

TOPIC:**International Academic Travel and U.S. Export Controls****INTRODUCTION:**

Many principal investigators, graduate students or research fellows, and even undergraduates travel internationally to attend or present at conferences and meetings, to collaborate with colleagues at other research institutions, and to perform their actual field research. But the academic traveler's failure to comply with U.S. export control laws can have grave consequences. A former professor at the University of Tennessee, for example, was recently convicted for conspiracy to violate the Arms Export Control Act (AECA), the parent statute to the International Traffic In Arms Regulations (ITAR), because of "deemed exports" made through disclosures to foreign graduate students from Iran and China and through carrying sensitive defense research-related reports on his laptop while traveling to China [1]. His laptop was seized and searched by federal agents on his return from that trip. The 72 year-old academic was sentenced to four years in prison for violating the AECA by exporting technical information related to a U.S. Air Force research and development contract [2]. This case clearly illustrates that both institutions and academic travelers must take the time to understand the applicable export control regulations and then to apply them properly, or else they may face equally stern treatment by the federal authorities with regard to their exports or deemed exports made in the course of their international travel.

This NACUANOTE discusses the impact of U.S. export control laws on academic travelers.

DISCUSSION:

In general, the most relevant U.S. export controls are grounded in three separate sets of federal regulations:

- The embargo laws and regulations are codified at 31 CFR Part [500](#) et seq. and are administered by the Office of Foreign Assets Control (OFAC), a unit of the U.S. Department of the Treasury, and so they are usually called generically the "OFAC Regulations." The OFAC Regulations affect commerce with a specified list of embargoed countries and with certain "specially designated nationals" (SDNs). The OFAC Regulations can change from time to time, often on little or no notice, because the statutory powers given the President are designed to be used for difficult and delicate foreign policy situations where urgent action may be needed to protect U.S. national foreign policy or national security interests;
- The ITAR are codified at 22 CFR Part [120](#) et seq. The ITAR govern the production of "defense articles" and provision of "defense services" by U.S. persons as those terms are defined within the ITAR. A core part of the ITAR is the U.S. Munitions List (USML) (22 CFR Part [121](#)), which defines a number of categories of such items [3]. The ITAR is administered by the U.S. Department of State's Directorate of Defense Trade Controls (DDTC); and

- The U.S. Export Administration Regulations (EAR) are codified at 15 CFR Part [730](#) et seq. The EAR govern the export of “dual use” items [\[4\]](#) that are listed within the Commerce Control List (CCL) (15 CFR Part [774](#), Supplement No.1). The EAR are administered by the U.S. Department of Commerce’s Bureau of Industry and Security (BIS).

As a practical matter, there are two points in the academic traveler’s travel planning process where U.S. export control laws may apply to an international trip: when evaluating what may be taken along as personal baggage and when determining what may need to be sent or shipped separately to the foreign destination. For instance, if the traveler intends to perform some field research with a colleague in another country or to provide a technological demonstration at a conference, he or she may need to send to the site separately certain equipment (e.g., computers, sensors, measuring instruments, reagents, etc.), data or software.

Academic personnel must consider the potential effect of each set of U.S. export control regulations on the proposed international travel to assure that both the institution and the individual traveler are in compliance. U.S. export control laws are principally concerned with whether the academic traveler will take and then disclose any controlled technology or other controlled information to non-U.S. persons (e.g., in papers or on their laptop computers) or will export any controlled items (e.g., sensors, test instrumentation, reagents, biological materials or other similar tangible goods) to non-U.S. persons. Generally speaking, the EAR considers the shipment or delivery of a tangible good to a non-U.S. person an “export” and regards the disclosure of controlled information to a non-U.S. person a “deemed export [\[5\]](#).”

However, in the case of academic travel to Cuba, the current OFAC embargo against Cuba also regulates travel *per se* by U.S. nationals to Cuba, even if there is no planned disclosure of any controlled information or export of a controlled item. So, in the case of any proposed Cuban travel, the institution and the academic traveler need to take the additional steps outlined below in Step 4.

Here are the steps to consider in connection with international travel.

