

The Research Foundation for SUNY

BREAKTHROUGH

to Excellence

THE 2017 RESEARCH
ADMINISTRATORS' SYMPOSIUM



EXPORT COMPLIANCE

“Reducing the risk to your campus – case studies on export control issues at universities”



The Research Foundation for SUNY

BREAKTHROUGH

to Excellence

THE 2017 RESEARCH
ADMINISTRATORS' SYMPOSIUM

TOPICS OF DISCUSSION

Basic Dos and Don'ts

**Basic Questions and Common
University Violations**

Case Studies



BASIC DOS AND DON'TS

DO



Request faculty and staff to:

- Review equipment they will be taking with them out of the U.S. against the ITAR and EAR; a license may be required.
- Review what data, information, or software is on their laptops or mobile devices before traveling abroad.
- Request classification from the vendor for equipment that has obvious military or space capabilities.



D O N ' T

- **Ship** any item outside the U.S. without first checking the ITAR and EAR.
- **Enter** into Secrecy Agreements or otherwise agree to withhold research results.
- **Accept** proprietary or confidential information that is marked “export controlled.”
- **Travel** to Cuba, Iran, N. Korea, Sudan, or Syria without first contacting the campus Office of Research.



BASIC QUESTIONS AND COMMON UNIVERSITY VIOLATIONS

BASIC QUESTIONS

- What type of activity are you doing?
- What items or technologies are being used?
- Where are items or technologies going?
- Who will access the items or technologies?
- For what purpose will the end-user be using the items or technologies?



COMMON UNIVERSITY VIOLATIONS

- Items Resulting from Fundamental Research
- Deemed Exports
- Embargoed Countries
- Hand-carried Items
- Restricted Parties
- Misuse of Exclusions and/or Exemptions (or Exceptions)
- Software Distribution





CASE STUDIES

ITEMS RESULTING FROM FUNDAMENTAL RESEARCH

National Security Decision Directive 189 (NSDD-189) states:

“‘FUNDAMENTAL RESEARCH’ means basic and applied research in science and engineering, the results of which ordinarily are published and shared broadly within the scientific community, as distinguished from proprietary research and from industrial development, design, production, and product utilization, the results of which ordinarily are restricted for proprietary or national security reasons.”

ITEMS RESULTING FROM FUNDAMENTAL RESEARCH

What contract terms are not allowable to maintain Fundamental Research?

- Prepublication review
- Sponsor approvals or conditions on publication of information
- Foreign national controls or approvals
- Access and dissemination controls on the research
- National Security controls VOID the Fundamental Research Exclusion.



ITEMS RESULTING FROM FUNDAMENTAL RESEARCH

A researcher in engineering has a grant from the National Science Foundation for a project researching materials for next generation sensors.

The researcher has published broadly and has made several presentations at conferences. In fact, he just published a paper about his results from this NSF grant.

The researcher wants to send his wafers to Israel for his collaborator to calculate some measurements and conduct additional research.

He comes to you to ask if he can send them. What is your answer?

CAN THE WAFERS BE SENT TO ISRAEL?

Questions to Ask:

- **What is being sent? Materials?** Yes (wafers) **Technical data?** No
- **Are the wafers export controlled?** Yes, ECCN 3C001.d
- **Who are they going to?** Semiconductor Services
- **Is Semiconductor Services on a Restricted Party List?** No
- **Where are they going?** Israel
- **Why are they being sent?** To conduct testing on the wafers and conduct some research for commercial applications.

CAN THE WAFERS BE SENT TO ISRAEL?

Questions to Ask (cont.):

- Is a license or license exception required for ECCN 3C001.d items to go to Israel? ECCN 3C001.d is controlled for National Security (NS) and Anti-Terrorism purposes. The Commerce Country Chart shows that Israel is controlled for NS reasons.

