversion that would result in the commission of serious violations to international human rights and humanitarian law?

### Terrorism and organized crime

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considerations. Overriding risk is not a term known in Canadian law. Canada will therefore be using a "substantial risk" test, which is known in Canadian law and jurisprudence.

<sup>2</sup> The ATT does not explicitly define serious violations of international human rights or international humanitarian law. This is a legal question, to be assessed in light of the factual circumstances of each specific case. In determining whether a violation is serious in nature, Canada takes into consideration, among other factors, the nature, scale and effect of the violation. Serious violations include, for example, torture, rape and other sexual violence, enslavement, enforced disappearances, or war crimes, including attacks against protected persons, such as civilians, medical personnel, or prisoners of war.



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- Do any of the parties identified in the permit application have a history of supporting, financing or otherwise facilitating acts of terrorism?
- Do any of the parties identified in the permit application have a history of supporting, financing or otherwise facilitating acts of transnational organized crime?
- Are the goods or technology proposed for export likely to be used to commit or facilitate an act constituting an offence under the international conventions or protocols relating to terrorism or transnational organized crime to which Canada is a party?
- Do the actions of any of the parties named in the permit application indicate a significant risk of diversion to terrorists or transnational organized criminals?
- Is there substantiated information to indicate that similar goods or technology exported to any of the parties identified in the permit application has been, or may be, diverted to terrorists or transnational organized criminals?

### **Serious acts of gender-based violence or violence against vulnerable groups**

- Do any of the parties identified in the permit application have a record of committing serious violations of the human rights of women, children or vulnerable groups?
- Do any of the parties identified in the permit application have a record of using similar goods or technologies as those identified in the proposed transaction to commit serious acts of violence against women, children or vulnerable groups?
- Is there substantiated information to indicate that the goods or technologies proposed for export, or similar goods or technologies, have been, or may be, used to commit serious acts of violence against women, children or vulnerable groups in the destination country?
- Do the actions of any of the parties named in the application indicate a significant risk of diversion that could lead to serious acts of gender-based violence?

The assessment criteria under the ATT apply to the following full system conventional arms (as defined in Article 2 of the treaty):

- battle tanks
- armoured combat vehicles
- large-calibre artillery systems
- combat aircraft
- attack helicopters
- warships
- missiles and missile launchers
- small arms and light weapons
  - a) small arms include revolvers and self-loading pistols, rifles and carbines, submachine guns, assault rifles, light machine guns, and other small arms
  - b) light weapons include heavy machine guns, hand-held under-barrel and mounted grenade launchers, portable anti-tank guns, recoilless rifles, portable anti-tank missile launchers and rocket systems

Canada proposes to apply the ATT criteria to the assessment of applications for export and brokering permits for strategic goods and technology included in the Export Control List, and in the Brokering Control List in respect of arms, ammunition, implements or munitions of war or to those controlled items having an end-use related to weapons of mass destruction.



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This goes beyond the requirements of the ATT, which maintains that State Parties must only assess exports of the full system conventional arms listed above and related ammunition.

### Mitigation Measures

Under the ATT, State Parties are also required to seek to prevent diversion of arms exports “by assessing the risk of diversion of the export and considering the establishment of mitigation measures, such as confidence-building measures or jointly developed and agreed programmes by the exporting and importing States.”

Mitigation measures would be subject to the circumstances of each particular case, the operational needs and requirements, and available resources.

For illustrative purposes, examples of mitigating measures could include conditions such as:

- additional end-use/end-user assurances or declaration by the importing state of intended use of the transferred weapons or items, accompanied by the undertaking/assurance/guarantee not to use them for other purposes and not in a manner that would run counter to the provisions of the ATT
- post-shipment controls including Delivery Verification Certificates, record-keeping requirements/checks
- information exchange and transparency provisions between exporting and importing states, including:
  - a) provision of information on weapons or items stolen, lost, or otherwise unaccounted for
  - b) disclosure by the importing state of its records regarding observation of relevant international human rights law, international humanitarian law, international conventions or protocols relating to terrorism and to transnational organized crime
- training of relevant actors in the application of international law including international humanitarian law, international human rights law, and other international standards such as the [UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials](#).

### Potential additional measures to protect Canadian national security interests

The Government of Canada is exploring potentially establishing new controls over certain emerging technologies or dual-use items of national security concern, which are not currently captured on Canada's Export Control List, but whose export could pose a threat to Canada and its allies, or be used to commit serious violations of human rights.

