

Export and Import Controls

Ryan Morris and Jamie Wilks

September 15, 2005

Overview

- Controls over free-flowing trade have been judged essential for a variety of reasons, including:
 - to regulate trade in military and strategic dual-use goods, and prevent the proliferation of weapons of mass destruction;
 - to prevent the supply of military goods to countries that threaten Canada's security, are under UN sanction, are threatened by internal or external conflict, and/or abuse the human rights of their citizens;
 - to protect vulnerable Canadian industries (e.g. clothing);
 - to obtain negotiated benefits from international agreements; and
 - to implement UN Security Council trade sanctions.

Overview

- The *Export and Import Permits Act* (EIPA) delegates to the Minister of International Trade wide discretionary powers to control the flow of goods contained in specified lists provided for under the EIPA
- The Export and Import Controls Bureau (EICB) is responsible for administering the EIPA
- The specified lists are the Import Control List (ICL), the Export Control List (ECL), and the Area Control List (ACL)

Overview - Domestic

- The Controlled Goods Directorate (CGD) controls the flow of goods and technology on the ECL *within* Canada
- The CGD is a Federal Government Program administered by the Department of Public Works and Government Services Canada
- Anyone who deals with goods and technology on the ECL in Canada is generally required to register with the CGD
- The CGD is legislated by the *Defence Production Act* and the *Controlled Goods Regulations*

Overview - Permits

- all goods on the ICL require an import permit
- all goods on the ECL require an export permit
- the ACL is a list of countries for which export permits are required to export any and all goods (Angola and Myanmar)

Import Controls

- Textiles and Clothing
- Agricultural Products
- Steel Products
- Weapons and Munitions

Export Controls

- The ECL included eight groups:
- **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 (U.S. origin goods, roe herring, cedar shakes and shingles, logs, softwood lumber)
- **Group 6:** Missile Technology Control Regime List
- **Group 7:** Chemical and Biological Weapons Non-Proliferation List
- **Group 8:** Chemicals for the Production of Illicit Drugs

Export Controls

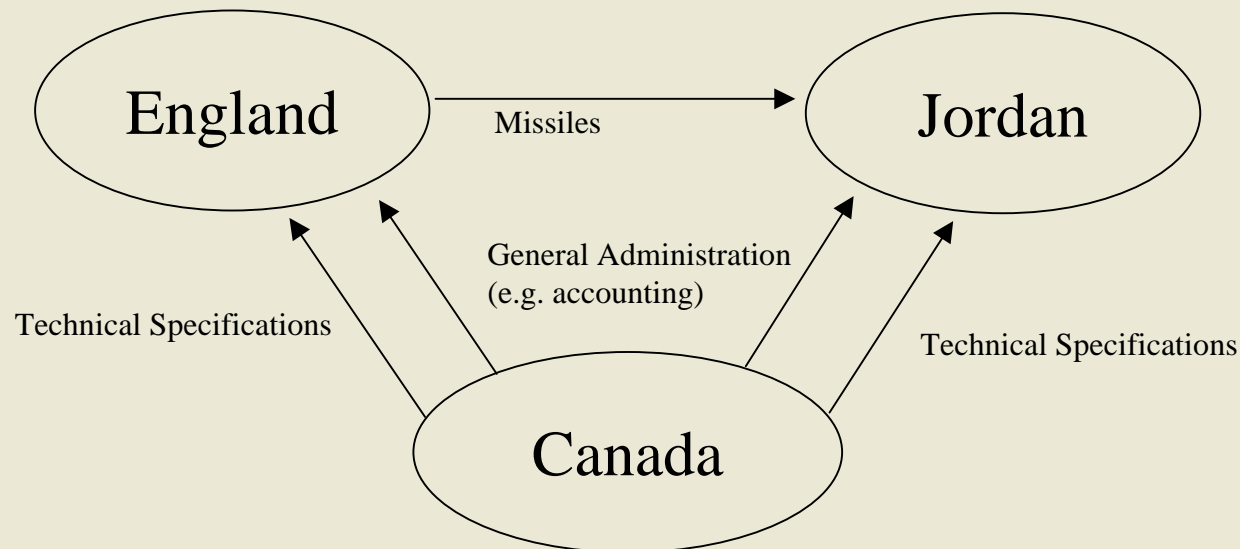
- Responsibility for the issuance or denial of export permits for most of the goods on the ECL lies with Export Controls Division of the EICB
- Softwood lumber is the responsibility of the Softwood Lumber Task Force, peanut butter and sugar and sugar products is the responsibility of Trade Controls Policy Division
- All Goods Destined for Countries on the ACL require an export permit

Export Controls

- Export of "technology" related to a controlled product requires an export permit
- For military goods, for example, "technology" means specific information which is required for the development, production or use of a controlled product, and not generally available "in the public domain"
- Very broad definition - most technical specifications and data will fall under the definition
- Generally the only way of exporting relevant technology without a permit would be if the data was "in the public domain", which is a very narrow exception

Case Study

- Export permits can be required even if no goods are exported from Canada



Applying for a Permit

- Certain controlled goods require an Individual Permit for import or export
- Certain goods may only require reference to a General Permit, which is not specific to an individual importer or exporter and allows for the pre-authorized export or import of goods in specified conditions (e.g. most U.S. origin exports to third countries)

Applying for a Permit

- Individual permits can take 10 days to several months depending on the good and the destination
- Alternatively, non-binding opinions can be sought from the ECD to determine if a permit is required (2-6 weeks for a response)
- Certainty versus timing and release of sensitive data

Violations

- Both corporations and their officers are potentially liable for prosecution and penalties for contravention of the EIPA or its regulations
- Investigators from Canada Border Services Agency and the Royal Canadian Mounted Police enforce the EIPA.
- Where offences are suspected, customs officers may detain or seize goods; as well, ascertained forfeiture action may be taken. Investigations may lead to charges, prosecutions, fines and/or incarceration
- Officers and directors can be liable for an indeterminate fine (at the discretion of the court) and up to 10 years in prison

McMILLAN BINCH MENDELSON
