

US State Department Policy – Office of Defense Trade Controls

International Traffic in Arms Regulations

An interview with Stan Jacobson, VP Export, CDIA

Canada's defence industry is struggling to find ways to mitigate some aspects of the ITAR policy and the way it is administered. The CDIA (Canadian Defence Industries Association) has some recommendations which may help.

Background

The International Trade in Arms Regulations (ITAR) is U.S. legislation which requires American companies to get authorization before exporting any material that is deemed to be sensitive to U.S. defense or could be used for weapons of mass destruction, and/or is covered on the U.S. munitions list. ITAR legislation facilitates U.S. control of a wide range of materials and technologies that fall into this category such as: data and other information; weapons; chemicals; etc. It is incumbent on the United States industry/government to be very aware of who will receive sensitive information and/or controlled goods; the uses for this material; and the control regulations followed by the recipient.

This U.S. legislation fundamentally affects the defence industry in Canada because the U.S. is Canada's biggest trading partner and many of our companies work hard at building and maintaining strong relationships with companies in the United States. According to CDIA's Vice President, Export, Stan Jacobson, the intent behind the ITAR requirements is not where the concern lies "because most of us in the defence arena are supportive of trying to make sure that certain technologies or information does not get in the hands of people who would misuse it." The problem for Canada lies in the process, not the reasons behind it.

Process & Problems

When a U.S. company wants to partner with a Canadian firm, for any ITAR-related material or information, they must apply for government approval before being allowed to share information or product between the two firms.

The American company submits completed paperwork to the U.S. State Department which then sends the submission to other stake holders, awaits feedback, and finally responds to the initiating company. "We would be reasonably delighted if that process was always 3 to 4 weeks, because you could make decisions – that's not a crippling time in commerce," states Jacobson. "But, when you go into four, five or 12 months, U.S. industry gets nervous because of the uncertain status of their proposed Canadian supplier. This can cause them to view the Canadian company as a 'program risk' and to look for a domestic U.S. supplier – and that is our biggest concern."

Two main documents come into play at this stage – the *Technical Assistance Agreement* (TA) allows a U.S. company to supply information to a Canadian company (or any other country), and a *Manufacturing Licence Agreement* allows that company to manufacture the product.

In Canada or the UK, it is possible to get an export permit in three to four weeks. However, the process can take anywhere from two months to over a year for a US company to get approval to supply information to their Canadian partner. With these types of delays, U.S. companies begin to see their Canadian partners as a risk. Many contracts would be lost if they wait for the approval process, so they look to other American companies instead.



Stan Jacobson, VP Export for CDIA, and Senior Manager, Business Development, for Lockheed Martin Canada, speaks with FrontLine on industry challenges involved in following the ITAR policy.

"The prime issue that we have with ITAR is the length of time it takes from the time the company initiates the paperwork until the time it is approved and through the system," says Jacobson.

Although some segments can work relatively quickly (4 to 6 weeks), companies caught in the trap of a long, drawn-out approval get quite irritated and often begin to justifiably speculate that this type of a longer process is simply a non-publicized trade barrier. This kind of delay can seriously hurt their ability to trade.

Employees with dual citizenship are another problem area in the defence sector. Canada accepts dual nationals, the United States does not. The U.S. see dual-nationals as a security risk and have made security clearance procedures for these employees so cumbersome that some companies may feel they must be cautious and possibly avoid hiring dual-nationals.

Another important issue that comes into play is the persistent protectionism by certain U.S. Congressional leaders, which in the defense sector is expressed in *Buy American* amendments to the annual U.S. defense reauthorization. Americans such as Scott Flukinger, a lawyer in the government contracts practice of the U.S. law firm McKenna, Long & Aldridge, say Canadian companies should anticipate such proposals and work to pre-empt the more extreme of them. *Buy American* is "here to stay," he says, so Canadian industry should be aware of it at all times and plan on it like any other cost of doing business.

One way to help the defence and aerospace industry in Canada, is for our politi-

cal machinery to become adept at making sure that our government representatives are well versed in the art of diplomacy – to know how and when to send the right the messages – to make sure that negative sentiments don't carry the day.

Canada's Response

So far, Canadian representatives have not been successful in reducing timelines of the U.S. approval process. However, Canada has initiated two programs that govern how Canadian industry will handle sensitive information or material.

The *Export Controls Act* has an associated list which is harmonized with the U.S. munitions list and Export Permits are processed by the Dept of International Trade.

