



CCC Submission on Bill C-47

Briefing to the Standing Senate Committee on
Foreign Affairs and International Trade

November 2018

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Introduction from the President of CCC



Martin Zablocki
President and CEO

November 28, 2018

Standing Senate Committee on Foreign Affairs and International Trade
The Senate of Canada
Ottawa, Ontario Canada
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Dear Senators,

Thank you for the invitation to attend the Senate Hearings regarding [Bill C-47 An Act to amend the Export and Import Permits Act and the Criminal Code \(amendments permitting the accession to the Arms Trade Treaty and other amendments\)](#). I regret that I am not able to personally appear before the Senate Committee this week.

The Canadian Commercial Corporation (CCC) has been following Canada's accession to the Arms Trade Treaty (ATT) through the enactment of Bill C-47. CCC recognizes the valuable role it has to play in supporting the Government of Canada in this area.

I am pleased to submit, for your consideration, a written brief on behalf of the CCC aimed at providing the Senate Committee with a more detailed evaluation of how Bill C-47 pertains to CCC. We thank the Senate Committee for this opportunity to provide our comments and hope that the submission will address any questions that you may have regarding CCC's role in ensuring the aims of the ATT. We would also be happy to respond to any enquiries you may have as you deliberate on this important legislation.

Sincerely,

A handwritten signature in blue ink, consisting of several overlapping loops and a long horizontal stroke extending to the right.

Martin Zablocki
President and CEO
Canadian Commercial Corporation

The Corporation and Its Mandate

This written submission seeks to provide information to the Senate Committee on the mandate of the Canadian Commercial Corporation and how it anticipates its operations would be impacted by Bill C-47.

The Canadian Commercial Corporation (CCC) is a Crown Corporation of the Government of Canada established by an Act of Parliament in 1946. Since its inception, the CCC has worked to facilitate trade on behalf of Canadian industry with governments of foreign nations.¹ CCC does this by helping Canadian exporters secure contracts with foreign governments for the purchase of goods and services that are available for export from Canada. CCC reports to Parliament through the Minister of International Trade Diversification, the Honourable James Gordon Carr, PC, MP, OM.

Last year, the Corporation was responsible for signing \$1.3 billion dollars in contracts², working with 182 Canadian exporters in 78 countries around the world. Over the years, CCC has worked on projects such as the construction of an award-winning airport in Quito, Ecuador, the implementation of a freshwater metering program in Barbados, and the delivery of over one million tonnes of Canadian Potash to the Government of Bangladesh.

CCC serves many sectors of the economy and we are particularly focused on a diversification strategy right now to connect with exporters across a wide variety of industry sectors that represent Canada's progressive trade agenda including: civil aerospace; clean technology, environment and energy; construction and infrastructure; and information and communications technology. CCC is also engaged in sourcing goods and services on behalf of the Government of Canada's international assistance programs, and managing ten Canadian trade Offices in China for Global Affairs Canada.

The Defence Production Sharing Agreement (DPSA)

As noted above, CCC's focus is on a diversification strategy but a fundamental aspect to the export support role is that CCC also holds the responsibility on behalf of the Government of Canada for administering the treaty obligations arising under the Canada-U.S. Defence Production Sharing Arrangement (DPSA). The DPSA is a defence procurement agreement that ensures Canadian exporters are able to compete for U.S. Department of Defence contracts on the same basis as U.S. defence and security firms. This bilateral trade agreement promotes an integrated North American defence industrial base, and mitigates the impact of "Buy American" legislation. It should be noted that Canada's defence industry is highly innovative and provides some of the world's leading technologies.

The DPSA has provided numerous benefits to Canada: over the past decade, CCC has facilitated annual sales of between \$500 million to \$2 billion to the U.S. DoD. In 2017-18, CCC signed \$692.6 million of new contracts with the U.S. DoD and this has directly supported 5,300 Canadian jobs. Over 50% of Canadian exporters selling under this program were small and medium enterprises (SMEs).

