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ARTICLE

Canada Becomes a State Party to the Arms Trade Treaty

Canada will become a State Party to the Arms Trade Treaty (ATT) on September 17, 2019. The legislative and regulatory changes giving effect to Canada's ascension to the ATT came into force on September 1, 2019. Changes include amending the *Export and Import Permits Act* (EIPA), new regulations related to arms brokering, and the creation of a new group on Canada's Export Control List (ECL), Group 9 – Arms Trade Treaty.

The ATT's objective is to establish common arms trade standards among its signatories in order to promote peace, security, and stability and reduce human suffering. The treaty applies to conventional arms, including small arms, artillery, tanks and armoured personnel carriers, combat aircraft and warships, as well as munitions, parts and components. The treaty also requires state parties to regulate arms brokering (i.e., arranging or negotiating the movement of covered goods and technology between foreign countries). As a result, Canada will assume jurisdiction of all brokering activities in Canada and extraterritorially with respect to brokering activities anywhere in the world by Canadian citizens, permanent residents or organizations established under Canadian law.

ATT state parties cannot allow transfers of covered goods and technology for use in the commission of genocide, crimes against humanity, or war crimes, and must assess all other exports of covered goods against prescribed criteria prior to authorizing such exports.

New assessment criteria for export permits

Changes to the EIPA require the Minister to assess all proposed export or brokering permits for "arms, ammunition, implements or munitions of war" against criteria related to international peace and security and human rights. These amendments were introduced through Bill C-47, which received royal assent on December 13, 2018.

The new criteria require the Minister to assess if the good or technology:

- Would contribute to or undermine peace and security, or
- Could be used to commit or facilitate:
 - A serious violation of international humanitarian or human rights law,
 - An offence under conventions or protocols on terrorism or organized crime to which Canada is a party, or
 - Serious acts of gender-based violence or serious acts of violence against women and children.

The Minister cannot issue an export or brokering permit if there is a "substantial risk" that exporting or brokering the goods or technology would result in any of the negative consequences listed above. A government backgrounder on Canada's ascension to the ATT describes substantial risk as "a connection, based on compelling evidence, between the negative consequences and the specific goods or technology proposed for export or brokering".

Exports to the United States

Canada is providing a new general export permit for all ATT goods, now listed in Group 9 on the ECL, destined for the United States. This maintains Canada's commitment to integrated North American supply chains while upholding its ATT commitments. The new permit is General Export Permit No. 47.

Brokering regulations

Brokering permits are required for any goods or technology listed in the new Brokering Control List (BCL). The BCL includes the following groups on the Schedule to Canada's ECL:

- 2 – Munitions,
- 9 – Arms Trade Treaty, as well as
- Other goods and technology in the ECL relating to chemical or biological weapons or nuclear explosives.

New *Brokering Permit Regulations* prescribe the information required to obtain a brokering permit. A general brokering permit is available for brokering goods or technology for end use in a list of low-risk countries.

The government also passed *Regulations Specifying Activities that Do Not Constitute Brokering* as further guidance in this new area of regulation. These regulations specify when transactions between corporate affiliates do or do not constitute brokering under the amended EIPA.

Business must also consider human rights impacts for proposed transactions

Obtaining an export (or now, brokering) permit is frequently one of the final steps in any proposed transaction. Canadian businesses involved in potential arms transactions should conduct their own human rights assessment and not wait for the Minister. This will avoid expending resources on transactions that fail to obtain export or brokering permits or encountering significant delays in completing otherwise lawful transactions.

The EIPA threshold is a "substantial risk" of resulting in the consequences specified in the ATT and the EIPA. This requires potential exporters, brokers, or associated third parties (e.g. financial institutions providing financing or insurance on a transaction) to think qualitatively about the transaction by asking, for example:

- Who is the buyer and proposed end user and what is its track record on respecting human rights?
- To what use(s) might the buyer or end-user put the good or technology?
- Is the country of destination engaged in armed conflict or a situation of unrest with a potential risk of armed conflict, human rights abuse or violations of humanitarian law?
- What safeguards can be put in place to guard against adverse human rights impacts?

The most effective way to answer these questions is to perform human rights due diligence in line with the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Human rights due diligence allows businesses to identify, prevent, and mitigate potential adverse human rights impacts and structure transactions to be responsive to identified risks, thereby improving the prospect for being granted an export or brokering permit.

Businesses engaged in arms transactions should examine their operations to ensure they have systems and procedures that will allow them to conform to the new EIPA and regulatory requirements. Companies looking to better understand compliance requirements related to international business and human rights can speak with members of [BLG's International Trade Group](#).

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