Practical Export-Import Compliance Issues Arising from International Research Projects

RGA 064: Research Administrators Forum
November 1, 2016
10:00 a.m.
Kimmel Center Room 802
OVERVIEW

- Introduction: NYU’s Office of Compliance and Risk Management and our Export-Import Compliance Program

- Three Case Studies

- Questions
Introduction

Robert F. Roach
Vice President, Chief Global Compliance Officer
robert.roach@nyu.edu
212.998.2075 (Office)
1-646-596-1988 (International Mobile)

Concierge Services
Case Studies

1. Salmonella Typhi
2. Laptops with Encryption Software to China
3. Tablet Computers to Lebanon
Export Control Law Overview

- **ITAR**: USML - Mortar
- **EAR**: iPad - Dual Use Technology
- **Defense Service**: Instructions on how to use an iPad to aim a mortar
- **OFAC**: Syria is sanctioned country
- **OFAC**: Al Qaeda elements may be sanctioned. Specially Designated Nationals (SDN)

*Syrian Rebels aim a mortar using an iPad.*
Important Export Control Exemptions

- **Fundamental Research** conducted at a U.S. university
  - "Technology" or "software" that *arises during, or results from*, fundamental research and is intended to be published is not subject to the EAR.
  - Fundamental research means research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community, and for which the researchers have not accepted restrictions for proprietary or national security reasons.

- **Educational Courses taught at a university**

- **Information in the Public Domain**
  - Unclassified "technology" or "software" is "published," and is thus not "technology" or "software" subject to the EAR, when it has been made available to the public without restrictions upon its further dissemination such as through any of the following: (1) Subscriptions available without restriction to any individual who desires to obtain or purchase the published information; (2) Libraries or other public collections that are open and available to the public, and from which the public can obtain tangible or intangible documents; (3) Unlimited distribution at a conference, meeting, seminar, trade show, or exhibition, generally accessible to the interested public; (4) Public dissemination (i.e., unlimited distribution) in any form (e.g., not necessarily in published form), including posting on the Internet on sites available to the public; or (5) Submission of a written composition, manuscript, presentation, computer-readable dataset, formula, imagery, algorithms, or some other representation of knowledge with the intention that such information will be made publicly available if accepted for publication or presentation: (i) To domestic or foreign co-authors, editors, or reviewers of journals, magazines, newspapers or trade publications; (ii) To researchers conducting fundamental research; or (iii) To organizers of open conferences or other open gatherings.
Case Study 1: Salmonella enterica; serovar Typhi Ty2; genomic DNA

Facts:

NYU receives a “Customer Acceptance of Responsibility” form from the American Type Culture Collection (ATCC) for a “dual use commodity with the potential for use as a bioweapon or in a bioterrorism event.”

In this form, NYU makes a variety of promises regarding the material, including:

- We will maintain the material securely;
- We will not be transferred the materials to third persons or export the material without written consent of ATCC and appropriate government agencies;
- We will not permit access to the materials by foreign nationals when to do so would constitute a violation of export control laws.

The PI’s research assistant indicated that she and the PI had been working on an assay for typhi and wanted to take the DNA sample to India with them for use in a project in India the following week.

ISSUES?
Export Control Classification:

- Export Administration Regulations: The material was controlled by the EAR CCL Section 1C353, which applies to Salmonella Typhi dna. This section controls for “CB Column 1 and AT Column 1”

- (ATCC did not assign a specific ECCN to the dna sample but inaccurately considered the sample export controlled by 1C351, which applies to the live organism, not to genetic elements).

- Country Chart Pt. 738, Supp. 1
Deemed Export

The disclosure or transfer of export controlled software, technologies or technical data to a foreign entity or individual inside the US is “deemed” to be an export to the home country of the foreign entity or individual.

Deemed exports can involve the release of export controlled technology or software through:

- Tours of laboratories
- Foreign national employees involved in certain research, development, and manufacturing activities
- Foreign students or scholars conducting research
- Hosting a foreign scientist
The Research Assistant was an Indian national.

1C353 only controls "Genetic elements that contain nucleic acid sequences associated with the pathogenicity" of microorganisms. The Research Assistant had not accessed those "pathogenicity" sequences in the DNA sample and it was not necessary to do so for her research purposes.

