Export Controls and Trade Sanctions – What you Don’t Know Can Hurt You!

April 23, 2015
Jean G. Schtokal
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- Shareholder and International Trade Lawyer at Foster, Swift, Collins & Smith, P.C.
  - JSchtokal@fosterswift.com
- Over 20 years of practice in business and international law
- Appointed Chair to Michigan District Export Council-West by U.S. Secretary of Commerce
- Advisory Board of Michigan State University’s Center for International Business Education and Research
- Co-Chair of the Global Business Club of Mid-Michigan
- Best Lawyer’s in America (International Trade and Finance Law)
- Executive-in-Residence, Michigan State University – The Eli Broad College of Business, International Business Center
Issue of the Day:

- Challenges of research, development, collaboration involving non U.S. persons/entities
  - foreign student admissions
  - U.S. federal research funding
  - private entity research collaborations
  - foreign alumni and directed donations
  - foreign campus locations and joint degree programs
How can academic institutions ensure compliance with OFAC, ITAR and EAR rules and regulations?
What Happens Before the Collaboration?

- Send researchers for meeting abroad
- Send portfolio of prior projects abroad
- Response to inquiry to collaborate
- Attend conferences
- U.S. facility tours for foreign potential collaborators
- Staffing research projects
Top 4 Questions You Need to be Able to Answer:

- What?
- Where?
- Who?
- Why?
Alphabet Soup
What We Will Cover

Overview:

- U.S. Department of Treasury – Office of Foreign Assets Control Regulations (OFAC)
- U.S. Department of State – International Traffic in Arms Regulations (ITAR)
- U.S. Department of Commerce – Export Administration Regulations (EAR)
U.S. Department of Treasury
Overview

Agency
- Office of Foreign Assets Control (OFAC).

Mission
- Administers and currently enforces economic and trade sanctions based on U.S. policy and national security goals.

Regulations
- Office of Foreign Assets Control Regulations (31 CFR Chapter V).
These economic and trade sanctions operate against:

- Countries
- Certain groups
- Regimes
- Entities, and
- Persons

Applies to all U.S. persons, non U.S. branches of U.S. entity; persons and entities in the U.S.
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Country and Subject Matter Controls

- OFAC acts under Presidential emergency powers, as well as other legislative authority.
- OFAC regulations impose economic and trade controls on transactions and freeze foreign assets under U.S. jurisdiction.
- You must always check the OFAC list of countries and restrictions before you export, even if no export license is required.

http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx
Types of Sanctions

Countries with:

- **Broad Sanctions:** “The C-SINS” – Cuba, Syria, Iran, North Korea, Sudan
- **Limited Sanctions example:** Burma
- **Regime Based Sanctions examples:** Western Balkans, Belarus, Cote D’Ivoire, Dem. Republic of Congo, Lebanon, Liberia, Libya, Somalia, Ukraine/Russia, Venezuela, Yemen, Zimbabwe

Note: The list of embargoed countries changes from time to time. [http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx](http://www.treasury.gov/resource-center/sanctions/Programs/Pages/Programs.aspx)
How Serious Are Universities Taking These Laws/Regs?

dismissal of that suit, but no motion had been filed as of press time. The new law puts the EFF case “on the same footing” as Wisconsin Project v. Dept of Commerce in 2003 and Times Publishing Co. v. Dept of Commerce, which upheld nondisclosure of EAA license applications, Justice said.

It also says 12(c) comes under FOIA provisions excluding certain government information from release. The last extension of the EAA expired in 2001 (see The Export Practitioner, January 2015, page 22).

UMass Reverses Ban on Iranian Students in Science, Engineering Programs

Export controls, especially on deemed exports and trade sanctions, have long confused and troubled university admissions offices, faculty and research labs. The latest example of the problem is the decision of University of Massachusetts (UMass) Amherst Feb. 18, 2015, to reverse a two-week old ban on the admission of Iranian students to its science and engineering programs.

Its original ban was based on its interpretation of 2012 legislation expanding U.S. sanctions on Iran. The reversal of the policy came after it received assurances from State that the ban wasn’t necessary.

“To comply with the law and its impacts, UMass Amherst will develop individualized study plans as appropriate based on a student’s projected coursework and research in conjunction with an offer of admission. The plan will be updated as required during a student’s course of study,” the university said. “The decision to revise the university’s approach follows consultation with the State Department and outside counsel,” it added.

“We have always believed that excluding students from admission conflicts with our institutional values and principles. It is now clear, after further consultation and deliberation, that we can adopt a less restrictive policy,” said Michael Malone, vice chancellor for research and engagement, in a statement.

At issue is the Iran Threat Reduction and Syria Human Rights Act of 2012, which requires State to deny visas to Iranian citizens “to participate in coursework at an institution of higher education to prepare the alien for a career in the energy sector of Iran or in nuclear science or nuclear engineering or a related field in Iran.”

In an earlier Feb. 6 announcement, UMass said it had “determined that these sanctions pose a significant challenge to our ability to provide a full program of education and research for Iranian students in certain disciplines and programs.”
Resources

OFAC – Sanctions Programs and Country Information

Sanctions Programs and Country Information

OFAC administers a number of different sanctions programs. The sanctions can be either comprehensive or selective, using the blocking of assets and trade restrictions to accomplish foreign policy and national security goals.

Frequently Asked Questions: Where is OFAC’s country list?

