



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

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1. PURPOSE

United States export control regulations govern the export of “items,” conduct of certain scientific work with non-U.S. persons, engagement in activities with or in sanctioned countries, transfer of funds to designated sanctioned countries, and travel overseas with large amounts of currency. It is the Smithsonian’s policy to comply with all export control and trade sanction laws, regulations, and policies of the United States. “Items” are hardware, production equipment for hardware, materials, software, and technology.

Many of the Smithsonian’s research activities qualify as “fundamental research” and may be exempt from certain U.S. export control licensing requirements. As an institution with diverse undertakings, the Smithsonian recognizes that U.S. export control regulations continue to regulate a variety of actions that are outside of the “fundamental research” exception. These activities include research considered to be military and/or space related, which involve “defense” or “dual-use” technology, such as space-qualified optics, sensors, satellites, instrumentation related to infrared or solid state detectors, chemicals, pathogens, specialized analytical computer code, marine vehicles, and high-technology research techniques. For these activities, export licenses may be required.

In addition, research activities that take place in countries that are subject to trade sanctions, or involve persons from sanctioned countries, may be subject to specific licenses and reporting, regardless of whether the activities qualify as “fundamental” research; when in doubt, contact

1. PURPOSE (continued)

export@si.edu. U.S. law for each sanctioned country is unique concerning the activities that are permissible, and the activities that are prohibited.

Some examples of Smithsonian activities that may be outside the scope of “fundamental research” and thus require action under U.S. export regulations include:

- Return of a World War II fighter plane back to Europe
- Hire of a non-U.S. student to conduct work on telescope instrumentation
- Collaboration with Syrian parties to preserve heritage sites at risk due to civil war
- Travel to Cuba to research migratory birds
- Loan of space gloves and military surveillance equipment for an exhibit in Europe
- Export of computers, microscopes and supplies valued at more than \$2,500 to support a research project to study mosquitos
- Sponsorship of an H1B visa for a non-U.S. research scientist, requiring the Smithsonian Institution (SI) to certify if the research is export controlled
- Presentation about optics at a design review meeting attended by non-U.S. collaborators
- Hand-carrying a large amount of currency for a research trip to a remote country.

2. POLICY

As an institution with a global focus, the Smithsonian Institution seeks to balance its research, outreach, and education objectives with its export control obligations. There are three primary types of U.S. export control regulations relevant to SI activities.

1. These regulations have control lists, and, subsequently, require that the Smithsonian monitor and/or obtain a license for the export and, at times, re-import of strategic “dual-use” or “defense” hardware, materials, technology and software to foreign countries — including certain historic military, marine or space items. Regulations limiting the development of chemical and biological weapons place laboratory equipment, chemical

2. POLICY (continued)

and biological materials, like certain pathogens, on the dual-use strategic list. Terrorism concerns cause underwater equipment and scuba gear to be put on the strategic list.

2. Controls over technology create an obligation to restrict access to only “U.S. persons” in laboratories, office areas and data networks at SI facilities where export-control work is being performed, unless the appropriate export control clearance has been obtained. Failure to control access to such areas can be considered an unauthorized “deemed export” to a non-U.S. person’s home country.
3. The export regulations limit certain activities through trade sanctions. Trade sanction laws, imposed on a limited number of countries, 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. Some SI activities, such as importing art collections, exporting supplies or offering funds in sanctioned countries, need to qualify for narrow categories of approved activities called “general licenses.” Otherwise, the Treasury Department requires a specific license in advance or after-the-fact reporting. Given that sanctions are closely tied to U.S. foreign policy objectives, they change periodically and their impact should be monitored by SI Units arranging exports, conferences, and collaborations with non-U.S. persons. The [Export Compliance website](#) maintains updated information about new restrictions.

A violation of export regulations can not only tarnish the reputation of the Smithsonian, but it may 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 potential violation can be directed to export@si.edu. See more information under the “Penalties” section.

To navigate these regulatory areas, the Smithsonian has adopted an export compliance program and established the position of Export Compliance Officer (ECO) to act as a focal point for export compliance responsibilities and inquiries. To determine what technology or equipment is export controlled, the ECO works with internal stakeholders and technical experts to evaluate the controlled item lists and determine if activities involve strategic “items.” Based on the assessment, the ECO consults the export regulations to determine whether an export license is required or another authorization is available.

