Export controls: implications in a world of knowledge sharing

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Introduction

When we hear the term “export controls,” we may think it only applies to weapons and other highly sensitive technologies, but that is not the case. There are a multitude of circumstances—some unexpected—to which it is important to know that export controls apply. This is especially true if you are involved in research or in the design and development of seemingly innocuous solutions that are not necessarily tangible objects.

Today, technological knowledge is shared not only through conventional partnerships between businesses or universities, but also through data sharing or access to databases that feed large language models. Artificial intelligence is, in itself, a means of sharing knowledge. Feeding such algorithms with sensitive data, or data that can become sensitive when combined, carries a risk of violating the applicable legal framework.

Here are some key concepts.

Overview of the federal export control framework

The Export and Import Permits Act

In Canada, the *Export and Import Permits Act* (the “**EIPA**”) establishes the primary framework governing the export of controlled goods and technologies. The EIPA gives the Minister of Foreign Affairs the power to issue, to any resident of Canada who applies for one, a permit authorizing the export or transfer of a wide range of items included on the *Export Control List* (the “**ECL**”) or destined for a country listed on the Area Control List. In other words, the EIPA regulates, and at

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times prohibits, the trade of critical goods and technologies outside Canada.

The Export Control List

To get the full picture of the ECL, we need to refer to the *Guide to Canada's Export Control List*as published by the Department with its successive amendments, the most recent of which date back to May 2025 (the "**Guide**").

In summary, the Guide includes military goods and technologies, strategic goods and dual-use (civilian and military) goods and technology that are controlled in accordance with Canada's commitments made in multilateral regimes, such as the Wassenaar Arrangement on Export Controls for Conventional Arms and Dual-Use Goods and Technologies, bilateral agreements, and certain unilateral controls implemented by Canada as part of its defence policy. The Guide also includes forest products, agricultural and food products, apparel goods and vehicles.

Other laws that affect exports

Also to take into account are the sanctions that Canada imposes under laws that affect exports, such as:

the *United Nations Act*
the *Special Economic Measures Act*
the *Justice for Victims of Corrupt Foreign Officials Act*

These sanctions against specific countries, organizations or persons include a number of measures, including restricting or prohibiting trade, financial transactions or other economic activities with Canada, or the freezing of property located in Canada.[1]

Finally, in order for an individual (or an organization) to transfer controlled goods outside Canada, they must register with the Controlled Goods Program (the "**CGP**") to obtain an export permit, unless exempt.

Key concepts

Did you know?

Certain goods and technologies are referred to as "**dual-use**" goods and technologies. This means that even though they were initially designed for civilian use or appear harmless, they may be subject to export controls if they can be used for military purposes or to produce military items.
A "**technology**" is broadly defined to include technical data, technical assistance and information necessary for the development, production or use of an item listed on the ECL. Also included in this notion, albeit indirectly, are the technologies referred to in any of the regulations associated with the laws listed above, which make certain countries subject to specific technology transfer restrictions.
A "**transfer**" in relation to a technology, means to dispose of it (e.g. sell it) or disclose its content in any manner from a place in Canada to a place outside Canada. This definition stems from legislative amendments to the EIPA, which expanded the scope of the law to include the mere transfer of intangible technologies by various means, thereby broadening the circumstances to which permits apply as regards transfers.[2]
Regarding trade relations with the United States, Canadian exporters may face additional restrictions and considerable challenges, particularly in situations where their employees or other stakeholders involved are foreign nationals.

The *International Traffic in Arms Regulations* ("**ITAR"**) and the *Export Administration Regulations*("**EAR"**) are two key sets of rules that govern exports from the United States.[3] They protect both similar and distinct interests. While the ITAR aim to protect defence articles and defence services (including weapons and information), the EAR govern

[4] [5]

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dual-use items. Both prevent exports in a broad sense, i.e., up to and including the transfer of information to so-called “foreign” persons, except with the permission of the authorities. It is thus quite possible that Canadian exporters will be required to comply with these American regulations, which, in addition to targeting territories, target the national origin of individuals. This is diametrically opposed to Canada’s export regime, which rather centres on prohibiting trade with a country or anyone located there.

In this regard, note that Quebec’s *Charter of Human Rights and Freedoms* considers national origin to be a ground for discrimination. [6] A Quebec business can thus find itself struggling to balance its contractual obligations under a contract with an American company with the requirements of the Quebec Charter.

Artificial intelligence: novel challenges

The development of large language models in the field of artificial intelligence represents a new challenge from an export control standpoint, and a significant one at that.

For example, if a large language model is trained using restricted data, a state subject to the aforementioned sanctions might attempt to use the large language model to indirectly obtain information to which it would not otherwise have had direct access.

As a result, training a large language model on plans, technical specifications or textual descriptions of technologies covered by transfer restrictions (which can include knowledge transfers) can create a risk of non-compliance with the law. The same applies to accessing such data for retrieval-augmented generation, a widely used technique to expand and improve large language model responses.

To limit the risk during research and development, a company that trains a large language models on such data or allows access to such data for retrieval-augmented generation will need to consider where the data will be hosted and processed. Similarly, once the artificial intelligence application is developed, it will be important to restrict access to it in a manner consistent with the law, both in terms of locating the servers on which the large language model will be installed and in terms of user access.

Sanctions

Any person or organization that contravenes any provision of the EIPA or its regulations commits an offence punishable by fine and/or imprisonment, as applicable.

Also, failure to register with the CGPmay constitute an offence under federal laws that can lead to prosecution and substantial sanctions against the offender(s).[7]

Conclusion

Canada’s export controls are quite complex, not only in how they are structured, but also in how they must be implemented. With the changing geopolitical and commercial landscape, it is advisable to periodically read the resources made available by the relevant authorities and put in place appropriate policies and measures, or to seek professional advice in this regard.

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1. Government of Canada, “Types of sanctions” (date modified: 2024-09-10): Types of sanctions
2. Martha L. Harrison & Tonya Hughes, “Understanding Exports: A Primer on Canada’s Export Control Regime” (2010) 8(2) *Canadian International Lawyer*, 97
3. The ITAR and EAR are included in the Code of Federal Regulations (“CFR”).
4. Austin D. Michel, “Hiring in the Export-Control Context: A Framework to Explain How Some Institutions of High Education Are Discriminating against Job Applicants” (2021) 106:4 *Iowa L Review*, 1993
5. The ITAR and EAR also provide for restrictions on re-exportation.
6. See Maroine Bendaoud, “Quand la sécurité nationale américaine fait fléchir le principe de non-discrimination en droit canadien : le cas de l'International Traffic in Arms Regulations (ITAR)” (2013) *Les cahiers de droit*, 54 (2–3), 549
7. Government of Canada, “Guideline on Controlled Goods Program registration” (date modified: 2025-05-08):

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