

Going Global: International Challenges

EXPORT CONTROLS & EMBARGOES

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Objectives

Introduction to Export Controls and Embargoes

- key concepts and definitions
- high risk areas
- critical laws
- scope of controls
- export control lists
- resources



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EXPORT CONTROLS & EMBARGOES

U.S. laws that regulate:

- the distribution of **strategic items**
- to **foreign nationals** and **foreign countries**.
- implement **sanctions**.

For reasons of:

- National security
- National competitiveness
- Human rights

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EXPORT CONTROLS

- Laws apply to activities of **every** US citizen and company when –
 - Sending or sharing controlled items to a restricted country.
 - Transmitting controlled items to foreign nationals from restricted countries *within* the U.S.
 - “Deemed Exports”

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Some definitions

- Controlled items:
 - commodities (equipment, parts)
 - software (esp. source code, high encryption)
 - technology
- Technology:
 - Specific **information** necessary for the design or development, production or use of a product.

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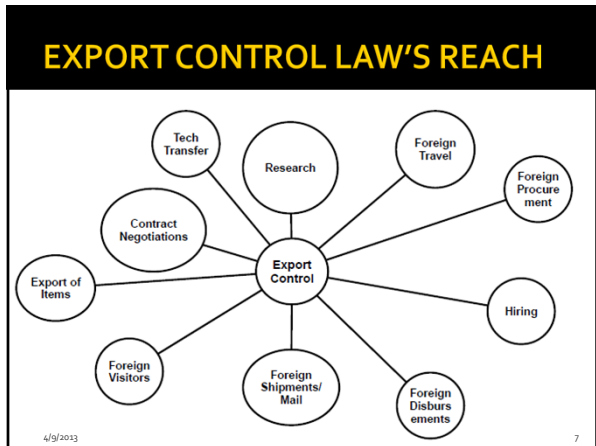
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Some definitions

- Foreign National:
 - any person who is not a lawful permanent resident of the United States; except refugees and asylum-holders
 - Students, faculty, staff, visitors
 - foreign corporations, business associations, partnerships, trusts, societies, etc.

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- ### WHAT RAISES CONCERNS?
- **High-risk areas:**
 - engineering
 - computer sciences
 - encrypted software
 - biological agents
 - space sciences
 - biomedical research (lasers)
 - controlled chemicals
 - toxins
 - **Research** or "**defense services**" in certain foreign countries.
 - **Sponsor restrictions** on foreign nationals or publication.
 - **Physical export** of controlled items.
 - **Financial Transactions** with sanctioned countries or "specially designated nationals" (SDN)
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- ### EMBARGO REGULATIONS
- Department of the **Treasury**
 - **Office of Foreign Assets Control** (OFAC) implements U.S. sanctions / embargoes
 - Regulates:
 - transfer of money,
 - exchange of items/services of value,
 - affiliation with Specially Designated Nationals (SDN),
 - 22 currently embargoed entities,
 - restrictions vary.
 - <http://www.treasury.gov/resource-center/sanctions/Pages/default.aspx>
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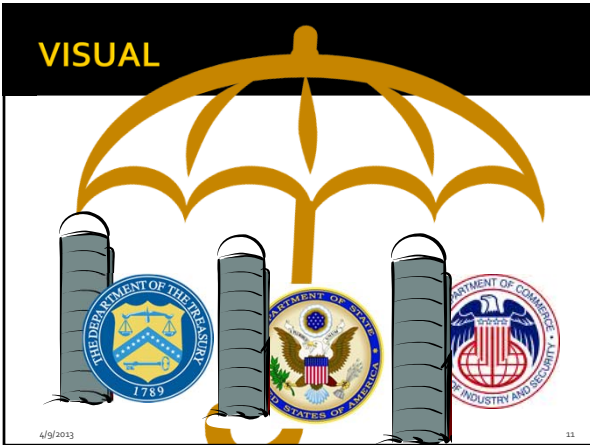
EXPORT CONTROL REGULATIONS

- Dept of **State**, Dir. of Defense Trade Controls
 - *International Traffic in Arms Regulations (ITAR)*
 - **Military items** or **defense** articles or technical data; space technology, certain biological agents and toxins
 - U.S. Munitions List (USML)
- Dept of **Commerce**, Bureau of Industry & Security
 - *Export Administration Regulations (EAR)*
 - **Dual-use** items: **commercial** and **potential military** use OR with international economic importance
 - Commerce Control List (CCL)

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VISUAL



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Why does Higher Ed care?