The ECO is responsible for developing, maintaining and communicating the procedural guidance that flows down to all related SI units. The ECO works with other Smithsonian administrative offices to provide assistance to museums, researchers and their staff, including: the Office of Sponsored Projects (OSP), the Sponsored Programs and Procurement Department at the Smithsonian Astrophysical Observatory (SAO), the Office of International

2. POLICY (continued)

Relations (OIR), the Office of the Under Secretary for Science (OUSS), the Office of the Under Secretary for History, Art and Culture (OUSHAC), the Office of Fellowships and Internships (OFI), the Office of the General Counsel (OGC), the National Collections Program (NCP), and the Office of Contracting and Personal Property Management (OCon&PPM).

The ECO liaises with appropriate U.S. Government agencies (e.g., the U.S. Departments of State, Commerce and Treasury) to obtain authorizations to facilitate the Smithsonian's research, outreach and education objectives while meeting its legal compliance obligations.

3. SCOPE

This Smithsonian Directive (SD) applies to the activities of all Smithsonian units, employees, and Smithsonian-affiliated persons as defined below in the "Definitions" section.

This SD underpins the procedures related to all Smithsonian "export" undertakings when an export-controlled situation is involved:

1. Preparing grant/contract proposals that include export-controlled information or certifications;
2. Accepting grant/contract awards that contain export restrictions (e.g., no foreign national or Chinese company can be involved), especially when there are limits on publication;
3. Using or constructing export-controlled equipment in a research space where non-U.S. persons or collaborators are engaged;
4. Procuring and then exporting export-controlled items, and in some cases, their subsequent re-import;
5. Exports and imports of any items (other than copyrighted material) to or from a sanctioned country;
6. Working with non-U.S. persons or sponsoring Fellows/interns who are nationals of a sanctioned country, and may require a specific license, or providing expertise, training, or arranging cultural exchanges with or museum loans to foreign countries that are subject to U.S. sanctions or an unsanctioned boycott;
7. Presenting export-controlled topics at foreign meetings and/or traveling abroad with export-controlled items or data which need to be safeguarded; and

3. SCOPE (continued)

8. Providing financial sponsorship or currency to non-U.S. persons (to include foreign entities), especially when a country designated by the U.S. Treasury Department is involved, regardless of what source of funds is used.

4. BACKGROUND

Since the end of World War II, the U.S. Government and its allies have regulated the export of certain strategic hardware, chemicals, biological items, materials, software, and technical data to promote peace and security. In the United States, there are three agencies that regulate trade (listed below, along with their corresponding implementation regulations):

- Department of State — International Traffic in Arms Regulations (ITAR), in 22 *Code of Federal Regulations* (CFR) Parts 120–130;
- Department of Commerce — Export Administration Regulations (EAR), in 15 CFR Parts 130–774; Foreign Trade Regulations (FTR), in 15 CFR Part 30; and
- Department of the Treasury — Foreign Assets Control Regulations (FACR), in 31 CFR Parts 500–600.

Each agency administers a system of export license requirements or export filings with the U.S. Government when exports are made. For a summary of each regulation and how it may intersect with SI activities, refer to Appendix A.

5. DEFINITIONS

Deemed Export — Transfer of controlled technology through any means (verbal, written, visual, electronic) to a foreign person in the United States, where a license is required to export the same technology to his or her home country.

Defense Article — Any item on the U.S. Munitions List (22 CFR, Part 121 http://www.pmdtc.state.gov/regulations_laws/documents/official_itar/2013/ITAR_Part_121.pdf), which includes **non-military** items; e.g., spacecraft, research 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 and inherently commercial in nature, but that the Government has deemed may have a “dual use” for a military purpose.

5. DEFINITIONS (continued)

Export — An actual shipment of a tangible item or 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 (this is what is known as a “**deemed export**” under export control laws; see above); or
- a foreign embassy or affiliate (which is treated like 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. Munitions List or Commerce Control List or that has been modified to take on characteristics of an item on the lists.

Fundamental Research — 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, Section 120.11). The EAR has specific criteria about how the “sharing” must occur to determine if it qualifies as “publicly available.”

Fundamental research is outside the scope of export controls (although not necessarily outside the scope of U.S.-imposed trade sanctions).

However, if the research involves the development of or improvement to a tangible item, such as an instrument, and the instrument is on one of the export control lists, it might not qualify as fundamental research. Procedures exist to obtain permission of the Government sponsor, or request a ruling from the Department of Defense (DOD) to receive permission in writing to release information about a controlled instrument into the public domain.

