



U.S.-EU Trade and Technology Council: Recommendations for
Working Group 7 – Export Controls Cooperation

January 2022

Introduction

The U.S. Chamber of Commerce is grateful for the opportunity to provide comments to the U.S. Department of Commerce and the European Commission regarding the work of Trade and Technology Council (TTC) Working Group 7, focused on enhancing cooperation on export controls. The Chamber is a strong proponent of the TTC, and we are eager for this effort to yield tangible results. Export controls represent one of the most urgent areas for constructive collaboration. Enhanced bilateral coordination with the European Union and its member states—as well as plurilateral collaboration with like-minded third countries—on export controls is essential to enhance the capacity for controls to achieve their specific policy objectives. Such coordination and collaboration is also particularly important to avoid unintentionally undermining U.S. or European companies vis-à-vis international competitors.

As U.S. and European policymakers work to rebuild our economies in the wake of the Covid-19 pandemic and in the face of rising geopolitical challenges from non-market economies, our countries have a shared interest in pursuing policies that foster economic competitiveness and innovation, and advance foreign policy goals that enhance our national security and safeguard our values. Any export control policy framework must reflect these objectives.

While export controls are a national security tool, they must be considered within the larger context of global markets and foreign availability. To ensure that controls are not used in a counterproductive manner, they should be deployed in a targeted, proportionate, flexible and agile manner so as not to undermine the innovative edge that sustains our technological advantage in the areas of national defense and intelligence.

Successful efforts to better align export control approaches and outcomes would more effectively accomplish these national security objectives, while offering the predictability, stability, and a level playing field for our business communities.

We have long supported efforts to encourage the U.S. government to adopt an approach to export controls that emphasizes the importance of coordinating with allies and partners. Unilateral controls leave room not only for our competitors to access sensitive technology through alternative avenues, including from allies and partners directly, but also impede U.S. domestic economic strength.

We therefore urge the U.S. and the EU—through the TTC—to develop the least trade-restrictive and narrowly targeted controls for the most sensitive technologies to protect our shared security and foreign policy interests, and to explore alternatives to blanket controls where possible. Adherence to the following principles would promote a framework that protects national security, while maintaining our technological advantages and our economic competitiveness.

The Chamber looks forward to active discussions with U.S. and European policymakers as the work of the Trade and Technology Council continues. Enhanced cooperation on development and implementation of export controls is critically important to achieve our shared national security objectives, to protect human rights in third countries¹, and to ensure that the United States and its allies maintain our competitive edge in critical technologies that will shape our economies for years to come.

Policy Principles for Scoping Export Controls

Target controls on technologies that safeguard national security and preserve and protect our technological edge.

We urge policymakers to be judicious and prioritize the most sensitive technologies, particularly those that enable a significant, quantifiable military, intelligence, or strategic national security material advantage, or help to ensure scaled production of the emerging or foundational technologies we most want to safeguard in the future to protect national security. In addition, we urge policymakers to focus controls on technology or goods that are controllable “chokepoints,” rather than more diffuse technology or goods such as software and algorithms, which are more difficult to enforce.

Be mindful of the secondary impacts of casting too wide a net.

We encourage policies that aim to build “higher walls around smaller yards.” Applying export controls to too broad a set of commercial commodity items and technologies—or expanding the scope of controls to cover personal data, for example—could undermine transatlantic competitive advantages and our shared security interests by unintentionally incentivizing R&D activities to move offshore. Moreover, there are national security benefits to our adversaries relying on certain U.S. and European technologies that would be undercut if those adversaries perceived no other choice than to develop their own indigenous capabilities if our export controls cut off access to those technologies.

Additionally, wherever possible controls should be limited to end-uses and end-users. Controls should not seek to encompass materials and other upstream inputs which might be present in sensitive products and technologies, as these materials are often components in a

¹ The Chamber notes the recent Joint Statement from the United States, Australia, Denmark, and Norway about establishing an Export Controls and Human Rights Initiative from December 10, 2021.

wide variety of goods well beyond those that may be subject to or targeted by those measures.

As an alternative to overly broad, technology-based export controls, policymakers should consider clearly defined, targeted restrictions on specific uses and users of greatest concern for the most sensitive technologies we export. The U.S. and EU should work to proactively—and collaboratively wherever possible—identify those uses and users to minimize the burden on companies that do not have access to the same information and intelligence as the U.S. government.

Develop and communicate a clear rationale for each set of controls.

In recent years, U.S. and European governments often have not clearly and publicly communicated the rationale behind export control policies and actions to industry or its international partners. This lack of transparency has hurt the government's ability to build buy-in from industry and civil society; undermined our ability to work in concert with allies, partners, and multilateral institutions; and limited opportunities to develop the strongest export control regime possible. A more open and collaborative approach would facilitate protection of our most sensitive technologies and allow our industries to compete on a more level playing field globally. Clarity and transparency should extend to the entities added to restricted-party lists, including clear, publicly available guidance on not only the named party but also any subsidiaries.