Determination:

- License Exception Strategic Trade Authorization (STA) (15 CFR §740.20) or
- Apply for a license from Bureau of Industry and Security (BIS)

Commerce Country Chart

Reason for Control

Countries	Chemical & Biological Weapons			Nuclear Nonproliferation		National Security		Missile Tech	Regional Stability		Firearms Convention	Crime Control			Anti-Terrorism	
	CB 1	CB 2	CB 3	NP 1	NP 2	NS 1	NS 2	MT 1	RS 1	RS 2	FC 1	CC 1	CC 2	CC 3	AT 1	AT 2
Georgia	X	X	X	X		X	X	X	X	X		X	X			
Germany ³	X					X		X	X							
Ghana	X	X		X		X	X	X	X	X		X		X		
Greece ³	X					X		X	X							
Grenada	X	X		X		X	X	X	X	X	X	X		X		
Guatemala	X	X		X		X	X	X	X	X	X	X		X		
Guinea	X	X		X		X	X	X	X	X		X		X		
Guinea-Bissau	X	X		X		X	X	X	X	X		X		X		
Guyana	X	X		X		X	X	X	X	X	X	X		X		
Haiti	X	X		X		X	X	X	X	X	X	X		X		
Honduras	X	X		X		X	X	X	X	X	X	X		X		
Hong Kong	X	X		X		X	X	X	X	X		X		X		
Hungary ³	X					X		X	X							

DEEMED EXPORTS

A **Deemed Export** is the release of technology or source code to a foreign person in the United States.

Deemed Exports can be:

- Verbal
- Written
- Visual



DEEMED EXPORTS

Dr. Kathiyitis at SUNY Pulaski was just offered a sponsored research contract from StartUp Co. to create novel algorithms for inclusion in the software programming for autonomous drone operations.

The generalizable research results, if any, may be published but the research team will be receiving proprietary information and will be required to keep the work product confidential.

Dr. Kathiyitis is a naturalized U.S. Citizen and her graduate students are from Germany, Greece and Israel.

Do you have a Deemed Exports issue?

DO YOU HAVE A DEEMED EXPORTS ISSUE?

Questions to Ask:

- **Is it Fundamental Research?** No, there is a publication restriction on the work product.
- **Will the drone be used for military applications?** No, StartUp Co. states that the drone is intended for civilian use.
- **Is the drone controlled under the export regulations?** Unmanned Aircraft Systems (UAS) are controlled under both the ITAR and the EAR. This particular drone is controlled under the EAR.

DO YOU HAVE A DEEMED EXPORTS ISSUE?

Analysis:

- **Drone: 9A012** – reason National Security* (NS) and Anti-Terrorism* (AT)
- **Software: 9D001** – Items Resulting from Fundamental Research
- **Technology for “development” of equipment or software controlled by 9A012 or 9D001: 9E001** – reason NS* and AT*
- **Technology for “use” of commodities or software controlled by 9A012: 9E102** – reason AT*
- Review Commerce Country Chart to determine if licenses are required.

*NS Column 1 and AT Column 1

DEEMED EXPORTS LICENSE REQUIRED?

Country	NS Column 1	AT Column 1
Germany	Yes	No
Greece	Yes	No
Israel	Yes	No

Determination:

- Export licenses may be required depending upon the information being shared.
- A Technology Control Plan should be implemented.

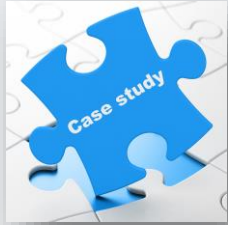
SANCTIONS AND EMBARGOES

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



**Sanctions Related to Significant
Malicious Cyber-Enabled Activities**

For sanctioned countries, there may be a general or specific license required.



TRAVEL TO IRAN

Dr. Pahlavi is a renown neurosurgeon at SUNY Finger Lakes Medical Center.

He has been invited to speak at the 9th Annual Stroke Conference in Tehran, Iran. The conference is sponsored by the World Stroke Organization and a couple of big pharmaceutical companies. The conference website lists Dr. Pahlavi as an invited speaker and notes that he is faculty at SUNY Finger Lakes Medical Center.

Dr. Pahlavi's administrator contacts you. She knows that Dr. Pahlavi usually travels to Iran to visit family but wanted make sure there aren't any issues with this additional activity.

DOES THE TRIP REQUIRE A LICENSE?

Questions to Ask:

- Is a license required to travel to Iran? No
- Is a license required to provide a service while in Iran? Yes.
- Is presenting at a conference considered a service? Yes.
- What if Dr. Pahlavi wanted to attend the conference but not present? He would still need a general or specific license. Probability?



DOES THE TRIP REQUIRE A LICENSE?

