



LEGISLATIVE SUMMARY



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)

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(Legislative Summary)

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LEGISLATIVE SUMMARY OF 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)

1 BACKGROUND

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), was introduced by the Minister of Foreign Affairs and received first reading in the House of Commons on 13 April 2017.¹ The primary purpose of the bill is to make necessary changes to Canada's export and import control regime that will allow Canada to join the United Nations (UN) *Arms Trade Treaty* (ATT).²

1.1 THE *ARMS TRADE TREATY*

1.1.1 IMPETUS AND NEGOTIATION OF THE *ARMS TRADE TREATY*

The impetus for the ATT grew out of mounting concern in the international community regarding the humanitarian consequences of armed conflicts and the increasing recognition of the role played by the mostly unregulated international arms trade in perpetuating them. Organizations, such as the International Committee of the Red Cross, Amnesty International and the Control Arms Coalition, began drawing direct links between violations of international humanitarian law and the proliferation of arms. This heightened attention implicated arms-exporting states in conflicts around the world in which they were not directly involved.³ With a particular focus on the spread of small arms and light weapons, and their diversion from legitimate channels to illicit markets, pressure for internationally coordinated action increased throughout the 1990s and early 2000s.

A number of international agreements related to the arms trade were reached during this period. Steps were taken to combat the illicit trafficking of firearms, notably through the 2001 UN Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects, and the legally binding *Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition*.⁴ Efforts were made to improve accountability for arms exports through greater transparency and international cooperation with the *United Nations Register of Conventional Arms* of 1991 and the *Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies*, which became operational in 1996.⁵ Additionally, the use of certain weapons, which were seen to have a disproportionate humanitarian impact, was prohibited through treaties, such as the *Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction* and the *Convention on Cluster Munitions*.⁶

The process leading to the ATT began in 2006, with a resolution by the UN General Assembly (General Assembly) that called for international standards for arms transfers and sought the views of Member States.⁷ The treaty, which was adopted by the General Assembly on 2 April 2013 and which entered into force on 24 December 2014, is “the first legally-binding instrument ever negotiated in the United Nations to establish common standards for the international transfer of conventional weapons.”⁸ As of June 2017, there were 91 parties to the ATT that have signed and ratified the treaty and are, therefore, bound by its provisions. There are an additional 39 signatories that have agreed to the treaty in principle, but have yet to ratify it and are not bound by it.⁹ While Canada participated in its negotiation and voted in favour of the treaty in the General Assembly, it is the only member of the North Atlantic Treaty Organization (NATO) not to have signed the ATT, with Turkey and the United States the only other NATO members not currently a party to it.

1.1.2 PROVISIONS OF THE *ARMS TRADE TREATY*

The ATT requires states to control the transfer – defined as the “export, import, transit, trans-shipment and brokering” – of eight categories of conventional weapons:

- (a) Battle tanks;
- (b) Armoured combat vehicles;
- (c) Large-calibre artillery systems;
- (d) Combat aircraft;
- (e) Attack helicopters;
- (f) Warships;
- (g) Missiles and missile launchers; and
- (h) Small arms and light weapons.¹⁰

The first seven categories correspond to those weapons covered by the *United Nations Register of Conventional Arms*, while small arms and light weapons are defined through other UN instruments, such as the Programme of Action to Prevent, Combat and Eradicate the Illicit Trade in Small Arms and Light Weapons in All Its Aspects.¹¹ The treaty also applies to ammunition used by the eight categories of weapons and their parts and components.¹²

States are required to control the transfer of arms in order to comply with the other provisions of the treaty, most notably the prohibitions under Article 6 and the export authorization assessment required by Article 7. Article 6 prohibits states from authorizing the transfer of arms where:

- the transfer would violate UN Security Council measures taken pursuant to Chapter VII of the *United Nations Charter* (i.e., sanctions and arms embargoes);
- the transfer would violate any other of the state’s obligations pursuant to its international agreements; or

- the state has “knowledge” at the time of authorization that the arms would be used

in the commission of genocide, crimes against humanity, grave breaches of the Geneva Conventions of 1949, attacks directed against civilian objects or civilians protected as such, or other war crimes as defined by international agreements to which it is a Party.

