

ECP # 2.5 EXPORT CLEARANCE PROCEDURE FOR TANGIBLE EXPORTS

I. Purpose

The purpose of this export clearance procedure is to provide instructions and ensure there is a standard method to facilitate the exporting of goods in compliance with all federal export regulations. These exports may or may not be subject to export license restrictions.

Every export from the U.S. is an import into another country, so exact information about value, origin, duty codes, and Value Added Tax (VAT) needs to be considered prior to exporting.

II. Procedures

1. **The requestor (PI/PM/DA/Registrar)** should plan to work with the Export Compliance Officer (**ECO**) and Accountable Property Officer (**APO**) a few weeks or months before the export if there are any export-controlled items.
2. When contacting the **ECO**, the **PI/PM/DA/Registrar** indicates the details below on the property form and Export of Hardware Checklist for tangible exports, including:
 - what is the equipment?
 - what is the value?
 - where is it going?
 - serial numbers, if possible
 - if the hardware is U.S. or other origin?
 - if it is on the U.S. Munitions List or Commerce Control List?
 - who owns it and who is shipping it ?
 - how long it is staying?
 - what is the weight (over 100 lbs?)
 - when does it need to be there?
 - does it need a government bill of lading?
 - does it need to be insured?
 - is it coming back?
3. **PI/PM/DA Registrar** can start the solicitation process for freight forwarding quotes but should coordinate with the **APO**. As stated above, a certified **Customs Broker** should assist us in the destination country with the customs requirements of importing research-related equipment of value (or hazardous materials). If you will be returning the goods, you must report them to Customs on the outbound and receive a receipt from a Customs Official (during business hours), or we will be charged the duty. Avoid exporting hazardous materials (procure locally instead), if possible. Contact the **ECO** and the **APO** if an

individual decides to hand-carry equipment. Check the **Transportation Security Administration (TSA)** guidance of what can be carried aboard or checked for air travel (www.tsa.gov) or check the Export Compliance website. The **ECO** manages the AES account, which allows us to file our own Electronic Export Information in AES.

It is recommended that we have a relationship with an experienced **Customs Broker** who the **Traveler** can contact at the first airport of arrival to assist with clearance and payment of fees. In such cases, schedule travel to arrive on a weekday during business hours. Ensure that SI has a Power of Attorney with this party. If not, the Office of General Counsel will need to prepare one; this may require a day or two. Refer to the OGC website.

4. The **PI/PM/DA/Registrar** prepares an invoice (to be in the possession of the **Traveler** if the item is hand-carried) or to provide to the shipper. Information to have on an invoice is as follows (Also see sample on the next page or on the export compliance webpage):
 - Description, serial number, origin, Incoterm, and payment terms.
 - Schedule B or HTSUS number – the first 6 digits only (last 4 digits depend are US only).
 - Value if the item is returning.
 - If the item is under an ITAR or EAR license, the invoice needs to state the destination control statement, the license number, and the item category or Export Control Classification Number (ECCN). If the item is staying with you, enter SAO or Smithsonian Institutionas both the “bill to” and “ship to” address.

If assistance is needed, the **ECO** can be reached at export@cfa.harvard.edu or export@si.edu.

5. A destination control statement must be printed on the invoice for shipments under an export license, as follows:
 - ITAR - “These commodities are authorized by the U.S. Government for [*temporary*] export only to [country – e.g., *United Kingdom*] for use by [end-user on license- e.g., *Space Science Laboratory*.] They may not be transferred, trans-shipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated into other end items, without the prior written approval of the U.S. Department of State.”
 - EAR - “These commodities are authorized by the U.S. Government per the Export Administration Regulations. Diversion contrary to U.S. law is prohibited.”
6. Prepare the SLI – Shipper’s Letter of Instruction – See Export Compliance Website for detailed instructions.

When using a freight forwarder, a Shipper’s Letter of Instruction is recommended so that they have all the relevant information to complete the filing and arrange the freight. See sample. (Use the entire 10 digit harmonized code or Schedule B number on this document.)