Step 1: Identify the Applicable Regulations

The essential first step in planning international academic travel is to determine which of the above regulations apply to the proposed trip. This requires the academic traveler to assess whether he plans to take any controlled information or materials, or to send or deliver any controlled goods, to non-U.S. persons outside the United States. If the academic traveler cannot make that determination, the traveler should consult the institution’s export control compliance officer and, if necessary, discuss the identified deemed export or export with the relevant U.S. regulatory agency.

Moreover, given the current wide-spread use of laptops and the expansion of laptop memory capacity via internal and external drives or portable “thumb” or flash drives, a traveler needs to consider whether his or her laptop or other separate storage device contains material that has nothing to do with the planned trip but one or more of the U.S. export regulations. The fact that the academic traveler merely carries certain information or software to another country on a laptop or other storage device may be sufficient for federal agencies to consider that the information or software was “exported” to that country, even if not actively used by the traveler in a presentation, discussion, or research in that country.

Step 2: Identify any Applicable Exclusions or Exemptions

If one or more of the regulations applies to a proposed trip, then the academic traveler must determine if those regulations provide an express exclusion or exemption for the type of disclosure or physical export that permits the proposed activity without getting an export license from the relevant agency. The OFAC regulations, the ITAR, and the EAR each contain unique forms of exclusions or exemptions and it is beyond the scope of this Note to cover them all [\[6\]](#). However, it is vital for institutions and academic travelers to understand that the so-called “fundamental research” exemption articulated in various ways by these three sets of regulations does not directly apply to any settings outside the United States. In other words, what can be lawfully done with non-American colleagues or students on the home campus inside the United States is

not automatically extended to a laboratory or field research site in another country with respect to a deemed export or export, but the EAR will usually permit the presentation at foreign meetings or conferences of the fruits of academic research undertaken within the United States. (See [Supplement No. 1 to Part 734—Questions and Answers—Technology and Software Subject to the EAR](#), Questions B (1) and B (4).)

The EAR's baggage (BAG) and temporary export (TMP) license exemptions, which are applicable to all international travel, are especially useful to academics traveling abroad. The BAG license exception in 15 CFR Part [§740.14](#) permits an American who is temporarily traveling abroad (for example, teaching or studying as a visiting scholar) to take his or her personal laptop with normal and customary application software and data for the traveler's personal use, provided the laptop is kept under the traveler's control and is brought back to the United States at the end of such travel. Similarly, under the TMP license exception, Part [§740.9](#) an American traveler may take an institution-owned laptop abroad, provided the laptop is kept under the traveler's control and is brought back to the United States not more than one year after the original departure date. Subject to certain limitations, these license exceptions also allow U.S. academic travelers to receive shipments, transmissions or releases of technology exported to them from the United States. However, these EAR license exceptions do not apply to laptops taken or the receipt of technology exported to Cuba, Iran, North Korea, Sudan and Syria. Academic travelers should consult their institution's export control officer to insure that the BAG or TMP exception applies to their travel.

In addition, the BIS has also published a handy FAQ, [Supplement No. 1 to Part 734—Questions and Answers—Technology and Software Subject to the EAR](#) that contains many familiar instances of academic travel and relatively clear guidance on how the BAG and TMP exceptions would treat the incidental disclosure of research findings or other similar data in the course of such travel.

Step 3: Obtain any Necessary Export License

If the applicable exemptions or exclusions are insufficient to authorize the type of disclosure or physical export contemplated by the academic traveler, then the planned activity will require an export license from the relevant regulatory agency. Each agency has its own unique application process. License applications under the ITAR and the EAR usually require processing through an online account maintained only by the institution itself. So, there should be careful coordination between the academic traveler and the institution's export control officer to insure that the license application is prepared and submitted in a timely manner and in accordance with the applicable agency's specific procedures. These licensing agencies have their own processing schedules, and an academic traveler will be frustrated if the institution files a license application on a "last minute" basis because the processing times for such licenses can often exceed 30 days. In sensitive cases involving certain technology or particular countries, complete processing within the BIS or the DDTTC may take 60, or even 90, days. Moreover, occasionally, the government issues the license subject to specific terms and conditions. The academic traveler needs to understand and abide by these limitations, which may alter or restrict the planned international activity.