Where authorization of an export is not prohibited by Article 6, Article 7 requires states to conduct an assessment in order to determine:

- whether the export “would contribute to or undermine peace and security”; and
- whether the arms could be used in relation to a serious violation of international humanitarian or human rights law, or an international offence involving terrorism or transnational organized crime.

Following this assessment and taking into account the availability of mitigating measures, states must not authorize exports where an “overriding risk” of negative consequences exists.

In addition to the core obligations under Articles 6 and 7, the ATT also requires states to

- prevent the diversion of arms to illicit markets;
- keep records of arms exports and report annually to the ATT Secretariat on arms transfers; and
- cooperate with other states to better regulate the transfer of arms and provide assistance where required.¹³

Article 10 requires states to regulate the brokering of arms covered by the ATT, which “may” include requiring brokers to register and get written authorization prior to engaging in brokering.

1.2 CANADA’S EXPORT AND IMPORT CONTROL REGIME

1.2.1 *EXPORT AND IMPORT PERMITS ACT*

The primary means by which Canada controls the export and import of arms is through the regulatory regime established under the *Export and Import Permits Act* (EIPA), first enacted in 1947.¹⁴ Through the *Export Control List* (ECL) and *Import Control List* made pursuant to the EIPA, the government determines the goods and technology that require ministerial approval – through the issuing of a permit – in order to be either exported or imported.¹⁵ The export of automatic firearms is further limited by the *Automatic Firearms Country Control List*, which lists the countries to which these weapons can be exported.¹⁶ Exports and imports can also be controlled based on the originating or destination country via the *Area Control List*.¹⁷

The EIPA states that, in deciding to issue an export permit, the Minister may consider whether the export may be prejudicial to either the “safety or interests of the State,” or the “peace, security or stability in any region of the world or within any country.”¹⁸ This provision is supplemented by Cabinet-approved policy guidelines that require the export of military goods to be closely controlled in the case of countries:

- that pose a threat to Canada and its allies;
- that are involved in or under imminent threat of hostilities;
- that are under United Nations Security Council sanctions; or
- whose governments have a persistent record of serious violations of the human rights of their citizens, unless it can be demonstrated that there is no reasonable risk that the goods might be used against the civilian population.¹⁹

2 DESCRIPTION AND ANALYSIS

Bill C-47 contains 24 clauses amending the EIPA and one related amendment to the *Criminal Code*. The main purpose of the bill is to make necessary changes to Canada’s export and import control regime in order to join the ATT. This description of the bill considers its main features but is not an exhaustive summary.

2.1 BROKERING

The most significant change to the EIPA made by the bill is the expansion of its regulatory authority to include the brokering of controlled goods and technology. Brokering is generally regulated under the EIPA in the same manner as exporting and importing, with some notable differences.

2.1.1 DEFINITION OF BROKERING (CLAUSE 3)

There is no generally accepted international definition of brokering, and countries define the term in different ways.²⁰ Clause 3 of the bill defines “broker” as follows:

to arrange or negotiate 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.

There are some noteworthy aspects to this definition:

- A “transaction” does not explicitly include other forms of facilitation, for example, providing related financial, insurance or transportation services.²¹
- It excludes transactions related to goods or technology entering or leaving Canada.
- There is no requirement that a broker receive compensation for their actions or that they be a third party to the transaction.²² The definition therefore covers the sale or purchase of goods and technology by persons and entities covered by the EIPA where the goods or technology do not enter or leave Canada.

The concept of brokering differs from the concepts of exporting and importing. The EIPA allows for both controlled and uncontrolled exports and imports; however, only controlled transactions meet the bill's definition of brokering, in that it is limited to the goods and technology listed on the Brokering Control List.

2.1.2 BROKERING CONTROL LIST (CLAUSE 5)

Clause 5 of the bill provides the Governor in Council with the authority to establish a Brokering Control List, consisting of goods and technology whose brokering is subject to ministerial approval. The authority to create the Brokering Control List differs from the equivalent authority for exports and imports, in that it is limited to those goods and technology already listed on the ECL and does not set out the purposes for which the Governor in Council must deem the controls necessary.

