

Blakes Bulletin

International Trade & Investment

Canada Set to Enhance Export Permit Restrictions on Goods and Technology Potentially Useful in the Proliferation of Weapons

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Foreign Affairs and International Trade Canada (DFAIT) published a proposed amendment to the *Export Control List* (ECL) in the *Canada Gazette Part I* on June 19, 2010. The proposed amendment is intended to clarify the scope of item 5505 – Goods and Technology for Certain Uses. This “catch-all” provision was first included on the ECL in 2002, in response to Canada’s international commitment to non-proliferation. It covers goods and technology not included elsewhere on the ECL that are intended for use in chemical, biological or nuclear weapons. Canadian companies and individuals who export or may export goods or technology under item 5505 may want to consider making representations to the government concerning the proposed changes. Representations should be submitted to the Export and Import Controls Bureau by July 19, 2010.

Currently, Canada participates in four multilateral export control regimes and is a party to the Nuclear Non-Proliferation Treaty and to the Chemical Weapons Convention. As part of Canada’s international commitment to non-proliferation, it maintains a list of goods and technology that can be used in the development and production of weapons of mass destruction. This list is known as the ECL. The ECL is governed by the *Export and Import Permits Act*, which delegates discretionary powers to the Minister of Foreign Affairs to control the flow of certain goods and technology from Canada, including goods listed on the ECL.

Because it is not possible to control all goods and technology that have the potential to be used in the proliferation of chemical, biological or nuclear weapons, Canada implemented a catch-all control by adding

item 5505 to the ECL in April 2002. When items not listed elsewhere on the ECL are likely to be used in an activity associated with the development or production of these weapons, item 5505 imposes an export permit requirement on those items.

Since the implementation of the catch-all provision, the Standing Joint Committee for the Scrutiny of Regulations has requested confirmation of DFAIT’s legislative authority to implement the control and clarification as to when a permit is required. The proposed amendment to item 5505 is designed to address these concerns.

The proposed amendment to the ECL specifies that an exporter is required to submit a permit application if the item’s properties (i.e., technical characteristics or capabilities) and any other information made known to the exporter would lead a reasonable person to suspect that the item will be used in the specified proliferation contexts. The amendment further provides that in addition to the reasonableness test outlined above, the Minister of Foreign Affairs may determine that an item is likely to be used in proliferation activities or facilities and may require that a permit be obtained for that item.

The proposed amendment also seeks to reduce the number of exempt destination countries. Currently, item 5505 designates specific countries that are exempt from the requirement to apply for an export permit, when the final destination of the goods or technology is in one of those countries. The proposed amendment to item 5505 will limit the number of permit-exempt destinations to those countries that participate in all four multilateral export control regimes. In addition, the permit-exempt destination list will only apply to a portion of item 5505 and will not apply to goods and technology that the Minister has determined require a permit.

Finally, the proposed amendment will broaden the types of weapons subject to control under item 5505. For example, once the amendment has been added, goods and technology not listed elsewhere and relating to nuclear explosive and radiological dispersal devices will now be included under this item.

CONT'D ON PAGE 2

CONT'D FROM PAGE 1

Once DFAIT has considered the submissions received in response to the proposal, the proposed amendment will be published as an adopted amendment having the force of law in the *Canada Gazette Part II*. Either the amendment will automatically come into force on the date of publication or a future date will be specified in the published regulation.

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