



FAIRLEIGH  
DICKINSON  
UNIVERSITY

# U.S. Export and Trade Controls Training

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General Counsel

# Topics

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Export Controls

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Trade Controls

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Sanctions & Restricted Parties

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Reporting Obligations

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FDU Policies

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*Take-Aways - How to Navigate All This*

# Overview

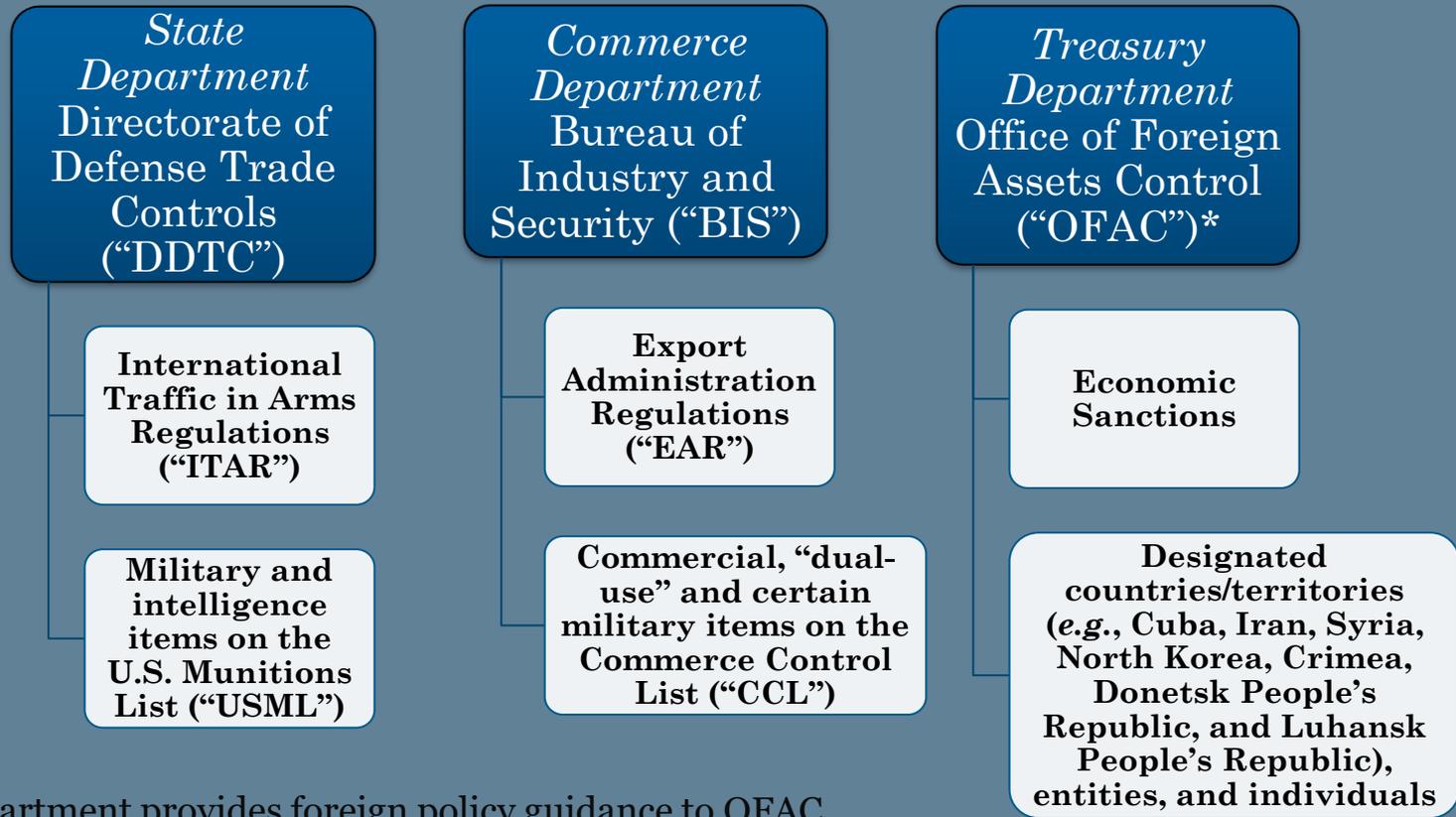
- U.S. export controls laws restrict the export of products, services, and certain information based on the type of item and activities involved and on the people and countries involved.
- Focus on **WHAT** (products, services, or information) is going **WHERE** and aim to prevent transfer if deemed against U.S. interests.