2.1.3 BROKERING PERMIT AUTHORITY (CLAUSES 7 AND 8)

Clauses 7 and 8 of the bill amend section 7 of the EIPA to provide the Minister with the authority to issue permits to "any person or entity," or a general permit applicable to "all persons and entities," to broker in relation to a listed good and technology (new sections 7.1(1) and 7.1(2)). These specifications constitute a broader group of individuals and entities than the "residents of Canada" who are authorized to apply for an export or import permit under the EIPA.

New section 7.2 replaces section 7(1.01) of the EIPA in respect of security considerations the Minister may consider when deciding whether to issue a permit. The new section also makes reference to the bill's provision authorizing the creation of regulations the Minister must take into account before issuing permits, which now includes brokering permits.

2.1.4 RELATED PROHIBITION AND CRIMINAL PROVISIONS (CLAUSE 13)

Similar to the provisions of the EIPA applying to controlled exports and imports, clause 13 of the bill prohibits brokering, or attempting to broker, without the proper permit. The contravention of this prohibition by a person or organization is a criminal offence. Unlike the export and import prohibitions, the brokering prohibition applies extraterritorially, covering acts or omissions committed outside Canada by Canadian citizens, permanent residents present in Canada after the fact, and organizations formed under Canadian laws.

2.2 OTHER AMENDMENTS TO THE *EXPORT AND IMPORT PERMITS ACT*

2.2.1 PERMIT ISSUANCE CONSIDERATIONS (CLAUSE 12)

The bill expands the authority of the Governor in Council to make regulations under the EIPA, allowing for rules to be created regarding the considerations that the Minister must take into account when deciding to issue an export or brokering permit to a person or organization in respect of goods or technology set out in the ECL or the Brokering Control List. Any such regulations would augment or clarify the security considerations provision in the EIPA.

2.2.2 CONTROL LISTS (CLAUSES 4 AND 5)

Clause 4 of the bill amends section 3(1) of the EIPA to include an additional purpose for listing a good or technology on the ECL. A good or technology can now be listed for the purposes of collecting information if it is, or is likely to be, the subject of “trade investigations or trade disputes.”

Clause 5 of the bill amends the authority for the *Automatic Firearms Country Control List*, removing the requirement that listed countries have an “intergovernmental defence, research, development and production arrangement”²³ with Canada, and replacing it with the requirement that the list be established on the “the recommendation of the Minister made after consultation with the Minister of National Defence.” The change removes an administrative hurdle to adding a country to the list, though the practical implications are unclear as the terms contained in the dropped wording were not defined by the EIPA or its regulations, and orders adding countries to the list in the past have provided little information regarding the substance of such arrangements.²⁴

2.2.3 CRIMINAL PENALTY (CLAUSE 16)

The bill increases the maximum fine for contravening the EIPA when it is prosecuted as a summary conviction offence from \$25,000 to \$250,000.

2.2.4 REPORTING REQUIREMENTS (CLAUSE 21)

The bill amends the reports to Parliament provision contained in section 27 of the EIPA, adding a second report regarding the “arms, ammunition, implements and munitions of war, that were exported in the preceding year” to the existing requirement under the Act to report on operations, and setting an annual deadline of 31 May for the presentation of the two reports in both Chambers. The Government of Canada has voluntarily produced a similar annual report on the export of military goods since 1990.²⁵

2.3 CRIMINAL CODE AMENDMENT (CLAUSE 23)

The bill amends the *Criminal Code* to include violation of the prohibition on unauthorized brokering among the offences listed under the definition of “offence” for the purposes of the interception of communications.²⁶

NOTES

1. [Bill C-47, An Act to amend the Export and Import Permits Act and the Criminal Code \(amendments permitting the accession to the Arms Trade Treaty and other amendments\)](#), 1st Session, 42nd Parliament.
2. United Nations [UN], [The Arms Trade Treaty](#) [ATT] [2 April 2013].