7. **ECO** – Determine if an Electronic Export Information (**E EI**) filing is required (see next step) and who will complete it – **ECO** (if hand-carried) or the forwarder?
8. Rules for filing are listed in the Foreign Trade Regulations (30 CFR).
 - **Not** required for tools of the trade that are coming back (30.37 of FTR).
 - **Not** required for Canada if not subject to an export license (30.36 of FTR).
 - **Not** required for personal effects (30.37 of FTR).
 - **Not** required if the shipment is not subject to an export license and is valued below \$2500 (30.37 a of FTR).
 - **Required** for Puerto Rico and some U.S. Virgin Islands.
 - **Not** required for Guam.
 - If the EEI is not required, the invoice needs to state “No EEI required per 3x.x of the FTR” with the citation of the exemption.
 - Once the EEI is filed, the filing number needs to be typed on the invoice, YYYYDDMMXXXX.
 - Failure to file can result in a fine of \$1,000 a day up to \$10,000; so if you are unsure, it is

better to file in AES. If you are asking another party (freight forwarder) to file for a hand-carry, try to provide 3 – 4 days notice, as they are doing us a favor if they are not shipping the freight.

9. Lodging of PERMANENT ITAR export licenses must be done at the airport with U.S. Customs at prior to filing the EEI, or else you risk that the EEI might show that the license value has been used. This can be done by emailing the license to the freight forwarder who will bring it to Customs. This must be arranged 3 - 5 days in advance. The port of exit must be the same as on the license. If it is a temporary shipment, the DSP-73 is decremented AFTER the EEI filing has been made, by taking the license to U.S. Customs at the port of exit.
10. Filing times: The EEI filing is usually completed by the freight forwarder and must be completed 2 hours before export for non-ITAR shipments, 8 hours before for ITAR shipments, and 24 hours for ITAR shipments going by sea.
11. If ITAR, the **Customs Broker** must bring in the item as a defense article. If it is entering under a license, have a pdf of the license available (DSP-73). Email the export documents to your APO and the Export Compliance Officer export@cfa.harvard.edu or export@si.edu.

III. References

- SD 611 Export Compliance and Trade Sanctions Related to Research, Export and Museum Activities
- Contact: Natascha Finnerty, Export Compliance Officer about questions related to this procedure at export@si.edu and telephone is (617) 496-7557.

- Definitions

Authorized Agent: An individual or legal entity physically located in or otherwise under the jurisdiction of the United States that has obtained power of attorney or written authorization from a U.S. Principal Party in Interest (USPPI) or Foreign Principal Party in Interest (FPPI) to act on its behalf and who will complete and file the Electronic Export Information (EEI).

Automated Export System (AES): Bureau of Census system that exporters are required to use. The system collect data on exported items for the balance of trade (over \$2500) and monitors compliance with regulations related to regulated products such as those requiring export licenses (must be reported for any value).

Carnet: Commonly known as a “Merchandise Passport”, is an international customs document that simplifies customs procedures for the temporary importation of various types of goods. In the U.S., two types are issued: ATA and TECRO/AIT Carnets; the latter is for Taiwan. A carnet DOES NOT replace the need for an export license.

- **ATA Carnets** ease the temporary importation of commercial samples (CS), professional equipment (PE), and goods for exhibitions and fairs (EF). They facilitate international business by avoiding extensive customs procedures, eliminating payment of duties and value-added taxes

(minimum 20% in Europe, 27% in China), and replacing the purchase of temporary import bonds.

- **TECHRO/AIT Carnets** are carnets for Taiwan.

Customs Broker: Company that we or our vendor selects at the destination airport or seaport that has a license and authority to clear the goods through U.S. and international customs, filing with the appropriate customs forms, tariff number, duty rate, and taxes. They are either our or the vendor's authorized agent and must have a one-time or durable Power of Attorney with us or the vendor.

Electronic Export Information (EEI): The electronic export data as filed in the Automated Export System (AES). This is the electronic form for filing export data, formerly collected on the Shipper's Export Declaration (SED). The EEI is now mandated to be filed through the AES through a freight forwarder or by the exporter using the on-line program AESDirect.

Export: the transfer of items, software or technical data in the form of an actual shipment, or by electronic, oral or visual means. Emailing technical specifications to a foreign vendor is an export.

Federal Communication Commission (FCC) Certificate: Some items emitting electromagnetic radiation require an FCC certificate that should be obtained from the manufacturer of the item. Depending on the equipment, FCC testing is needed to show compliance, e.g., wireless devices, etc.

Foreign Principal Party in Interest (FPPI): The party shown on the transportation document to whom delivery or end-use of the goods will be made.

Freight Forwarder: Agent who is hired (e.g., TNT, Expeditors, Schenkers) to coordinate the pickup, transport, and delivery of goods. They often can also arrange clearance of our goods through Customs or we or the vendor can contract a separate company. (Freight forwarders tend to deal with freight that is more than 100 lbs or is regulated. Couriers, such as Federal Express and DHL, are used for small packages that are not regulated.)

