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**MEMORANDUM FOR INFORMATION**

<b>TO:</b>	<b>The Minister of Foreign Affairs</b>
<b>CC:</b>	<b>The Minister of International Trade Diversification The Minister of International Development</b>
<b>SUBJECT:</b>	Update on export permits to Saudi Arabia

**SUMMARY:**

This memo provides an update on the Department's assessment of export permits to the Kingdom of Saudi Arabia (KSA). As a result of the deterioration in relations between Canada and KSA, the conflict and resulting humanitarian crisis in Yemen, and the Khashoggi killing, the Government has been re-evaluating Canada's foreign, defence and security policies towards KSA. In November 2018, you announced a review of all arms sales to KSA and an effective moratorium on the issuance of new export permits to KSA pending the completion of the review.

During the period of assessment, no existing valid permits were suspended or cancelled, thus allowing for the continued export of some items, including Light Armoured Vehicles (LAVs) by General Dynamics Land Systems Canada (GDLS-C). Moreover, during this period, the Department has assessed and processed a further 48 permit applications for exports of controlled goods to KSA on a case-by-case basis under its standard robust risk assessment process. Those permits have been deemed ready for approval by officials and await your further consideration.

Since November 2018 and in line with the Department's standard robust risk assessment process, officials examined areas of concern, including the domestic human rights situation and the conflict in Yemen, and identified the types of exports that could be considered to give rise to a risk. KSA's overall human rights record remains problematic, particularly for civil and political rights. KSA has also been accused of gross violations of international human rights and humanitarian law due to its role leading a military coalition in Yemen. In this context, however, officials found no credible evidence linking Canadian exports of military equipment or other controlled items to any human rights or humanitarian law violations committed by the Saudi government. Officials did not identify any existing permits or pending applications that would be of concern under the standard robust risk assessment framework.

John Hannaford  
Deputy Minister of International Trade

Marta Morgan  
Deputy Minister of Foreign Affairs

**BACKGROUND:**

1. In November 2018, you announced that the Department would conduct a review of arms exports to the Kingdom of Saudi Arabia (KSA) and an effective moratorium on the issuance of new permits pending the completion of this review. This memorandum provides an update on the on-going assessment and the impact of the moratorium on new export permits.
2. Since October 2018, the Department has not issued any new export permits for controlled items destined to KSA, although Canadian companies holding existing valid export permits for KSA are still able to export. New export permit applications continue to be assessed on a case-by-case basis using robust risk assessment guidelines as required under the *Export and Import Permits Act* (EIPA). Once assessed and where warranted, the applications are subject to your approval.
3. Under the EIPA, you, as Minister of Foreign Affairs, have broad discretion to make the determination of whether an export of controlled goods is consistent with Canada's interests, so long as it is not based on irrelevant considerations and is not arbitrary and capricious. With the introduction of Bill C-47, the Department adopted a more rigorous process for assessing whether there is a substantial risk that the proposed export would result in human rights or humanitarian law violations. With the coming into force of Bill C-47 (amendments to the EIPA and Criminal Code) and associated regulations on September 1, 2019 (enabling Canada's accession to the Arms Trade Treaty on September 17, 2019), assessment of these considerations is legally required for all future export permits. That said, the absence of any credible evidence of a substantial risk does not require that you issue a given permit, as there may be other foreign, security or defence policy reasons not to grant a permit.

**Bilateral Relations**

4. Since August 2018, there has been a marked deterioration in Canada's bilateral relationship with KSA. The expulsion of Canada's Ambassador last August by the Saudi government and Saudi trade and investment restrictions on Canada (precipitated by KSA's reaction to your support for detained human rights advocates in KSA), the Khashoggi killing, and the actions of KSA-led coalition in the Yemeni conflict, have contributed significantly to this deterioration

5. No progress has yet been achieved in normalizing the bilateral Canada-KSA relationship. The punitive diplomatic and trade measures that KSA instituted against Canada in August 2018 remain in place. While clear barriers to political, trade and diplomatic interactions remain [REDACTED] For example, KSA remains a valuable partner in the global fight to counter Daesh.