OFAC Sanctions Programs: Program Last Updated:
- Balkans-Related Sanctions: 02/07/2014
- Belarus Sanctions: 06/11/2011
- Burma Sanctions: 10/31/2014
- Central African Republic Sanctions: 07/07/2014
- Cote d’Ivoire (Ivory Coast)-Related Sanctions: 01/06/2011
- Counter Narcotics Trafficking Sanctions: 04/08/2010
- Counter Terrorism Sanctions: 04/21/2015
- Cuba Sanctions: 04/19/2015
- Cyber-related Sanctions: 04/01/2015
List Based Sanctions Examples:

- Counter Terrorism Sanctions
- Counter Narcotics Trafficking Sanctions
- Non Proliferation (WMD) Sanctions
- Transnational Criminal Organizations
- Cyber-Related Sanctions
Sanctions:

- Generally Comprehensive:
  - Applies to most goods, technology and services and generally prohibits exports (direct or indirect), imports (direct or indirect), brokering, financing or facilitating trade and attempts to evade/avoid the sanctions

- The “C-SINS”:
  - Cuba
  - Syria
  - Iran
  - North Korea
  - Sudan
Partial or Limited Sanctions

Sanctions:

Examples Limited:

- Burma
  - jade or rubies minded or extracted from Burma and jewelry containing them
- Diamond Trading
  - import and export of rough diamonds without proper certification
- Ukraine/Russia
  - Energy, defense and banking sectors
Sanctions:

- Regime Based Examples
  - Balkans
    - blocks property and persons who threaten international stabilization efforts in Western Balkans
  - Belarus
    - blocks property or persons undermining democratic processes or in institutions aimed at corrupt members of the Belarus government
  - Cote D'Ivoire
    - among other things, blocks property of those who threaten peace and national reconciliation efforts and contribute to the conflict there
  - Dem. Republic of Congo
    - blocks property of persons contributing to the conflict there
  - Ukraine/Russia
    - blocks property of those who undermine democratic processes and institutions in Ukraine
SDN and Blocked Persons List

Specifically Designated Nationals (SDN) and Blocked Persons List:

- Full trade embargo of all goods and services, and requires U.S. persons to block property in their possession or under their control
- Over six thousand individuals and entities have been identified by OFAC
- Includes people and entities all over the world
- Owned, controlled or acting on behalf of governments or groups targeted by the U.S.
- *Prohibits dealing with SDN’s and all SDN assets are blocked*
- *Full trade embargo of all goods and services and requires U.S. persons to block SDN property in their possession or under their control*

OFFICE OF FOREIGN ASSETS CONTROL
Specially Designated Nationals and Blocked Persons List
April 21, 2015

ALPHABETICAL LISTING OF SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS (“SDN List”):

This publication of Treasury’s Office of Foreign Assets Control (“OFAC”) is designed as a reference tool providing actual notice of actions by OFAC with respect to Specially Designated Nationals and other persons (which term includes both individuals and entities) whose property is blocked, to assist the public in complying with the various sanctions programs administered by OFAC. The latest changes to the SDN List may appear here prior to their publication in the Federal Register, and it is intended that users rely on changes indicated in this document. Such changes reflect official actions of OFAC, and will be reflected as soon as practicable in the Federal Register.

7TH OF TIR COMPLEX (a.k.a. 7TH OF TIR; a.k.a. 7TH OF TIR INDUSTRIAL COMPLEX; a.k.a. 7TH OF TIR INDUSTRIES; a.k.a. 7TH OF TIR INDUSTRIES OF ISFAHAN/ESFAHAN; a.k.a. MOJTAMAE SANATE HAFTOME TIR; a.k.a. SANAYE HAFTOME TIR; a.k.a. SEVENTH OF TIR), Mobarakheh Road Km 45, Isfahan, Iran; P.O. Box 81486-478, Isfahan, Iran; Additional Sanctions Information - Subject to Secondary Sanctions [NPWMD] [IFSR].

17 NOVEMBER (a.k.a. EPANASTATIKI ORGANOSI 17 NOEMVR); a.k.a. REVOLUTIONARY ORGANIZATION 17 NOVEMBER) [FTO] [SDGT].

32 COUNTY SOVEREIGNTY COMMITTEE (a.k.a. 32 COUNTY SOVEREIGN MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO] [SDGT].

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OFAC List Checking Example

Which ones look suspicious?

- Abdul Rahman Yasin – Bloomington, Indiana
- Center for Innovation and Technology Cooperation
- Tigris Trading Inc. – London, UK
- Tienda Marina Abaroa – La Paz, Mexico
- Havantur Canada Inc. – Montreal, Québec
- Advance Electrical and Industrial Technologies SL – Barcelona, Spain
- Second Academy of National Sciences Research Institute
- Eurasian Youth Union
Exceptions – TSRA Licensing and Other Licenses

Licensing:

- Comprehensive Programs (Iran and Sudan) – limited ability to get license (certain agricultural goods, food, medicine, medical devices) under TSRA (Trade Sanctions Reform and Export Enhancement Act)

- General Licenses (Personal Communications, including certain anti-tracking and anti-censorship software for Iran and Sudan is a recent example)

- Specific Licenses
Common Sense Precautions:

- Risk assessment of region (example, trading with countries with known ties to sanctioned countries, re-exports, etc.).
- Internal controls and processes (screening processes using current lists, recordkeeping, audits, getting full legal names and understanding ownership and government affiliations).
- Designating an internal compliance officer (experienced dealing with U.S. sanctions and high risk countries, open door policy to encourage inquiry, written compliance program, processes, and policies).
- Training (employees involved in cross border activities understand OFAC sanctions and receive ongoing training), document review and screening.
Red Flag Indicators

Things to Look for in Export Transactions

Use this as a check list to discover possible violations of the Export Administration Regulations. You may also wish to visit our page that provides “Know Your Customer Guidance.”

- The customer or its address is similar to one of the parties found on the Commerce Department’s [BIS] list of denied persons.
- The customer or purchasing agent is reluctant to offer information about the end-use of the item.
- The product’s capabilities do not fit the buyer’s line of business, such as an order for sophisticated computers for a small bakery.
- The item ordered is incompatible with the technical level of the country to which it is being shipped, such as semiconductor manufacturing equipment being shipped to a country that has no electronics industry.
- The customer is willing to pay cash for a very expensive item when the terms of sale would normally call for financing.
- The customer has little or no business background.
- The customer is unfamiliar with the product’s performance characteristics but still wants the product.
- Routine installation, training, or maintenance services are declined by the customer.
- Delivery dates are vague, or deliveries are planned for out of the way destinations.
- A freight forwarding firm is listed as the product’s final destination.
- The shipping route is abnormal for the product and destination.
- Packaging is inconsistent with the stated method of shipment or destination.
- When questioned, the buyer is evasive and especially unclear about whether the purchased product is for domestic use, for export, or for reexport.
Know Your Customer Guidance

Certain provisions in the Export Administration Regulations (EAR) require an exporter to submit an individual validated license application if the exporter "knows" that an export that is otherwise exempt from the validated licensing requirements is for end-uses involving nuclear, chemical, and biological weapons (CBW), or related missile delivery systems, in named destinations listed in the EAR.

