

ECP 2.2 COMPLIANCE WITH GENERAL PROHIBITIONS AND SANCTIONS - LICENSING, REJECTION AND REPORTING PROCEDURE (GP 4-10 per 734 of EAR)

I. Purpose

This document explains the policy and procedure at SI to ensure its activities comply with U.S. export law and sanctions law. The document details the methodology to identify what international activities need to be vetted and the method used to classify those export-controlled projects as having export compliance and sanctions issues: activities with foreign sponsors or collaborators, exchanges with foreign countries, payments to/from foreign persons, dealings with sanctioned countries and/or international travel.

[Export controls related to the export of “strategic” items: scientific hardware, materials, software or technology is address under ECP 2.1 Identification of Items subject to ITAR or EAR Control Lists.]

To accomplish this, each SI Unit flags the projects that have an international aspect so that the responsible person can review it for export controls and the impact of sanctions. Once identified as having an international component or NASA award, the responsible persons are instructed to follow the process below to confirm that the project does not violate any activity-based General Prohibitions, as enumerated in Part 736 of the EAR.

II. Procedure

1. **SI ECO** trains personnel listed at the end of this procedure about how to flag the types of activities or items that may be restricted by U.S. export regulations and sanctions regulations:
 - SI cannot have financial or other dealings with parties in countries subject to U.S. or U.N. trade sanction (or the dealing may need an export license).
 - SI cannot have dealings with prohibited parties, sanctioned governments, restricted companies, or organizations specified on denial lists published by several government agencies (i.e., the Denied Persons List and Specially Designated Nationals Lists other lists of parties whom we cannot have financial or other transactions.)
 - The export of certain scientific items may require an export license for strategic purposes related to military use or contributions to weapons of mass destruction.
2. The SI Units and positions (listed at the end of this document) follow the instructions in this section to identify potential export-controlled **activities** and **items**, when preparing proposals, accepting awards, collaborating with or supporting non-U.S. groups to travel to the U.S. or vice versa in the situations described below:
 - **Sanctioned Countries:** If the “activity” involves foreign travel to **Cuba, Iran, North Korea, S. Sudan, Syria, Russia/Crimea or Venezuela** or the country is listed on a **U.N. sanctions list, or State Department travel advisory**, or borders a country with a travel advisory, contact the **ECO** for guidance, and report the activity to the **ECO**. Refer to the Jurisdictional Summaries for a particular country.

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NOTE: SI must comply with foreign policy actions. U.S. Sanctions can be unilateral or multilateral. A limited scope of activities related to humanitarian aid: clothing, education and medical assistance is permitted, therefore, the ECO needs to evaluate if the activity is permitted, and if yes, what type of export license, if any, is required. The sanctioned countries are listed in both the EAR and the FAC regulations. Some travel is permitted but may require an export license from the OFAC, Treasury Department. (See Attachment 1 - Work Instruction for Embargoed Countries) Each sanction program is unique.

- **Denied Persons:** Check the names against the consolidated government-issued Denial Lists when the “activity” involves a party (sponsor, vendor or collaborator) who is a **foreign person, organization or foreign government** entity. (See Instructions on Attachment 2 - Work Instruction for Denied Person Screening)
 - **Restrictive Trade Practices:** Ensure that there are no antiboycott clauses or shipping instructions when an “activity in U.S. Commerce” (these clauses are mostly initiated by countries in the **Middle East** or **country in Asia** with a predominant **Muslim** population against Israel). (§ 760 of the EAR) (Consult Antiboycott Procedure)
 - **Export of items that must be filed with Bureau of Census:** The project involves export of items valued at more than \$2500 and it is not an item that is a “tool of the trade” (which stays with the person and is returned back to the US.)
 - **Export of currency** in excess of \$10,000
3. The **Contracting Officer, registrar or person arranging the activity** who encounters one of the issues above completes the Project Export Compliance Checklist (Attachment 4). Per the instructions, the initiator contacts the **ECO**.
 4. The **ECO** identifies export regulatory issues and researches the latest regulation, travel advisory, sanctioned country or denied persons list, as these lists and regulations change. When the **ECO** determines that there is an export compliance regulatory issue, the **ECO** adds the project to the “Export License” list and advises the initiator of any necessary actions.
 5. License and Rejection Policy - The **ECO** determines whether the requestor can proceed with the activity via an exemption or General License, if an export license, or export license exemption or exception applies, or if the unit must cease the activity - rejection.
 - The inquirer completes the International Activities Checklist providing details of the transaction and the time frame. The ECO reviews it and provides a determination of whether the activity qualifies for an exemption, General License or a Specific License.
 - If a Specific License is required, the **ECO** requests the necessary information and documents from the unit. The **ECO** then follows the steps detailed in the Export License Procedure and send the license cover letter to the inquiry for review and approval. Once approved, the ECO applies on the OFAC portal. The ECO emails a draft of the license application generated on

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the portal. The ECO follows up after 2 months and advises the Unit of the status and when the license is approved. The persons involved in the project are advised to cease any future actions that involve foreign persons or exporting until the appropriate license authorization has been determined or obtained.

