Export Control Program

Researcher Training

University of Wisconsin – Madison

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Table of Contents

- Introduction
- Non-Compliances
- Definitions
- Regulations
- Impact on Work
- Contact Information
Introduction
What is Export Control?

- Export control consists of a group of federal laws / regulations that control certain commodities, technologies, information and data
- Limits what can be shipped out of the country and to whom it can be shipped
- Can limit access to information for certain foreign nationals and/or organizations
- Determines when a license is required to ship items or information abroad
Purpose of the Regulations

- To control the export of military and dual use products, technology and services to foreign persons or organizations
  - Primarily for national security purposes
  - Some economic reasons as well
  - Dual Use: commercial items that could have military, national security or proliferation applications
    - Ex: computer technology and software, sensors, lasers
Why Do We Care (about Export Control)?

- It’s the law (we need to comply with the regulations)
- These regulations can affect:
  - What type of research we do
  - Who we hire
  - Who we can share information with
  - Who we work with (collaborators / sponsors)
  - Where we ship items
  - What items we ship
  - Level of security for projects / labs
Non-Compliances
Results of Non-Compliance

- Civil & criminal penalties levied against individuals & organizations
- Disciplinary action by university toward responsible individual
- Bad press
- Loss of research funding

You can be held personally liable for non-compliance
Case of J. Reece Roth - U of Tenn (Sept 2008)
- Retired professor in plasma physics
- Convicted on 18 counts of conspiracy, fraud & violating ITAR
- Gave 2 grad students from China & Iran access to sensitive info
- Sentence - 48 months in prison
  - Worst case: 175 yrs in prison; $15.5M

Humane Restraint - Waunakee (June 2012)
- Manufacturer of restraining devices for police & hospitals
- 32 charges of shipping restraints w/o export licenses
- $465K fine, reducible to $50K, if they do not commit additional violations over the next 2 yrs

Teledyne LeCroy, New York (June 2015)
- Exporting 2 oscilloscopes (3A292) to Beihang University, China (an entity-listed university)
- Failed to get export licenses & file accurate shipping documentations;
- Value of oscilloscopes < $16K
- Fine = $75K
Definitions
**Physical Export:** Sending or taking anything out of the United States in any manner, except mere travel outside of the U.S. by a person whose personal knowledge includes technical data; including:

- Shipping – commercial shippers or hand-carry
- Verbal transfer of technical data (i.e., phone, Skype)
- Electronic transfer of technical data (i.e., e-mail, fax, text, social media)
- Items: computers, equipment, biological agents, materials, substances, etc.

**Deemed Export:** See next page

**Defense Service:** Performed for or on behalf of a foreign person or organization
Deemed Export

- Transfer (oral or visual disclosure) of technology, information or data to a foreign person within the U.S. is deemed to be an export to that person’s home country
  - Deemed exports are treated in the same manner as a physical export to a foreign country
- Examples of deemed export:
  - Foreign collaborators @ UW working on controlled technology
  - Phone calls regarding controlled technology w/ foreign collaborators working @ another U.S. university
  - Taking foreign visitors on a tour of a lab where they can view design details of controlled technology
  - Discussions regarding controlled technology w/ foreign persons at a conference w/in the U.S.
A Foreign Person or Organization is anyone who is NOT a U.S. Person. A U.S. Person is:

- U.S. citizen or national
- Permanent resident (green card holder) of the U.S.
- A refugee, someone granted political asylum or someone granted amnesty
- U.S. government agency and any state or local governments therein
- U.S. company, business, LLC or partnership
- U.S. university
Regulations
### ITAR

<table>
<thead>
<tr>
<th>Name of Regulation:</th>
<th>International Traffic in Arms Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency:</td>
<td>State Dept.</td>
</tr>
<tr>
<td>Items Controlled:</td>
<td>Military equipment &amp; information</td>
</tr>
<tr>
<td>Listing:</td>
<td>United States Munitions List (22 categories) – 22CFR 121</td>
</tr>
<tr>
<td>Comments:</td>
<td>Treats all foreign destinations the same</td>
</tr>
</tbody>
</table>
| UW Examples:       | Category IV: Launch vehicles, missiles, rockets,….
|                    |  • StarTracker                            |
|                    | Category VII: Tanks and military vehicles |
|                    |  • Terrain displacement under treaded vehicles |
|                    | Category XII: Fire Control, optical, guidance and control equip. |
|                    |  • NIR detector                           |
|                    |  • AERI crycooler                         |
|                    | Category XV: Spacecraft systems and associated equipment |
|                    |  • GOES-R                                 |