BIS has issued the following guidance on how individuals and firms should act under this knowledge standard. This guidance does not change or revise the EAR.

Decide whether there are "Red Flags"

Take into account any abnormal circumstances in a transaction that indicate that the export may be destined for an inappropriate end-use, end-user, or destination. Such circumstances are referred to as "Red Flags." Included among examples of red flags are orders for items which are inconsistent with the needs of the purchaser, a customer's declining installation and testing when included in the sales price or when normally requested, or requests for equipment configurations which are incompatible with the stated destination (e.g.--120 volts in a country with a standard of 220 volts). BIS has developed lists of such "Red Flags" which are not all-inclusive but are intended to illustrate the types of circumstances that should cause reasonable suspicion that a transaction will violate the EAR. You should also review U.S. Government Lists to check to identify parties prohibited or restricted from participating in U.S. export transactions, and BIS's Unverified List of parties whose bona fides BIS has been unable to determine in end-use checks.
OFAC Civil Penalties

Civil Penalties

- up to $250,000 per violation (IEEPA).
- $1,075,000 per violation Foreign Narcotics Kingpin Designation Act.
- $65,000 Trading With the Enemy Act.
Criminal Penalties:

- up to $1,000,000 (entities) or $250,000 (individuals), or twice the value of the gain or loss on the transaction and jail time up to 20 years for willful violations

Mitigating factors:

- voluntary disclosure
- first time offense
- compliance policy in place
- level of risk
Resource Center

Civil Penalties and Enforcement Information

2015 Enforcement Information
Browse OFAC Enforcement Actions By Year

Civil Penalties Information Chart

<table>
<thead>
<tr>
<th>Detailed Penalties Information</th>
<th>Aggregate Number of Penalties or Settlements</th>
<th>Monthly Penalties/Settlements Total in USD</th>
</tr>
</thead>
<tbody>
<tr>
<td>4/15/2015</td>
<td>1</td>
<td>23,336</td>
</tr>
<tr>
<td>3/25/2015</td>
<td>1</td>
<td>7,655,300</td>
</tr>
<tr>
<td>3/25/2015</td>
<td>1</td>
<td>780,000</td>
</tr>
<tr>
<td>3/12/2015</td>
<td>1</td>
<td>258,660,796</td>
</tr>
<tr>
<td>Year to date totals:</td>
<td>4</td>
<td>$207,122,432</td>
</tr>
</tbody>
</table>

Selected Settlement Agreements:

2015 Information
• Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and PayPal, Inc.
• Settlement Agreement between the U.S. Department of the Treasury's Office of Foreign Assets Control and Commerzbank AG
Screening – Check Prohibited Parties List

- Consolidated Screening List
  - With respect to parties involved in an export transaction including intermediaries and colleagues, you must check certain lists to be sure the entities or persons you are dealing with are not designated or blocked with respect to export transactions.
  - Lists to Check and Consolidated Screening List is located on the BIS website [http://export.gov/ecr/eg_main_023148.asp](http://export.gov/ecr/eg_main_023148.asp).
  - Commercial software available for purchase – MSU uses ECustoms.
Darkening Your Doorstep

PROPOSED CHARGING LETTER

CERTIFIED MAIL - RETURN RECEIPT REQUESTED

University of Massachusetts at Lowell
600 Suffolk Street
215 Wannalancit Mill
Lowell, MA 01854

Attention: Julie Chen
Vice Provost for Research

Dear Ms. Chen:

The Bureau of Industry and Security, U.S. Department of Commerce ("BIS"), has reason to believe that the University of Massachusetts at Lowell ("UML") located in Lowell, Massachusetts, has committed two violations of the Export Administration Regulations (the "Regulations"),¹ which issued under the authority of the Export Administration Act of 1979, as amended (the "Act").² Specifically, BIS charges that UML committed the following violations:

Charges 1-2 15 C.F.R. §764.2(a) – Export of Atmospheric Testing Device and Related Antennae and Cables to a Listed Entity in Pakistan Without the Required License

On two occasions, on or about September 1, 2007, and on or about October 6, 2007, UML, through its Center for Atmospheric Research, engaged in conduct prohibited by the Regulations when it exported items subject to the Regulations from the United States to the Pakistan Space and Upper Atmosphere Research Commission ("SUPARCO") without the Department of Commerce license required by Section 744.11 and Supplement No. 4 to Part 744 of the Regulations. Specifically, on or about September 1, 2007, UML exported antennae and cables...
UNIVERSITY STATES DEPARTMENT OF COMMERCE
BUREAU OF INDUSTRY AND SECURITY
WASHINGTON, D.C. 20230

In the Matter of:
University of Massachusetts at Lowell
600 Suffolk Street
215 Wannamalacit Mill
Lowell, MA 01854

ORDER RELATING TO
UNIVERSITY OF MASSACHUSETTS AT LOWELL

The Bureau of Industry and Security, U.S. Department of Commerce (“BIS”), has notified the University of Massachusetts at Lowell (“UML”), of its intention to initiate an administrative proceeding against UML pursuant to Section 766.3 of the Export Administration Regulations (the “Regulations”), ¹ and Section 13(c) of the Export Administration Act of 1979, as amended (the “Act”), ² through the issuance of a Proposed Charging Letter to UML that alleges that UML committed two violations of the Regulations. Specifically, the charges are:
NOTE and CAUTION:

- There are several different lists to check. You should not print the lists as they change on a regular basis and are very lengthy. There are thousands of persons and entities on the lists. If you find a match you must contact the applicable Department for further examination. Again, there are commercial software programs you can purchase that handle list checking.
- Persons and entities on the list might be found in other countries.
- Due diligence required on persons or entities you collaborate with (avoid being perceived of doing indirectly what you cannot do directly).
August 13, 2014

REVISED GUIDANCE ON ENTITIES OWNED BY PERSONS WHOSE PROPERTY AND INTERESTS IN PROPERTY ARE BLOCKED

This guidance responds to inquiries received by the Department of the Treasury’s Office of Foreign Assets Control (OFAC) relating to the status of entities owned by individuals or entities designated under Executive orders and regulations administered by OFAC. This document sets forth new guidance with respect to entities owned 50 percent or more in the aggregate by more than one blocked person.