To ensure that Canadian exports do not threaten national security interests, the Government of Canada has committed to improving its counter-proliferation framework and to studying other avenues through which it can better monitor the end-use of Canadian exports. In addition, on November 29, 2018 Public Safety Canada launched a separate [conversation](#) with stakeholders to seek public input on ways to strengthen Canada's counter-proliferation framework. The ATT requires each States Party involved in the transfer of conventional arms to take measures to prevent their diversion to an unauthorized end-use. The risks of diversion, and considerations of end-use and end-user, have long been the cornerstone of the export permit



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evaluation process and are further buttressed by the enforcement and compliance activities undertaken by partners across the Government of Canada.

### Brokering controls

The ATT requires signatories to implement brokering controls. Therefore, to enable Canada to join the ATT, Bill C-47 establishes controls over brokering activities of persons and organizations in Canada, and Canadians abroad (citizens, permanent residents and organizations).

The Government of Canada, in Bill C-47, defines brokering as “arranging or negotiating a transaction that relates to the movement of goods or technology included in a Brokering Control List from a foreign country to another foreign country.”

Under Bill C-47, the government will establish a Brokering Control List which will comprise all items for which a brokering permit would be required. Currently the Government proposes to include all items listed in Group 2 (Munitions List) of the Export Control List, as well as dual-use Export Control List items likely to be used as weapons of mass destruction.

All brokers would require a permit to engage in a brokering transaction. The Government is considering establishing a General Brokering Permit (GBP) to streamline the authorization of proposed brokering transactions involving low-risk transactions to allied or like-minded countries.

Additionally, administrative and auxiliary services such as transport, financing and insurance, among others, will not be captured by the brokering regulations.

Informed by the outcomes of this consultation, brokering controls will be further defined in regulations (including specifying activities or classes of activities that do not constitute brokering) and policy.

### Reporting on exports to the United States

During Parliament of Canada’s study of Bill C-47 the issue of reporting on controlled exports to the U.S. was raised.

Under the ATT, States Parties are required to control and report on exports of full-system conventional arms. The ATT allows States Parties to establish and maintain national policies for controlling exports of military goods and technologies, including the use of expedited measures for low-risk transfers to trusted end-users. Other ATT signatories, including many of Canada’s allies, have such measures in place. Many of Canada’s exports of controlled items to the United States are comprised of parts and components that do not fall under ATT requirements. Expediting legitimate trade in parts and components to the U.S is not inconsistent with the scope and intent of the ATT, which is to curb the illicit trade in arms.

Global Affairs Canada currently collects data on military exports to the U.S. if the export requires a permit. Such exports include: prohibited firearms, ammunition for police or military end-use, and goods controlled under ECL item 2-4.a (e.g. bombs, torpedoes, grenades etc.). Any efforts towards the greater collection of data on US exports should take into account the potential additional burdens they would cause.



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### Export permit processing service

The Government of Canada processes approximately 7,000 export permit applications a year. All permit applications are carefully reviewed, and higher-risk applications are forwarded for consultations among departmental experts in geographic areas, human rights, international security, intelligence, defence technology, and subject matter experts in other relevant government departments and agencies. In addition, the government's assessments of permit applications are informed by a wide range of open (i.e. unclassified) and classified sources. The government has promised that Canada will hold itself to a higher standard on the export of controlled items, and accession to the ATT requires that Canada formalize more detailed documentation of permit reviews. Global Affairs Canada is aligning its export controls program to meet these requirements.

This requirement for more detailed documentation could result in longer processing timelines, particularly for those transactions that are high risk due to the nature of the items, the country of final destination, the end-user, or the end-use in the proposed transaction.

Further to the information found in the [Export Controls Handbook](#), the processing time for straightforward applications that contain all required supporting documentation is 10 working days, and for more complex applications that contain all required supporting documentation is 40 working days. The performance target for achieving this standard is set at 90 percent. Applicants should be mindful of these service standards and apply for permits well in advance of anticipated shipping dates.

Should the circumstances under which a permit was issued change, subsection 10(1) of the *Export and Import Permits Act* grants the Minister of Foreign Affairs, the power to “suspend, cancel, or reinstate any permit, import allocation, export allocation, certificate or other authorization issued or granted under this Act.” If there is evidence that Canadian exports are being misused or diverted, the Minister can suspend those export permits while an investigation proceeds.

### Related links

- [United Nations' Arms Trade Treaty](#)
- [Export and Import Permits Act](#)
- [Criminal Code](#)
- [2017 Report on the Export of Military Goods from Canada](#)