

## What Does Canada's Auditor General Say About Canada's Export Controls

February 3, 2016

On February 2, 2016, Canada's Auditor General released "Report 2 – Controlling Exports at the Border", which looks at whether the Canada Border Services Agency ("CBSA") had the necessary information, practices and controls at the border to implement its export enforcement priorities. What is interesting about this report is that it talks about Canada's export controls and economic sanctions laws. This is not a usual topic for the Auditor General.

Paragraph 2.3 of the Report states:

"While most controls focus on the type of good, there are also controls over exporting to certain individuals or countries that are subject to **sanctions**. Sanctions are important to enforcing international norms and laws."

A note about what are sanctions states:

"A variety of measures imposed by the government to restrict or prohibit trade, financial transactions, or other economic activity between Canada and specific countries, organizations, or individuals."

Paragraph 2.5 of the Report states:

"To legitimately export a controlled good, an exporter may require an export permit or other form of authorization from the relevant government department or agency."

Paragraph 2.9 of the Report states:

"Several other government departments also participate in controlling exports by administering and enforcing export legislation or providing information and intelligence. For example, Foreign Affairs, Trade and Development Canada issues export permits under the *Export and Import Permits Act* and assists the Canada Border Services Agency in determining the control status of detained export shipments. Statistics Canada operates the Canadian Automated Export Declaration system, which provides the Agency with electronic export declarations submitted by exporters."

This is good bread and butter stuff.

Then the Report starts to educate the reader with useful language about the roles of the CBSA. Paragraph 2.6 of the Report states:

- “The Canada Border Services Agency (the Agency) is Canada’s last line of defence to prevent goods that contravene Canada’s export laws from leaving the country. Yet generally, exporters do not need the Agency’s approval before goods leave the country. As a result, goods move through the export process unhindered unless the Agency takes deliberate steps to identify, locate, and examine them. This is in contrast to the requirements for imports, where the Agency is expected to release shipments before they enter Canada. Where exports are concerned, the Agency has discretion in terms of when to exercise its authority to examine shipments and how much effort to expend.”
- Then the Report covers the CBSA’s export priorities – and this is interesting:
- “Counter-proliferation: preventing the export of goods that contribute to the proliferation of weapons of mass destruction. This supports a Government of Canada national security priority, and helps fulfill the Canada Border Services Agency’s statutory obligations under the Export and Import Permits Act with respect to controlling military goods and weapons technologies.
- Property obtained through crime: preventing the export of property obtained through crime, mainly stolen vehicles. This supports the Government of Canada’s efforts to combat organized crime and vehicle theft in Canadian communities. In 2010, the Canada Border Services Agency committed to using new powers provided by an amendment to the Criminal Code to help prevent the export of stolen vehicles on a risk-management basis, using its existing resources.
- Export legislation of other federal government departments and agencies: carrying out control activities identified in agreements with those organizations.”
- There is a lot of interesting and useful information in this Report about the audit, which focused on whether the CBSA and its key federal partners (e.g., Global Affairs Canada) had the necessary information, practices, and controls at the border to enable the Agency to implement its enforcement priorities, prevent the export of goods that contravened Canada’s export laws, and facilitate legitimate trade. There are findings and recommendations about:
  - Selecting and examining shipments for non-compliance; and
  - Minimizing the impact on legitimate trade.

Some interesting findings include:

- Foreign Affairs, Trade and Development Canada (the Department) issued most export permits for strategic and military goods and technology within the time frames shown in its published service standards. The Department’s service standards for processing export permit applications for strategic goods controlled under the Export and Import Permits Act are 10 days for straightforward

applications and 40 days for complex applications, provided that the exporter has submitted all the required information. The Department’s target for the 2014–15 fiscal year was to meet these standards 90 percent of the time. We found that during the 2014–15 fiscal year, the Department exceeded this target, meeting its service standards 98 percent of the time, and processed a total of 7,207 permit applications.

- The CBSA did not fully have the necessary authorities, information, practices, and controls to implement its enforcement priorities and prevent the export of goods that contravene Canada’s export laws. As a result, some non-compliant shipments were leaving the country.
- The number of export shipments that the Agency placed on hold or detained was very small compared with total exports, and delays caused by these detentions had little overall negative impact on Canadian trade. However, the CBSA was sometimes slow to take action on, or to release, held or detained goods. Eleven percent of exporters surveyed whose goods were detained for more than a week reported experiencing a major impact. During the period of our audit, compared with the total number of export declarations, few shipments were subject to formal detentions by the Agency. Even fewer—approximately 300—were legitimate shipments that were subsequently released for export without enforcement action and more than 75 percent of these shipments were detained for more than seven days. The Auditor General’s office reviewed a representative sample of 44 detained legitimate shipments and found 5 cases (11 percent) that the Agency did not process in a timely manner.
- For about two thirds of the sample detentions, the CBSA asked the Department to determine whether the goods were controlled under the Export and Import Permits Act or sanctions laws. We did not find any unnecessary delays in the Department’s assessment of these cases, though referring shipments to the Department increased the length of time by which shipments were delayed.



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