



Smithsonian
Institution

SMITHSONIAN DIRECTIVE 611,

September 30, 2022

**EXPORT COMPLIANCE AND TRADE SANCTIONS RELATED TO
RESEARCH, EXPORT AND MUSEUM ACTIVITIES**

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1. PURPOSE

The Smithsonian Institution (SI), as a research institution and museum, is subject to compliance laws and regulations related to U.S. Government export controls and trade sanctions. These regulations come most into play in the following activities:

- Use or development of export-controlled instruments in research labs or programs where non-United States (U.S.) persons or collaborators are engaged;
- Procurement or export of export-controlled items, and in some cases, their subsequent re-import;
- Export and import of any items, or remittances to or from a sanctioned country;
- Work with non-U.S. persons from foreign countries subject to U.S. sanctions. Examples include:
 - The sponsorship of Fellows/Interns who are nationals of a sanctioned country;
 - The provision of expertise, training, cultural exchanges, or object loans with museums, universities or institutions in sanctioned countries;

- Presentation of export-controlled topics at meetings held abroad or when non-U.S. persons are present, and/or traveling abroad with export-controlled items or data which need to be safeguarded;
- Response to grant/contract solicitations that include export-controlled information or certifications, export restrictions, especially clauses that place limits on publication or financial contributions from a foreign collaborator(s) that raise foreign influence or research security concerns; and
- Regardless of the source of funds used, the provision of financial sponsorship or funds to non-U.S. persons (to include foreign entities), especially when a sanctioned country is involved.

2. BACKGROUND

As an institution with a global focus, SI seeks to balance its research, outreach, and education objectives with its export control obligations. The U.S. Government and its allies have regulated the export of certain strategic hardware, chemicals, specimens, biological items, materials, software, and technical data to promote peace and security. There are three primary types of U.S. export control regulations relevant to SI activities: technology restrictions, country restrictions, and party restrictions.

- **Technology Restrictions.** Certain hardware, materials, technology, and software to/from foreign countries, including certain historic military, marine or space items are considered strategic “dual-use” or “defense” articles for which SI must secure licenses to export, and possibly re-import. As relevant to SI, such articles may include certain laboratory equipment, chemical and biological materials (e.g., specified pathogens and viruses), underwater equipment, and drones. For technology or articles subject to these controls, SI has an obligation to restrict access to only “U.S. persons” in laboratories, office areas, staging areas and data networks at SI facilities where such controlled articles or controlled technology (as defined in the “Definitions” section) are being studied or used. To the extent SI wishes to provide to non-U.S. person(s) access to controlled technology, it must receive a license in advance of allowing that access. Failure to control or secure a license for a non-U.S. person to access controlled technology may be considered a “deemed export” to the non-U.S. person’s home country. For museum items and technical information, the Government can grant SI specific approval to release them into the public domain.
 - **Restrictions on Dealings with Sanctioned Countries.** Trade sanctions laws, imposed on a limited number of countries, apply pressure on governments with
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which the United States Government has foreign policy issues, such as those believed to be engaging in human rights violations, state-sponsored terrorism, or military aggression. Some SI activities, such as importing artifact collections, exporting supplies, or dispersing funds abroad may implicate sanctioned countries. In such instances, SI must evaluate whether the proposed activity involves a sanctioned country, and if so, under what circumstances the activity can continue given the country-specific sanctions program that is implicated. In many cases, the activity may be exempt or allowable under what is known as a “general license,” so that SI needs to document the activity but does not need to seek specific permission from the Treasury Department to proceed. In other cases, SI may be required to submit to the Office of Foreign Assets Control (OFAC) a specific license request, or may be required to submit periodic reports to OFAC regarding the activity. Given that sanctions are closely tied to U.S. foreign policy objectives, they are country-specific and change periodically so that their impact should be continuously monitored. Units arranging exports, conferences, and collaborations with non-U.S. persons should contact the Export Compliance Officer (ECO) by emailing export@si.edu prior to engaging in any activities with sanctioned countries.