**UW Examples:**
- Category IV: Launch vehicles, missiles, rockets,….
  - StarTracker
- Category VII: Tanks and military vehicles
  - Terrain displacement under treaded vehicles
- Category XII: Fire Control, optical, guidance and control equip.
  - NIR detector
  - AERI crycooler
- Category XV: Spacecraft systems and associated equipment
  - GOES-R
## EAR

<table>
<thead>
<tr>
<th>Name of Regulation:</th>
<th>Export Administration Regulations</th>
</tr>
</thead>
<tbody>
<tr>
<td>Agency:</td>
<td>Commerce Dept.</td>
</tr>
<tr>
<td>Items Controlled:</td>
<td>Dual use items &amp; information</td>
</tr>
<tr>
<td>Listing:</td>
<td>Commerce Control List (10 categories) – 15CFR 774, Supp 1</td>
</tr>
<tr>
<td>Comments:</td>
<td>Need for a license depends on commodity, destination country, reason for control &amp; exemptions</td>
</tr>
</tbody>
</table>
| UW Examples:       | Category 1: Select agents  
                      Category 3: Electronics, such as multimeters, digital I/Os, D/A converters and integrated circuits  
                      Category 4: Computers and related equipment  
                      Category 5: Telecommunications equipment, ethernet switches, remote control power switches, encryption software  
                      Category 6: Lasers, optical sensors |
**Name of Regulation:** Foreign Asset Control Regulations  
**Agency:** Treasury Dept.  
**Items Controlled:** Foreign assets (bank accounts)  
**Listing:** Specially designated nationals list  
**Comments:** More concerned with whom you are communicating rather than what you are communicating  
**Examples:**  
- Benevolence International Foundation, Oak Lawn, IL  
- Ukrainian-Mediterranean Airlines, Kiev, Ukraine  
- Malek Ashtar University of Technology, Tehran, Iran  
- Electronics Institute, Damascus, Syria  
- A-Team Chemicals Company LTD., Bangkok, Thailand  
- China Enriching Chemistry Limited, Shanghai, China  
- Proton Petrochemicals Shipping Limited, Nicosia, Cyprus
1) The contract contains one or more of the following:

- Publication restrictions
- Personnel restrictions
- Export control paragraph
  - Ask for ITAR or EAR classification

2) Technical information received under a NDA

3) Shipping items or information overseas

4) Working with foreign collaborators here or abroad

RSP typically does not accept these restrictions
Exemptions for Universities

- **Fundamental Research Exemption (ITAR, EAR)**
  - No license is required for fundamental research – basic or applied research in science or engineering – at an accredited institution of higher learning in the U.S. and resulting in information that is ordinarily published and shared broadly in the scientific community.

- **Public Domain Exemption (ITAR, EAR)**
  - No license is required to export information or research that are generally available in the public domain. This does not apply to physical equipment, materials, substances, etc.

- **Education Exemption (ITAR, EAR)**
  - No license is required to transfer information to students, including foreign nationals, concerning general scientific, mathematical or engineering principles commonly taught in schools, colleges or universities.

- **Employment Exemption (ITAR only)**
  - No license is required to transfer export controlled information to a foreign national if the foreign national: (1) is a bonafide, full-time employee of the UW, (2) is not a national of certain countries of concern, (3) has a permanent residence in the U.S. while employed at the UW, (4) has been informed in writing not to transfer information to other foreign persons.
Impact on Work
Discovering Issues

The Export Control Office reviews a number of processes to unearth issues, including:

- **Project Screening** – Using the WISPER screening tool
- **Visa Certification** – For H-1B and O-1 visas
- **Outgoing International MTAs**
- **International Travel** – Weekly review of Concur bookings
- **Classification of Projects** – USML categories or ECCNs
- **Vendor Screenings**
- **Project Reviews** – Questions from staff regarding projects, staffing, shipping, etc.
Restricted Party Screening

- The gov’t maintains multiple lists of persons and organizations upon which it has placed business restrictions (restricted parties)
  - Specially Designated Nationals List, Denied Persons List, Entity List, Unverified List, Nonproliferation Sanctions List
  - Reasons Parties Are Added to These Lists: Terrorism, WMD development, drug trafficking, export control violations

- eCustoms Screening Tool
  - Screens parties to U.S. and foreign lists

- When do we screen parties?
  - Visa assessments, project reviews, MTAs, purchasing, shipping destinations
International Shipping

- **Who?**
  - To whom are you shipping the item? Is the recipient a restricted party?
  - Do you know who the end user is?

