



Exports of Dual-Use Goods and Technology from Canada is More Business Friendly

By Cyndee Todgham Cherniak on November 6th, 2015

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On August 12, 2015, Canada's Minister of Foreign Affairs caused to be published in the Canada Gazette, Part II, Vol 149, No. 16 a regulation entitled "General Export Permit No. 41 – Dual Use Goods and Technology to Certain Destinations", SOR/2015-200. Foreign Affairs, Trade and Development Canada also published a backgrounder and Notice to Exporters No. 19 "General Export Permit – Dual Use Goods and Technology to Certain Destinations, Serial No. 194 (August 2015). This Notice to Exporters should be read in conjunction with the regulation and the current version of "A Guide to Canada's Export Controls" the ("Guide").

General Export Permit No. 41 ("GEP 41") should reduce compliance burdens on Canadian exporters of controlled dual use goods and technology when the goods are exported to an eligible destination.

The Eligible Destinations

The eligible destinations are listed in the regulation and are Australia, Austria, Belgium, the Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Iceland, Ireland, Italy, Latvia, Lithuania, Luxembourg, the Netherlands, New Zealand, Norway, Poland, Portugal, the Republic of Korea, Slovakia, Slovenia, Spain, Sweden, Switzerland, Turkey, the United Kingdom and the United States of America. This is a positive list – meaning GEP 41 can be used only when a country is listed as an "eligible destination". Canadian exporters selling to these countries should review the new rules to see whether they apply to their exports.

What is a GEP?

As a general rule, an exporter must obtain an export permit prior to exporting goods/items on Canada's Export Control List (ECL). An export permit application is submitted to the Export Controls Division of the Department of Foreign Affairs, Trade and Development. The application must be processed and an export permit issued with respect to specific goods before the goods can be exported. If an export permit is not obtained, the goods may be seized by the Canada Border Services Agency upon export.

In limited circumstances, the obligation to obtain an export permit is altered by a General Export Permit. Canada has promulgated a number of General Export Permits covering a variety of lower-risk goods and goods shipped to lower-risk

destination in lower risk environments.

What Does GEP 41 Do?

Section 2 of the GEP 41 Regulation provides as a general rule that any resident of Canada may export or transfer from Canada any good or technology referred to in (a) Group 1 of the Guide; and (b) items 5504.2.a to 5504.2.g of the Guide.

Section 3 of GEP 41 Regulation restricts the application of the general rule. In particular, GEP 41 does not authorize the export or transfer of goods or technology:

- to a country that is not an eligible destination;
- to a country that is listed in the Area Control List;
- to a country in respect of which an order or regulation has been made under section 4 of the *Special Economic Measures Act* or section 2 of the *United Nations Act*;
- that are intended to be used in a country that is not an eligible destination;
- that are referred to in the Schedule of GEP 41 Regulation (which can be amended);
- that are referred to in any item in the Guide other than those referred to in Section 2, unless the export or transfer is so authorized by another GEP;
- that are referred to in any of subparagraphs 3(2)(c)(i) to (iii) of the Export Permits Regulations;
- that is software that is specifically designed or modified for the development or use of the goods or technology referred to in item 5504.2.h or item 5504.2.i of the Guide; and
- that is technology that is specifically designed or modified for the development or production of the goods or technology referred to in item 5504.2.h or item 5504.2.i of the Guide.

Section 4 sets out the what information must be provided to the Export Controls Division prior to the first use of GEP 41.

Section 5 sets out the record keeping requirements – including a 6 years retention requirement.

Section 6 of the GEP 41 Regulation cancels two outdated GEPs, being (i) General Export Permit No. Ex. 30 – Certain Industrial Goods to Eligible Countries and Territories and (ii) General Export Permit No. Ex. 29 – Eligible Industrial Goods.

If you require more information or would like to assess specific facts, please call Cyndee Todgham Cherniak at 416-307-4168.

Tags: dual use, export controls, GEP 41

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