- **Restrictions on Dealings with Prohibited Parties.** Multiple U.S. agencies maintain prohibited parties lists that prevent transactions with certain individuals and entities across the world. To illustrate, the Department of the Treasury restricted parties are known as “[Specially Designated Nationals](#).” Before engaging in transactions with a foreign party, particularly those that involve a monetary disbursement for a service or item, SI must confirm that the payee is not itself a prohibited party or owned or controlled by a prohibited party. Generally, except military and encryption items, information released free to the public is not subject to export control restrictions.

Regulating Agencies

In the United States, four agencies regulate trade sanctions and administer license regimes. The agencies and their corresponding implementation regulations are as follows:

| AGENCY | DEPARTMENT | REGULATIONS |
|------------------------|---|--|
| Department of Commerce | Bureau of Industry and Security — Enforces export controls of civilian items | Export Administration Regulations (EAR), in <i>(15 Code of Federal Regulations [CFR])</i> Parts 730–774) |
| | Bureau of Census — Administers reporting of export statistics and export filings of shipments | Foreign Trade Regulations (FTR), in 15 CFR Part 30; |

| AGENCY | DEPARTMENT | REGULATIONS |
|-----------------------------|---|--|
| Department of State | Directorate of Defense Trade Controls — Administers licenses for military exports | International Traffic in Arms Regulations (ITAR), (22 CFR) Parts 120–130; |
| Department of the Treasury | Office of Foreign Asset Controls — Administers sanctions on countries and individuals like government officials | Foreign Assets Control Regulations (FACR), in 31 CFR Parts 500–600. |
| Department of Defense (DOD) | Office of Prepublication and Security Review | Automatic (ADR), Systematic, Mandatory Declassification Review (MDR), and DOD Foreign Relations of the United States (FRUS) Programs |

More description of export regulations can be found in the Appendix A.

3. APPLICABILITY

This directive applies to all SI employees, and Affiliated Persons as identified in Section 4.

4. DEFINITIONS

Affiliated Persons — For the purposes of this directive, the term Affiliated Persons is defined as: (i) contractors who access SI networks, facilities, or perform work similar to Smithsonian employees, such as employees of temporary help firms; (ii) volunteers, as defined in [SD 208, Standards of Conduct Regarding Smithsonian Volunteers](#); (iii) interns and Fellows; (iv) emeriti, as defined in [SD 206, Emeritus Designations](#); (v) visiting researchers, including scientists, scholars, and students; (vi) research associates, as defined in [SD 205, Research Associates](#); Smithsonian Early Enrichment Center (SEEC) employees, and employees of federal/state/local agencies who access SI networks or facilities; and (viii) Regents and Advisory Board members.

Controlled Technology — Any software, documentation, technology, or other technical data, or any products for which the export, re-export, or release to certain jurisdictions or countries is prohibited or requires an export license or other governmental approval under any [Law, including the U.S. Regulations](#). (EAR 15 CFR § 772) or the International Traffic in

Arms Regulations (ITAR 22 CFR Parts 120–130). Technology means: Information necessary for the “development,” “production,” “use,” operation, installation, maintenance, repair, overhaul, or refurbishing (or other terms specified in Export Classification Control Numbers (ECCNs) on the Commerce Control List (CCL) or the U.S. Munitions list that control “technology”) of an item.

Deemed Export — (EAR 15 CFR § 734.13) Transfer of controlled technology through any means (verbal, written, visual, and/or electronic) to a foreign person in the United States are deemed to be an export to their home country.

Defense Article — Any item on [the U.S. Munitions List](#) (22 CFR, Part 121). Note that some items on the U.S. Munitions list include **non-military** items; (e.g., spacecraft, satellites, certain ground control and infrared technologies) or items specially designed to improve an item’s defense capabilities.

Dual-Use — Items and technology that are primarily civilian in nature but may have a “dual use” for a military or strategic purpose, including research satellites and non-military space/NASA programs.

