

# Penalties for Export Violations

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## A. GENERAL OVERVIEW

Generally, any person or entity that brokers, exports or attempts to export a controlled item without prior authorization, or in violation of the terms of a license, is subject to penalties. Violators may incur both criminal and civil penalties. Although there is a maximum amount for a civil or criminal penalty, the actual penalty imposed is often multiplied. For instance, each shipment might be considered a separate violation, and BIS will often find multiple violations of related restrictions in connection to each shipment (*e.g.*, export without a license, false representation, actions with knowledge of a violation, *etc.*). A series of violations occurring over a period of time may result in hundreds of thousand or even millions of dollars of penalties.

## B. DEFENSE ITEMS EXPORTS VIOLATIONS

The Arms Export Controls Act and the ITAR provide that wilful violations of the defense controls can be fined up to \$1,000,000 per violation, or ten years of imprisonment, or both.<sup>1</sup> In addition, the Secretary of State may assess civil penalties, which may not exceed \$500,000 per violation.<sup>2</sup> The civil penalties may be imposed either in addition to, or in lieu of, any other liability or penalty. The articles exported or imported in violation, and any vessel, vehicle or aircraft involved in such attempt is subject to seizure, forfeiture and disposition.<sup>3</sup> Finally, the Assistant Secretary for Political-Military Affairs may order debarment of the violator, *i.e.*, prohibit the violator from participating in export of defense items.<sup>4</sup>

Both DDTC and BIS have stated that they believe that many universities are in violation of the regulations based on the low number of licenses received in relation to the number of foreign students enrolled.

## C. DUAL-USE ITEMS EXPORTS AND ANTI-BOYCOTT VIOLATIONS

Similarly to the ITAR, violations of the EAR are subject to both criminal and civil penalties. Fines for export violations, including anti-boycott violations, can reach up to \$1,000,000 per violation in criminal cases, and \$250,000 per violation in most civil cases. In

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<sup>1</sup> 22 U.S.C. § 2778(c) and 22 C.F.R. § 127.3.

<sup>2</sup> 22 U.S.C. § 2778(e) and 22 C.F.R. § 127.10.

<sup>3</sup> 22 C.F.R. § 127.6.

<sup>4</sup> 22 U.S.C. § 2778(g) and 22 C.F.R. § 127.7.

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addition, criminal violators may be sentenced to prison time up to 20 years, and civil penalties may include the denial of export privileges.<sup>5</sup> A denial order is probably the most serious sanction because such order would bar a U.S. company from exporting for a period of years or bar a foreign entity from buying U.S. origin products for such period.

In most instances, BIS reaches negotiated settlements in its civil cases, as a result of voluntary self-disclosures of violations by companies and individuals. Voluntary disclosures constitute a major mitigating factor in determining penalties, reducing the amount of penalty by up to 50 percent, provided certain conditions are met, such as the implementing of a comprehensive compliance program.<sup>6</sup>

## **D. EXPORTS TO A SANCTIONED COUNTRY**

Although potential penalties for violations of U.S. export laws vary depending on the country and product involved, an exporter may be subject to a maximum civil penalty of \$250,000 per violation under OFAC regulations, with the exception of exports to Cuba. Violations of the Cuban sanctions are subject to a maximum penalty of \$65,000 per violation.<sup>7</sup>

The U.S. Government can also seek to criminally prosecute conduct where violations are willful and knowing. Such violations may reach \$1,000,000 per violation and imprisonment of up to 20 years. In addition, where there is egregious conduct by the offender, BIS (who assists OFAC in enforcing sanctions) may suspend the export privileges of a company.

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<sup>5</sup> These violations are based on the Export Administration Act of 1979, as amended (50 U.S.C. app. §§ 2401-2420), and inflation adjustments made in 15 C.F.R. § 6.4. From August 21, 1994, through November 12, 2000, the Act was in lapse. During that period, the President, through Executive Order 12924, which had been extended by successive Presidential Notices, continued the EAR in effect under the International Emergency Economic Powers Act (50 U.S.C. §§ 1701-1706 (IEEPA)). On November 13, 2000, the Act was reauthorized by Pub. L. No. 106-508 (114 Stat. 2360 (2000)) and it remained in effect through August 20, 2001. Since August 21, 2001, the Act has been in lapse and the President, through Executive Order 13222 of August 17, 2001, which has been extended by successive Presidential Notices, has continued the EAR in effect under IEEPA. The USA PATRIOT Improvement and Reauthorization Act of 2005, signed into law on March 9, 2006 (Pub. L. No. 109-177, 120 Stat. 192 (2006)), increased the limit of civil penalties available under IEEPA to \$50,000. On October 16, 2007, President Bush signed the International Emergency Economic Powers Enhancement Act, Pub. Law No. 110-96, which amends IEEPA by increasing civil penalties up to \$250,000 per violation, and criminal penalties up to \$1,000,000 per violation.