# Overview – Continued

U.S. Trade Controls include sanctions and restrictions on designated individuals, entities, and countries/territories.

- Focus on **WHO** and/or **WHERE**
- **In all cases, the PURPOSE of the activity will also be of key importance.**

# U.S. Agencies Primarily Involved in U.S. Export and Trade Controls



# Export Controls – Defense Items

The U.S. Dept. of State administers export control regulations for defense-related articles, services, and technical data.

- If item is listed on the Dept. of State's United States Munitions List (under the International Traffic in Arms Regulations (ITAR)), might need license from U.S. Gov't before any export.
  - Not always obvious: e.g., certain types of laser-protective eyewear (or goggles)
  - <https://www.ecfr.gov/current/title-22/chapter-I/subchapter-M/part-121#121.1>

# Export Controls – Non-Defense

U.S. Dept of Commerce Bureau of Industry and Security (BIS) regulates export of commercial products and technology (information) under the Export Administration Regulations (EAR).

- Generally, *all items of U.S. origin or physically located in the U.S. are subject to the EAR.*
  - EAR requires a license for exportation of wide range of items that are listed on the “Commerce Control List.”
    - Listed items are subject to controls based on where they are going, who they are going to, and for what purpose.
  - Many items do not require a license to export – unless to a sanctioned/restricted person or country or for unlawful purpose.
  - And there are various exceptions for higher education institutions (discussed below).

# Deemed Exports

Sharing or release of controlled information or source code to a “foreign person” within the U.S. is deemed an export to the individual’s home country.

- “Foreign person” means:
  - entities not incorporated or organized to do business in the U.S.
  - individuals who are not U.S. citizens, green card holders, or protected individuals (refugees or asylees)
  - foreign governments and international organizations and their agencies and subdivisions. This includes individuals in the U.S. on non-immigrant visas (e.g., F-1, J-1, H-1B).

Controlled information means specific information necessary for the development, production, or use of a product (Dept. of Commerce) or information necessary for the design, development, production, manufacture, assembly, operation, repair, testing, maintenance, or modification of defense articles (Dept. of State).

Source code: human-readable text written with programming language (e.g., Python).

# Key Exceptions – Educational Information Exclusion

Dept. of Commerce (EAR) exempts information that is educational (i.e., information released by instruction in **catalog-listed courses** at the university), including through lectures, instruction in teaching laboratories, and inclusion in course materials.

- Includes software, with the exception of certain encryption software.

Dept. of State (ITAR) exempts information concerning general scientific, mathematical, or engineering principles commonly taught in schools, colleges and universities.

EAR 15 C.F.R §. 734.3 (b) (iii) and ITAR 22 C.F.R. §120.10(b)

# Key Exclusion – Fundamental Research

Fundamental research exclusion (FRE): Information arising during or resulting from “fundamental research” conducted at an accredited institution of higher learning located in the United States.

“Fundamental research” generally means basic or applied research in science, engineering, or mathematics, the results of which ordinarily are published and shared broadly within the research community. Researchers cannot accept restrictions for proprietary or national security reasons.

FRE will not apply if FDU *or the researcher* accepts any contract clause that:

- forbids the participation of foreign persons;
- gives the sponsor a right to approve publications resulting from the research; or
- otherwise operates to restrict participation in research and/or access to and disclosure of research results.

If researcher enters into a separate contract that does the above, no FRE will apply and any export (or deemed export) could be unlawful.

Limited delay in publications to permit review of patentability and to confirm that sponsor’s confidential information provided to FDU will not necessarily undermine the FRE.

“Input data” (i.e., information received from the sponsor) is not covered by the FRE. Only results/output comes under the exemption.

# Key Exclusion – Public Domain

Essentially, excludes information that is published, meaning:

- readily available at libraries open to the public or university libraries
- in patents and published patent applications
- released at an open conference, meeting, seminar, trade show, other open gatherings
- published in periodicals, books, print, electronic, or other media available for general distribution (including websites that provide free uncontrolled access) *either free or at a price that does not exceed the cost of reproduction and distribution.*

Doesn't apply to certain encryption software.