Step 4: Determine if the Travel Itself is Controlled

Neither the EAR nor the ITAR regulate academic travel itself. These regulations only prohibit the export of tangible goods or the deemed export of certain forms of technology or information that impinge upon U.S. national security interests if shared with non-U.S. persons. However, under the OFAC regulations, the government retains the right to regulate travel itself to certain destinations, as a matter of U.S. foreign policy. Under the OFAC embargoes in place as of August 2009, only travel to Cuba is *per se* regulated.

At the present, OFAC may issue licenses to authorize Cuban travel and specific related transactions for certain educational activities by students or employees at U.S. undergraduate or graduate institutions. If OFAC issues a license, it must be renewed after one year. Once an academic institution receives a specific license, the following categories of travelers affiliated with that academic institution are authorized to engage in travel-related transactions incident to the following activities without seeking further authorization from OFAC:

- Undergraduate or graduate students participating in a structured educational program lasting at least ten weeks in Cuba as part of a course offered at a U.S. undergraduate or graduate institution [\[7\]](#).
- Persons conducting non-commercial Cuba-related academic research in Cuba for the purpose of qualifying academically as a professional (e.g. research toward a graduate degree) [\[8\]](#).
- Undergraduate or graduate students participating in a formal course of study lasting at least ten weeks at a Cuban academic institution provided the Cuban study will be accepted for credit toward a degree at the licensed U.S. institution [\[9\]](#).
- Persons regularly employed in a teaching capacity at a licensed U.S. undergraduate or graduate institution who plan to teach part or all of an academic program at a Cuban academic institution for at least ten weeks [\[10\]](#).
- Cuban scholars teaching or engaging in other scholarly activities at a licensed college or university in the United States. Licensed institutions may sponsor such Cuban scholars, including payment of a stipend or salary and the Cuban scholar may carry all such stipends or salary payments back to Cuba [\[11\]](#).
- Full-time employees of a licensed institution organizing or preparing for the educational activities described above [\[12\]](#).

Overall, these U.S. export control regulations are probably more tedious to understand and follow with respect to academic travel than they are actually burdensome in practice, once properly analyzed. However, as illustrated in the *Roth* case outlined at the beginning of this Note, the Department of Justice has effectively served notice to all U.S. academic institutions that it will deal firmly with U.S. export control violations that occur in relation to such academic travel and in interactions with non-U.S. persons.

FOOTNOTES:

FN1. *U.S. v. Roth*, 2009 WL 2356691 (E.D. Tenn. 2009) (No.3:08-CR-69).

FN2. Judgment in Criminal Case, *Roth*, *supra* Note 1; see also Press Release, U.S. Department of Justice, "[Retired University Professor Sentenced to Four Years in Prison for Arms Export Violations Involving Citizen of China](#)", (July 1, 2009) (accessed August 24, 2009).

FN3. The USML is a listing of 21 categories with somewhat amorphous and non-specific descriptions of controlled items and technologies that are deemed to be ITAR-controlled. Those categories are less precise and transparent than the descriptions set forth in the EAR with respect to "dual use" items.

FN4. A "dual use" item is one that is principally designed and used for commercial or civilian applications but that could also be readily used for a military or strategic application. Examples of such items include high end or "strong" encryption software that can protect financial records or illicit terrorist communications, advanced carbon fiber materials that could be used in athletic equipment or in jet aircraft, supercomputers that might be used for weather forecasting or telecommunications analysis; etc. The CCL within the EAR contains a very detailed and technically precise set of regulations that define what "dual use" items or technologies are considered controlled. See [Export Administration Regulation Database](#).

FN5. Although the EAR are the most detailed and explicit set of U.S. export regulations as to deemed exports, the OFAC embargoes bar transfer of software, technology and technical data to certain non-U.S.

persons covered by the OFAC embargoes and the ITAR bar transfer of ITAR-controlled software, technology and technical data to foreign persons without prior DDTC approval.

FN6. The exceptions and exclusions in the OFAC Regulations and the ITAR are particularly complex. However, since most academic travel involves neither travel to OFAC-embargoed destinations nor military-type technologies subject to the ITAR controls, this Note does not provide guidance on the exceptions and exclusions in the OFAC Regulations or the ITAR. Academic travelers who face these unique situations should consult their institution's export control compliance officer or legal counsel to ensure compliance with these rules. For example, U.S. scholars who use advanced global positioning system (GPS) equipment in their research that involves quartz rate sensors (which are also often used in missile and rocket targeting systems) should carefully consider the ITAR implications of their work outside the United States.