Property blocked pursuant to an Executive order or regulations administered by OFAC is broadly defined to include any property or interest in property, tangible or intangible, including present, future or contingent interests. A property interest subject to blocking includes interests of any nature whatsoever, direct or indirect.

Persons whose property and interests in property are blocked pursuant to an Executive order or regulations administered by OFAC (blocked persons) are considered to have an interest in all property and interests in property of an entity in which such blocked persons own, whether individually or in the aggregate, directly or indirectly, a 50 percent or greater interest.

Consequently, any entity owned in the aggregate, directly or indirectly, 50 percent or more by one or more blocked persons is itself considered to be a blocked person. The property and interests in property of such an entity are blocked regardless of whether the entity itself is listed in the annex to an Executive order or otherwise placed on OFAC’s list of Specially Designated Nationals (“SDNs”). Accordingly, a U.S. person generally may not engage in any transactions...
U.S. Department of State Overview

Agency
- The Directorate of Defense Trade Controls (DDTC)
  - This is the U.S. Agency that controls more sophisticated/advanced defense/military and sometimes other other exports.

Mission
- Charged with controlling the export, re-export, and temporary import of Defense Articles, including Technical Data, and Defense Services. Goals: National Security; Foreign Policy; Technological Advantage; Economic Security.

Regulations
- The International Traffic in Arms Regulations (ITAR).
  (22 CFR 120 to 130)
What is Covered by ITAR?

- U.S. persons, wherever located.
- “Defense Articles” in the U.S., or “Defense Articles” outside the U.S. of U.S. origin or containing U.S. technology.
- “Defense Services” for non-U.S. persons, whether the services take place in the U.S. or elsewhere.
What Does ITAR Regulate?

- “Defense Articles” – item, including “Technical Data”
- “Defense Services” to “Non-U.S. Person”

All as defined in the ITAR, and as identified in the U.S. Munitions List (USML).

http://www.ecfr.gov/cgi-bin/text-idx?node=pt22.1.121
§120.10 Technical data.

(a) Technical data means, for purposes of this subchapter:

(1) Information, other than software as defined in §120.10(a)(4), which is required for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance or modification of defense articles. This includes information in the form of blueprints, drawings, photographs, plans, instructions or documentation.

(2) Classified information relating to defense articles and defense services on the U.S. Munitions List and 600-series items controlled by the Commerce Control List;

(3) Information covered by an invention secrecy order; or

(4) Software (see §120.45(f)) directly related to defense articles.

(b) The definition in paragraph (a) of this section does not include information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges, and universities, or information in the public domain as defined in §120.11 of this subchapter or telemetry data as defined in note 3 to Category XV(f) of part 121 of this subchapter. It also does not include basic marketing information on function or purpose or general system descriptions of defense articles.
§120.11 Public domain.

(a) *Public domain* means information which is published and which is generally accessible or available to the public:

* * *

(8) Through fundamental research in science and engineering at accredited institutions of higher learning in the U.S. where the resulting information is ordinarily published and shared broadly in the scientific community. Fundamental research is defined to mean basic and applied research in science and engineering where the resulting information is ordinarily published and shared broadly within the scientific community, as distinguished from research the results of which are restricted for proprietary reasons or specific U.S. Government access and dissemination controls. University research will not be considered fundamental research if:

(i) The University or its researchers accept other restrictions on publication of scientific and technical information resulting from the project or activity, or

(ii) The research is funded by the U.S. Government and specific access and dissemination controls protecting information resulting from the research are applicable.
Key Terms – Defense Service

Defense Service (ITAR §120.9)

- Furnishing assistance (including training) to non U.S. persons in the U.S. or in a foreign country in design, development, engineering, manufacture, production, assembly, testing, repair, maintenance, modification, operation, demilitarization, destruction, processing or use of defense articles (including being observed performing maintenance/repair; Technical data transfer not necessary)

- Furnishing Technical Data to a foreign person in the U.S. or in a foreign country
If an item (including technology) is listed on the USML then export is generally restricted unless specially licensed or approved by the DDTC; There are some narrow exceptions.

- 21 categories of "Defense Articles" and listed components and directly related technical data.
- Application ("Defense Articles"), related Technical Data and Defense Services are covered.
- End use does not matter (even if end use is for a commercial application), so long as it is covered by the USML. You need to know capabilities and functions.