¹ *Canadian Commercial Corporation Act (R.S.C., 1985, c. C-14)*

² <https://www.ccc.ca/en/ccc/about-ccc/~media/53700B0E2D06448192128F8C2CD4B6B1.ashx>

At present, CCC's exports under the DPSA, like all exports to the United States, are permit-free as an established practice of the export controls regime. In this regard, CCC reiterates the submission of Global Affairs Canada that succession to the ATT does not require Canada to amend the practice around controlled exports to the U.S. Moreover, CCC echoes the statements made regarding the fact that Canada and the U.S. have a highly integrated market, and an integrated North American Industrial Base. To this end, Canadian exporters rely on seamless integration with US market to maintain our highly developed research and development and manufacturing capacity.

CCC and Export Controls

CCC provides a competitive advantage to Canadian companies looking to export their goods or services to foreign governments by offering Canadian exporters the ability to transact on a government-to-government basis. Essentially, within CCC's transactions CCC signs two contracts. One with the foreign government buyer with respect to the goods or services to be obtained from the Canadian exporter and one with the Canadian exporters to ensure the full performance of the obligations in the government-to-government contract.

CCC's transactions do not circumvent the export control regime in any way. The *Export and Import Permits Act* (EIPA) governs transactions undertaken by commercial entities in Canada.³ As a result, Canadian exporters, even when working in conjunction with CCC, must comply with the export control regime established by the EIPA. Following the coming into force of Bill C-47, Canadian exporters, working in conjunction with CCC, will continue to be required to comply with the EIPA, as amended by Bill C-47.

In terms of responsibility for obtaining export permits, pursuant to s. 7 of EIPA, it is the exporter of record who is responsible for obtaining all required export permits. CCC does not obtain export permits on behalf of Canadian exporters. This will not change with the coming into force of Bill C-47.

In terms of the sequence, it is important to note that practice is usually for parties to sign a contract and then secure permits. Export contracts are no different. Generally, contracts are signed before any export permit would be secured. However, exporters often engage with export controls to mitigate the risk of not obtaining an export permit, though a "pre-assessment" process that does not bind the Minister. Permits cannot be issued in an anticipatory manner, as assessments require a full review of current facts. At present, the Minister exercises absolute discretion over the issuance of permits.

³ *Export and Import Permits Act (R.S.C., 1985, c. E-19)*

To ensure alignment, CCC and Global Affairs Canada engage in regular consultation regarding proposed transactions to determine whether a proposed CCC transaction is likely to conform to the export permit criteria prior to CCC entering into any contractual agreements.⁴ This practice of coordinating approaches with respect to risk assessments will continue after the passage of Bill C-47. In addition, the Minister's discretion over the issuance of export permits and the decisions of the export control authorities, remains absolute notwithstanding:

- (1) any CCC decision to enter into a transaction based on its own review aimed at ensuring CCC's business practices comply with the *United Nations Guiding Principles on Business and Human Rights*;
- (2) any CCC and Global Affairs Canada consultation on a transaction; or
- (3) any formal "pre-assessment" by the export control division of Global Affairs Canada.

Moreover, any change of circumstance can affect the outcome of an export permit application.

CCC supports Canada's commitment to the protection of human rights at home and abroad. CCC notes that there already exists a strong export control regime within Canada and that Canada complies with 26 of the 28 Articles of the ATT. The two new criteria are discussed below under the Bill C-47 Specific Impact section. To conclude, CCC submits that Bill C-47, together with amendments to government policies and procedures, will ensure that Canada is fully compliant with the ATT.

Crown Corporations and Bill C-47

As CCC is not the exporter of record for the goods and services for the contracts it signs, it is not technically subject to the amendments to the EIPA stemming from the adoption of Bill C-47. However, in parallel to Bill C-47, the Senate Standing Committee on Human Rights (See Promoting Human Rights: Canada's Approach to its Export Sector, June 2018) called for "Canadian Crown corporations ... [to] take additional steps to ensure their business practices comply with the United Nations Guiding Principles on Business and Human Rights."