- U. of Tennessee: faculty doing USAF research
- Shared information w/ the Chinese
- University warned him; reported it
- Faculty member 4 years in prison

- Texas Tech faculty
- Shipped 30 vial of plague bacteria to Tanzania
- Reported it stolen...destroyed...
- Faculty member 2 years in prison

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Why do PUIs care?

- Geology faculty doing research in Armenia, taking University's magnetometer 
 - On Commerce Control List
 - Restricted to Armenia
 - License required
 - Security measures (technology control plan)

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Why do PUIs care?

- Faculty summer travel to Sudan  (embargoed) and South Sudan (not).
 - Funded with institution funds.
 - Research topic raised concerns.
 - Cannot take any laptop, etc. to Sudan, no license available.
 - Cannot pay interview subjects (embargoes)
 - State Department Travel advisory.

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Why do we care ...PENALTIES

Penalties in ONE word: **Severe!**

Voluntary Disclosure mitigates penalties

- Criminal
 - **University** – fine up to \$1 million, or 5x the value of the export (the greater), for **each violation**
 - **Individual** – fine up to \$250,000 and/or up to 10 years in prison for each violation
- Civil sanctions:
 - **University** – a fine of up to \$500,000 for each violation
 - **Individual** – a fine of up to \$500,000 for each violation

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EXCLUSIONS

This is **the good news!**

- ✓ Fundamental Research
- ✓ Public Domain
- ✓ Educational Institution activities



Applies to much of PUI's activity

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FUNDAMENTAL RESEARCH EXCLUSION (FRE)

APPLIES TO INFORMATION:

- Resulting from **basic and applied research** in science and engineering,
- Conducted at an accredited institution of higher education,
- Located **in the U.S.** and
- **Ordinarily published and shared broadly** in the scientific community, as long as it is...
- **Not subject to publication or access controls.**

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FUNDAMENTAL RESEARCH EXCLUSION (FRE)

- **Does not apply** to commodities or materials.
- Publication or personnel **approvals** by sponsor **invalidate the FRE – check contracts!**
- Some technologies (advanced encryption) always ineligible for fundamental research exclusion
 - May not be available when **controlled information** that is already existing is **used during research** that otherwise meets the criteria for a fundamental research exclusion

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EXCLUSIONS: PUBLICLY AVAILABLE

APPLIES TO *INFORMATION*:

- **Already published** and found in
 - Libraries open to the public
 - Unrestricted subscriptions, newsstands, or bookstores
 - Published patent information
 - Conferences or exhibits (etc.) held in the U.S. (ITAR) or anywhere (EAR), which are generally accessible by the public
 - Unrestricted Websites

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EXCLUSIONS: EDUCATIONAL ACTIVITIES

APPLIES TO THE CLASSROOM:

- General science, math, and engineering commonly taught at schools and universities (STATE)
- Information conveyed in courses listed in course catalogues and in associated teaching labs (COMMERCE)

KEY: *Course is described in the catalog, information taught is in textbooks.*
May Not Apply to independent study

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EXPORT or EMBARGO LICENSE

- A LICENSE IS REQUIRED TO
 - send or take or provide a controlled item/service
 - to a controlled/restricted destination or
 - to provide it to a foreign national from a controlled country when in the US.
 - enter into transactions with an embargoed country or SDN, restricted entity

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LICENSE MAY BE REQUIRED

CONSIDER HIGH-RISK AREAS/DISCIPLINES

- **Presentations**/discussions of previously **unpublished research** at conferences where foreign national scholars may be in attendance.
- Research **collaborations** with foreign nationals from controlled countries and technical exchange programs involving controlled items/country.
- Shipping **controlled** research **equipment abroad** (almost always).
- **Visits** to your lab by foreign scholars (if equipment/country controlled, depends on level of access).

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What is controlled?

- **What is my item?**
 - On the USML or CCL? Why?
- **Where is it going?**
 - A proscribed, controlled or embargoed country/foreign national?
- **What will be the end-use?**
 - Why are you taking the item?
- **Who will receive it?**
 - Screen! SDN, Restricted entities.