Strategic Item — An item, even if available commercially, that has characteristics that can be exploited for a military purpose to inflict harm on a population or that can violate human rights. The “item” can be 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.

Non-U.S. Person (Foreign Person) — 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) — The export control laws contain exceptions from the licensing requirement for certain information that is in the “public domain,” which means “information that is published and that is generally accessible or available to the public.”

5. DEFINITIONS (continued)

However, the EAR and the ITAR handle publications with different criteria. The EAR require that the information has been or is regularly published and recognize “publishing” as posting on the Internet for free. The ITAR require that the information has been published in more limited areas: ordinary publication is considered to be executed with distribution through sales at newsstands and bookstores; subscriptions which are available, without restriction, at libraries open to the public; patent information available at any patent office; unlimited distribution at a conference, meeting, seminar, trade show, or exhibition generally accessible to the public, in the United States; or public release in any form after approval by the cognizant U.S. Government department or agency.

Smithsonian-Affiliated Persons — This category includes contractors embedded with SI employees, research associates, interns and Fellows, volunteers, visiting researchers, scientists, and scholars.

Trade Sanctions — Trade sanctions are a tool of our Government’s foreign policy on certain countries or persons who pursue actions viewed negatively by U.S. Government foreign policy, for being detrimental to Human Rights, or contrary to United Nations’ resolutions. The Smithsonian has procedures to ensure that any activities pursued in these countries by individual researchers or by a Smithsonian unit comply with the limited scope of activities permitted by the U.S. Treasury Department by general or specific license.

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.

6. RESPONSIBILITIES

The **Under Secretary for Finance and Administration/Chief Financial Officer (USF&A/CFO)** is responsible for acting as the primary **Empowered Official (EO)** at the Smithsonian and is accountable for:

- ensuring that adequate resources are allocated to export compliance in terms of writing policies and procedures, providing screening tools and security systems, and training;
- overseeing the implementation and monitoring of Smithsonian export compliance activities;
- confirming that proper authorizations are approved; and

6. RESPONSIBILITIES (continued)

- delegating in writing the Alternate Empowered Official and other additional Empowered Officials at the Smithsonian, who are trained in the export regulations, have authority to approve and stop export activities without retribution, and are responsible for ensuring compliance governed by the ITAR and EAR with respect to specific activities of their unit.

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

- receiving communications about changes in rules concerning countries sanctioned by the U.S. Department of the Treasury's Foreign Assets Control Regulations (FACR) that are issued by the Office of Foreign Assets Control (OFAC);
- consulting with the ECO when OIR is involved in activities or funding related to sanctioned countries to ensure no participants appear on Government denial lists;
- establishing internal procedures to comply with anti-boycott provisions of the Export Administration Regulations;
- consulting with the ECO when pursuing agreements in countries identified by the Internal Revenue Service for unsanctioned boycotts when presented with clauses that may be illegal boycott language;
- communicating with the ECO when processing H1B visas for persons involved in scientific research. This is to ensure that visa requests related to potentially export-controlled research are accurate, allowing the Smithsonian Institution to provide Technology Control Plan certifications required by the State Department and apply for any export licenses; and
- recommending, as part of OIR's international travel guidance, that travelers register with the State Department Travel Advisory Service and are made aware of what requirements exist if they are traveling with currency or conducting work or services in a country that is under U.S. trade sanctions.

The **Office of Fellowships and Internships (OFI)** is responsible for:

- working with the ECO to ensure that the names of non-U.S. academic appointees a unit intends to host have been checked against U.S. Government denial lists; and
- verifying with each sponsoring unit that any projects proposed by non-U.S. academic appointees the unit intends to host have been reviewed for possible export control

6. RESPONSIBILITIES (continued)

requirements if the research is scientific in nature or there is an activity related to a sanctioned country.

The **Office of the Inspector General (OIG)** is responsible for:

- investigating criminal and civil violations of export control laws; and
- coordinating criminal and civil investigations with law enforcement agencies.

The **Office of Sponsored Projects (OSP)** and **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
- ensuring that the SPP department also has a back-up Empowered Official.