- If actions without a license have already occurred, the **ECO** interviews involved persons to gather all relevant facts to determine the proper corrective action and training needs. The various exemptions and general licenses will be evaluated to determine if a violation has occurred. Consult ECP 5.4: Handling Violations. The **ECO** consults with **Office of General Counsel (OGC)** who decides if a violation has occurred and if a voluntary self-disclosure (as outlined in § 127 of the ITAR and § 764.5 of the EAR) will be submitted. The **ECO** addresses the issue to the unit, **Supervisor of Sponsored Programs**, and **OGC** about recommended actions.
6. If the activity is a proposal, grant or award, the **Contracting Specialist** applies the attribute (ITAR/EAR/FAC) in the proposal coversheet and to contact the ECO.

If a **license** is required, the **ECO** works with PIs/scholar and Units to obtain the necessary information about the transaction, equipment, persons and technology to complete the application in Part 748 of the EAR, or OFAC guidelines. The **ECO** follows the procedures listed in the SI document – ECP 2.4 Export License Procedures.

7. If the flagged activity involves classification against the Commerce Control List as AT controls (Anti-terrorism) or higher, the **ECO** works with a qualified technical person, scientist or engineer for assistance, when required, to confirm if the item/software or technology is subject to the Commerce Control List. See Attachment – Classifying against U.S. export control lists.
8. The **ECO** documents the classification is on the Product Classification form, which provides the name of the project, designated code/contract number, the sponsor, PI and scope of work. The controlled item(s) are described – hardware, software or technology and whether they are subject to the ITAR and US Munitions List or EAR and the Commerce Control List. If there is doubt or the ECO makes a decision to have the conclusion confirmed by one of the regulating agencies, the **ECO** prepares a commodity jurisdiction application to the DDTC or a classification request to BIS. See Attachment X.X about how to apply for Commodity Jurisdiction from the DDTC or Product Classification from BIS.

III. Reference

SI's Directive No. 611 Compliance with Export Controls and Trade Sanctions related to Exports, Research and Museum Activities.

Any questions should be directed to Natascha Finnerty, Export Compliance Officer (ECO) at (617) 496-7557 or email at export@si.edu.

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Exports from the U.S. are controlled for national security, foreign policy, crime control, human rights and non-proliferation reasons. SI must comply with four key regulations when exporting items:

- The commercial regulations called the Export Administration Regulations
- The regulations dealing with embargoed countries, called the Foreign Asset Control Regulations
- The military regulations, called the International Trafficking in Arms Regulations
- The export clearance regulations, called the Foreign Trade Regulations
- When exporting or importing, certain transport regulations related to dangerous goods must also be considered.

The regulations can be found at the links below:

[Export Administration Regulations](#) (15 CFR Part 730-770)

[Commerce Control List](#) (Part 774 of the EAR)

[International Traffic in Arms Regulations](#) (22 CFR Parts 120 – 130)

[US Munitions List](#) (Part 120 of the ITAR)

Dangerous Goods [List](#) (Transportation Regulations)

[State Department Travel Advisory](#)

[Foreign Trade Regulations](#) (15 CFR Part 30)

- Responsibility

The process of determining the applicability of export controls on a program or activity can be a technically detailed, complex and multi-step process. All **Units, Contracting Officers** and **administrators** need to be gatekeepers who are responsible for recognizing export control risks to ensure that no export prohibitions are violated.

Units Responsible for Flagging International Projects

Director of the Office of International Relations (OIR)

Office of Sponsored Projects (OSP)

Office of Contracting and Personal Property Officer (OCON & PPM)

Administrators/Curators at SI Units

SI Research Centers

Smithsonian Enterprises (SE)

Principal Investigators (PI)

Program Manager (PM)

Museum Registrars

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ATTACHMENT 1: WORK INSTRUCTION - COUNTRIES SUBJECT TO TRADE SANCTIONS

To ensure that SI activities and transactions involving U.S. persons or U.S.-origin items do not violate the economic restrictions on countries subject to sanctions. The Office of Foreign Asset Control (OFAC) administers US foreign policy controls by restricting any financial dealings and issues licenses for activities. The BIS administers export licenses for items being exported to a sanctioned country.