Export — The shipment or retransfer of a tangible item or the transmission of an intangible item (verbal, written, electronic or visual disclosure of technology, controlled technical data, or software codes) to:

- anyone outside the United States, including a U.S. citizen;
- any non-U.S. person, which includes anyone who is not a U.S. citizen or permanent resident, even if they are located in the United States (see “**Deemed Export**” definition above); or
- a foreign embassy in the United States, or affiliate (which is treated as an “export” to that nation).

Export-controlled Item — An “item” (hardware, software, material, technology, or production equipment to manufacture the item) that is on either the U.S. State Department “Munitions List” or the Commerce Department “Commerce Control List,” or an item that has been modified to take on characteristics of an item on one of the lists.

Fundamental Research — Both the State Department and the Commerce Department recognize an exemption from their controls of technology and information that qualifies as “fundamental research,” which captures the majority of the research and scholarship promulgated by SI. For the State Department, “fundamental research” is defined as basic and applied research in science and engineering where the resulting information is free from restrictions on publication and involves information that is not subject to any access or dissemination controls whose intent is to be published and shared broadly in the scientific community (ITAR, 22 CFR, § 120.11). For the Commerce Department, the EAR have

specific criteria about how the “sharing” must occur to qualify as “publicly available.” In either case, fundamental research may be impacted by trade sanctions, but it is exempt from export controls.

Non-U.S. Person (Foreign Person) (ITAR, 22 CFR, § 120.16) — An individual who is not a U.S. citizen, nor a permanent resident, nor approved under asylum, nor approved under refugee status.

Public Domain Exclusion (ITAR, EAR) — Both the State Department and the Commerce Department also recognize in their regulatory schemes an exception from their controls information that is in the “public domain,” or “information that is published and that is generally accessible or available to the public.” The EAR and the ITAR do, however, use different criteria to determine whether a “publication” falls in the “public domain.” The EAR require that to be “public domain,” information must be intended to be published. Further, the EAR recognize “publishing” includes information or technology that is posted on the Internet for free. By contrast, the ITAR require that “public domain” information (§ 120.11) is limited to information that is published only through the following media: ordinary publication through sales at newsstands and bookstores; subscriptions available without restriction; information found in libraries open to the public; patent information available at any patent office; information subject to unlimited distribution in the United States at a conference, meeting, seminar, trade show, or exhibition generally accessible to the public; or information that is publicly released in any form after approval by the cognizant U.S. Government department or agency.

Re-import (ITAR) —an ITAR-licensed item that was previously exported and then is imported for temporary use. This activity is controlled by the ITAR.

Strategic Item — Hardware, software, materials, or technology enumerated on an export control list or an “uncontrolled” item that has been specially enhanced or customized to have the characteristics of an item on an export control list.

Trade Sanctions — Laws imposed on a limited number of countries that apply pressure on governments with which the United States has foreign policy issues, such as those believed to be engaging in human rights violations, state-sponsored terrorism, or military aggression.

U.S. Person — A person who resides in the United States who is a citizen, a permanent resident, or has legal status as an asylum seeker or refugee.

5. POLICY

It is SI policy to comply with all export control and trade sanction laws, and regulations of the United States Government. All SI employees and Affiliated Persons are responsible for

understanding international activities that may trigger an export compliance requirement.

To implement this policy, SI has an export compliance program and an ECO, who acts as a focal point for export compliance inquiries. The ECO is responsible for administration of the SI export compliance program, including training SI employees and Affiliated Persons on export compliance matters.

6. RESPONSIBILITIES

The **Under Secretary for Science and Research** is responsible for acting in the role of the **Senior Empowered Official (EO)** at SI and this position is accountable for:

- ensuring that adequate resources are allocated to export compliance for maintaining current policies and procedures, developing additional procedures where necessary, providing screening tools and security systems, and training to adequately respond to the changing regulatory environment;
- monitoring export compliance activities at the SI;
- being apprised of ITAR export license applications in advance and confirming that proper export authorizations are approved;
- serving as a point person for export compliance inquiries and issues that arise in SI units and coordinating with the ECO as these issues are raised; and
- delegating in writing the Alternate Empowered Official, who is trained in the export regulations, and may share responsibility for ensuring compliance governed by the ITAR and EAR in the event of a temporary absence of the EO.

