

Consultation response

Export Controls under the Trade and Technology Council



AmCham EU speaks for American companies committed to Europe on trade, investment and competitiveness issues. It aims to ensure a growth-orientated business and investment climate in Europe. AmCham EU facilitates the resolution of transatlantic issues that impact business and plays a role in creating better understanding of EU and US positions on business matters. Aggregate US investment in Europe totalled more than €3 trillion in 2020, directly supports more than 4.8 million jobs in Europe, and generates billions of euros annually in income, trade and research and development.

Introduction

The EU-US Trade and Technology Council (TTC) was the culmination of the EU-US Summit in June 2021, which underscored the determination of the EU and the US to shape the global economy's future direction around the values of democracy, rule of law, open trade and fair competition.

At AmCham EU, we believe that the TTC can enhance EU-US cooperation by providing a forum for both sides to proactively work through new and emerging issues that arise from the transformation of our economies, including the pervasive impact of new technologies, the digitisation of trade and supply-chain resilience. The TTC must serve as a sustainable mechanism for the EU and the US to engage with each other and build trust. It can also be a platform for both sides to be more forward-looking and shape global standards according to their common values. With the establishment of the TTC, there is a forum in place to proactively address specific issues as soon as they arise.

The establishment of the TTC's ten working groups, including the group dedicated to export controls, is vital to maintain an efficient communication flow. Export controls on strategic goods and dual-use items are essential, however, there is scope for cooperation and harmonisation between the EU and the US in export controls – especially when narratives such as technological sovereignty and open strategic autonomy shape dialogues.

The areas in which the EU-US TTC working group on 'Export Controls' can and should strive to achieve immediate results are:

Seeking a harmonised EU-US export control regime

To ensure availability of the best technologies, a harmonised export control regime among like-minded transatlantic partners would be welcome. More specifically, the EU and the US should further align their export controls focused on sensitive emerging technology transfers (eg, quantum, artificial intelligence, advanced robotics, semiconductors, facial recognition technology, commercial drone technology). This would reduce barriers between EU and US exporters and simultaneously ensure that exports of sensitive emerging technologies outside of the EU or US are consistently controlled. Since each EU country (except Cyprus) is a member of the Wassenaar Arrangement individually, the TTC creates a unique opportunity for alignment and advocacy at the Wassenaar level. Multilateral controls have proven to be successful and support the continued collaboration between the EU and the US, including alignment on export licensing policies.

Removing non-tariff barriers

Industry stakeholders in the EU and the US aim to provide the best products, services and interoperable technologies at the most affordable cost. When it comes to US third-country entity access to EU and EU Member States' publicly funded research and development (R&D), acquisition and sustainment programmes, Export Administration Regulations (EAR) and, in certain sectors the International Traffic in Arms Regulations (ITAR), are often used as a reason to prevent American companies, based in- or outside the EU, from participating. Non-tariff trade barriers undermine innovation, limit access to the best available technologies among like-minded countries and drive costs. Both partners should aim to facilitate the lawful export of goods and services, reduce administrative burdens and harness the best of R&D by coherently applying existing export control measures, such as Wassenaar, as well as provide new solutions.

Agreeing pre-defined export control frameworks

Given the Member States' growing appetite for jointly developing capabilities, it will be increasingly difficult to find consensus on competing national export regimes, which often embody different approaches. Pre-defined cross-border – intra-EU and transatlantic – export control frameworks that are established at the beginning of an action for the duration of the capability, will not only ensure clarity for industry and limit business disruptions, but will also reduce potential strains on political partnerships.

Pursuing collaborative export framework for joint R&D

With collaborative and joint R&D quickly becoming the new norm, especially in the EU and within certain NATO frameworks such as the Defence Innovation Accelerator for the North Atlantic (DIANA), export controls should be adapted to reflect these circumstances. Currently, diverging - and often competing - national export controls can be a major hindrance to successful collaboration in the security, space and defence sectors. Many will, for instance, shy away from partnering on or even discussing sensitive technologies when third-country controls can significantly interfere and may have significant drawbacks upon commercialisation. A collaborative approach to export controls that can identify and overcome current hurdles, either through specific project-based or wider framework solutions, would promote successful transatlantic R&D cooperation while ensuring that export controls maintain their integrity.

Promoting legal certainty

In the context of far-reaching emerging and disruptive technologies (EDTs), it remains of utmost importance to promote clarity and legal certainty for export control authorisation requirements. This need for clarity and objectivity rings particularly true when talking about the multilateral approach to export controls. Transatlantic regulators should pursue a list-based approach of items subject to controls rather than adopting subjective requirements which would lead not only to regulatory uncertainty, but also to risks of regulatory fragmentation and additional compliance burdens for businesses.

Coordinating intangible technology and software transfers

The EU's recast of the dual-use goods regulation takes many positive steps to modernise EU export controls. However, the regulation lacks clarity on how export controls apply to intangible technology and software transfers, including within cross-border cloud computing environments. This results in divergent interpretations and approaches towards the application of controls within the EU and puts the EU at odds with the treatment of such transfers by other jurisdictions, including the United States. It also puts businesses operating in the EU at a disadvantage, as they need to spend resources to manage divergent processes and obtain export authorisations not required in the US or in certain European countries. Therefore, the development of EU guidelines on intangible technology transfers is needed to ensure consistent interpretation and implementation across the EU, but also to ensure alignment with like-minded countries, in particular the US. This topic is ripe for discussion and coordination within the EU-US Trade and Technology Council.

This paper updates AmCham EU's previous input¹ on the TTC's Export Controls Working Group.

¹ <http://amchameu.eu/working-document/export-controls-cooperation>