Regulatory Background

The Embargo lists are found in both the EAR and the Foreign Assets Control Regulations (FACR).

1. Office of Foreign Asset Controls (OFAC), Treasury Department

SI cannot deal in countries designated by the Treasury Department as sanctioned without an export license. Currently, this list of countries includes **Cuba, Iran, North Korea, Russia/Crimea, Sudan, Syria, or Venezuela** or to any party that intends to deal to these countries. OFAC monitors all activities with sanctioned countries and This includes any financial transactions. OFAC also designates person who are in a position of power in the country and prohibits U.S. persons from having dealings with government officials. This is a link to OFAC's website and a list of specially designated nationals [sorted by country](#)

Some cultural exchanges are permitted with Cuba, but these need to be vetted against the license requirements. Failure to obtain the proper license in advance could subject SI to **finances that can be imposed on SI or the individual for violations.**

Refer to [OFAC's](#) website

2. Exports of Items to a Sanctioned Country is regulated by BIS, Department of Commerce

Also, certain items are **not subject to EAR controls** (trade sanctions), such as books, certain artwork and copyrighted materials, gifts and commercial webpages of publicly available information offered at no charge.

Gift parcels by an individual (donor) addressed to an individual, or a religious, charitable or educational organization (donee) located in any destination for the use of the donee or the donee's immediate family (and not for resale). The gift parcel must be provided free of charge to the donee. Other items are basic humanitarian donations in the form of medical supplies, educational supplies and certain agricultural items are permitted. Consult 740.12 and Supplement No. 2 to part 740. Country embargoes are fairly static. The EAR includes country embargoes under § [746 Embargoes and Other Special Country Controls](#)

For a quick list, you can also check Country Group E – [Supplement No 1 to §740.](#)

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3. Proscribed countries under the International Traffic in Arms Regulations (ITAR)

For U.S. Munitions List items, the ITAR prohibits the export of items or technology to a longer list of countries with which sales are prohibited, either with an export license or under an exemption. It includes the countries lists above as well as China, Belarus, Venezuela and others. See the list on the Directorate of Defense Trade Controls website. [Proscribed Countries](#)

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ATTACHMENT 2: WORK INSTRUCTION - GENERAL PROHIBITIONS - SCREENING AGAINST US DENIAL LISTS

Objective

To ensure that SI activities and transactions involving U.S. persons or U.S.-origin items under the jurisdiction of the EAR do not involve persons or organizations restricted by the U.S. Department of Commerce or those persons or entities whose export privileges have been denied or limited by the U.S. Treasury Department or whose names appear on the Debarred List maintained by the U.S. Department of State.

Responsibilities

Human Resources
Fellowship Coordinator
Contracts Specialist
Persons receiving foreign visitors
Units providing financial assistance to foreign persons
Shipping Personnel

Work Instruction

1. **Denial List Prohibition.** It is prohibited for SI to sell to parties on government denial lists. Therefore, all customer names must be screened against the government lists. We subscribe to a tool that consolidates the various restricted party lists. The four lists to screen are:

- **Denied Persons List (DPL)** - Part 764 of the EAR. A list of individuals and entities that have been denied export privileges. Any dealings with a party on this list that would violate the terms of its denial order are prohibited.
- **Entity List** - The Entity List identifies foreign parties that are prohibited from receiving some or all items subject to the EAR unless the exporter secures a license. Those persons present a greater risk of diversion to weapons of mass destruction (WMD) programs, terrorism, or other activities contrary to U.S. national security or foreign policy interests. By publicly listing such persons, the Entity List is an important tool to prevent unauthorized trade in items subject to the EAR.

BIS can add to the Entity List a foreign party, such as an individual, business, research institution, or government organization, for engaging in activities contrary to U.S. national security and/or foreign policy interests. In most instances, license exceptions are unavailable for the export, reexport, or transfer (in-country) to a party on the Entity List of items subject to the EAR. Rather, a prior license is required, usually subject to a policy of denial. For guidance concerning the prohibitions and license application review policy applicable to a particular party, please review that party's entry on the list. Procedures for removal from the Entity List appear in section 744.16 of the EAR. General Orders also may restrict exports to named individuals or entities.

