Trade Compliance: Part 2

Sarah Schlagter
Export Control and Compliance Officer

Terrence Rusch
Export Control Associate

Introduction

- Export Control Laws
  - Restrict the release of commodities, software, technology, and information that may have a military, security, or strategic use
    - Applies to transfers out of country
    - Applies to in-country transfers
    - Applies to U.S. citizens wherever they are located
    - Applies to everyone in the United States

Why?

"America has historically employed controls on the export of advanced technologies developed here at home to ensure they are not misused abroad in ways that would run counter to national security interests, foreign policy priorities, or American values. Pick an innovation: components that could be used to produce nuclear weapons, chemical weapons precursors, precision weapon guidance systems and even fingerprint matching technology. All of these technologies are carefully controlled not to stifle the advancement of other nations, but to defend U.S. interests and democratic values, and to minimize risks to the United States and its allies."

-Christopher A. Padilla, Vice President, IBM Government and Regulatory Affairs, Assistant Secretary of Commerce for Export Administration from 2006-2007

Alphabet Soup!

Common Export Controls Acronyms	
ECO	(Cornell) Export Controls Office
ITAR	International Traffic in Arms Regulations
USML	United States Munitions List
EAR	Export Administration Regulations
CCL	Commerce Control List
OFAC	Office of Foreign Assets Control
USG	United States Government
FRE	Fundamental Research Exclusion
NLR	No License Required
EEI	Electronic Export Information

Export Control Regulations & Regimes:

ITAR
- **International Traffic in Arms Regulations**
- Controls commodities, technology, software & services with inherent military/space application
- Regulated items found on USML

EAR
- **Export Administration Regulations**
- Controls Commercial/"Dual Use" commodities, technology, & software
- Regulated items found on CCL

OFAC
- **Office of Foreign Assets Control**
- Sanctions & embargos on foreign nations/individuals
- Controls virtually all US activities involving Cuba, Iran, North Korea, Syria, Russia, Belarus & Ukraine + thousands of listed entities/individuals
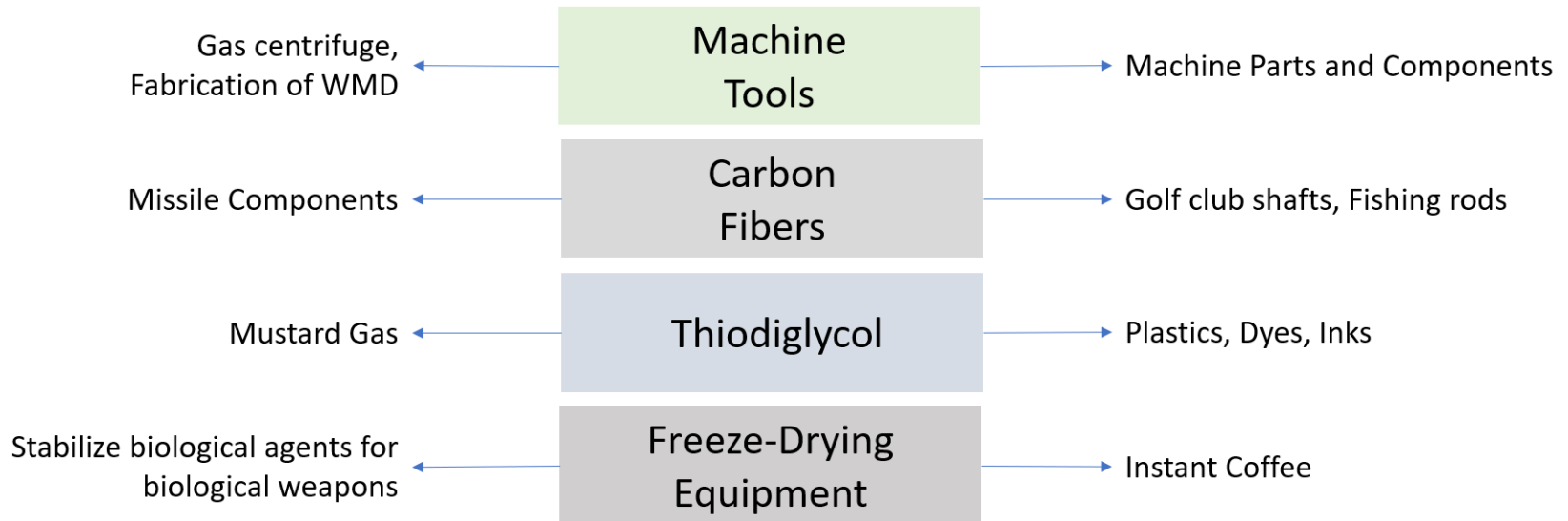
Examples of Dual-Use Items

Use of Concern   **Legitimate Use**

Gas centrifuge,
Fabrication of WMD ← | Machine Tools | → Machine Parts and Components

Missile Components ← | Carbon Fibers | → Golf club shafts, Fishing rods

Mustard Gas ← | Thiodiglycol | → Plastics, Dyes, Inks

Stabilize biological agents for
biological weapons ← | Freeze-Drying Equipment | → Instant Coffee

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Other Export Regulations:

- **<u>F</u>oreign <u>T</u>rade <u>R</u>egulations (FTR) - Commerce**
  - Doesn't control what may be exported; requires exporter to report specific information for statistical analysis and compliance purposes
- **CITES Convention – Fish & Wildlife Service**
  - Restricts the export (and import) of listed wildlife that is threatened or endangered
- **Nuclear Regulatory Commission (NRC)**
  - Restricts the export (and import) of listed equipment and materials used in specific nuclear energy applications

What is subject to the Regulations?