Determination:

- A US person cannot attend or present at a conference in Iran without obtaining an OFAC* license. Currently these licenses may take several months to process.
- The license requirement applies regardless of the topic of the conference and regardless of whether the information presented is within the public domain.
- Even if Dr. Pahlavi was not a US person, he is representing SUNY Finger Lakes Medical Center -- a U.S. institution. A specific license would be required.

* Office of Foreign Assets Control – U.S. Treasury



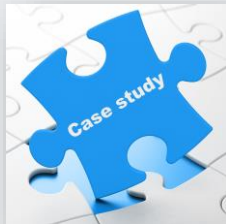
HAND-CARRIED ITEMS

License Exception TMP (Temporary Exports) – under the EAR but not the ITAR.

A TMP authorizes various temporary exports and re-exports within certain guidelines and conditions.

Examples:

- Tools of the Trade
- Exhibition and demonstration
- Inspection, test, calibration, and repair



H A N D - C A R R I E D I T E M S

SUNY Mattituck Professor Auslander is a material scientist with a joint appointment at Brookhaven National Laboratory (BNL). She has research grants administered by the RF, some internal research at BNL, and also undertakes personal consulting in the form of reviewing technical drafts.

Professor Auslander will be traveling to a workshop at Seoul National University and wants to bring her laptop and smart phone. She plans on bringing copies of her published work, and has stated that she uses a separate tablet for her consulting work and a workstation computer in each of her labs for ongoing project information.

Do the laptop and smart phone qualify for TMP?

TMP: TOOLS OF THE TRADE?

Questions to Ask:

- Does the laptop or smart phone contain:
 - Any proprietary information? No
 - Any export controlled information? No
 - Any specialized encryption software? No
- Will the laptop and smart phone remain under the effective control of Professor Auslander? Yes
- Will the laptop and smart phone be returning to the U.S. with Professor Auslander (in less than one year)? Yes

DO THE LAPTOP AND PHONE QUALIFY FOR TMP?

Determination:

The laptop and smart phone qualify for TMP as Tools of the Trade.

Notes:

If the laptop or the smart phone contained:

Proprietary Information – You would need to determine if the information is also export controlled.

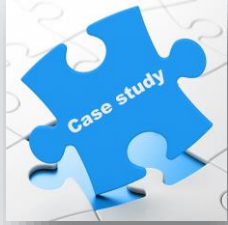
Export Controlled Information or Specialized Encryption Software – You would need to determine if a license is required for the technology and/or software to be exported (hand carried) to Korea.

VISITING SCHOLARS AND RESTRICTED PARTY LISTS

A “restricted party” or “denied party” is an entity that is placed on a restricted party (or denial) list by the U.S. government or any other country’s government.

A license from one or more of the federal agencies may be required if you plan on conducting any business or research with a restricted party, even if you are conducting Fundamental Research.

There are over 50 lists issued by U.S. governmental agencies that restrict transactions with specific individuals, groups and entities.



VISITING SCHOLAR

Dr. Ye has received a request from Dr. Xiaofang Chen to come to the U.S. to conduct joint research under the J Visiting Scholar program.

Dr. Xiaofang Chen is a faculty member at the University of Electronic Science and Technology in China (UESTC).

Dr. Ye is a researcher in Engineering and has corporate and federal funding.

Dr. Ye and Dr. Chen have no previous relationship.

SHOULD THE VISIT BE APPROVED?

Questions to Ask:

- **Are their Restricted Parties?** Yes
- **Have you run a Visual Compliance search for the individual and home institution?** Yes. No matches for Dr. Chen but a match for UESTC. UESTC is on the Entity List (BIS). Visual Compliance indicates: “For all items subject to the EAR. Case-by-case basis.”
- **What is the purpose of the visit?** Research
- **Will export controlled information be released?** Possibly. Need to evaluate equipment and research being conducted in the lab.

SHOULD THE VISIT BE APPROVED?

Analysis:

- Dr. Chen is an agent of UESTC and therefore subject to the same restrictions.
- An export license may be required. Considerations:
 - Proprietary information (corporate contracts)
 - Research sponsors (federal – defense agencies)
 - Laboratory equipment/supplies (even EAR99 is controlled for UESTC)

Determination:

- Deny visit or implement Technology Control Plan.

SHOULD THE VISIT BE APPROVED?