We developed a proposed technology control plan for discussion with PI that would have allow the Research Assistant to do her research without "Genetic elements that contain nucleic acid sequences associated with the pathogenicity"
IATA - International Air Transport Association

Dangerous Goods Regulations:
http://www.iata.org/whatwedo/cargo/dgr/Pages/index.aspx

NYU Logistics and Distribution Services
Al Dimauro, Director
al.dimauro@nyu.edu
Example of Prohibited goods In UAE

- All types of narcotics
- Decision by Israel Boycott Office prohibiting goods from Israel (bearing Israeli marks or logos)
- Counterfeit and fake currencies Central Bank
- Authentic publication, oil painting, photograph, pictures, cards, books, magazines & stony sculptures, which contradict Islamic teachings, decencies or deliberately implying immorality or turmoil.
- Crude Ivory (elephant ivory) and Rhinoceros’s horn.
- 3 layers nylon fishing nets
- Gambling tools & machine Ministry of Interior
- Falcons shall be prohibited from September to March of each year
- Bustard
- Dangerous Waste
- Electronic cigarette
- Used Tyres
Case Study Two: Laptops with Encryption Software to China

Facts:

Several faculty members traveling to China this month. Their laptops are encrypted with Microsoft Bitlocker (ECCN 5D992c). This section controls for “AT Column 1”
China, like many countries, strictly regulates the use of encryption technology.

Under Directive 273 "Regulation of Commercial Encryption Codes" (CEC), Section 4 on usage of encryption technology, Article 15 provides "Foreign organizations or individuals using CEC products or equipment containing CEC technologies within the borders of the PRC must report these products and their usage to the NCECR and obtain approval."

Penalties in the regulations (not involving state secrets) are:
"Article 24: Foreign organizations or individuals who use CEC products or equipment containing CEC technologies without proper authorization will be given a warning from the NCECR and public security organs and ordered to make amends. Their CEC products or equipment may also be confiscated."

For Encryption Import Restrictions: http://www.cryptolaw.org/
我叫大卫，是旅华学者，从事中国问题研究，十分愿意与各位交流。
自从上次聚会后，大卫开始与小李频繁接触，赠送礼物。

你漂亮，温柔，优秀，其实我第一次见到你的时候就爱上你了……
有个帅气，浪漫，有才气的外国男友也不错！
亲爱的，跟我还用保密吗？我只是写学术文章用，借阅一下而已。

嗯，那好吧。
这是我拷贝的，你用完要马上还给我。

放心吧，亲爱的。
你是小李吧？我们是国家安全局的，请跟我们走一趟。

啊？怎么了？
你身为国家工作人员，保密意识淡薄，你涉嫌触犯我国相关法律。

我不知道他是间谍，我被他利用了！
Case Study 4 – Galaxy Tablets to Lebanon

• NYU researchers are sub-grantees working with an international relief agency.
• Researchers are traveling to Lebanon to conduct social science research. Together with our Non-Profit partners they want to carry 90 Samsung Galaxy Tabs E 9.6" 16 GB Wifi (not the newest model), with a retail value of ~$200
• HS Code 84713090, ECCN 4A994 (This section controls for “CB Column 1 and AT Column 1”)
• Researchers are very concerned that these tablets arrive safely by the time they land in Lebanon. Partners have successfully hand carried tablets into Lebanon, so their strong preference is to hand carry in their luggage.
Customs and Duties

- Under the customs laws of Lebanon, these items would need to be declared.

- There is a variety of documentation you would need to present to customs officials including original invoice, identify the country of origin.

- You would be required to pay the associated tariffs and VAT.
IATA Regulations

All cells and batteries must be tested in accordance with the UN Manual of Tests and Criteria Part III Subsection 38.3 (DGR 3.9.2.6)

Passed UN?

Yes

Lithium Ion Batteries (limited to a maximum of 30% SoC)

Lithium Ion Batteries Contained in Equipment

Cells greater than 20 Wh and Batteries greater than 100 Wh

UN3481
PI 967
Section I
IMP: RLI

Limit per package:
Pax A/C = 5 kg
CAO = 35 kg

Cells equal to or less than 20 Wh and Batteries equal to or less than 100 Wh

UN3481
PI 967
Section IA
IMP: RLI

Limit per package:
Pax A/C = 5 kg
CAO = 5 kg

Lithium Ion Batteries Packed With Equipment

Cells greater than 20 Wh and Batteries greater than 100 Wh

UN3480
PI 965
Section II
IMP: ELI

Limit per package:
Pax A/C = 5 kg
CAO = 35 kg

Cells ≤ 20 Wh and Batteries ≤ 100 Wh

UN3480
PI 965
Section I
IMP: ELI

Limit per package:
Pax A/C = 5 kg
CAO = 35 kg

Cells ≤ 20 Wh and Batteries ≤ 100 Wh

UN3481
PI 966
Section I
IMP: ELI

Limit per package:
Pax A/C = 5 kg
CAO = 35 kg

* exceptions exist to the labelling requirements – see PI 967 Section II

NOTE: Use “IB” if package exceeds Section II Limits and more than 1 package
Limit per package:
Pax A/C = Forbidden
CAO = 16 kg

Limit per package:
Pax A/C = Forbidden
CAO = 35 kg

No

Redesign