(ITAR (public domain) and EAR (publicly available) are not identical in treatment for this exclusion)

EAR: 15 C.F.R. § 734.3(b)(3) and ITAR: 22 C.F.R §120.11

# Key Exceptions – Employees

U.S. universities allowed to share certain ITAR-controlled information with:

- Full-time, bona fide, regular employee (not visiting researcher)
- Employee's permanent abode must be in the U.S. for duration of employment
- Employee cannot be a national of certain countries (EAR D:5 – includes China, Iran, Russia, among many others)
- University must inform employee in writing that cannot transfer the information to other foreign persons.

Other restrictions apply.

# Sanctions

U.S. Dept. of Treasury (through Office of Foreign Trade Controls (OFAC)) administers sanctions regulations.

Sanctions programs vary in scope depending on the country involved.

Comprehensive economic sanctions/embargoes - prohibit nearly all transactions with persons or entities ordinarily resident in:

- Cuba, Iran, North Korea, Syria, Crimea, Donetsk People's Republic, and Luhansk
- People's Republic regions of Ukraine/Russia

Targeted sanctions – restrict certain sectors or transactions, or sanctions certain persons, entities and national governments or their institutions.

OFAC general licenses (no application necessary) and specific licenses (must be applied for and granted) are available for certain activities.

Applies to FDU Vancouver as well as FDU in U.S.

# Restricted Parties

Specially Designated Nationals (SDN) List, including:

- Terrorists and sponsors of terrorist activities
- Narcotics traffickers
- Proliferators of weapons of mass destruction material
- *Agents of sanctioned country governments*

*Comprehensive prohibitions: Cannot deal in any way with entities and individuals on SDN List.*

Other restricted parties lists are more limited in scope, but, in general, U.S. persons are prohibited from engaging in any transactions or dealings with restricted parties or entities owned or controlled by restricted parties.

OFAC sanctions are NOT limited to listed parties—also apply to any non-listed entity that is owned at 50% or greater level, directly, or indirectly, individually or in the aggregate, by designated parties. *Requires due diligence.*

# Restricted Parties – Lists to Check

Consolidated Screening List -

<https://www.trade.gov/data-visualization/csl-search>

Fill in:

- Name
- Fuzzy [run both “on” and “off”]
- Address
- Sources [leave blank]
- Countries

Check both counterparty entity/person of the contract plus name of individual signing the contract.

If get a “hit” contact Carolyn Julien, Associate Provost for Research & Sponsored Projects. [Not all “hits” are accurate.]

# Reporting Obligations

## Routine Reporting Obligations:

- Higher Education Act, Section 117: Twice yearly (January 31 and July 31), must report gifts and contracts with “foreign sources” for prior 6 month period if certain levels reached.
- NSF: Must annually report gifts and contracts “associated with foreign country of concern” (currently, China, N. Korea, Russian Federation, Iran)

# FDU Policies

Sect. 117 Compliance Policy:

<https://www.fdu.edu/wp-content/uploads/2025/09/Section-117-Compliance-Policy-FINAL.pdf>

Export Controls Policy:

<https://www.fdu.edu/wp-content/uploads/2025/12/FDU-Export-Control-Policy-December-2025-FINAL.pdf>

Compliance Red Flags:

<https://www.fdu.edu/wp-content/uploads/2023/09/Red-Flags-Compliance-09.15.23.pdf>

All available by searching “Compliance” on FDU’s main web page.

# Take-Aways

FDU faculty are not expected to be experts in U.S. trade controls.

Key: All contracts must be reviewed in advance by University's contract review process:

General Contracts: [contractreview@fdu.edu](mailto:contractreview@fdu.edu)

Affiliations: [affiliation@fdu.edu](mailto:affiliation@fdu.edu)

<https://www.fdu.edu/wp-content/uploads/2021/05/210504-contract-routing.pdf>

All gifts must be reviewed in advance by University Advancement.

<https://support.fdu.edu/contact/>

*For China (Iran, Russia, N. Korea, Cuba) – Expect extensive review. Involve Office of Grants & Sponsored Projects (sponsored projects) or University Director of Global Education (education programs) **early in planning stages.***

*These University resources – as well as OGC – are available to help with your questions and concerns.*