Government Bill of Lading (GBL): Used when the government requires U.S. government entities to ship using U.S.-flagged carriers.

Harmonized Tariff Schedule (HTSUS): Internationally recognized import number (10 digits XXXX.XX.XXXX format) that identifies the item and is the category for determining import duty. May be used instead of the export code called the Schedule B number. See website [HTSUS](#).

Hazardous Materials: Items that are flammable, explosive, corrosive, radioactive, irritant, poisonous, etc. that have special export and import requirements. Managed by the U.S. Department of Transportation.

Incoterms: International Chamber of Commerce sales terms to define who is responsible for the shipping, insurance, duty, taxes, storage, inland freight, etc. Examples are Ex Works (named place), CPI, DAP, etc. (The term "FOB" should only be used for domestic or sea freight.)

International Trade Administration (ITA): Agency that administers the Harmonized Tariff Schedule list.

International Traffic in Arms Agreement (ITAR): The U.S. Department of State's regulations controlling the permanent and temporary export and temporary import of defense articles and services.

Law: The law that governs the general reporting of the Electronic Export Information is the Foreign Trade Regulations (FTR), also known as 15 Code of Federal Regulations (CFR) Part 30. Other Federal Government agencies, which are referenced in the FTR, may also have a say in the export laws.

Materials Safety Data Sheets: Disclosures by manufacturers as to whether their items are hazardous to handle or transport.

Personal Effects: Household goods, clothing, and other personal items.

Power of Attorney (POA): Document that an exporter signs to permit an agent to act on their behalf for specified responsibilities. All POAs must be executed by the Smithsonian Office of General Counsel.

Schedule B Number: 10-digit code used to identify the equipment when exported for the balance of trade. Collected by U.S. Department of Census when value is over \$2500.

Shipper's Letter of Instruction (SLI): Shipper's communication(s) to its agent and/or directly to the international water-carrier. Instructions may be varied, e.g., specific details/clauses to be printed on the B/L and directions for cargo pickup and delivery. (A sample is included in this procedure.)

Tools of the Trade: Items you bring with you to do your job and that stay in your possession and come back with you when returning from travel.

U.S. Munitions List (USML): Articles, services and related technical data designated as defense articles and defense services. The USML is in Part 121 of the International Traffic in Arms Regulations. To read the USML go to:

http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/2012/ITAR_Part_121.pdf

U.S. Principal Party in Interest (USPPI): The person or legal entity in the United States that receives the primary benefit, monetary or otherwise, from the export transaction. Generally, that person or entity is the U.S. seller, manufacturer, order party, or the foreign entity while in the United States when purchasing or obtaining the goods for export.

IV. Reference Documents

Government website about exporting: www.export.gov

List of dual use items that may require an export license from BIS:
http://www.bis.doc.gov/policiesandregulations/ear/Index_to_CCL.pdf

List of Schedule B Numbers: <http://www.census.gov/foreign-trade/schedules/b/>

Automated Export System website:
<http://www.census.gov/foreign-trade/aes/gettingstarted/overview.html#WhatisAES>

- Responsibilities

Office of General Counsel (OGC) signs the Power of Attorney.

The **Registrar, Principal Investigator (PI), Division Administrator (DA),** and/or **Project Manager (PM)** identify information about the transaction – who will get it, what it is, where it is going, who will use it, how long it is staying, who owns it, etc.

The **Export Compliance Officer (ECO)** classifies the project as to whether the export is subject to the ITAR or EAR if the item is an instrument, machine, chemical, or biological item.

The **Accountable Property Officer (APO)** monitors the shipment and all related parties, e.g., crater, trucker, freight forwarder, insurance carrier, broker, carnet company, etc.

SAO Financial Management Department or **SI Office of Sponsored Projects** determines the account to be used to pay bond, duties, taxes, etc.

Office of the Chief Information Officer (OCIO) is the contact for a FCC Certificate.

VI. Basic Export Conventions

Exports by the Smithsonian often are loans to another museum. In such cases the **Registrar** is responsible for the movement of items, selection of the freight forwarder, customs broker, and preparing the invoice.

For exports of instruments and controlled items, the **ECO's** focus involves a review of both export license issues and export clearance requirements with the U.S. Government. Export documentation needs to identify the items being exported, as well as their value, and if they require an export license. "Tools of the trade" do not need to be itemized on the export filing. These are items that **Travelers** bring with them to do their jobs, and the items will stay in their possession and be returned to the U.S. Items not being sold still must have a value declared.