**Human Rights**

6. KSA's overall human rights record remains [REDACTED] problematic, particularly for civil and political rights. Human rights issues in Saudi Arabia include: unlawful killings; executions for nonviolent offenses; forced renditions; forced disappearances; and torture of prisoners and detainees by government agents. Other issues include arbitrary arrest and detention; censorship; restrictions on freedoms of peaceful assembly, association, and expression; restrictions on religious freedom; legal barriers to women's full participation in society, and, in a limited number of cases, the application of the death penalty for minors.

7. Of particular concern is KSA's failure to launch a transparent and credible investigation into the killing of Saudi journalist Jamal Khashoggi in KSA's Istanbul consulate. Closed court hearings in KSA commenced in January 2019 and appear to be ongoing, although Saudi officials refuse to confirm the names of the accused. The US, UK, France, China and Turkey have had access to the Khashoggi trials, under the commitment that they not reveal any details of the trial.

8. While the overall Saudi human rights record is [REDACTED] problematic, Canadian officials have no information or evidence linking Canadian exports of military equipment or other controlled items to any human rights violations committed by the Saudi government. In that respect, the Department's assessment remains the same as that summarized in the memorandum dated March 21, 2016, that was presented to then-Minister Dion concerning the GDLS-C LAVs export permits and in the memorandum presented to you on October 10, 2017 concerning the Terradyne Gurkhas permits. The Department is of the view that there is no substantial risk that current Canadian exports of military equipment or other controlled items to KSA would result in any of the negative consequences referred to in section 7.3(1) 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)* within KSA.

#### Yemen Conflict

9. KSA has also been accused of gross violations of international human rights and humanitarian law due to its role leading a military coalition in support of the legitimate government of Yemen against the Houthi armed rebellion. KSA's participation in the campaign has been primarily in the form of airstrikes; its naval vessels have also undertaken operations in the Red Sea and Gulf of Aden. [REDACTED]

[REDACTED] The U.S. and UK have been working with the Saudis to try to improve targeting and attack approval procedures. This makes them – in the eyes of civil society and others – complicit in the Yemen conflict. The UN has also recently issued a report that takes the view that some states that export arms to KSA and the UAE (specifically, the U.S., U.K. and France) could be complicit in war crimes in relation to the conflict in Yemen.

10. Canada is part of a core group that has led efforts at the Human Rights Council to put in place accountability mechanism regarding the human rights situation in Yemen. This includes gross violations of international human rights and humanitarian law by parties to the armed conflict, including KSA.

11. There have been reports of Canadian LAVs being deployed along the Saudi-Yemeni border, likely to protect KSA's territorial integrity from Houthi cross-border incursions and missile attacks targeting its sovereign territory. Of note, any Canadian-made vehicles on the KSA-Yemen border are not the LAVs currently being exported by GDLS-C, but older vehicles that were shipped under contracts dating back to the early 1990s.

12. There are no confirmed reports of Canadian-made military equipment being deployed by KSA on Yemeni territory. This is consistent with KSA's role within the coalition, which is primarily to lead and coordinate aerial engagements.

13. There is no evidence or credible reporting that would link any Canadian exports (eg. ground vehicles, sniper rifles) to contraventions of international humanitarian law in Yemen. This

is in marked contrast with exports from [REDACTED] whose military exports can be directly traced to the Saudi coalition air campaign and naval blockade.

#### Positions of Like-Minded Countries

14. Many countries exporting arms to KSA committed to reviewing their policies in the wake of the Khashoggi killing, and in the context of increased international concern about the humanitarian situation in Yemen. However, as Canada's like-minded partners announce new export restrictions, many are taking a narrow interpretation of what constitutes "arms exports". These are "lethal" goods or fully-assembled conventional weapon systems as defined by the Arms Trade Treaty (ATT). As such, the export of non-ATT listed items such as dual-use technologies and other military goods that are not intended for use in Yemen or that have little risk of being used in Yemen continue to be exported.