The **Export Compliance Officer (ECO)** and **Alternate Export Compliance Officers** are primarily responsible for administering the Smithsonian's export compliance program. The ECO's responsibilities include:

- fulfilling the role of Alternate Empowered Official as designated by the USF&A/CFO;
- establishing and implementing export compliance policies and procedures;
- ensuring compliance with the applicable export control laws and regulations that pertain to the conduct of research and other activities, including the International Traffic in Arms Regulations (ITAR), Export Administration Regulations (EAR), and the Foreign Trade Regulations (FTR);
- providing training to Unit Directors, researchers and "gatekeepers" about export control requirements;
- approving controlled exports (and some imports) under U.S. export regulations;
- preparing export licenses;

6. RESPONSIBILITIES (continued)

- coordinating with OGC to facilitate interactions with Government agencies regarding particular export control or trade sanction issues, to receive general guidance about the impact of regulations on the Smithsonian, and to make decisions about voluntary disclosures;
- contacting the OIG about criminal or civil export control investigations conducted by any law enforcement agency pertaining to the Smithsonian; and
- coordinating interfaces between Smithsonian units and shipping personnel with other research institutes, logistics parties, and Government agencies in the legal movement of controlled goods, software and technology.

Unit Directors are responsible for delegating export review and export-related shipping tasks to persons or functions within their unit, who, in turn, are responsible for:

- reviewing items for export to determine if an export compliance review is needed;
- informing the ECO when non-U.S. persons are involved with export-controlled activities;
- ensuring that key staff members attend training about export regulations and SI procedures; and
- ensuring that proper export clearance procedures are followed in adherence with the Foreign Trade Regulations.

Smithsonian Employees and SI-Affiliated Persons engaged in scientific research, hiring, contracting, provisioning information technology (IT) networks, arranging travel, security, and shipping abroad and 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 transfers made and information 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.

6. RESPONSIBILITIES (continued)

Employees and SI-affiliated persons are encouraged to come forward to the ECO (export@si.edu), their supervisor or General Counsel in cases where a “controlled export” may have been carried out without proper authorization. The ECO will have the opportunity to review the situation and determine if a license exception is available to authorize the export, and, if not, determine, in consultation with the General Counsel, if it is appropriate to necessitate a “voluntary disclosure” that can mitigate penalties.

7. PENALTIES

Violation of the export control laws can result in both civil and criminal penalties, including fines, being placed on a “denial” or “debarred list,” and imprisonment. In some cases, the Government imposes criminal penalties on an individual if there is evidence that an act of non-compliance was willful. The fines, more severe for criminal violations than administrative, can be multiplied by the number of occurrences. Maximum penalties for violations under the OFAC, ITAR and EAR are \$1,000,000, and criminal prison sentences can be up to 20 years for individuals engaging in the violations.

An employee’s or SI-affiliated person’s failure to comply with this directive is cause for remedial or disciplinary action. Such action may include but is not limited to:

- Follow-up training to prevent future violations;
- Change in assigned duties or removal from export-controlled projects;
- A letter of reprimand in the employee’s personnel record;
- Suspension without pay; or
- Appropriate discipline, up to and including dismissal.

The OIG investigates criminal and civil export control violations, as well as assists law enforcement agencies with such investigations. To determine if a violation is considered criminal or civil, the enforcement agency, Office of Export Enforcement or Department of Homeland Security will look at the facts to assess whether the violation was inadvertent, a mistake of fact, a misinterpretation of the laws, or if a willful act was made to circumvent the law.

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

8. REFERENCES

- [Smithsonian Export Compliance Website](#) — posts export compliance procedures and forms.
- Identification of International Traffic in Arms Regulations (ITAR)- and Export Administration Regulations (EAR)-controlled activities, including licensing of non-U.S. persons
- Compliance with anti-boycott procedures (related to the boycott of Israel and other unsanctioned boycotts)
- Compliance with General Prohibitions concerning prohibited parties and controls related to [U.S. trade sanctions](#)
- Facility and Information Technology (IT) controls
- Export license procedures
- Export compliance training
- Export clearance procedures
- Export control record keeping.

Government Agencies Involved with Export Controls

- [Directorate of Defense Trade Controls, U.S. Department of State website](#)
- [Bureau of Industry and Security, U.S. Department of Commerce website](#)
- [Office of Anti-boycott Compliance, U.S Department of Commerce website](#)
- [Office of Foreign Assets Control website](#)

Export Compliance Program Guidelines

- [Nunn Wolfowitz Task Force Report](#)
- [Bureau of Industry and Security — Export Management and Compliance Program \(EMCP\)](#)

8. REFERENCES (continued)

- [Directorate of Defense Trade Controls, Compliance Program](#)

CANCELLATION: None.

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

RETENTION: Indefinite. Subject to review for currency 24 months from date of issue.

DRAFT