

special list established by the Governor in Council.<sup>1</sup> Subsection 3(2) authorized the Governor in Council to establish a list of countries to which export restrictions applied. Under Section 5, exporters of the goods mentioned in the lists were required to obtain an export permit, and sanctions were provided in cases of non-compliance. Therefore, the main components of a control system were put in place although the Act did not address the question of strategic products, and there were shortcomings in the restriction procedures.

#### *The 1954 Export and Import Permits Act*

Canada joined COCOM in 1950 and immediately began to tighten its control system. On 15 March 1954, the new *Export and Import Permits Act* was introduced, which for the first time referred to the trade of strategic goods.<sup>2</sup> This Act is still in effect, although it has been amended often. Section 3 authorizes the Governor in Council to establish an "Export Control List" (ECL) for purposes such as the following:

- (a) to ensure that arms, ammunition, implements or munitions of war...or any articles deemed capable of being converted thereinto or made useful in the production thereof or otherwise having a strategic nature or value will not be made available to any destination where their use might be detrimental to the security of Canada.

The Act requires that an export permit be obtained before transferring any strategic goods, which would include not only military articles but also those which would be designated today as "dual-use technology." Paragraph (d) provides that products and countries covered by certain international agreements to which Canada is a party (such as COCOM), be included in the Canadian control list.

As in the 1947 Act, the Governor in Council is authorized to establish an "Area Control List", that is a list of countries to which *no* goods may be exported without a permit. Subsection 4(1), added in June 1991, authorizes cabinet to establish an "Automatic Firearms Country Control List" made up of countries which have agreements with Canada in the areas of defence, research and development or production. Only countries on this list may receive automatic firearms from Canada.

Section 7 stipulates that only residents of Canada may apply for an export permit. The regulations of 27 May 1954, which are still in effect, specify that companies with their head office or a branch in Canada meet this requirement. Limiting licences to the country's residents is designed to help regulate the international

trade in arms by restricting the opportunities for intermediaries to do business.

The Act stipulates that Canadian exporters must obtain an export permit from the minister responsible, initially the Minister of Trade. After International Trade and External Affairs were integrated in 1982, responsibility passed to the Secretary of State for External Affairs.

The establishment of control lists is strictly the prerogative of the executive, and there is no parliamentary consultation required. The minister is required only to provide to Parliament an annual report of the operations under the Act. The executive is not obliged to publish the content of the lists, details concerning operations under the Act, or information on the number or type of permits issued. The cabinet may cancel, amend, or re-establish any Area Control List. It may decide on the information and undertakings to be required of permit applicants and holders, issue "general" permits, and even exempt "any person or goods or any class of persons or goods from the operation of any or all of the provisions of this Act."

#### *The Atomic Energy Control Act*

Passed in 1946, this Act also concerns the control of strategic exports since it authorizes the Atomic Energy Control Board (AECB) to issue, with the approval of cabinet, permits for the possession, use and sale of substances or articles which could be used to produce nuclear energy.<sup>3</sup> Most of the nuclear items are also included in the Export Control List, and therefore require an export permit from the Department of External Affairs and the AECB. However, some non-strategic nuclear materials (non-fissile radioisotopes used in research, medicine, agriculture and industry) are not on the ECL and only an AECB export permit is needed.

#### *The United Nations Act*

This Act gives cabinet the powers it requires to implement, pursuant to Article 41 of the UN Charter, any decision of the UN Security Council.<sup>4</sup> It authorizes the executive to implement non-military coercive measures to safeguard collective security, particularly the interruption of economic relations. It allows the Canadian government to block all exports, not just of goods but also of services, capital and labour. The 1990 embargo against Iraq was implemented on the basis of this Act.

#### *Amendments to Legislation Governing Arms Exports*

Amidst considerable controversy, in June 1991 the government amended the *Export and Import Permits*

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