3. See International Committee of the Red Cross, [Arms Availability and the Situation of Civilians in Armed Conflict](#), 1999; Amnesty International, [Killer Facts: The Impact of the Irresponsible Arms Trade on Lives, Rights and Livelihoods](#), 2010; and Amnesty International, Control Arms and Oxfam, [Shattered Lives: the case for tough international arms control](#), 2003.
4. UN, [Report of the United Nations Conference on the Illicit Trade in Small Arms and Light Weapons in All Its Aspects](#), A/CONF.192/15, 2001; and UN General Assembly [UNGA], Resolution 55/255, "[Protocol against the Illicit Manufacturing of and Trafficking in Firearms, Their Parts and Components and Ammunition, supplementing the United Nations Convention against Transnational Organized Crime](#)," A/RES/55/255, 101st Plenary Meeting, 55th Session, 31 May 2001.
5. UNGA, Resolution 46/36L [establishing the *United Nations Register of Conventional Arms*], "[Transparency in Armaments](#)," A/RES/46/36L, 66th Plenary Meeting, 46th Session, 9 December 1991, p. 73; and Wassenaar Arrangement Secretariat, [Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies: Public Documents – Volume I: Founding Documents](#), compiled February 2017.
6. UN, "[Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction](#)," *Treaty Series*, vol. 2056, 2002, pp. 241-252; and UN, [Diplomatic Conference for the Adoption of a Convention on Cluster Munitions: Convention on Cluster Munitions](#), 30 May 2008.
7. UNGA, Resolution 61/89, "[Towards an arms trade treaty: establishing common international standards for the import, export and transfer of conventional arms](#)," A/RES/61/89, 67th Plenary Meeting, 61st Session, 6 December 2006.
8. Peter Woolcott, "[Introductory Note](#)," *Arms Trade Treaty*, Audiovisual Library of International Law.
9. United Nations Office for Disarmament Affairs [UNODA], "[Basic facts](#)," *The Arms Trade Treaty*.
10. ATT, art. 2.
11. ATT, art. 5(3).
12. ATT, arts. 3–4.
13. ATT, arts. 11–16.
14. [Export and Import Permits Act](#) [EIPA], R.S.C. 1985, c. E-19.
15. EIPA, ss. 7–8; [Export Control List](#), SOR/89-202; and [Import Control List](#), C.R.C., c. 604.
16. [Automatic Firearms Country Control List](#), SOR/91-575.
17. [Area Control List](#), SOR/81-543. North Korea and Belarus are the only two countries currently on the list.
18. EIPA, s. 7(1.01).
19. Global Affairs Canada, [Report on Exports of Military Goods from Canada – 2015](#).
20. A report to the UNGA defined a broker as

a person or entity acting as an intermediary that brings together relevant parties and arranges or facilitates a potential transaction of small arms and light weapons in return for some form of benefit, whether financial or otherwise.

See UNGA, [Report of the Group of Governmental Experts established pursuant to General Assembly resolution 60/81 to consider further steps to enhance international cooperation in preventing, combating and eradicating illicit brokering in small arms and light weapons](#), A/62/163, 30 August 2007, para. 8. Regulations in the United States define brokering activities as

any action on behalf of another to facilitate the manufacture, export, permanent import, transfer, reexport, or retransfer of a U.S. or foreign defense article or defense service, regardless of its origin.

See U.S. Department of State, Directorate of Defense Trade Controls, [The International Traffic in Arms Regulations \(ITAR\)](#) [ITAR], § 129.2(b). For a definition of “broker” in the United Kingdom, see [Export Control Act 2002](#), c. 28, s. 4 (“Trade controls”). For Australia, see Federal Register of Legislation, [Defence Trade Controls Act 2012](#), Part 1, s. 5A.

21. For an example of where such facilitation is included, see ITAR, § 129.2(b)(1)(i).
22. Unlike the UNGA’s definition cited in endnote 20.
23. EIPA, s. 4.1.
24. For recent examples, see [Order Amending the Automatic Firearms Country Control List](#), SOR/2015-10, 14 January 2015, in *Canada Gazette*, Part II, Vol. 149, No. 2, 28 January 2015, p. 323 [Israel]; and [Order Amending the Automatic Firearms Country Control List](#), SOR/2014-92, 10 April 2014, in *Canada Gazette*, Part II, Vol. 148, No. 9, 23 April 2014, p. 1215 [Chile and Peru].
25. Global Affairs Canada, [Report on Exports of Military Goods from Canada – 2015](#).
26. [Criminal Code](#), R.S.C. 1985, c. C-46.