The **Export Compliance Officer (ECO)** is primarily responsible for administering the SI export compliance program. The ECO's responsibilities include:

- establishing and implementing export compliance policies and procedures consistent with the applicable export control laws and regulations pertaining to the conduct of research and other activities, including the ITAR, EAR, FACR, and FTR;
- monitoring compliance with the SI export compliance policies and procedures by SI employees and Affiliated Persons;
- providing training to SI employees and Affiliated Persons about export control requirements, particularly employees and Affiliated Persons most likely required to apply the policies and procedures when performing their duties and responsibilities;

- approving controlled exports (and some imports) to ensure compliance with U.S. export regulations;
- preparing export licenses;
- coordinating with the Office of the Under Secretary for Science and Research, and when appropriate, the Office of the General Counsel (OGC) to facilitate interactions with Government agencies regarding particular export control or trade sanction issues and to make decisions about voluntary disclosures; and
- interfacing between SI units and shipping personnel at other education and research organizations, logistics parties, and Government agencies in the legal movement of controlled goods, software, and technology.

The **Office of International Relations (OIR)** is responsible for:

- receiving advisories from the U.S. State Department and changes in rules concerning countries sanctioned by the U.S. Government and sharing those communications with the ECO;
- consulting with the ECO when the OIR is aware that SI is involved in activities or funding related to sanctioned countries to ensure compliance with sanction rules and verify that units ensure that no participants appear on Government denial lists — on [the OSP compliance website](#), there is a procedure and an internal training course that explains the numerous lists and how to check them;
- consulting with the ECO when the OIR is aware that SI is pursuing agreements in countries identified by the Internal Revenue Service for unsanctioned boycotts when presented with clauses that may contain illegal boycott language;
- ensuring that, when immigration support is requested, the OIR International Exchange Advisor screens the names of non-U.S. academic appointees a unit intends to host against U.S. Government denial lists; or processing work visas for persons involved in scientific research;
- recommending, as part of the OIR international travel guidance on its website and in its communications, that travelers to sanctioned countries contact the ECO to be made aware of possible requirements.

The **Office of Academic Appointments and Internships (OAAI)** is responsible for alerting, as appropriate, sponsoring units that arrange visits of non-U.S. academic appointees for activities in science to consider possible export control requirements.

The **Office of Sponsored Projects (OSP)** and **Smithsonian Astrophysical Observatory (SAO) Sponsored Programs and Procurement (SPP) Department** are responsible for:

- reviewing outgoing proposals and incoming sponsored award documents for export control clauses, equipment purchases for overseas locations, and foreign collaboration;
- directing principal investigators, program managers, divisional administrators, or fund managers to the ECO for further assistance; and
- flagging possible boycott issues when reviewing agreements in countries identified by the Internal Revenue Service for unsanctioned boycotts when presented with clauses that may contain illegal boycott language.

The **Office of Contracting and Personal Property Management (OCon&PPM)** staff is responsible for referencing this Smithsonian Directive and consulting or referring to the ECO, as necessary, when deciding appropriate advice to the SI units' staffs about:

- export control regulations applicable to a planned procurement or travel to a sanctioned country;
- screening potential contractors for active debarments or otherwise appearing on Government contracts denial lists; and
- determining which offices to contact to obtain required SI internal clearances for procurements that present export or import concerns.

The **Office of the General Counsel**, to the extent requested by the Office of the Under Secretary for Science and Research and the EO:

- facilitates interactions with Government agencies regarding particular export control or trade sanction issues;
- reviews for possible boycott issues when OGC reviews agreements in countries identified by the Internal Revenue Service for unsanctioned boycotts;
- provides general guidance about the impact of regulations on SI; and
- advises institutional leadership regarding export control issues that raise clear legal considerations, such as violations and voluntary disclosures.