When preparing the commercial invoice, it must have information that facilitates the import into the foreign country by noting the country of origin and arranging services in advance, such as, payment of taxes and duties. There are international terms, called "Incoterms" that note whether the shipper or recipient is responsible for transportation, insurance, duties, and taxes.

The export code, called the **Schedule B** code, assigned to the equipment is a ten digit code. XXXX.XX.XXXX. The first 6 digits correspond with import codes used all over the world. So if the equipment was originally imported, we can reference the import code to see what the export code will be. Some equipment is duty free, while others have specific duty rates. If equipment or components are purchased from overseas and then assembled here and the import number "shifts" to a different export code, then we can call these items "U.S. origin" by way of tariff shift.

Chemicals and other items have a **Material Safety Data Sheet (MSDS)** that indicates if they are hazardous. If possible, we have to ask the manufacturer for these sheets for anything that may need to be reported as hazardous.

Freight forwarders can assist with most aspects of exporting, and we have developed relationships with a few who are specialists in museum and scientific equipment transportation, rather than using different ones each time. If equipment is hand-carried, it still must be declared according to the same rules as cargo. Tools of the trade that are returning with the person are exempted.

VIII. Records Retention

PI/PM/DA/Registrar – maintain records with loan agreement/contract. Archive with SI documents.

ECO - Maintain records for five years or five years beyond the validity of the license.

APO – retains export records

SMITHSONIAN ASTROPHYSICAL OBSERVATORY

EXPORT OF HARDWARE CHECKLIST

DATE: _____

COMPLETED BY: _____

HARDWARE EXPORTS AND DESCRIPTION	RESPONSE	COMMENTS
1. Name of Program		
2. PI/PM PI/PM email and phone		
3. Date of Planned Export		
4. Date it needs to be there		
5. Type of equipment\Description		
6. Location of equipment now		
7. Permanent or Temporary export		
8. If temporary, when is it coming back?		
9. Has property transfer form been completed?		
10. Controlled under ITAR or EAR?		
11. What is ECCN/ITAR Category?		
12. Does it need a license? (ECO)		
13. If yes, has license been obtained? (ECO)		
14. Check Denied Persons List and country (ECO)		
15. Hazardous Material/FCC concerns? Is there an MSDS for the equipment? Is anything hazardous – corrosive, radioactive, etc. If yes, try not to ship; procure it locally at your destination. See DOT list for hazardous items. *1 MSDS – Material Safety Data Sheet *2 DOT – Dept. of Transportation list of Hazardous Materials and Transportation Guide		

HARDWARE EXPORTS AND DESCRIPTION (cont)	RESPONSE	COMMENTS
16. What is value?		
17. What is its origin? Do you have Manufacturer Affidavit?		
18. Schedule B or HTSUS no.?		Requestor: Provide if known
19. Serial numbers		
20. How will it be exported – shipped or hand carried?		
21. What is weight?		
22. Will it be sold (transfer title?)		
23. Do you have a broker for VAT, duty?		
24. Who is arranging the crating, shipping?		
25. Who is arranging the insurance?		
26. Who is arranging the export Filing in AES?		
27. It is exempted? (Tools of the trade, going to Canada, under \$2500)		
28. Any Technology release?		
29. Parties involved and their role (forwarders, refurbishers, customs brokers, etc.)		
30. Conduct Denied Party Screening (ECO)		
Sign off ECO Traveler or Admin:		



PRO FORMA INVOICE

Scientist
Cambridge, MA 02138
Phone: 617 495-7317
Fax: 617 496-7557

Date 7/1/2013
Expiration Date
Invoice # inv1
Contract No. SV2-XXXX

CUSTOMER
Science center
c/o Smithsonian Astrophysical Observatory (SAO)
Main St
London RH5 United Kingdom

SHIP TO
Science center
Main Street
London RH5 United Kingdom

SHIPPING DETAILS
Freight Type hand cary
Est Ship Date 7/1/2013
Est Gross Weight 12 kg
Est Cubic Weight
Total Packages [Qty]

1

PART NUMBER	UNIT OF MEASURE	DESCRIPTION	QTY	UNIT PRICE	TAX	TOTAL AMOUNT
	pcs	CMOS camera subsystem - video camera	1	500,000	500,000.00	500,000.00
		General description - Digital Still Image Video Camera - other				-
		US origin				-
		Schedule B#: 8525.80.4000				-
		No for sale, for research and return to US				-