Also covers items and technical data with “equivalent performance capabilities” of USML Defense Article.
<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category I</td>
<td>Firearms, Close Assault Weapons and Combat Shotguns</td>
</tr>
<tr>
<td>Category II</td>
<td>Guns and Armament</td>
</tr>
<tr>
<td>Category III</td>
<td>Ammunition/Ordnance</td>
</tr>
<tr>
<td>Category IV</td>
<td>Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines</td>
</tr>
<tr>
<td>Category V</td>
<td>Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents</td>
</tr>
<tr>
<td>Category VI</td>
<td>Surface Vessels of War and Special Naval Equipment</td>
</tr>
<tr>
<td>Category VII</td>
<td>Ground Vehicles</td>
</tr>
<tr>
<td>Category VIII</td>
<td>Aircraft and Related Articles</td>
</tr>
<tr>
<td>Category IX</td>
<td>Military Training Equipment and Training</td>
</tr>
<tr>
<td>Category X</td>
<td>Personal Protective Equipment</td>
</tr>
<tr>
<td>Category XI</td>
<td>Military Electronics</td>
</tr>
<tr>
<td>Category XII</td>
<td>Fire Control, Range Finder, Optical and Guidance and Control Equipment</td>
</tr>
<tr>
<td>Category XIII</td>
<td>Materials and Miscellaneous Articles</td>
</tr>
<tr>
<td>Category XIV</td>
<td>Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment</td>
</tr>
<tr>
<td>Category XV</td>
<td>Spacecraft Systems and Related Articles</td>
</tr>
<tr>
<td>Category XVI</td>
<td>Nuclear Weapons Related Articles</td>
</tr>
<tr>
<td>Category XVII</td>
<td>Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated</td>
</tr>
<tr>
<td>Category XVIII</td>
<td>Directed Energy Weapons</td>
</tr>
<tr>
<td>Category XIX</td>
<td>Gas Turbine Engines and Associated Equipment</td>
</tr>
<tr>
<td>Category XX</td>
<td>Submersible Vessels and Related Articles</td>
</tr>
<tr>
<td>Category XXI</td>
<td>Articles, Technical Data and Defense Services Otherwise Not Enumerated</td>
</tr>
</tbody>
</table>
What Does the ITAR Require?

- If an academic institution intends to export Defense Articles or related Technical Data, then generally speaking it must first obtain a license or approval from the DDTC.
- If an academic institution intends to perform Defense Services for a non-U.S. person, then generally speaking the institution must first obtain a license or approval from the DDTC.
- There are limited carve outs from Technical Data definition. A big one is information in the public domain (22 CFR 120.11).
What is an Export?

- Shipping or taking hardware across an international border
- Sending or sharing information or technical data abroad or with a non U.S. person
- Performing certain services for non U.S. persons
Key Terms – Export

What is an Export? (ITAR § 120.17)

- Sending or taking a defense article out of the U.S. in any manner. It includes transferring ownership or control of certain defense articles to a foreign person, whether in the U.S. or in a foreign country.
- A release of technology or software (oral, electronic or visual) to a foreign person, whether that person is in the U.S. (deemed export) or in a foreign country.
- A release of technology outside the U.S. or inside the U.S. with knowledge it will be exported.
- Performing a defense service for a foreign person whether in the U.S. or in a foreign country.
- Re-export from one foreign country to another.

The concept is that you are responsible for where your defense articles, technical data and defense services go, to whom and for what purpose.
If an institution transfers Technical Data covered by the USML to a non-U.S. person in the U.S. (for example, by a research facility tour, by physical review of blueprints, by providing Technical Data orally or by electronic mail or facsimile to a non-U.S. person in the U.S.), the institution has completed an export.
Key Terms – U.S. Person

U.S. Person (ITAR § 120.15)

- Includes permanent resident aliens ("Green Card holders")
- Protected individuals under 8 USC 1324b(a)(3) [refugees, those granted asylum in the U.S.]
- Entities incorporated to do business in the U.S.
Scientist charged in Iran export case

SAN DIEGO — Mohamad Reza Nazemzadeh just wanted to share his MRI research with his native country.

But prosecutors say the nationally-recognized scientist violated a federal ban against doing business with Iran, allegations that have led to criminal charges and potential prison time.

Nazemzadeh, a 36-year-old Michigan resident, tried to buy a medical device in San Diego to send to Iran, court documents say. While that alone isn’t considered a crime, people who wish to ship humanitarian goods such as medical equipment must obtain a license under the U.S. trade sanctions with Iran.
Former University of Tennessee Professor John Reece Roth Sentenced to 48 Months in Prison for Illegally Exporting Military Research Technical Data

KNOXVILLE, TN—On Wednesday, July 1, 2009, John Reece Roth, 72, of Knoxville, Tennessee, was sentenced to 48 months in prison for violating the Arms Export Control Act by conspiring to illegally export, and actually exporting, technical information relating to a U.S. Air Force (USAF) research and development contract. The sentencing, announced today by United States Attorney Russ Dedrick, took place in U.S. District Court in Knoxville, Tennessee, by the Honorable Thomas A. Varlan, Jr., United States District Court Judge. Upon his release from prison, Roth will serve a term of two years supervised release.

These illegal exports by Dr. Roth of technical information, known as “technical data,” related to his illegal disclosure and transport of restricted military information associated with the USAF contract to develop specialized plasma technology for use on an advanced form of an unmanned air vehicle (UAV), also known as a drone. The illegal exports by Dr. Roth of military technical information involved specific information about advanced plasma technology that had been designed and was being tested for use on the wings of drones operating as a weapons or surveillance systems. The Arms Export Control Act prohibits the export of defense-related materials, including the technical data, to a foreign national or a foreign nation.

After a trial in September 2008, Dr. Roth was convicted of conspiring with Atmospheric Glow Technology, Inc., a Knoxville, Tennessee technology company, of unlawfully exporting in 2005 and 2006 fifteen different “defense articles” to a citizen of the People’s Republic of China in violation of the Arms Export Control Act. This law prohibits the export of defense-related materials, including the technical data, to a foreign national or a foreign nation. These “defense articles” related to different specific military technical data that had been restricted and was associated with the USAF project to develop plasma technology for use on weapon system drones.

Dr. Roth was also convicted of one count of wire fraud relating to defrauding the University of Tennessee of his honest services by illegally exporting sensitive military information relating to this USAF research and development contract.
ITAR § 126.1 Country Policies and Embargoes – Generally, Cannot Get a License, Some Exceptions

- Afghanistan
- Belarus
- Burma
- Central African Republic
- China
- Cote d’Ivoire
- Cuba
- Cyprus
- Democratic Republic of Congo
- Eritrea
- Fiji
- Haiti
- Iran
- Iraq
- Kyrgyzstan
- Lebanon
- Liberia
- Libya
- North Korea
- Republic of Sudan
- Somalia
- Sri Lanka
- Syria
- Venezuela
- Vietnam
- Zimbabwe
Why is the ITAR Important?