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- **Unverified List** - A list of parties where BIS has been unable to verify the end-user in prior transactions. The presence of a party on this list in a transaction is a “Red Flag” that should be resolved before proceeding with the transaction.
- **List of Specially Designated Nationals** (SDN), Foreign Assets Control Regulations. **These persons/ companies are foreign nationals of, or companies owned or controlled by countries under US trade embargo.** The Treasury Department maintains a list of terrorist, government official who violate human rights, drug kingpins, etc. Check all foreign government organizations and persons against this list before proceeding with awards
- **Debarred List.** U.S. Dept. of State. These parties are debarred for violation of the Arms Export Control Act. These are listed on the DDTC website www.pmdtc.state.gov

1. Screening of New Collaborators, visitors, organizations

The SI website provides a link to our consolidated denial list screening tool – www.mkdenial.com. Log on and provide the credentials - Request an instruction sheet with information from export@si.edu.

MK Denial-screenshot.doc

ID 70891 PW smithsonian

The web screening tool allows you to enter the name of a person or organization, (i.e., a student, post doc, researcher, etc.), their address and country.

The tool will show a result of “not found” and date should be recorded and saved as an image. The tools will save the screening in an internal log, but the user can opt to save the report. If desired, the user should create an export compliance directory and name each DPL result files as “DPL_name_date”.

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Sample OFAC SDN List

ALPHABETICAL LISTING OF SPECIALLY DESIGNATED NATIONALS AND BLOCKED PERSONS:

7TH APRIL CARD BOARD FACTORY, Tajoura, Libya [LIBYA]

17 NOVEMBER (a.k.a. REVOLUTIONARY ORGANIZATION 17 NOVEMBER; a.k.a. EPANASTATI KI ORGANOSI 17 NOEMVRI) [FTO][SDGT]

32 COUNTY SOVEREIGNTY COMMITTEE (a.k.a. 32 COUNTY SOVEREIGNTY MOVEMENT; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; a.k.a. REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO][SDGT]

32 COUNTY SOVEREIGNTY MOVEMENT (a.k.a. 32 COUNTY SOVEREIGNTY COMMITTEE; a.k.a. IRISH REPUBLICAN PRISONERS WELFARE ASSOCIATION; REAL IRA; a.k.a. REAL IRISH REPUBLICAN ARMY; a.k.a. REAL OGLAIGH NA HEIREANN; a.k.a. RIRA) [FTO][SDGT]

A. BORTOLOTTI & CO. S.P.A. (a.k.a. BORTOLOTTI), Cremona, Italy [LIBYA]

A. BORTOLOTTI & CO. S.P.A. (a.k.a. BORTOLOTTI), Via Predore, 59, 24067 Sarnico, Bergamo, Italy [LIBYA]

A.I.C. COMPREHENSIVE RESEARCH INSTITUTE (a.k.a. AUM SHINRIKYO; a.k.a. A.I.C. SOGO KENKYUSHO; a.k.a. ALEPH; a.k.a. AUM SUPREME TRUTH) [FTO][SDGT]

A.I.C. SOGO KENKYUSHO (a.k.a. AUM SHINRIKYO; a.k.a. A.I.C. COMPREHENSIVE RESEARCH INSTITUTE; a.k.a. ALEPH; a.k.a. AUM SUPREME TRUTH) [FTO][SDGT]

A.T.E. INTERNATIONAL LTD. (f.k.a. RWR INTERNATIONAL COMMODITIES), 3 Mandeville Place, London, England [IRAQ]

A.W.A. ENGINEERING LIMITED, 3 Mandeville Place, London, England [IRAQ]

AARAN MONEY WIRE SERVICE INC., 1806 Riverside Ave., 2nd Floor, Minneapolis, Minnesota, U.S.A. [SDGT]

ABASTECEDORA NAVAL Y INDUSTRIAL, S.A. (a.k.a. ANAINSA), Panama [CUBA]

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[The Denied Persons List](#) | [Return to Previous Page](#)

