

## EXPORT CONTROLS ON INFORMATION SECURITY (CRYPTOGRAPHY) ITEMS

### **PURPOSE:**

The Export Controls Division at the Department of Foreign Affairs and International Trade (DFAIT) is seeking the views of industry on possible ways to further improve the efficiency of Canada's administration of export controls on information security items (cryptography), while continuing to meet Canada's international commitments and national security requirements. This brief paper is intended to provide broad context for this consultation exercise with industry.

### **CONTEXT:**

Pursuant to the *Export and Import Permits Act*, Canada controls exports of certain dual-use, military and strategic goods and technology. The Export Control List (ECL) defines which items are subject to controls, and these definitions are generally the result of multilateral negotiations in four export control regimes in which Canada participates.

Recognizing that cryptography could be used to undermine or threaten international and national security, all 40 Participating States of the Wassenaar Arrangement have committed to implement in national legislation export controls on cryptography. Cryptography is controlled in the ECL in Category 5 of Group 1, the "Dual-Use List", which includes items that are designed for civil, commercial applications but which could also be used for significant military purposes. The Export Controls Division administers these export controls in partnership with the Communications Security Establishment (CSE), Canada's national cryptologic agency. Export controls are enforced by the Canada Border Services Agency and the Royal Canadian Mounted Police, in consultation with the administering offices.

Because encryption items can be used to maintain the secrecy of information, the Government of Canada takes measures to protect against the possibility that these items may be used by persons abroad to harm Canadian foreign policy and national security interests. Cryptographic export controls assist the Government in ensuring that Canada's foreign policy and national security interests are protected from concealed hostile or detrimental activities abroad. At the same time, export controls aim to facilitate the legitimate use of encryption to protect information within the public and private sectors.

In 1998 the Government of Canada adopted a Cryptography Policy to support the growth of secure electronic commerce and recognize the important role of cryptography in providing secure, trusted and reliable online transactions and communications. That Policy noted that, while Canada would continue to implement cryptography export controls in keeping with the framework of the Wassenaar Arrangement, the Government would take into consideration the export practices of other countries, national security interests, and that the export permit application process should be streamlined to ensure the least regulatory intervention necessary.

In support of the Cryptography Policy and as noted in Notice to Exporters SER-113 of December 1998, cryptography may be exported using a number of multideestination permits in an effort to provide Canadian cryptography exporters with conditions broadly similar to those faced by exporters in the United States and the European Union. In particular, these permits allow: exports of defined products to any end-user in the European Union and 5 other countries; exports of defined products to defined subsidiaries of US and Canadian companies; and exports of defined products to all but the most sensitive countries with reduced documentary requirements (with semi-annual reporting on actual shipments required). Single-destination permits are also available to exporters and are the only allowable permit type for exports of the most sensitive cryptography-related goods and technology or to certain destination countries. No permits are required for exports of cryptography to the United States.

In December 2009 Participating States of the Wassenaar Arrangement agreed to eliminate export controls on “ancillary” cryptography. Pending the necessary regulatory amendment to Canada’s ECL, the Export Controls Division has implemented an interim measure of issuing a special, very broad type of permit with no reporting conditions in order to immediately provide the benefit of this decontrol to Canadian exporters.

The ECL contains a decontrol note on “mass market” cryptography, as agreed by Wassenaar Arrangement Participating States. The Export Controls Division takes under advisement mass-market rulings provided by the US Department of Commerce and other Wassenaar partners when presented by Canadian exporters. The interpretation of this note by other countries was the subject of an industry consultation which ended in May 2010.

## **INDUSTRY CONSULTATION**

In order for the Government to fulfill its mandate to preserve international and national security, export controls on cryptography as defined in the ECL must provide efficient, credible mechanisms for Government to identify the cryptography-related goods and technology that are being exported, the nature of the cryptography they contain, and the destinations to which they are being exported.

The Export Controls Division is seeking the views of Canadian industry on possible measures to further improve the efficiency of the administration of Canadian export controls on cryptography items to ensure a level playing field for Canadian exporters, within the context of Canada’s commitments made in the Wassenaar Arrangement and the security mandate of the Government.