The *Controlled Goods Program* (CGP) was enacted a few years ago when the U.S. criticized Canada's lack of legislation for controls and penalties within the country. This spurred Canada into initiating the CGP legislation and policy which governs how sensitive goods are handled or transferred between individuals and/or companies within Canada. Penalties for failure to control these materials include jail terms and significant fines.

Defence Industry Response

The CDIA had hoped that if Canadian firms continued to demonstrate effective controls, the U.S. would have the confidence to return certain exemptions (lost after 9/11) to facilitate the conduct of defence business between the two countries.

Not much benefit has yet been derived from tightening things up, but, says Jacobson, "we are still hopeful that at some point it will have some positive effect."

Initially, the execution of Canada's Controlled Goods Program had some problems – possibly created due to wide-ranging implications across the entire Canadian industry. Mr Jacobson believes that the CGP is a good idea and concept. "Regretfully," he muses, "in the early stages, few people on the government teams, who were trying to determine what policies to implement, had any industry experience. Initially that caused great strain and I give the current administration at lot of credit for involving industry associations in the policy process, to help find solutions that won't cripple industry. The current administration has been very positive in wanting to keep industry stake holders involved. As for the critically needed inter-governmental discussions, the concern we

have is that, because of Department of Industry and Trade staffing issues, and because of 9/11, the ability of government representatives to have meaningful dialogue that will address key issues has been compromised."

How much longer will it be before our governments agree that it's time to resolve some of these crippling trade barriers? Industry associations have made attempts to recommend potential solutions. For example, the CDIA has suggested that, as Canada's defence industry is relatively small, and since many of the major players are subsidiaries of US firms, a section in the State Department could be devoted to handling applications related to Canadian firms. This section, with experience dealing with Canadian partnering companies, could establish processes that could handle some of the regular partners in a timely manner.

The CDIA has met with Canada's Department of Industry and Trade, and the Department of Foreign Affairs, hoping to find ways to expedite the internal processing of these requests.

Surely the US government can streamline the process to match international standards of 3 to 4 weeks for approvals.

Canada US Relations

Mr. Jacobson suggests that there could have been a less industry- and relationship-damaging way to explain Canada's refusal to join the *Coalition of the Willing*. "I have tried to explain to American friends and colleagues that Canada had no other capabilities... we had nobody left to send, so we did what we could by supplementing forces where we could in Afghanistan, to allow US forces to deploy in Iraq. We extended our fleet which, in turn, freed up US fleet assets for redeployment. And probably the least-subtle message was the fact that Canada did not withdraw any of the Canadians who were actually attached to U.S. units that went into Iraq. It would have been better to say 'the reason we are not joining you is two-fold: One, we don't believe this is the right thing to do, we don't see the evidence, and we think this is a risky venture. And two, we just don't have anybody to send. We can do the following things to be helpful but that's it.' I think that message would have been understood a lot better in the U.S."

Our new administration, the MND in particular, seems to understand the critical importance of handling political differences in a diplomatic manner.

"I think that's probably hit the nail on the head," agrees Jacobson, "it's not so much what the message is, but how you convey the message. There are a number of ways to say you can't play without presenting a superior attitude. Canada should be proud of what we do, but we still must appreciate that, in the military sense, our ability to contribute significantly to a sustained combat mission is really limited."

Canadian citizens are becoming painfully aware that our military resources are not up to the standards required to offer the strong presence on the international stage that the Prime Minister apparently would like to have. We don't have enough of anything to make significant contributions for any great length of time, therefore, taking a 'holier than thou' attitude is not effective.

"Canadians need to recognize that we do share this continent, that it's incumbent upon us to make sure that we help protect the continent," states Jacobson. "If the United States is worried that we aren't doing enough to protect this vast undefended border, they will understandably want to take things into their own hands. So, it is important to have a positive relationship – it doesn't mean necessarily a subservient one – but, in a positive relationship, you can agree to disagree. I am comforted by the fact that the current administration is concerned enough about the relationship to want to approach it in a non-antagonistic manner."

Jacobson's comments were made prior to the recent anti-Bush tirade by Carolyn Parrish, who has since been banished from her cabinet position by the Prime Minister.

CDIA

Governed by a volunteer Board of Directors from defence companies, which uniquely positions the CDIA to intimately understand the nuances of the policies and their industrial consequences.

Many industry members have neither the time nor resources to travel to Ottawa to make their concerns known, so instead they can privately express concerns about policy issues to the CDIA. This, in turn, allows CDIA executives to examine the issue with other Association members, and potentially to work with the Government to improve the process on behalf of Canadian industry. **FL**

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