- **What?**
  - Some items require an export license (i.e., military equipment; spaceflight H/W or S/W; select agents; some lasers; high speed cameras; night vision goggles)

- **Where?**
  - **E:1 Countries: Iran, North Korea, Sudan, Syria – Major restrictions**
  - **OFAC & US Embargo List:** Balkans, Belarus, Central African Republic, Cote d’ Ivoire, Cuba, Congo, Iran, Iraq, Lebanon, Liberia, Libya, N. Korea, Somalia, South Sudan-related, Sudan, Syria, Ukraine-related (Russia), Venezuela, Yemen-related, Zimbabwe
  - **ITAR Prohibited Countries (22CFR 126.1):** Afghanistan, Belarus, Central African Republic, China, Cote d’ Ivoire, Congo, Cuba, Cyprus, Eritrea, Haiti, Iran, Iraq, Lebanon, Liberia, Libya, N. Korea, Somalia, Sri Lanka, Sudan, Syria, Venezuela, Vietnam, Zimbabwe

*For additional information & examples, see the Shipping training @ [https://kb.wisc.edu/images/group156/shared/ExportControl/shippingtraining.150105.pdf](https://kb.wisc.edu/images/group156/shared/ExportControl/shippingtraining.150105.pdf)*
International Travel

- **Where?**
  - Similar destination concerns as shipping

- **Why?**
  - Conferences, meetings – What do you plan to discuss?
  - Research – Is this fundamental research?

- **Who?**
  - Are you meeting with specific persons?
  - Some foreign universities are subject to restrictions by the federal gov’t

- **What?**
  - An export license may be required when traveling and taking something on a plane either in checked or hand-carried luggage
  - Hand-carry to a foreign country = ship to a foreign country
International Travel (cont.)

- **AES Submissions**
  - U.S. Customs will require you to submit an Electronic Export Information filing (EEI) two (2) hours prior to your departure if you are carrying:
    - If the item being hand-carried requires an export license
    - The value of the items hand-carried are $\geq 2500$ for a single tariff code (Schedule B code)
    - Rough diamonds

- **Hand-carried Items**
  - Complete a commercial invoice and forward to your customs broker to complete the EEI filing

- **Exemptions**
  - Tools of the Trade: For UW-owned equipment that is used for work purposes
  - BAG: For personally-owned equipment that is taken out the country

- **Clean laptop program**
Software

- **Software can be included in any of the export control categories**
  - Please review any software that is involved with a project to determine if it is export controlled

- **Encryption**
  - **Encryption presents its own set of special rules under EAR and ITAR**
  - Use of encryption on any project may require a license when foreign nationals are involved
  - Even if a license is not required, a classification report may need to be submitted

For additional information on software, please see:
https://kb.wisc.edu/images/group156/shared/ExportControl/software.160317.pdf
Services

- Service - Work done for hire that is not considered research
  - University exemptions do not apply
- Examples:
  - Analysis of unknown pharmaceutical substances
  - Manufacturing items that are incorporated into commercial devices
  - Providing materials for outside university or commercial research

Concerns

- Physical export of controlled items, technology or information to foreign persons
- Services conducted at UW by foreign staff/students using controlled technology (deemed export)
Finding export control issues is much like looking for a golf ball in a haystack.

And when you find a “golf ball”, what do you do with it?
Technology Control Plan (TCP)

- Prevent unauthorized access to controlled equipment, materials, technology, software, information or data

- Written plan describing:
  - What items are controlled
  - Where the items are located
  - Who can have access
  - How the access is controlled (see lab security)

- Developed in collaboration between PI and Export Control Office

- All lab staff should review and sign off on TCP

- Adequate control may prevent need for deemed export licenses
Lab Security

- In some cases lab security needs to be implemented to prevent unauthorized persons from having access to controlled items
  - Lab security measures are described in the TCP

- Types of security
  - Lab: Door locks, key access
  - Equipment: Lockouts
  - Materials: Lockboxes
  - Computer: Password protection, encryption

- Adequate control may prevent need for deemed export licenses
Export Licenses

- **Not the “end of the world”**
  - Typically takes 1-2 months to submit and receive approval on licenses from the Depts. of Commerce and State
  - Export Control Office submits about 6 license applications a year (average 2010-2014)

- **Notify Export Control Office if an export license may be needed**
  - Develop license strategy
    - Can we manage information to prevent the need for a license?
    - Is there an exception we can use?
    - Type of license (EAR or ITAR)
    - When is the license needed?
For Additional Information, Contact:

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**UW Export Control Website:**
http://grad.wisc.edu/respolcomp/exportcontrol/