



# Canada's Implementation of the new *International Traffic in Arms Regulations (ITAR) Dual National Rule*

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# THE CONTROLLED GOODS PROGRAM

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# Controlled Goods Program (CGP)

- Established in 2001 to support Canada's ITAR exemption. Under separate legislation: *Defence Production Act (DPA)* and *Controlled Goods Regulations*.
- Enhanced in 2011 to meet the requirements of the new ITAR dual national rule and Canada's own threat assessments.
- Regulates the access of controlled goods in Canada. Includes examination, possession, or transfer of controlled goods.
- Designed to prevent risk of illegal transfer and proliferation of articles and technologies which could assist in the creation of weapons of mass destruction.



## Legal Obligations if you Examine, Possess or Transfer Controlled Goods

- Registration is mandatory for any company/individual accessing controlled goods in Canada.
- A security assessment is a condition of registration for all employees, directors or officers requiring access to controlled goods in Canada.
- Every company must appoint a Designated Official (DO).
- All DOs must be trained and certified within reasonable timelines.



## Role of the Designated Official

- **Conducts security assessments**, for the risk of illegal transfer of controlled goods, on officers, directors and employees.
- **Transfers** all high-score security assessments to the CGD for additional evaluation with security partners if deemed necessary.
- **Submits** applications for exemptions to the CGD.



## Role of the Designated Official (cont.)

- **Additional** duties that may be delegated by the Company:
  - **Develop and Implement** security plans.
  - **Maintain** records (e.g. security assessments, controlled goods transfers).
  - **Train** employees, visitors and temporary workers.
  - **Report security breaches** and any changes to the organization and/or persons accessing controlled goods.



# Procedures to Ensure Compliance

- Security assess and certify DOs.
- Conduct compliance inspections of registered companies (including security plans, record keeping, training programs, security breach reports).
- Invoke suspension and revocation, and prosecution procedures as required (including seizure and detention of controlled goods).





## Procedures to Ensure Compliance (cont.)

- Educate industry and company DOs, on the legal and regulatory requirements.
- Pass on high risk security assessments to security and intelligence (S&I) partners for further analysis.
- Illegal possession, examination or transfer of controlled goods is an offence under Canada's DPA.
  - Maximum penalty is \$2,000,000 per day and/or imprisonment for a term not exceeding 10 years.



## Shared Responsibility

- The security of controlled goods is a responsibility that is shared between government and industry.
- A registered person must be ready for inspection at all times. Under section 42 of the *Defence Production Act* (DPA), a designated inspector can:
  - enter and inspect any place at any reasonable time;
  - question any person;
  - require any person to produce for inspection any document believed to contain any relevant information;
  - detain or remove any controlled good;
  - require any individual in charge to take corrective measures.

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## Shared Responsibility (cont.)

- When non-compliance occurs, it is the company's responsibility to take timely and appropriate action to comply with legislative and regulatory requirements.
- Consequences of non-compliance include revocation of CGP registration and the penalties outlined on the previous slide.



## Metrics

- As of April 1, 2012: 3,840 companies registered with the CGP.
- In the last fiscal year, the CGP has:
  - processed 1,829 applications (new, renewals, amendments);
  - completed 1,248 compliance inspections;
  - security-assessed 1,854 exemption requests for foreign visitors and temporary workers;
  - investigated 157 case files, including 4 criminal breaches sent to RCMP;
  - under the enhanced program, assessed 253 files with S&I partners.
- Currently 3 companies under review for possible denial and 2 others for possible suspension or revocation.





# ENHANCEMENTS TO THE CONTROLLED GOODS PROGRAM

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# Drivers for Enhancements

- Adapting to Canada's evolving security needs.
- Meeting the requirements of the new ITAR dual national rule (section 126.18).



# Adapting to Canada's Evolving Security Needs

- Public Works and Government Services Canada takes security very seriously.
- Asked CSIS to conduct a Threat and Risk Assessment (TRA) in 2009 to determine whether the CGP's parameters were in line with the post 9/11 security context. i.e.
  - Terrorism
  - Sabotage
  - Home-bred extremism
  - Proliferation of weapons of mass destruction
  - Espionage
  - Intangible technology transfer
  - Cyber crime, Wikileaks; and,
  - Use of couriers to facilitate terrorist activities
- A number of security gaps were identified.

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## Meeting the Requirements of the new ITAR Dual National Rule

- Conflict between Canadian human rights legislation and former ITAR dual national rule was costing Canadian companies millions of dollars in lost business opportunities and settling human rights complaints.
- Since the mid 2000s, Canada has advocated for a solution that focuses on security rather than nationality. The enhanced CGP embodies this solution, as does the new ITAR rule.
- Basis for an Exchange of Letters between the U.S. Directorate of Defense Trade Controls and the Canadian Department of Public Works and Government Services, concluded on August 29, 2011.

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## Canada-U.S. Exchange of Letters

- Recognizes that CGP registration meets requirements of Section 126.18(c)(2) of the ITAR.
- Assures Canadian and U.S. industry that the CGP addresses both new ITAR rule and Canadian privacy and human rights legislation.
- Stipulates that all U.S. State Department requests for information are to be addressed to the CGP and all information provided to State will go through the CGP.
  - Ensures accordance with Canadian privacy laws and policies.