<sup>6</sup> For a review of BIS investigations and penalties, see "Don't Let This Happen to You! Actual Investigations of Export Control and Anti-boycott Violations" at [http://www.bis.doc.gov/index.php/forms-documents/doc\\_view/535-don-t-let-this-happen-to-you-2010](http://www.bis.doc.gov/index.php/forms-documents/doc_view/535-don-t-let-this-happen-to-you-2010)

<sup>7</sup> The OFAC embargo of Cuba was promulgated under the Trading with the Enemy Act (TWEA).

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In assessing penalties, DDTC, BIS, and OFAC will consider a number of factors, both aggravating and mitigating. Mitigating factors include (1) whether the disclosure was made voluntarily; (2) whether this was a first offense; (3) whether the company had compliance procedures; (4) whether steps were taken to improve compliance after discovery of violations; and (5) whether the incident was due to inadvertence, mistake of fact, or good faith misapplication of the laws. Aggravating factors include: (1) willful or intentional violations; (2) failure to take remedial action after discovery; (3) lack of a compliance program; and (4) deliberate efforts to hide or conceal a violation.

## E. EXPORT CONTROLS VIOLATIONS WITHIN UNIVERSITIES

### 1. *J. Reece Roth case – University of Tennessee*

On January 18, 2012, John Reece Roth, a former professor of electrical engineering at the University of Tennessee (UT) in Knoxville, began serving a four-year prison sentence for his September 2008 convictions. Roth received this sentence for illegally exporting military technology, in large part due to his work with graduate students from Iran and China. Although, Roth claimed he was ignorant of the regulations, the prosecution pointed out that he was warned on a number of occasions, including by university counsel, that the technology may have been controlled. Professor Roth's conviction and prison sentence forcefully remind the research community, as well as academia, of the potentially severe consequences that may arise from ignoring technology export controls<sup>8</sup>.

### 2. *Other Universities case*

In May 2013, three researchers at the New York University School of Medicine were charged for sharing with Chinese companies non-public information about their N.Y.U work conducted through a grant from the N.I.H. to develop new M.R.I. technologies<sup>9</sup>.

In March 2013, University of Massachusetts in Lowell (UML) has been sanctioned for two past violations of the Export Administrations Regulations: in 2006 and 2007 UML exported

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<sup>8</sup> <http://www.fbi.gov/knoxville/press-releases/2012/former-university-of-tennessee-professor-john-reece-roth-begins-serving-four-year-prison-sentence-on-convictions-of-illegally-exporting-military-research-data>

<sup>9</sup> [http://www.nytimes.com/2013/05/21/nyregion/us-says-3-nyu-scientists-took-bribes-to-reveal-work-to-china.html?\\_r=0](http://www.nytimes.com/2013/05/21/nyregion/us-says-3-nyu-scientists-took-bribes-to-reveal-work-to-china.html?_r=0)

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an antennae and an atmospheric testing device as EAR99 to SUPARCO, an organization listed on the Entity List (one of the Restricted Parties Lists)<sup>10</sup>.

In 2009, Georgia Institute of Technology allowed Internet Users in 36 countries, including China, and Iran, to view sensitive information that was intended only for federal employees and contractors. This course included 14 PowerPoint slides and was uploaded to Georgia Tech's servers. The State Department stated that it had determined that violations had occurred<sup>11</sup>.

In 2004, Dr. Thomas Campbell Butler, M.D., a professor of Texas Tech University received a 2 year prison sentence for illegally exported the *Yersinia pestis* (human plague), which is a controlled item under the EAR and cannot be exported without the required export licenses. Dr. T. C. Butler had to resign from Texas Tech and accepted a denial of his export privileges for a period of ten years<sup>12</sup>.

Other common violations within academic environments are: the conduct of research with unlicensed foreign students/employees (deemed export violations) and the misused of exemptions/ exceptions.

In summary, consequences for violating export control laws and regulations are severe. It is a liability not only for the university, but also for its faculty and staff to assess the risk and to apply for the appropriate export authorizations.

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<sup>10</sup> <http://efoia.bis.doc.gov/exportcontrolviolations/E2306.PDF>

<sup>11</sup> <http://mobile.bloomberg.com/news/2012-04-30/military-secrets-leak-from-u-s-universities-with-rules-flouted.html>

<sup>12</sup> [http://www.bis.doc.gov/index.php/forms-documents/doc\\_view/535-don-t-let-this-happen-to-you-2010](http://www.bis.doc.gov/index.php/forms-documents/doc_view/535-don-t-let-this-happen-to-you-2010), page 15