Subsequent to this Report, on September 24, 2018, the Honourable Jim Carr, Minister of International Trade Diversification, requested that CCC review its due diligence assessments and take all necessary steps to meet the thresholds set out in the ATT and, in particular, to address human rights impacts and international humanitarian law considerations. Minister Carr asked CCC for an update on the status of this review by the end of November 2018 and a full implementation of any new procedures by the end of June 2019.

CCC is progressing with this work and will implement any new procedures by June 2019.

⁴ In addition to the export control regime and EIPA, it should be noted that pursuant to the Significant Project Instruction, CCC projects over a certain financial threshold are now subject to approval by the Minister of International Trade Diversification, with the concurrence of the Minister of Finance.

Bill C-47 Specific Impact on CCC & CCC Submissions

a. Arms Trade Treaty (ATT) Assessment Criteria

There are two provisions that are key to Canada's accession to the ATT: (1) the ATT assessment criteria in Article 7 and (2) the Brokering Controls. Bill C-47 will ensure that Canada meets the remaining two criteria before acceding to the Treaty by formalising in legislation the assessment criteria namely: human rights, humanitarian rights law, peace and security, and gender-based violence. CCC notes that of our main allies with common law systems, Canada will be the first to legislate the ATT criteria and substantial risk test directly into domestic legislation.

CCC, as a Crown Corporation, has been actively following the Bill's progress and CCC is putting in place policies and procedures to address the proposed assessment criteria and to ensure that the Canadian exporters its supports do the same. In fact, Canada is looking beyond the export control regime to have exporters actively identify, prevent and mitigate human rights risks based upon the United Nations Guiding Principles on Business and Human rights (UNGPs).

CCC supports the incorporation of the ATT's export assessment criteria in Bill C-47 which requires the Minister not to issue a permit where, after the consideration of mitigation measures, it is determined that there is a substantial risk that the export will result in any of the negative consequences noted in the ATT. CCC acknowledges that all exports of controlled goods, including those facilitated by CCC, will be subject to this more stringent criteria, as CCC transactions are subject, as applicable, to the provisions of the *Import and Export Act*.

b. Brokering Controls

While CCC is not specifically mentioned in the legislation, upon coming into force, the provisions of the ATT will apply to any of CCC's exporters who are involved in the brokering of controlled items as they fulfill the performance obligations captured in CCC transactions. It would be the Canadian company, (and not CCC), who could be the broker, and, as such, would be subject to the EIPA. This will not change with the proposed amendments to the EIPA set out in Bill C-47.

c. Expedited Licensing to the United States

Accession to the ATT does not require Canada to amend the practice around controlled exports to the United States. Canada and the U.S. have a highly integrated market, and the permit-free movement of goods benefits the Canadian economy and supports the integrated North American Industrial Defence Base. This reciprocal permit-free movement has been in place since World War II and is consistent with the ATT.

This arrangement provides critical support to the Canadian Armed Forces through the development of new technology and the reliable and timely provision of equipment. Our defence industry, which is heavily dependent on this arrangement, supports over 60,000 Canadian jobs, and contributes \$6 billion annually to our GDP, and relies heavily on the ability to export in order to maintain its ongoing viability.

Further, given this close relationship and the fact that the U.S. export control system remains highly rigorous, expedited measures for low-risk exports to the United States remain in Canada's best interest. We therefore consider that the United States has more leverage regarding end use monitoring of goods through their three End Use Monitoring (EUM) programs for defence articles, technology, or services.⁵ This provides for pre-licence, post-licence and post-shipment enquiries or checks to confirm receipt of goods, confirm end use and compliance with any end use requirements.

ATT Reporting, Diversion and Record Keeping Requirements

ATT Reporting

Pursuant to the implementation of the reporting requirements under the ATT, as proposed in s. 27 of Bill C-47, State Parties must submit annually, by May 31, a report for the preceding calendar year on authorized or actual exports and imports of weapons under the scope of the ATT⁶.

