



University Charged with Export Violations

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The University of Massachusetts at Lowell was charged by the Bureau of Industry and Security (?BIS?) for violating export control laws in connection with the export of an atmospheric testing device and related equipment. Specifically, the University was charged with violations of Sec. 764.2(a) of the Export Administration Regulations (?EAR?) for exporting items classified as EAR99 to a party on the BIS Entity List[1]. This case reinforces the important point that even universities engaged in fundamental research are required to comply with export control laws. It also reinforces the importance of prohibited party list screening as a mandatory part of export compliance efforts.

According to the BIS Enforcement Order,[2] the University, through its Center for Atmospheric Research, exported an atmospheric testing device (valued at \$191,870) and related cables and antennae (valued at \$12,480) to the Space and Upper Atmosphere Research Commission (?Suparco?) in Pakistan. The items exported were classified as EAR99, the lowest level of export control under the EAR. During the time of the exports, Suparco was listed on the Entity List. The University did not obtain a license for the exports as required by Sec. 744.11. As such, BIS charged the University with a violation of Sec. 764.2(a) of the EAR. The University entered into a Settlement Agreement and agreed to pay a civil penalty[3]. A copy of the Settlement Agreement in the case can be found here.

This case is significant for two reasons. First, the University of Massachusetts was the target of the enforcement action and charged with committing the violation. In the widely reported Roth case[4] Professor John Reece Roth at the University of Tennessee was convicted of export violations and sentenced to four years imprisonment for disclosing export-controlled technical data related to his research without obtaining an export license. While Professor Roth was held personally liable for the violations, the University of Tennessee was not prosecuted.[5] In the University of Massachusetts case, the University was held responsible. This is yet another reminder for universities that they are viewed by export agencies as important actors in the export control world and are under enforcement scrutiny along with for-profit companies. In many instances university-related violations can occur through research institutions or other affiliated arms of the institution that are outside of the university's core programs. A list of the general categories of export compliance that we recommend for universities is set out below[6].

The second major significance of the case is the increased importance of checking prohibited party lists as an integral part of the export compliance process. In this case, the products exported by the University were classified as EAR99. This denotes the lowest level of export control and normally does not require a license for any destination except the embargoed or prohibited countries. Yet, even when selling EAR99 items, exporting to parties on one of the Government's prohibited parties lists is a violation unless the requisite license is obtained (and often these are subject to a policy of denial). The U.S. Government has been placing an increasing emphasis on controls and sanctions programs targeting specific individuals and entities rather than country-based or product-based controls, and, hence, list checking has become of particular importance. As a result, it is imperative for exporters to conduct prohibited party screening for each export transaction as a routine part of their export compliance function.

There are, of course, a number of U.S. prohibited party lists to screen^[7] which are accessible through the Consolidated Screening List available at www.export.gov. We recommend screening any foreign parties involved in the export. In a research context, this might include foreign universities or research institutes, as well as the research sponsors. In a more traditional export transaction, such as the shipment of equipment or materials to a research partner, screening would include foreign and intermediate consignees, end-users, agents, brokers and other intermediaries, joint venture partners and freight forwarders or other transportation parties. Finally, records of screening should be maintained along with other export records as required under the export recordkeeping requirements at 15 CFR Part 762 and 22 CFR § 122.5.

[1] See 15 CFR Part 744 Supplement No. 4. The Entity List is a list of entities that have engaged in activities that could result in an increased risk of the diversion of exported, reexported and transferred (in-country) items to weapons of mass destruction (WMD) programs.

[2] The Order can be found at:
<http://efoia.bis.doc.gov/exportcontrolviolations/E2306.PDF>

[3] The civil penalty of \$100,000 was suspended for a two year period provided that the University did not engage in export violations during this period.

[4] U.S. v. Roth, 628 F.3d 827 (6th Cir. 2011); U.S. v. Roth, 642 F. Supp. 2d 796 (E.D. Tenn. 2009).

[5] Even though the University was not formally prosecuted, it most likely incurred significant expense and disruption in connection with the criminal investigation of one of its professors.

[6] Areas may include sponsored research; technology transfer; purchasing or procurement; collaboration with foreign researchers or institutions; foreign travel; foreign research assistants; foreign students and visiting scholars; IT systems; and shipping.

[7] These include: List of Specially Designated Nationals (?SDN?) published by OFAC; the Denied Persons List published by BIS; the Entity List published by BIS; the Unverified List published by BIS (exports to these parties are considered a ?Red Flag? under BIS?s ?Know Your Customer Guidance?); the Statutory Debarred Parties List published by DDTC (required for transactions regulated under ITAR); the Administrative Debarred Parties List published by DDTC (required for transactions regulated under ITAR); and the Nonproliferation Sanctions List published by the State Department.

This article contains general, condensed summaries of actual legal matters, statutes and opinions for information purposes. It is not meant to be and should not be construed as legal advice. Readers with particular needs on specific issues should retain the services of competent counsel. Retired partner Tom McVey was the original author of these materials. Please contact Chris Skinner for more information at 202.293.8129 or cskinner@williamsmullen.com.

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