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WHAT IS EXPORT CONTROLLED?

Commerce Control List Categories

- 0—Nuclear Materials, Facilities and Equipment and Miscellaneous
- 1—Materials, Chemicals, "Microorganisms," and Toxins
- 2—Materials Processing
- 3—Electronics
- 4—Computers
- 5—Telecommunications and Information Security
- 6—Lasers and Sensors
- 7—Navigation and Avionics
- 8—Marine Technology
- 9—Propulsion Systems, Space Vehicles and Related Equipment



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WHAT IS EXPORT CONTROLLED?

Commerce Control List Groups

Within each category, items are arranged by group:

- A—Equipment, Assemblies and Components
- B—Test, Inspection and Production Equipment
- C—Materials
- D—Software
- E—Technology



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WHAT IS EXPORT CONTROLLED?

US Munitions List - 21 categories total

- I - Firearms
- X - Protective Personnel Equipment
- XI - Military [and Space] Electronics
- XII - Fire Control, Range Finder, Optical and Guidance and Control Equipment
- XIV - Toxicological Agents and Radiological Equipment
- XVII - Classified Articles, Technical Data and Defense Services
- XX - Submersible Vessels, Oceanographic and Associated Equipment



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WHAT IS EXPORT CONTROLLED?

- Defense Services (State – ITAR)
 - Furnishing assistance/ training to foreign persons anywhere, in the use of defense articles;
 - Furnishing any technical data that is ITAR controlled.



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The item

What list? What controls?

- State (USML) or Commerce (CCL)?
- Rule: *its State until its Commerce.*
- Commodity Jurisdiction or self-classify
- State:
 - military items, defense services, space, satellites, classified, government labs ...
- Commerce:
 - research equipment, use technology...

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Commerce: step-by-step

What is the item?

- Alpha index ¹ → potential ECCNs
- Look up ECCNs on CCL ¹
 - if specs match, classify item and continue.
 - if specs *do not* match → EAR 99, no license.
- Note "reasons for control" code for ECCN.
- Note license exception codes, if any.

(¹Part 774, Supplement 1)

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Commerce: step-by-step

Where is it going?

- Is the country restricted for your item?
 - Use "country chart" (Part 740, Supp. 1): reasons for control columns: "X" requires a license to that country.

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Commerce: step-by-step

Supplement No. 1 to Part 738—Commerce Country Chart

[Reason for control]

Countries	Chemical and 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
Afghanistan	X	X	X	X		X	X	X	X	X		X		X		
Albania ^{2,3}	X	X		X		X	X	X	X	X						
Algeria	X	X		X		X	X	X	X	X				X	X	
Andorra	X	X		X		X	X	X	X	X				X	X	
Angola	X	X		X		X	X	X	X	X				X	X	
Antigua and Barbuda	X	X		X		X	X	X	X	X	X			X	X	
Argentina	X					X	X	X	X	X	X			X	X	
Armenia	X	X	X	X		X	X	X	X	X				X	X	
Aruba	X	X		X		X	X	X	X	X				X	X	
Australia ³	X					X		X	X	X						
Austria ^{3,4}	X					X		X	X	X				X	X	
Azerbaijan	X	X	X	X		X	X	X	X	X	X			X	X	
Bahamas, The	X	X		X		X	X	X	X	X	X			X	X	
Bahrain	X	X	X	X		X	X	X	X	X				X	X	
Bangladesh	X	X		X		X	X	X	X	X				X	X	

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- ## Commerce: step-by-step
- Where is it going?*
- Check "list based exceptions": identified by "country group"
 - Check transaction based exceptions, e.g. Baggage
 - Conclude: License Exceptions available and No License Required OR prepare to apply for a license
 - Document use of any License Exception
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- ## One last thing ...embargoes
- Where is it going/End-use/End-user.... more*
- Is the country embargoed? (Treasury)
 - Check Restricted Entities list, Specially Designated Nationals (Treasury)
 - Use Export.gov consolidated list.
- Can do this first!*
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EXAMPLE

- Smartphone
 - Listed by Commerce Dept. on the CCL: ECCN 5A992
 - Reason for control: Anti-terrorism (codeAT1)
 - Countries controlled for Anti-Terrorism (AT1) - Sudan, Syria (*Embargoed!*)
- Software and data (i.e., technology) are classified separately from the commodity (hardware).

