



U.S. Export Control and Export Licensing: An Overview

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What are Export Controls?

Export control laws have been in existence for many years in Canada, the United States and other countries. Federal export control laws restrict the export of goods, technology and related technical data in the interest of protecting national security. In general, if the export of an item is controlled, a permit or license is required by the applicable governmental authority to export that item.

In Canada, federal export controls are enumerated primarily through the Export Control List administered by [Global Affairs Canada](#).

In the United States, export controls are managed by the [Export Administration Regulations](#) (“EAR”), administered by the U.S. Department of Commerce’s [Bureau of Industry and Security](#).

Why should researchers at the University care about export controls?

Research at the University often involves the use of materials and data received from locations outside of Canada, shipment of materials and data to locations outside of Canada, and even the export of material or data from one individual to another within the same location. All of these scenarios could require an export/import permit under Canadian and/or US export control laws.

The University’s mission of education and research and the international nature of science and academic discourse, require that we maintain an open academic environment without regard to citizenship or visa status. By following the applicable rules, we can ensure that faculty, students and staff at the University do not compromise our academic standards and, as well, do not violate applicable export regulations.

I am in Canada. Why should I care about U.S. export controls?

U.S. export controls focus on the origin and jurisdiction status of the goods, software or technology that is transferred to a particular entity, regardless of the nationality of the entity or person providing them. In particular, the U.S. Government imposes re-transfer conditions on certain U.S.-origin goods and technology even after they have been exported from the United States to Canada.

As a condition of authorizing exports of certain U.S.-origin goods or technology to a Canadian entity or person, the U.S. Government may require the Canadian entity or person to obtain authorization before transferring these items to certain companies in Canada or re-exporting the items from Canada to a third destination (such as China). As

a condition of obtaining an export permit from Canadian authorities, they will ask for the U.S. authorization for the re-export from Canada to the third country.

What could happen to me if I don't comply with export control laws?

Violation of Canadian export controls may result in prosecution, fines up to \$25,000 or imprisonment for up to 12 months, or both; and for indictable offence, a maximum fine set by the court or imprisonment up to 10 years. The direct implications of violating U.S. export control laws are civil and criminal penalties, but there could also be immigration consequences that result from such violations by non-U.S. citizens or other sanctions that would affect the ability of the University to receive U.S.-origin items or could put the University's access to U.S. research funding at risk.

I heard that Huawei was banned in the United States? What does this mean?

The U.S. Department of Commerce has added Huawei Technologies Co. Ltd. and 68 non-U.S. affiliates (including Huawei in Canada) to the "Entity List". Huawei's listing was based on the U.S. conclusion that "Huawei is engaged in activities that are contrary to U.S. national security or foreign policy interest". By being added to the Entity List, Huawei and its affiliate in Canada are restricted from directly or indirectly receiving "items subject to the EAR" (which includes U.S.-origin hardware, software, and technology) without a license from the U.S. authorities.

The addition of Huawei to the Entity List can be found at BIS, [Final Rule, Addition of Entities to the Entity List, 84 FR 22961](#).

How does this development with Huawei in the U.S. have an impact on the University?

The University has several joint-research initiatives with Huawei in Canada. In some instances it may be necessary to curtail the transfer of items subject to the EAR to Huawei, or to obtain a license from U.S. authorities to do so.

Which items transferred to Huawei are restricted?

The Entity List notice requires a license from U.S. authorities for the export to Canada, re-export or transfer in Canada to Huawei of all "items subject to the EAR". Except for certain items, the following hardware, software and technology are subject to the EAR:

- **U.S.-located:** All items that are physically located in the U.S., including those on a server located in the U.S.
- **U.S.-origin:** All items of U.S.-origin, which are those items developed, drawn, produced or compiled in the U.S.
- **Security-sensitive:** Certain foreign-made (including Canadian-made) direct products of sensitive U.S.-origin technology or software controlled for national security reasons. In general, this would apply to U.S. technology and software classified as military items, certain spacecraft-related items and some radiation-hardened microelectronic circuits. Items such as these are also generally controlled under existing Canadian law.
- **Mixed:** Items made outside of the U.S. that incorporate more than a minimum amount of export controlled U.S.-origin technology (see below).

I want to incorporate U.S.-origin items in a Canadian-made deliverable. How does this affect me?

If an item (whether hardware, software or technology) made outside of the U.S.:

- incorporates export controlled U.S.-origin commodities;
- is bundled with export controlled U.S.-origin software; or,
- is commingled with or drawn from export controlled U.S.-origin technology;

then the item is “subject to the EAR” if its U.S.-origin controlled content exceeds 25% of the item’s content by value. This is commonly referred to as the *de minimis* amount of U.S. content.

For example, if the deliverable under one of the University’s joint research projects with Huawei is developed in Canada but contains more than a *de minimis* amount of U.S.-origin controlled content, then a license from the U.S. Government will be required to transfer that item to Huawei in Canada.

The rules are very fact specific and it is critical that the U.S.-origin content is properly classified under the U.S. [Commerce Control List](#) (“CCL”) which assigns each controlled item an [Export Control Classification Number](#) (“ECCN”). The CCL has hundreds of pages and uses detailed technical applications and performance characteristics to classify items. Interpreting the CCL properly requires both regulatory and technical knowledge.

If the U.S.-origin item is classified “EAR99” (generally basic commercial items), it does not require a license for export from the U.S. in most situations, whether on its own or incorporated in a Canadian product. However, if the proposed export of an EAR99 item is to an [embargoed country](#), to an end user of concern, or in support of a prohibited end use, a license may be required.

For more information, see the Department of Commerce’s [Frequently Asked Questions to Export Licensing Requirements](#).

Are there items that I can transfer without a license?

Yes. If the item is not “subject to the EAR” you can transfer it without a license from the U.S. Government.

In addition to items classified EAR99, the following are other key examples of items that are not subject to the EAR in an academic setting:

- **Public dissemination:** Information and software that is intended for public dissemination without restriction on its further dissemination. This includes materials submitted to journals or conferences.
- **Fundamental research:** Information that arises during or results from “fundamental research”. The results of fundamental research must be ordinarily published and shared broadly within the research community and the researchers must not have accepted restrictions for proprietary purposes. If software arises entirely during the course of fundamental research, then it is not subject to the EAR.

What is the University doing next?

To ensure compliance, the University is in the process of conducting an analysis of commodities, software and technologies to be re-exported or transferred to Huawei under the various joint research initiatives to determine whether they are “subject to the EAR”, including whether they are of U.S.-origin, contain more than a *de minimis* amount of U.S.-origin content, or are the direct product of U.S.-origin technology controlled for national security reasons.

What do I need to do?

Do not transfer any deliverable that may have any US origin content to Huawei in Canada under the joint research initiatives without first checking with the University to determine if a license is required.

Educate yourself about export controls. You don't have to become an expert, but you need to have a fundamental understanding of the subject to be able to know when to raise questions and alert the University to a possible export controls issue. Background information can be found on the [U.S. Bureau of Industry and Security website](#).

Principal investigators conducting research projects with Huawei have specific responsibilities relating to export control compliance. Please contact innovations.partnerships@utoronto.ca regarding those responsibilities.

Where can I get help?

Any time you have a question about the application of export controls at any stage of a specific research project with Huawei or any other sponsor, or have general questions about export controls and research, contact innovations.partnerships@utoronto.ca.