Would the determination change if:

- **If Xiaofang Chen was a graduate student?**
- **If Dr. Chen was a faculty member of Northwestern Polytechnical University (NPU) in China?** NPU is on the Entity List (BIS). It states, “For all items subject to the EAR having a classification other than EAR99 or a classification where the third through fifth digits of the ECCN are “999”, e.g. XX999”

MISUSE OF EXCLUSIONS AND/OR EXEMPTIONS (OR EXCEPTIONS)

The export regulations include exclusions and exemptions (or exceptions). You must make sure that the activity meets the criteria of any exclusion or exemption (or exception) prior to use.

Exclusion: Primarily used when something is not subject to the export regulations. For example, the Fundamental Research Exclusion.

Exemptions (or Exceptions): Primarily used when something is not subject to a specific part of the export regulations. For example, a license exemption.



EXCLUSION AND/OR EXEMPTION (OR EXCEPTION)

A researcher is studying wildlife populations. She has ordered an infrared camera through the campus procurement office.

The buyer from the procurement office has reached out to you because the distributor has notified her that the infrared camera being ordered is ITAR controlled.

You reach out to the researcher and her response is that “they are doing Fundamental Research so export controls don’t apply.”

IS THE EXCLUSION AND/OR EXEMPTION (OR EXCEPTION) VALID?

Questions to Ask:

- **Where will the infrared camera be used?** In the field
- **Where will your field work take place?** South Africa
- **How do you plan to transport the camera?** Hand carry with me
- **Do you plan on bringing the camera back with you?** Yes
- **How long will you be in the field?** Three months
- **Does your research require that specific camera?** No. It was the best one I could find. It does much more than I require for my research.

IS THE FUNDAMENTAL RESEARCH EXCLUSION OR A LICENSE EXCEPTION VALID?

Response:

Fundamental Research does not mean that no export licenses are required to bring items/information internationally.

The Fundamental Research Exclusion (FRE) means that the information resulting from the project will be publicly available.

Travel with items/information resulting from fundamental research still require a license or license exception (or exemption).

ITAR-controlled equipment/information always requires a license.

EAR-controlled cameras may qualify for TMP license exception.

SOFTWARE DISTRIBUTION

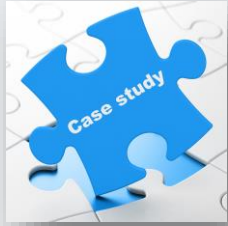
Publicly Available: The export control regulations include categories of information that are considered “publicly available”* (available to the public without any restrictions).

Publicly available information is not subject to the regulations (e.g. ITAR and EAR) but it can be prohibited to send publicly available information to an embargoed/sanctioned country without a license.

Software has to be made available to the public without restriction upon its further dissemination.

Consider commercialization vs. publicly available

*Excludes encryption software.



SOFTWARE DISTRIBUTION

A researcher in Computer Science has a National Institute of Health grant and as part of the project she is developing a software tool. Her project is fundamental research and does not have any publication or foreign national restrictions.

She has disclosed her software to the Technology Transfer Office (TTO) and they would like to make the software open source with restrictions on use. This tactic would allow the TTO to sell commercial licenses. The TTO contacts you to ask if there are any export compliance issues. What information would you need to know?

DETERMINE IF THE SOFTWARE IS PUBLICLY AVAILABLE

Questions to Ask:

- **Is there any requirement from the sponsor to make the software and the source code publicly available?** Yes. It will be “open source” but the license will restrict altering of the source code.
- **Will any collaborators be able to alter the source code?** Yes. Some collaborators will be granted access to alter the source code.
- **Is there any intent to charge these collaborators for the source code?** No. This would be given for free.
- **After reviewing the CCL of the EAR, is the software designated in an ECCN?** No.

ARE THERE ANY EXPORT CONTROL ISSUES?

Analysis:

EAR: “Publicly Available” for software means that the source code can be **freely** downloaded by any interested party **without registration** and that there are **no restrictions on use, altering of code, copyrights, or redistribution**.

“Open source code” is accessible but may have restrictions on use, altering of code, copyrights, or redistribution.

Determination:

Export control considerations: Export determination is required. If other than EAR99, would licenses be required to provide source code to some parties that may have open source access? Conduct Restricted Party screening. Limit access to embargoed countries if there is any registration even for EAR99.



QUESTIONS?

Susan Gasparo
Scott Shurtleff