- The DDTC takes its responsibility to safeguard U.S. national security and further U.S. foreign policy objectives very seriously.
- Failure to comply with ITAR can result in civil penalties of up to $500,000 for each violation.
- Criminal penalties can be up to $1,000,000 for each violation or imprisonment of up to 10 years, or both.
- Failure to comply with ITAR (for example exporting without a proper license or approval) can also result in denial of export privileges, debarment from government contract work, risk to federal funding, seizure and forfeiture of articles exported in violation of ITAR, appointment of government or independent monitors, forced audits, bad publicity, loss of confidence of benefactors and collaborators, loss of contracts, and loss of goodwill.
- If an institution understands ITAR and is compliant, it gains credibility; if an institution does not understand and comply with ITAR, the entity is a risk to research partners.
Export Control Reform

- Fundamental changes to U.S. Export Control System
  http://export.gov/ecr

- Goals:
  - More clearly identify items and technology requiring the most stringent controls under the ITAR (functions and capabilities).
  - Permit more interoperability with NATO and other U.S. allies and partners.
  - Move items including technology that should have reduced controls (more common, less advanced) to EAR and CCL under new ECCNs known as “600 .x Series” and permit some of those items to use license exceptions.
  - Create a .y paragraph of the 600 series ECCN for items and technology that may be exported to most destinations without license or license exception. (Still not China or “C-SINS”)

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April 23, 2015
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Export Control Reform

Methodology:

- Centerpiece is “specially designed” and other definitions.
  - USML 22 CFR 120.41
  - CCL 15 CFR 772.1
  - Supplement No. 4 to Part 774 of EAR – Commerce Control List Order of Review
- Changes occur to ITAR and EAR in tandem generally by category of item. First round of changes were published in April 2013 and became effective 6 months later in October of 2013 (aircraft and gas turbine engines and related parts).
- In July 2013 additional changes were published and became effective 6 months later in January 2014 (military vehicles, vessels of war and submersibles, auxiliary and miscellaneous items).
- Additional changes to come published on a rolling basis to be effective 6 months after final rule is published (Latest Final Rules published 7-1-14, effective 12-30-14 – Military Electronics Category XI).
Export Control Reform

Transition Rules:

- Since generally speaking end items and technology remain in ITAR and some accompanying items like components and accessories and attachments move to EAR two licenses from two different agencies may be required. So State Department has authority to grant licenses that include some EAR items with the ITAR items (“.x” items) if certain conditions are met. ITAR § 120.5(b) and 123.1 (120.42); EAR 734.3(e)

- For items moving from ITAR to EAR, can use existing ITAR license or approval (TAA) for up to two years after effective date of change unless license expires or needs amendment before then (RWA).
Helpful Web Links ECR

- Weekly BIS Teleconferences on Export Control Reform

- Decision Tree Tools http://www.bis.doc.gov/index.php/decision-tree-tools

- Export Control Reform FAQs
  http://www.bis.doc.gov/index.php/2012-03-30-17-54-11/ecr-faqs

- Export Control Reform News
  http://export.gov/ecr/ecr_main_043652.asp
Export Control Reform (ECR)

Upcoming Weekly Teleconferences and Webinars

Assistant Secretary for Export Administration Kevin Wolf conducts a teleconference updating the public on the Export Control Reform Initiative each Wednesday at 2:30 p.m. Eastern Time.

To access the teleconference dial 1-888-455-8218 and then dial the participant code: 6514196. To access the teleconference from outside of the United States, use the international call-in number (this is a toll call at your international call rate): 1-212-547-0350, and then dial the participant code: 6514196. You can submit a question about any aspect of the Export Control Reform Initiative including any BIS proposed rule that is open for comment. The address is ECRweekly@bis.doc.gov.

December 16, 2014, Kevin Wolf Discussion at ABA Brown Bag Lunch about Export Control Reform and the Definition of “Specially Designed”

<table>
<thead>
<tr>
<th>Category</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>I</td>
<td>Firearms, Close Assault Weapons and Combat Shotguns (TBD)</td>
</tr>
<tr>
<td>II</td>
<td>Guns and Armament (TBD)</td>
</tr>
<tr>
<td>III</td>
<td>Ammunition/Ordnance (TBD)</td>
</tr>
<tr>
<td>IV</td>
<td>Launch Vehicles, Guided Missiles, Ballistic Missiles, Rockets, Torpedoes, Bombs, and Mines (7-1-14)</td>
</tr>
<tr>
<td>V</td>
<td>Explosives and Energetic Materials, Propellants, Incendiary Agents, and Their Constituents (7-1-14)</td>
</tr>
<tr>
<td>VI</td>
<td>Surface Vessels of War and Special Naval Equipment (1-6-14)</td>
</tr>
<tr>
<td>VII</td>
<td>Ground Vehicles (1-6-14)</td>
</tr>
<tr>
<td>VIII</td>
<td>Aircraft and Related Articles (10-15-13)</td>
</tr>
<tr>
<td>IX</td>
<td>Military Training Equipment and Training (7-1-14)</td>
</tr>
<tr>
<td>X</td>
<td>Personal Protective Equipment (7-1-14)</td>
</tr>
<tr>
<td>XI</td>
<td>Military Electronics (12-30-14)</td>
</tr>
<tr>
<td>XII</td>
<td>Fire Control, Range Finder, Optical and Guidance and Control Equipment (TBD)</td>
</tr>
<tr>
<td>XIII</td>
<td>Materials and Miscellaneous Articles (1-6-14)</td>
</tr>
<tr>
<td>XIV</td>
<td>Toxicological Agents, Including Chemical Agents, Biological Agents, and Associated Equipment (TBD)</td>
</tr>
<tr>
<td>XV</td>
<td>Spacecraft Systems and Related Articles (11-10-14)</td>
</tr>
<tr>
<td>XVI</td>
<td>Nuclear Weapons Related Articles (7-1-14)</td>
</tr>
<tr>
<td>XVII</td>
<td>Classified Articles, Technical Data and Defense Services Not Otherwise Enumerated (10-15-13)</td>
</tr>
<tr>
<td>XVIII</td>
<td>Directed Energy Weapons (TBD)</td>
</tr>
<tr>
<td>XIX</td>
<td>Gas Turbine Engines and Associated Equipment (10-15-13)</td>
</tr>
<tr>
<td>XX</td>
<td>Submersible Vessels and Related Articles (1-6-14)</td>
</tr>
<tr>
<td>XXI</td>
<td>Articles, Technical Data, and Defense Services Not Otherwise Enumerated (10-15-13)</td>
</tr>
</tbody>
</table>
Overview