Unit Directors are responsible for facilitating the identification of persons or functions in their unit to bear primary responsibility for export review and import/export-related shipping tasks, which include:

- reviewing items and activities for import or export compliance and determining if ECO support is necessary;
- informing the ECO when non-U.S. persons are involved with export-controlled activities and ensure that non-U.S. persons are not on the Government denial lists;
- ensuring that all Unit employees and affiliated persons, particularly those engaged in activities that can implicate export or sanctions issues, attend training about export regulations, sanctions and SI export control policies and procedures;
- ensuring that proper export clearance procedures are followed — specific procedures as listed on the Export Compliance Website (see “References” section); and
- coordinating, as necessary with the ECO, import clearances for certain equipment and artifacts (e.g., licenses to import ITAR-controlled items, or arranging temporary import bonds and carnets to support specific research projects and exhibitions).

SI Employees and Affiliated Persons engaged in scientific research, hiring, contracting, provisioning information technology (IT) networks, arranging travel or transport of export-controlled artifacts, security, and shipping abroad or to U.S. possessions are responsible for:

- becoming knowledgeable about the fundamentals of export compliance;
- facilitating the export license approval process, as requested by the ECO, including providing details about the transfer of technology to be approved (e.g., statements of work);
- keeping records about equipment and transfers made, including tracking the export information and equipment location that is required to be reported to Government agencies; and
- securing and managing export-controlled materials in laboratory spaces, display cases, during transit, on networks and mobile devices.

7. PENALTIES

A violation of export regulations can not only tarnish the reputation of SI, but also lead to loss of research funding and significant monetary penalties. In some cases, the Government imposes criminal penalties on the individual if there is evidence that the act of non-compliance was willful.

Questions or concerns about a potential violation can be directed to export@si.edu.

Violation of export control laws can result in civil and criminal penalties, and such penalties may be imposed on the Institution itself or the individual(s) involved in the violation. Potential penalties include monetary fines, the placement of the party responsible for the wrongdoing on “denied” party or “debarred” entity list, or imprisonment if there is evidence that an act of non-compliance was willful. Fines for criminal violations may be more severe than administrative violations and may be quite large since they can be multiplied by the number of violation occurrences. Maximum penalties for violations under the OFAC, ITAR, and EAR depend on the value of the transaction and criminal prison sentences can be up to 20 years for individuals responsible for the violations.

Failure by an SI employee or Affiliated Person to comply with this policy is cause for remedial or disciplinary action by the Institution. Such consequences include the actions described in the Disciplinary/Adverse Actions chapter of the [Federal](#) and [Trust Personnel Handbooks](#), including counseling, suspension, and removal.

8. REFERENCES

Export regulations and SI compliance websites for more information:

Research Compliance website on Prism

[OUSSR Export Compliance site](#) and [Export Compliance forms](#) for imports, exports, and related activities

[Smithsonian Astrophysical Observatory Export Compliance website](#) — posts export compliance procedures and forms.

Government Agencies’ Regulations Involved with Export Controls

- [International Traffic in Arms Regulations](#) (ITAR)
- [Export Administration Regulations](#) (EAR)
- Compliance with [anti-boycott regulations](#) (related to the boycott of Israel and other unsanctioned boycotts)
- Compliance with General Prohibitions concerning [prohibited parties](#) and controls related to [sanctioned destinations](#)
- [Commerce Control List](#)

Export Compliance Program Guidelines

- [Bureau of Industry and Security \(EMCP\)](#)
- [Directorate of Defense Trade Controls, Compliance Program](#)
- [OGC Ethics Page](#)

SUPERSEDES: SD 611, issued May 13, 2015.

INQUIRIES: Export Compliance Officer, Smithsonian Institution, export@si.edu

RETENTION: Indefinite. Subject to review for currency 36 months from date of issue.