CCC notes that Canada already voluntarily completes and tables in Parliament the annual *Report on the Export of Military Goods* in addition to the annual report to the UN Register on Conventional Arms (UNROCA). CCC supports the Minister in the compilation of the reports and will provide the information regarding its transactions as the Minister requires, while maintaining the commercial confidentiality of CCC contracts, in line with the ATT requirements.

The UN ATT implementation documentation specifically indicates that reports may exclude commercially sensitive or national security information.⁷

CCC is cognizant of the calls for disclosure of contracts from previous speakers before this Committee and from civil society. A point not highlighted, was that the ATT does not call for this disclosure and indeed, with respect to reporting requirements, specifically enables the exclusion of commercially sensitive information. CCC therefore emphasizes that the ATT reporting requirement does not require full disclosure of the commercial contracts.

However, as a Crown Corporation, CCC is subject to the *Access to Information Act*. The *Access to Information Act* allows "necessary exceptions to the right of access should be limited and specific". This Act applies to CCC contracts and operations more generally.

CCC's non-disclosure of the contents of its commercial contracts is in keeping with the legislative requirements of the *Access to Information Act*. In particular, the Act allows government institutions to refuse to disclose any record: obtained in confidence from the government of a foreign state or which contains information the disclosure of which could reasonably be expected to be injurious to the conduct of international affairs or which contains confidential third party commercial or technical information, the release of which would prejudice the competitive position of a Canadian supplier.

⁵ <https://www.state.gov/t/pm/rls/rm/2017/271928.htm> "End Use Monitoring and Compliance"

⁶ United Nations *The Arms Trade Treaty*, Article 13

⁷ ATT Implementation Toolkit | Module 3 | Reporting Requirements, para 1.2, pg 5

Diversions

CCC further acknowledges that reporting on the prevention of diversion is not mandatory but it is recommended that State Parties make a serious effort to report on such. As noted above, and in the context of expedited licencing to the United States, we note that United States undertakes monitoring in this area through their Blue Lantern End-Use Monitoring Program and Golden Sentry program.⁸

We would further like to draw attention to a 2018 UK Parliament publication on UK arms exports in 2016 which draws some insight into end use monitoring by our allies. This report highlights that the UK Government does not collect data on the use of equipment after sale with such end-use monitoring noted as being uncommon in export regimes, with Germany, Sweden and Switzerland undertaking monitoring on a limited basis.⁹

This report goes on to reference the “Blue Lantern” programme as “one comprehensive” arrangement in place operated by the US State Department’s Directorate of Defense Trade Controls (DDTC), involving end-use checks being made by US personnel in cooperation with host governments.¹⁰ The UK government indicated that parliamentary committees were “impressed” by the “Blue Lantern” scheme.¹¹

CCC welcomes and supports efforts by Global Affairs Canada and, in particular, the export controls regime to assess measures to prevent diversion and welcomes continuing strategies for development in this area.

Record-Keeping Requirements

CCC supports the inclusion of the record-keeping requirements in Bill C-47 and the power to inspect, audit or examine records of persons and organizations that have applied for export permits under the EIPA. It should be noted that CCC, as a facilitator of exports, is not the entity that applies for an export permit and it is the Canadian exporter chosen to fulfill the contract that bears this responsibility. To this end, we welcome the record-keeping requirements and will encourage our suppliers to abide by these commitments.

Conclusion

Thank you for permitting CCC the opportunity to provide these written submissions. CCC supports the work of the Committee and of the Government in raising the bar for all countries in legislating the export of controlled goods.

⁸ Supra 5

⁹ <https://publications.parliament.uk/pa/cm201719/cmselect/cmquad/666/66606.htm#footnote-222>, paras 40-42.

¹⁰ *Ibid.*

¹¹ *Ibid.*

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