Agency

- Bureau of Industry and Security (BIS)
  - This is the U.S. Agency with export control authority over most items and technology that is controlled for export

Mission

- Charged with advancing U.S. national security, foreign policy and economic objectives by ensuring effective export control to preserve U.S. strategic technology leadership

Regulations

- Export Administration Regulations (EAR) (15 CFR 730 to 774)
Certain items, technology, materials test and other equipment are regulated.

Certain General Prohibitions for all exports.

Covers re-exports of U.S. origin items.
Is your item controlled for export?
- What is it (including technical specs)?
- Where is it going?
- Who is the End User?
- What is the End Use?
Step 1 – Check the Commerce Control List (15 CFR Supplement No. 1 to Part 774).

- The Commerce Control List is divided by Category. Check the Category your export item falls under.
- You need to know the general characteristics of your item or the item related to your technology.
<table>
<thead>
<tr>
<th>Category 0</th>
<th>Nuclear Materials, Facilities and Equipment [and Miscellaneous Items]</th>
</tr>
</thead>
<tbody>
<tr>
<td>Category 1</td>
<td>Special Materials and Related Equipment, Chemicals, “Microorganisms,” and “Toxins”</td>
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<tr>
<td>Category 2</td>
<td>Materials Processing</td>
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<tr>
<td>Category 3</td>
<td>Electronics</td>
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<td>Category 4</td>
<td>Computers</td>
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<td>Category 5</td>
<td>Telecommunications and “Information Security”</td>
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<td>Category 6</td>
<td>Sensors and Lasers</td>
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<tr>
<td>Category 7</td>
<td>Navigation and Avionics</td>
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<tr>
<td>Category 8</td>
<td>Marine</td>
</tr>
<tr>
<td>Category 9</td>
<td>Aerospace and Propulsion</td>
</tr>
</tbody>
</table>
Commerce Control List Categories

Each Category has 5 parts:

A. Systems, Equipment and Components
B. Test, Inspection and Production Equipment
C. Materials
D. Software
E. Technology
U.S. Department of Commerce
Self Classification

Step 2 – Locate Your ECCN with assistance from your compliance team. If the item or technology for export is on the Commerce Control List it will be associated with Export Control Classification Number (ECCN).

https://www.bis.doc.gov/index.php/licensing/commerce-control-list-classification/export-control-classification-number-eccn

- You need to know the specific characteristics, functions and possible uses of the item relating to the technology.
- The U.S. Department of Commerce website is helpful. www.bis.doc.gov.
- Commerce Control List. http://www.ecfr.gov/cgi-bin/retrieveECFR?gp=1&SID=02b534f76f96c9c5f13a1d1be8edf8d4&ty=HTML&h=L&n=15y2.1.3.4.45&r=PART
U.S. Department of Commerce
Self Classification

Step 2 – Locate Your ECCN. Having identified your Category and Group in the CCL, match the specific characteristics of your item to an ECCN. If your company’s item for export is on the Commerce Control List it will be associated with Export Control Classification Number (ECCN). [http://export.gov/logistics/eg_main_018803.asp](http://export.gov/logistics/eg_main_018803.asp)

Best Practice Tip:

- New 600 Series and 9x515 ECCNs take priority—even if item is also listed in another ECCN so check those first
- You need to know the specific characteristics, functions and possible uses of your item.
- The U.S. Department of Commerce website is helpful. [www.bis.doc.gov](http://www.bis.doc.gov). BIS Exporter Services Export Counseling Division can answer questions about classification (202-482-4811). Note: THIS IS NOT A FORMAL EXPORT CLASSIFICATION DETERMINATION.
Step 3 – Check Reasons for Control contained in the ECCN description against the Country Chart. You must check the Reasons for Control to determine whether an export license is required for the intended country of export. You do this by checking the ECCN “Reasons for Control” with the Country Chart (15 CFR Supplement 1 to Part 738).

Country Chart [http://www.ecfr.gov/cgi-bin/text-idx?SID=6f33821063d8697ab02ccebdfec938f5&node=ap15.2.738_14.1&rgn=div9](http://www.ecfr.gov/cgi-bin/text-idx?SID=6f33821063d8697ab02ccebdfec938f5&node=ap15.2.738_14.1&rgn=div9)
### Electronic Code of Federal Regulations

**e-CFR data is current as of April 2, 2015**

Title 15 → Subtitle B → Chapter VII → Subchapter C → Part 738 → Appendix

Title 15: Commerce and Foreign Trade

**PART 738—COMMERCE CONTROL LIST OVERVIEW AND THE COUNTRY CHART**

**Supplement No. 1 to Part 738—Commerce Country Chart**

<table>
<thead>
<tr>
<th>Countries</th>
<th>Chemical and biological weapons</th>
<th>Nuclear nonproliferation</th>
<th>National security</th>
<th>Missile tech</th>
<th>Regional stability</th>
<th>Firearms convention</th>
<th>Crime control</th>
<th>Anti-terrorism</th>
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</tbody>
</table>

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**Commerce Country Chart**

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Export Controls and Trade Sanctions – What You Don’t Know Can Hurt You!

April 23, 2015

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Step 4 – Check General Prohibitions. If the country is not restricted then you can export that technology there, subject to review of the General Prohibitions (15 CFR §736), unless there is an embargo for that country or an end user or end use of concern.

If the country is restricted, then you need to check whether a license exception is available under that section of the ECCN. Restrictions vary country to country.