15. Further demonstrating flexibility when it comes to arms exports to KSA, Germany still allows the export of dual-use items and continues to allow weapons jointly developed with EU partners to be exported to KSA to honour existing contracts. The UK recently lost a court case on the grounds that it had not conducted mandatory human rights assessments before issuing export licences; however, there is no impediment to further arms exports to KSA once those assessments have been completed, unless UK authorities determine that there is a clear risk that the items proposed for export will be used to commit human rights violations. The U.S. has approved \$8 billion (USD) in arms sales to KSA under emergency powers. France also continues to export to KSA.

#### Impact on Canadian Economic Interests

16. Canada-KSA bilateral tensions and the moratorium on the issuance of new permits are having a negative impact on Canadian exporters. It is difficult to gather precise figures on the value of lost business. In the fall of 2018, King Salman's decree prohibiting "new business" with Canada resulted in Saudis securing substitutes for some Canadian products and expertise. KSA government contracts with Canadian companies in various sectors, except defence and other sectors where there are benefits to KSA, are either on hold or being cancelled. [REDACTED]

17. Canadian exporters of military goods and technologies to KSA have been affected to varying degrees. [REDACTED]

[REDACTED] In addition, Canadian companies exporting military goods that are readily available elsewhere are being excluded from KSA bidding processes, and that business is being lost to foreign competitors. Examples include:

- [REDACTED]
- [REDACTED]

• [REDACTED]

18. As the Department has not suspended or cancelled any valid permits to KSA, a handful of Canadian exporters, including GDLS-C, are still able to export controlled items to KSA. Since November 2018, the number of valid permits for KSA has diminished [REDACTED] (as of August 15, 2019). This is due to 1) the expiry of individual permits whose two-year validity period has ended, or 2) permit amendment applications being treated as applications for new permits and being subject to your approval. [REDACTED]

19. Engagement by departmental officials with 20 companies that have a history of exporting to KSA suggests that approximately \$2 billion in trade has been affected since August 2018. A number of Canadian exporters to KSA have suspended their business development operations in the Gulf region, although some continue to submit new permit applications in an attempt to fulfill their contractual obligations (mostly dual-use items). The open-ended nature of Canada's moratorium on new export permits, and the lack of identified conditions that would allow a resumption of permit issuance, present a high commercial risk for Canadian companies.

#### Stakeholder Views

20. Stakeholders, including Canadian businesses, civil society organizations, academics, and industry associations continue to urge the Government to provide clarity on the policy for exports of controlled items to KSA. They are seeking guidance on the types of information and assurances required to demonstrate that the item proposed for export will not result in any of the negative consequences listed in the EIPA, as well as the level of risk that would trigger a denial.

21. Stakeholders have noted that the Government's moratorium on new permits has resulted in lower-risk items being subject to your approval (dual-use items such as software and IT training systems) while exports of [REDACTED] (conventional full weapons systems as defined under the ATT) against existing permits continue unabated [REDACTED]

[REDACTED] Stakeholders have argued that other measures, such as targeted sanctions, would be more appropriate in achieving a foreign policy objective (e.g. sanctions imposed under the *Magnitsky Act*, as was done in the aftermath of the Khashoggi killing).

#### Legal Obligations under Amended EIPA

22. The legislation to implement the ATT in Canada, Bill C-47, amended the EIPA to add new legislative requirements to (a) examine whether the export of military goods could be used to commit or facilitate serious violations of international human rights or humanitarian law, amongst other things, before issuing an export permit and (b) refuse to issue the permit if the Minister determines that there is a substantial risk that the export would result in such violations, after taking into account mitigation measures. While the consideration of human rights and humanitarian law risks has been part of Department's export permit assessment process for decades, Bill C-47 made the practice a legal requirement. As a consequence, the Department has adopted a more rigorous and systematic process for evaluating and documenting the evaluation of these considerations. [REDACTED]