- Items in the United States
  - Nearly all commodities, software and technology in the U.S

- Some items located outside of the United States
  - U.S. origin items wherever located

- Activities of U.S. and foreign persons
  - Everyone in the United States
  - U.S. citizens abroad

What does it mean to "Export"?

- An export can be any oral, written, electronic or visual disclosure, **shipment or transfer of commodities**, technology, information, technical data or assistance to:

    – anyone outside the U.S. including a U.S. citizen

    – a "foreign national" in the U.S. or abroad

    – a foreign embassy or affiliate located in the U.S. or abroad

Misconceptions about Exporting (Tangible Items):

- "It's just a free sample for my colleague at XYZ University…"

- "It's not hazardous!"

- "It's all part of my research…what about FRE?"

- "This falls under a DOD award so it must be allowed!"

- "The people overseas are going to send it back to me"

- "Oh, I'll just hand carry it to [insert destination]…"

- "It's only going to Canada!"

Bottom Line:

- If a tangible item crosses a U.S. border during shipment or travel, it **HAS** been exported…regardless of the other circumstances of the transaction.

Policy 4.22 – Export and Import Control Compliance

https://policy.cornell.edu/policy-library/export-and-import-control-compliance

International Shipments: …It is the responsibility of all parties involved to ensure that the international shipment complies with regulatory and legal requirements. All shipments being sent from or on behalf of Cornell to an international location must be reviewed by the ECO or cleared through a process established by the ECO.

International Travel: Travel to certain sanctioned countries is prohibited without a general or specific license (currently Iran, Syria, North Korea, Cuba, certain regions of Ukraine + Russia & Belarus). Travelers should refer to the Export Control Website for up-to-date information at the time of travel. All international travel made on behalf of Cornell must be registered in the Cornell Travel Registry.

Note: Even travel to non-sanctioned destinations can have export controls implications…

What Does the ECO Look for?

- International Shipments or Travel that Involves:

  – Controlled Items (i.e. on the USML or CCL)

  – Sanctioned Destinations

  – Restricted Parties (on one or more US lists)

  – Prohibited End Use

  – High valued Items (> $2,500)

- Any of the above can trigger export compliance requirements

What Happens After ECO Review?

- Various Potential Outcomes:
  - Shipment or travel does NOT require an export license/authorization (Most Cornell activities)
  - License required; application submitted by ECO
  - License exception available and use documented by ECO
  - NLR but End-User Statement needed (combats re-exports)
  - EEI filing necessary (items >$2,500 / certain destinations)
- All Export Documents Must be saved for Five Years

Export License Factoids

- If required, must be obtained PRIOR to shipment or travel (via ECO)

  - Factor in time for application processing (6+ months in some cases)

- If granted by USG, will NOT provide blanket authorization:

  - Scope of issued license limited to specifics of submitted application

    - Who/What/Where/How

- Valid anywhere from 1-4 years (depending on agency)

- Always come with provisos and conditions

- ECO <u>may</u> require that licensed shipments move via freight forwarder/logistics provider (i.e. no FedEx, etc.)

Why is ECO Review Essential?

- Mitigates risk of an export violation

- Institutional & Individual Liability

- Penalties:
  - Fines
  - Imprisonment
  - Debarment
  - Loss of export privileges
  - Bad PR

Other Considerations

- Paperwork (as applicable) such as:
  - Customs Invoice
  - Import permit
  - MTA
  - Carnet
- Hazardous Materials? [contact EH&S]
- [Cornell Travel Registry](#)
- Hand Carry vs Shipping???

What About Imports?

- Multiple Agencies regulate US imports:
    - **U.S. Customs** (<u>ALL</u> items must be cleared upon entry)
    - **CDC** (human source material and pathogens)
    - **USDA** (plant and animal material and pathogens)
    - **F&W** (endangered & protected animal/plant species and their products)
    - **FDA** (additional clearance and inspection for certain materials)
    - **EPA** (toxic chemicals)
    - **NRC** (certain radioactive materials and nuclear reactors)
    - **ATF & DDTC** (defense articles)

Imports (Cont'd):

- Some items require import permits or explanation letters from the sender
  - Pathogens
  - Animal/Plant materials
  - Others..
- No import controls on information or technology, only tangible items
- Mohawk Global has Power-of-Attorney to clear items on Cornell's behalf

Case Study – Controlled Pathogen Export

- Researcher wants to send a CCL pathogen to France

- Not a select agent

- Fundamental Research

- No restricted parties

- ECO gathers application info/docs from researcher

- License application submitted

- If approved, ECO administers use of license

Case Study – Sanctioned Country Travel

- Researcher wants to travel to Iran to interview subjects

- IRB approved

- Fundamental Research

- No restricted parties

- ECO gathers application info/docs from researcher

- License application submitted

- If approved, ECO administers use of license

Questions?

- Sarah Schlagter, Export Control and Compliance Officer:
  sms655@cornell.edu

- Terrence Rusch, Export Control Associate:
  tr292@cornell.edu

- Export Mailbox:
  exportcontrols@cornell.edu

- Cornell Export Control Website:
  https://researchservices.cornell.edu/export-controls