# Responding to the TRA and new ITAR Rule

Enhancements to the CGP were developed and implemented under four pillars:

- Flexibility and partnerships to capture and address evolving security vulnerabilities.
- Tightened security assessments vis-à-vis the risk of illegal transfer of controlled goods.
- Ensure uniform application of all processes and tools for all CGP registered companies.
- A commitment to consulting and involving government and industry stakeholders on improvements to the Program.



## What are the Main Enhancements?

- **More rigorous assessments**
  - A standardized tool to security assess employees.
  - Conduct further assessments (e.g. due to criminality) with S&I partners as appropriate.
  - More robust assessments of security plans and other inspection activities.
- **Establishing information sharing agreements** with S&I partners.
- **Education and certification** of company DOs.
- **Exchange of Letters** with the U.S. Department of State



## Consultation/Communication/Education

- Industry is being informed of changes to the Program through:
  - call centres;
  - bulletins and communiqués posted on the CGP web site;
  - direct contact with front line staff; and,
  - a cross-Canada training blitz for DOs.



## Consultation/Communication/Education (cont.)

- Over the last two years, 10 formal consultations have been held with key industry stakeholders representing 6 industry associations and 25 companies.
- In February, 2012, an Industry Engagement Committee was established to focus on specific issues and suggestions.
- Since October, 2011, one-day training sessions have been offered to all DOs who are required to implement the enhanced security measures by using the new Security Assessment Application.



# Industry Concerns and Suggestions

- Increased administrative burden, overly stringent requirements.
- Duplication of effort by not recognizing security clearances in CG security assessment process.
- Risk of legal action on privacy and human rights grounds.



## Industry Concerns and Suggestions (cont.)

- List of items in the Controlled Goods Schedule (CG Schedule) is broader than the U.S. Munitions List, resulting in a competitive disadvantage for Canadian industry.
- Need to monitor U.S. export control reform, in particular changes to the ITAR, and adjust Canada's controlled goods and export control regime as appropriate.



## Our Response

- Internal and industry continuous improvement initiatives.
- Integrated security clearances into the assessment process.
- Clarified that any sharing of information will be in accordance with Canadian privacy legislation; will be making appropriate amendments to the assessment form.
  - The EOL with the U.S. stipulates that any sharing of information will be through the CGP.
- Created an interdepartmental CG Schedule Working Group to amend the Schedule to focus on the items that may have implications on national security and are of strategic significance.





## Security Assessment Procedures for Individuals with a Security Clearance

- The Designated Official (DO) has the discretion to consider a valid security clearance in the security assessment process provided the clearance is secret or higher; the individual has consented to the use of the security clearance; and the company holds the security clearance.
- The DO must possess and consider the information in the Security Clearance Form (TBS 330-60) and the Security Screening Certificate and Briefing Form (TBS 330-47).
- The individual is required to complete the Security Assessment Application if the TBS 330-60 form is not available.

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# Security Assessment Procedures for Individuals without a Security Clearance

1. Identity and background check.
2. Criminal history verification.
3. Assess financial risk.
4. Assess travel risk.
5. Assess significant and meaningful associations.
6. Perform risk assessment.
7. Submit files exceeding risk threshold to CGD for further assessment .



# Amendments to the Security Assessment Application Form

- We are working closely with industry in order to address their concerns and make a number of changes to the SAA Form.
- The review has focused on:
  - **Clarity:** relating to the Privacy Statement and consent to the security assessment.
  - **Length and duplication:** looking at simplifying the SAA form.
- But not a reduction in due diligence.



# Amending the Controlled Goods Schedule

- Update and amend the Schedule to address and control:
  - All ITAR items contained in the U.S Munitions List;
  - All other non-ITAR items which require domestic controls;
  - Review items contained in the Schedule that overlap with alternative legislation and/or different federal regulatory bodies; and
  - Reflect industry input.
- Draft review of the CG Schedule will be completed by November 2012.



# U.S. Export Controls Reform

- The CGP acts as a first point of contact regarding U.S. export controls reform:
  - Works with the Department of Foreign Affairs (DFAIT), the Canadian Embassy in Washington and Canadian industry to monitor U.S. export control reform, in particular as these relate to the ITAR.
  - Coordinates the analysis of implications on Canadian government and industry with key departments (especially DFAIT and National Defence) and Canadian industry.
  - Coordinates government response (where required) and comment on Industry response (when requested).
  - Transmission of all Canadian government submissions will be via the Embassy.

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## In Summary

- The CGP played a key role in Canadian industry's privileged access to the economically important U.S. defense and security market.
- The 2011 enhancements enabled industry to take immediate advantage of the new ITAR dual national rule.
- Commitment to consulting with industry and improving the program so that it meets security requirements with the minimum administrative burden.
- We are monitoring U.S. export control reform and also aiming to build 'higher walls around a smaller yard'.



# Strengthening Canada's Security Together



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**Government and Industry**

***We both share a common interest: Security***

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