A good summary chart regarding the process to determine your license requirements is located in the regulations. http://export.gov/ecr/eg_main_067960.asp
Order of Review

- **Jurisdiction** – which set of regulations applies?
  - ITAR
  - EAR

- **Embargo?**
  - OFAC
  - ITAR § 126.1

- **Classification**
  - USML
  - CCL

- **Party/Use of Concern?**
  - Restricted Party Screening
  - Prohibited End Use

- **Prerequisite**
  - Registration?

- **License or Approval Required?**
  - Exceptions/Exemptions
“Technology”

EAR covers generally technology/information necessary for the “development,” “production” or “use” of an item subject to EAR. To be “use” technology it must be technology for:

1) operation,
2) installation,
3) maintenance,
4) repair,
5) overhaul, and
6) refurbishing of an item subject to EAR.
“Development”

(General Technology Note)—“Development” is related to all stages prior to serial production, such as: design, design research, design analyses, design concepts, assembly and testing of prototypes, pilot production schemes, design data, process of transforming design data into a product, configuration design, integration design, layouts.
You can check the Commerce Control List alphabetical listing for both the common and scientific names of the item. (Note: not an exhaustive list and not a substitute for a deep dive in the regulations).

https://www.bis.doc.gov/index.php/regulations/commerce-control-list-ccl
Technically Speaking:

If your technology does not appear on the Commerce Control List it is then EAR-99

or

If your technology is on the Commerce Control List but there is no “X” in the box on the Country Chart under the appropriate Reason for Control column for the destination country

then

no license to export is required (NLR) but you still need to check for embargoed destinations, prohibited end uses or end users
§734.3 Items subject to the EAR.

* * *

(b) The following items are not subject to the EAR:

* * *

(3) Publicly available technology and software, except software classified under ECCN 5D002 on the Commerce Control List, that:

(i) Are already published or will be published as described in §734.7 of this part;
(ii) Arise during, or result from, fundamental research, as described in §734.8 of this part;
(iii) Are educational, as described in §734.9 of this part;
(iv) Are included in certain patent applications, as described in §734.10 of this part.

See also EAR Supplement 1 to Part 734 – Tech and Software Q&A (http://www.ecfr.gov/cgi-bin/text-idx?SID=eb8d4b6316096ca31f2e4aa767ca3e15&node=ap15.2.734_112.1&rgn=div9)
Actual investigations of Export Control Violations can be found in the publication “Don’t Let This Happen To You”
https://www.bis.doc.gov/index.php/enforcement
June 28, 2012

Pratt & Whitney Canada pleads guilty in military software case
By BERTRAND MAROTTE

Pratt & Whitney sent military software to China

Jet-engine maker Pratt & Whitney Canada Corp. has pleaded guilty to two U.S. criminal charges related to the illegal export of military software to China.

The Longueuil, Que.-based company, its parent United Technologies Corp. and another subsidiary, Hamilton Sundstrand Corp., have agreed to pay more than $75-million (U.S.) to the U.S. government as part of the settlement of the case brought by the departments of justice and state.

Pratt & Whitney Canada pleaded guilty to violating the State Department’s International Traffic in Arms Regulations as well as the False Statements Act, United Technologies said in a news release Thursday.

The charges were in connection with the export to China of U.S.-made military software installed in Pratt & Whitney Canada engines, used by China to test its first military attack helicopter, the Z-10.

United Technologies said in April the violation was related to the export of modifications to electronic engine control software, sent to China in 2002 through 2004.

The software was used to develop the Z-10. United Technologies said it voluntarily disclosed the violation to regulators.

"We accept responsibility for these violations and we deeply regret they occurred," United Technologies chairman and chief executive officer Louis Chenevert said in a statement.

As a result of the settlement, P&W Canada will be partly stripped of its right to get new export licenses.

United Technologies and Hamilton Sundstrand also admitted to making false statements to the U.S. government about the illegal exports.
Pratt Orders Strict Limits on Laptops, Other Devices In Travel to China

July 10, 2012
By DAN HAAR, Courant Staff Writer, The Hartford Courant

In the wake of its guilty plea for illegally selling military engine technology to China, Pratt & Whitney has ordered all employees traveling to export-restricted countries to bring only specially scrubbed laptops and other devices.

Under the rule, employees can’t bring personal laptops or their regular work laptops — an added security measure designed to boost export compliance.

“If you need a laptop during your trip, you must obtain a special 'clean loaner laptop' from P&W IT that has been approved for travel to China or another 126.1 country,” a memo sent to company employees last week said.

The reference to 126.1 is the U.S. State Department “International Traffic In Arms Regulations” that apply to 25 nations, including China, Cuba, Afghanistan, North Korea, Somalia, Vietnam, Libya and Iraq.

In addition, employees traveling to those countries must have certain software deleted from their iPads, must have all messages deleted from BlackBerrys and cannot bring thumb drives or other external devices.

On June 28, Pratt and its parent company, United Technologies Corp., pleaded guilty to violating the Export Control Act, stemming from the sale of engines and software to a China-owned helicopter company, as Pratt & Whitney Canada was trying to gain entry to the Chinese commercial helicopter market. The companies also pleaded guilty to one count of lying about the activities in disclosures to the U.S. government.
What’s Next?

- Developmental Research added to certain ITAR categories.
- Export Control Lists will change more frequently in the future than in the past – no longer static.
  “Contrary to popular belief, the EAR and ITAR are not written in stone.” The Export Practitioner, March 2014. “Agencies Begin to Look Beyond Export Control Reforms.”
- New Definitions of Fundamental Research, Public Domain, Defense Services, etc. coming this month or next.
NOTE and CAUTION:
This presentation is time sensitive and the information in it may quickly become out of date due to ongoing and proposed changes in export laws, as well as changes in world events, U.S. foreign policy and national security objectives. This presentation is a general overview. It is not legal advice; Seek legal counsel for specific factual situations.

Other U.S. Departments and governmental agencies also regulate exports, including the U.S. Department of Energy, the Nuclear Regulatory Commission and the Drug Enforcement Administration, among others. Other countries also regulate exports/imports.