TERMS OF SALE AND OTHER COMMENTS
Not for sale, temporary export to Science center and return to SAO
Hand carried by Jane Smith
"These commodities are authorized by the U.S. Government for temporary export only to United Kingdom for use by Space Science Laboratory. They may not be transferred, transshipped on a non-continuous voyage, or otherwise be disposed of in any other country, either in their original form or after being incorporated of Stat into other end items, without the prior written approval of the U.S. Department of State.
ITAR license DSP73-7300011111 expiration 8/13/2016

Subtotal US\$	\$ 500,000.00
Taxable	\$ -
Tax rate	
Tax	\$ -
Freight	\$ -
Insurance	\$ -
Legal/Consular	\$ -
Inspection/Cert.	\$ -
Other (specify)	\$ -
Other (specify)	\$ -
TOTAL US\$	\$ 500,000.00
Currency	USD

ADDITIONAL DETAILS
Country of Origin United States
Port of Embarkation Boston - Logan Airport
Port of Discharge London Heathrow

Reason for Export: temporary export for research

I certify the above to be true and correct to the best of my knowledge.

x

Natascha Finnerty, Export Compliance Officer

Date

Sec. 30.1 General statement of requirement for Shipper's Export Declarations (SEDs) /Electronic Export Information (EEI).

- (a) SED/EEI shall be filed by U.S. principal party in interest or the authorized agent in accordance with the definitions, specifications, and requirements of these regulations for all commodities, gold and silver, except as specifically exempted herein, shipped as follows:
- (1) To foreign countries or areas, including Foreign Trade Zones located therein, (see Sec. 30.58 for exemptions for shipments from the United States to Canada) from any of the following:
- (i) The United States, including the 50 States and the District of Columbia.
 - (ii) Puerto Rico.
 - (iii) Foreign Trade Zones in the United States or Puerto Rico.
 - (iv) The Virgin Islands of the United States.
- (2) Between nonforeign areas as specified below:
- NOTE: Shipper's Export Declarations are not required for shipments from the United States or Puerto Rico to the United States Possessions, except to the Virgin Islands of the United States, or from a U.S. Possession destined to the United States, Puerto Rico, or another U.S. Possession.
- (i) To Puerto Rico from the United States.
 - (ii) To the United States from Puerto Rico.
 - (iii) To the Virgin Islands of the United States from the United States or Puerto Rico.
- (b) EEIs shall be filed for merchandise moving as described above regardless of the method of transportation. Instructions for the filing of SEDs for vessels, aircraft, railway cars, etc., when sold foreign appear in Sec. 30.33. Export information that is required to be filed for items identified on the Commerce Control List (CCL) of the Export Administration Regulations (EAR) (15 CFR Supplement No. 1 to part 774) or the State Department's U.S. Munitions List (USML) of the International Traffic in Arms Regulations (ITAR) (22 CFR, part 121) is to be filed electronically through AES. This requirement to file information via AES applies to those items that would otherwise require the filing of an SED. Exemptions from these requirements and exceptions to some of the provisions of these regulations for particular types of transactions are found in subparts C and D of this part.
- (c) In lieu of filing paper SEDs as provided elsewhere in this section, when an SED would be required, the USPPI or the authorized agent is required to file shipper's export information electronically through the AES for the export of items identified on the CCL of the EAR (15 CFR Supp. No. 1 to part 774) or the USML of the ITAR (22 CFR part 121) as provided for in subpart E of this part, Electronic Filing Requirements--Shipper's Export Information. Information for items identified on the USML, including those exported under an export license exemption, must be filed electronically prior to export, unless exempted from the AES filing requirement by the State Department. For USML shipments, refer to the ITAR (22 CFR parts 120-130) for requirements concerning the AES proof of filing citation and filing

time requirements. USPPIs or their authorized agents are required to file export information through the AES for shipments of rough diamonds classified under Harmonized System subheadings 7102.10, 7102.21, and 7102.31 and exported (reexported) in accordance with the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) as provided for in subpart E of this part. Use of the SED form is not permitted for reporting exports of rough diamonds. Entities serving as data entry and other forms of processing centers are not authorized to either collect or file export information on shipments of rough diamonds using any export reporting option. The USPPI or the authorized agent filing SEDs for the export of items not on the CCL, the USML, or exported (reexported) under the provisions of the Clean Diamond Trade Act and the Rough Diamonds Control Regulations (31 CFR part 592) has the option of filing this information electronically as provided for in subpart E of this part.

- (d) Electronic transmissions and intangible transfers. Electronic transmissions to be received outside the United States and other intangible transfers, such as downloaded software, technical data, and technology, are not subject to this part, but may be subject to export control requirements under other laws and regulations. See 15 CFR parts 730 through 774 of the EAR.