Principles to Mitigate Risks

Elevate diplomacy and develop export controls in close coordination with allies and partners.

Export controls have the most impact when they are set in partnership with—and are adopted by—other supplier governments. This must be a primary objective of the TTC's work on export controls.

To succeed, the U.S. and EU will need to work more effectively together, build trust and confidence over time, expand cooperation to include other capable partners, such as Japan, Canada, the United Kingdom, South Korea, and the United Kingdom. Plurilateral coordination could be especially effective to engage partners in a targeted and expedited manner.

Nonetheless, the U.S. and EU should prioritize, where appropriate, working through multilateral institutions. Accordingly, the U.S., the EU, and EU member-states should renew and reinvigorate their leadership under the Wassenaar framework, through the Australia Group, and other export control organizations to leverage existing commitments with like-minded countries.

If the United States or the European Union imposes unilateral export controls on technologies over which other countries that do not yet have the legal tools in place to exercise control,

choose not to exercise control, or elect to maintain a looser licensing policy, our restrictions will not only be ineffective in achieving their national security objectives, but also put our industrial base at a competitive disadvantage. We need to work collectively to design a system where our adversaries and rivals cannot simply turn elsewhere for our controlled technology.

Be explicit about tradeoffs.

We urge policymakers to carefully consider the balance of risks to national security and risks to economic competitiveness when determining export controls for foundational and emerging technologies. Wherever possible, these considerations should include consultations with the private sector and other civil society actors. Export controls should consider the impacts on labor, communities (especially under-represented ones), small- and medium-sized businesses, innovation, as well as economic and technological competitiveness. Additionally, the use of trade impact assessments would help ensure that specific controls' ability to restrict is balanced against global availability of like-technology.

Strengthen interagency coordination (or coordination between member-states) of the export controls process; encourage open dialogue with the private sector.

We believe the export control policy process should reflect strong interagency coordination in the U.S., as well as more efficient and effective coordination between member-states in the European Union. We further urge the need for regular and consistent engagement with the business community to advance the least trade-restrictive approaches that protect transatlantic competitiveness, while addressing legitimate security concerns. Wherever possible, the governments should issue rules in draft form and provide ample opportunity for civil society and private sector input. Generally, industry is likely to have more information about foreign availability, as well as more data and impact analysis capabilities, than the governments acting alone. Industry review can also spot inadvertent drafting errors that may lead to unintended regulatory compliance challenges.

The U.S. and EU should also consult with the private sector to identify potential opportunities to develop novel digital solutions that could better protect sensitive and important technologies from uses that harm national security, while preserving beneficial uses.

Principles to Promote an Affirmative Agenda

Safeguard human rights and rule of law.

User and use-based controls that protect human rights and rule of law remain important to protect and project our shared values. These controls are rarely effective, however, without plurilateral adoption or the use of other additional foreign policy tools that reinforce these values. Encouraging the adoption of a values-based export control regime should be a key part of the TTC agenda. Currently, many other countries lack the authority to impose end user or

end-use based controls to achieve human rights objectives. This must change if unilateral or even bilateral export controls designed to protect human rights are to be successful.

Ensure access to technology that will help provide for basic needs, develop economies, and reduce carbon emissions.

Effective export controls should not hinder other shared transatlantic priorities, such as combatting the climate crisis or building more resilient supply chains after the pandemic. We urge policymakers to ensure continued access for all countries to the sorts of technology that will help them provide for their citizens' needs and protect the planet.

Preserve access to the best talent.

Export controls can 1) limit U.S. and European industry's ability to benefit from third-country talent; and 2) unintentionally advantage international competitors who then recruit and reap the knowledge of top scientists, engineers, and technologists. The inability to bring world-class talent to the United States or Europe, or losing people that have been educated and trained on either side of the Atlantic, erodes our inherent comparative advantages and impedes our national security, ability to innovate, and broader economic competitiveness in the long run. The United States and EU should endeavor through the TTC to ensure that we retain access to the best talent available to sustain our globally competitive R&D capacity, while taking appropriate measures to ensure security and prevent theft of intellectual property.

Promote robust engagement in standards development to advance U.S. and European economic security.

Participation and leadership by U.S. and European-based stakeholders in standards development organizations and consortia is critical to ensuring American competitiveness in the development of next generation technologies, including, but not limited to, 5G and 6G advanced wireless networking. Accordingly, the U.S. and EU should provide clear rules of engagement that enable robust participation and leadership in legitimate standards setting activities while complying with U.S. and European regulations that limit transfer of non-public, export-controlled technology with entities designated by the U.S. Bureau of Industry and Security or any relevant European counterpart bodies.

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