

Canadian Government Undertaking Industry Consultations on Cryptography Export Permit Process

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The Export Controls Division of Foreign Affairs and International Trade Canada (ECD) has launched another consultation with industry regarding the control of encryption goods and technology for export or transfer from Canada. This comes on the heels of earlier consultations on the mass market exemption launched in March of this year and further described at [Canadian Government Launches Consultations on Encryption Controls \(March 2010\)](http://www.mccarthy.ca/article_detail.aspx?id=4896) [http://www.mccarthy.ca/article_detail.aspx?id=4896].

Canada, as a Participating State of the Wassenaar Arrangement, controls cryptography under Category 5, Group 1 of its *Export Control List*. The threshold for control is relative low -- e.g., cryptography having a symmetric algorithm employing a key length exceeding 56 bits. Those seeking to export or transfer from Canada covered goods, software and related technology employing cryptography must apply for and obtain a permit for destinations other than the United States.

Because of the administrative burden, uncertainty and delays experienced in having to obtain permits prior to shipment of these items, and the difficulties these present for the just-in-time business models employed across industry, some Canadian exporters and vendors of these items have been expressing significant concerns with the current process. They have also found that streamlined export licensing procedures and more flexible interpretations of exemptions in the United States and other countries have placed them at a competitive disadvantage when selling and supporting their products in the international market place.

These competitive issues have intensified recently with further steps being taken in the United States to liberalize export controls, and in particular the controls over encryption items, putting Canadian vendors and exporters at a further disadvantage.

ECD has stated that it is now seeking the views of industry stakeholders on ways of improving the efficiencies of the administration of export controls on these items while continuing to meet Canada's Wassenaar commitments and national security requirements. ECD has drafted a brief paper intended to provide broad context for these consultations: *Export Controls on Information Security (Cryptography) Items*. [http://www.mccarthy.ca/pubs/Industry_Consultation_Framework_Paper_July920]

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10.pdf] ECD has also created an *Information Security (Cryptography) Questionnaire* in which interested parties can provide information and express their views on this issue and which is available upon request.

The deadline for filing submissions is August 5, 2010.

McCarthy Tétrault's International Trade and Investment Law Group has significant expertise in encryption controls, and regularly assists clients in developing solutions to compliance and enforcement issues in this area. We are available to advise on these or any other export control, economic sanction or trade matters.

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