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WHAT IS A LICENSE EXCEPTION?

IF A LICENSE REQUIRED, SEVERAL EXCEPTIONS:

- *Temporary* export of *tools of the trade* and *Baggage (personal or professional use)*
- Reasonable kinds and quantities of commodities and **software** can be taken overseas.
- BUT **MUST** remain under one's effective control
- Applies to: **Laptops, smart phones**, w/ commercial software.
- Must be documented.
- **No controlled items may be taken to embargoed countries.**

All exceptions are defined within the regulations.

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EXPORT LICENSE PROCESS

REQUIREMENTS

- Detailed explanation
 - technology, use, principals (CVs), foreign nationals, travel plans, significance ...
- Technology Control Plan
 - safeguards a University takes to protect items
 - Principals involved, complete activity description, resumes, supporting documentation
 - Required for "**Deemed Exports**" as well

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BASIC CONCEPTS

- Is it fundamental research?
- Is it educational activity?
- Is it publicly available info?
- *All are EXCLUSIONS from Export Control Laws*



BASIC CONCEPTS

- Export regulations cover only "listed" items and, therefore, *the great majority of University activity is not on the covered items lists.*
- **Fundamental research exclusion is negated** by restrictions on publications or foreign nationals)
- "Export" does not necessarily mean out of the country; concept of "**deemed export**" critical (students, employees, guests)

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BASIC CONCEPTS

- Licenses may be needed for
 - **shipment** of listed tangible items AND
 - sharing **research results/technical info** (email!)
 - some activities in **embargoed** countries
- Individual License takes (a lot of) time
- Penalties for noncompliance may be severe
- License exceptions must be documented

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BASIC CONCEPTS

- What is my item?
 - On a list? Why? 
- Where is it going?
 - A controlled or embargoed country? 
- What will be the end-use?
 - Why are you taking the item? 
- Who will receive it?
 - Check the lists! 

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QUESTIONS

?

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RESOURCES

<http://www.bis.doc.gov/policiesandregulations/ear/732.pdf>

Export Control Decision Tree
(Supp. No. 1 to Part 732)

```

    graph TD
      A{Subject to the EAR?  
(See 734.2 - 5)} -- No --> B(Exit the EAR)
      A -- Yes --> C{Is your item classified under an  
ECCN on the CCL?  
(General Prohibitions 1, 2, & 3)  
(See Supp. No. 1 to Part 734)}
      C -- Yes --> D{Do General Prohibitions 4-10  
apply?  
(See 735.20(4-10))}
      C -- No --> E{EAR99}
      D -- Yes --> F[ ]
      D -- No --> E
      E --> F
      style F fill:none,stroke:none
    
```

RESOURCES

Subject to the EAR Supplement No. 2 to Part 732 – page 1

SUPPLEMENT NO. 2 TO PART 732 – SUBJECT TO THE EAR?

Subject to the EAR?

N
O
T
S
U
B
J

Am I involved in an activity described in 734.5, e.g., related to the proliferation of chemical or biological weapons, anti-air equipment devices or "in a wider" technical activities with respect to encryption or activities prohibited by any order issued under the EOR?
See Section 734.5(a), (b), and (c)

↓

Is the item I am planning to export or reexport subject to the export jurisdiction of another US Governmental Department or Agency?
See Section 734.2010

↓

Does my export or reexport consist of pre-recorded phonograph records.

S
U
B
J
E
C
T

← YES

→ YES

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RESOURCES

- University Sites:
 - Vanderbilt
 - Stanford – decision tree
 - U. Texas at Austin
 - Worcester Polytechnic Institute
 - Council on Government Relations (COGR)

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RESOURCES

- Commerce, BIS online training:
 - <http://www.bis.doc.gov/seminarsandtraining/seminar-training.htm>
- Consolidated lists to check
 - http://export.gov/ecr/eg_main_023148.asp
- Treasury Embargoes FAQ
 - <http://www.treasury.gov/resource-center/faqs/Sanctions/Pages/answer.aspx>

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