FN7. Students planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution's license number, (2) that the student is currently enrolled in an undergraduate or a graduate degree program at the institution or is a full-time permanent employee of the institution, and (3) that the travel is part of a structured educational program of the institution. (Cuban Assets Control Regulations ("CACR"), 31 CFR § [§515.565\(a\)](#) (1).)

FN8. Students planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the institution's license number, (2) that the student is enrolled in a graduate degree program at the institution, and (3) that the Cuba research will be accepted for credit toward that graduate degree. (CACR, 31 CFR [§515.565\(a\)](#) (2).)

FN9. Students planning to engage in such transactions must carry a letter from the licensed U.S. institution stating: (1) the number of the U.S. institution's license, (2) that the individual is a student currently enrolled in an undergraduate or graduate degree program or a full-time permanent employee at the institution, (3) that the Cuba study will be accepted for credit toward that degree, and (4) that the Cuba-related travel is part of a structured educational program of that institution. (CACR, 31 CFR [§515.565\(a\)](#) (3).)

FN10. Individuals planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the U.S. institution's license number, and (2) that the individual is a full-time permanent employee regularly employed by the licensed institution in a teaching capacity. (CACR, 31 CFR [§515.565\(a\)](#) (4).)

FN11. CACR, 31 CFR [§ 515.565\(a\)](#) (5).

FN12. Individuals planning to engage in such transactions must carry a letter from the licensed institution stating: (1) the U.S. institution's license number, and (2) that the individual is a full-time permanent employee regularly employed by the licensed institution in a teaching capacity. (CACR, 31 CFR [§515.565\(a\)](#) (6).)

AUTHORS:

[Nelson Dong, Partner, Dorsey & Whitney LLP, Seattle, Washington](#)

[Lawrence Ward, Associate, Dorsey & Whitney LLP, Seattle, Washington](#)

RESOURCES:

Statutes:

- [Arms Export Control Act, \(22 U.S.C. 2778\)](#)
- [Trading With the Enemy Act, \(50 U.S.C. App. 5\(b\)\)](#)
- [Foreign Assistance Act of 1961, \(22 U.S.C.2370\)](#)
- [Export Administration Act of 1979, as amended, \(50 U.S.C. app. 2401–2420\)](#)

Regulations:

- 31 CFR Part [500](#) et seq
- 22 CFR Part [120](#) et seq
- 15 CFR Part [730](#) et seq
- 15 CFR Part [§740.14](#)
- 15 CFR Part [§740.9](#)
- 15 CFR Part [774](#), Supplement No.1
- [Supplement No. 1 to Part 734—Questions and Answers—Technology and Software Subject to the EAR](#)
- 31 CFR [§§515.565\(a\)\(1\)-\(6\)](#)

Government Resources:

- [Office of Foreign Assets Control \(OFAC\)](#)
- [Directorate of Defense Trade Controls \(DDTC\)](#)
 - [International Traffic in Arms Regulations \(ITARs\) and Resources](#)
- [US Department of Commerce - Bureau of Industry and Security \(BIS\)](#)
 - [Export Administration Regulations \(EARs\) and Resources](#)

NACUA Resources:

- [Export Controls Resources and Links Resource Page](#)
- [Export Controls Compliance Programs: How Colleges and Universities Can Cope With the Complexity, Comply, and Foster the Best Research and Teaching](#)

Source: NACUA CLE 2004

Material: Conference outline with EAR/ITAR requirements in chart form

Additional Resources:

- [Checklist for License Exception-Baggage](#)

Source: Emory University

- [Addendum Checklist for Export Control Issues Related to Laptops or GPS Equipment](#)

Source: University of Chicago

- [What Researchers Need to Know about Laptops and GPS Equipment](#)

Source: University of Alabama at Huntsville

- [Foreign Travel with Computers and Other Electronic Devices](#)

Source: University of Colorado at Boulder

- [UW Researchers Guide for Export of Computers, Computer Software and Essential Data](#)

Source: University of Washington

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