Last Modified: October 18, 2013

Name and Address	List Change Date	Action Taken
GORMLEY, TIMOTHY INMATE NUMBER - 68687-066, USP LEWISBURG, US PENITENTIARY, P.O. BOX 1000, LEWISBURG, PA, 17837	10/18/2013	FR NOTICE ADDED
NAGHIBI, (SEAN) 9426 BLESSING DRIVE, PLEASANTON, CA, 94588	10/18/2013	FR NOTICE ADDED
NAGHIBI, AFSHIN (SEAN) 9426 BLESSING DRIVE, PLEASANTON, CA, 94588	10/18/2013	FR NOTICE ADDED
TYSONIC ENTERPRISES 10 ANSON ROAD, 15-14 INTERNATIONAL PLAZA, SINGAPORE, SG, 79903	10/18/2013	FR NOTICE ADDED
DUBOUSKAYA, VOLHA INMATE # - 67621-066-30, U.S.P. HAZELTON, U.S. PENITENTIARY, P.O. BOX 2000, BRUCETON MILLS, WV, 26525	10/17/2013	NEW
SILCOX, ANDREW INMATE # - 84941-280, FCI BASTROP, FEDERAL CORRECTIONAL INSTITUTION, P.O. BOX 1010, BASTROP, TX, 53952	10/17/2013	NEW
SINGH, VIK A 16810 E. AVENUE OF THE FOUNTAINS, SUITE 108, FOUNTAIN HILLS, AZ, 85268	10/17/2013	NEW
SINGH, VIKRAMADITYA 16810 E. AVENUE OF THE FOUNTAINS, SUITE 108, FOUNTAIN HILLS, AZ, 85268	10/17/2013	NEW

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SI EXPORT CONTROL CHECKLIST

PI: _____ Division: _____

Project Title: _____

Project Sponsor: _____

No.	EXPORT QUESTION	YES	NO
1. a	<p>COUNTRY REVIEW:</p> <p>Does your project involve any sanctioned countries, (financial transaction or travel to sanctioned countries?) (See lists on Treasury Dept.’s Sanctioned Countries: (currently Cuba, Iran, North Korea Sudan, Syria)</p> <p>Dept. of Commerce Denied Persons Lists:</p> <p>Dept. of State Country Policies and Embargoes List</p> <p>Enter country into www.mkdenial.com. If it is embargoed, contact Export Compliance Officer at export@si.edu</p>		
1.b	<p>Are you dealing with countries where there have UN peace keeping actions (Check State Dept. website for travel advisories) Contact ECO for any recent actions.</p>		
2.	<p>COMPLIANCE WITH BOYCOTT RESTRICTIONS:</p> <p>Are you dealing with countries in the Middle East or Muslim countries in Asia?</p> <p>Check for antiboycott language Part 760 of EAR – Refer to Antiboycott Procedure SI No.</p>		
3.	<p>CONTROLLED ITEMS:</p> <p>Does the project involve the export of instruments, computers, processors chemicals, laboratory equipment biological items, marine, aircraft, GPS,</p>		

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	<p>tracking, weapons, crime control (finger printing or space qualified)</p> <p>Does your project involve any controlled materials, technology, or services listed on the EAR/Commerce Control List http://www.access.gpo.gov/bis/ear/ear_data.html</p> <p>or the ITAR/U.S. Munitions List (See our controlled items list) http://www.pmddtc.state.gov/regulations_laws/itar_official.html</p> <p>or otherwise specifically designed, developed, configured, modified or adapted for military or space-based applications?</p> <p>Refer to Classifying ITAR- and EAR-controlled items Procedure</p>		
<p>4.</p>	<p>INTERNATIONAL COLLABORATION OR SUPPORT:</p> <p>All foreign parties with whom we collaborate or offer/receive financial support must be screened against US Denial Lists. Refer to Procedure Denial List Screening SI No.</p>		
<p>5.a</p>	<p>FUNDAMENTAL RESEARCH CRITERIA:</p> <p>Is all the <u>information or software</u> involved in your research published and generally accessible to the public through at least one of the following?</p> <ul style="list-style-type: none"> • publication for distribution; • subscriptions available without restrictions; • website available free of charge; • libraries open to the public; • patents and published patent applications; • instruction in commonly taught courses; or • presentation at an open conference or seminar? • If the presentation occurs outside of the U.S. please indicate here: <p>Does the <u>information or software</u> involved in your research meet all of the following criteria:</p> <ul style="list-style-type: none"> • is ordinarily published and shared broadly within the scientific community; • is not restricted (either through written or oral agreement) by the 		

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	<p style="text-align: center;">sponsor for proprietary reasons or national security controls; and Is not subject to specific U.S. Government access and dissemination controls</p>		
5.b	Is the research for NASA and/or does the contract include foreign national restrictions? If yes, contact ECO.		
6.	<p>EXPORT CLEARANCE:</p> <p>Will goods be exported that are valued at more than \$2500, restricted by export license or are hazardous for shipping?</p> <p>If yes, Refer to Export procedure. Contact ECO at export@si.edu</p>		
7.	Did you check the names of all parties against the US government Denial List and was there a match?		
HOLD	If there was a yes to any of these questions, refer to the ECO at export@si.edu		
SIGN	Signature: Date:		

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