DIGITALEUROPE

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DIGITALEUROPE priorities for the TTC working group on export controls cooperation

Executive Summary

DIGITALEUROPE welcomes the comprehensive effort to pursue alignment and coordinated approaches to export controls through the EU-US Trade and Technology Council Working Group Seven on Export Controls Cooperation.

The Trade and Technology Council (TTC) represents a unique opportunity to work towards further alignment of approaches to export controls and to enhance coordination at the level of the Wassenaar arrangement, including by ensuring that any new approaches are multilateralised. As the Inaugural Joint Statement from the TTC's first meeting in Pittsburgh affirms, multilateral controls are the most successful approach for protecting international security and supporting a global level-playing field.

Further transatlantic alignment, harmonising approaches and aligning export licensing policies, can significantly strengthen but not replace multilateral solutions in export controls. Said alignment can provide a more stable, transparent, and predictable regulatory climate, help ensure a more level competitive landscape for businesses on both sides of the Atlantic, better support the national security objectives underlying export control measures, and support jobs and growth in the EU and US by easing barriers to lawful exports. We also believe it to be crucial for the competitiveness of EU and US industry to consider an item's foreign availability to avoid barriers for items already widely available on the global market.

With a view to enhancing cooperation, strengthening the multilateral approach, facilitating lawful exports, and reducing administrative frictions on businesses on both sides of the Atlantic, DIGITALEUROPE offers eight concrete proposals that the EU and US can address to advance the work of the TTC working group on export controls cooperation:

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- EU-US alignment on software and technology transfers.
- Improving Wassenaar control list alignment.
- Coherence across Wassenaar members.
- Harmonising license validity periods.
- Certainty in export authorization requirements.
- Working towards license-free transatlantic exports.
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- Limiting the introduction of controls outside the multilateral regimes.

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Introduction

DIGITALEUROPE called for the launch of the TTC back in January, provided concrete industry priorities in July[1] and addressed leaders at the Inaugural TTC Meeting in Pittsburgh on 29 September. We hope that through the TTC, both sides of the Atlantic can truly make the 2020s the Digital Decade.

We are encouraged by the commitment expressed by both sides to undertake close and regular stakeholder engagement, which will be mission-critical, as each of the TTC Working Groups begin their substantive work. Input from market participants who operate at the nexus of trade and technology can help ensure that the work of the Council is informed by, and responsive to, a rapidly changing business environment. DIGITALEUROPE and its members stand ready to participate as active partners in this work.

Achieving greater convergence between the EU and US on export control approaches would benefit from a more coherent approach within the internal market. Industry currently experiences a disparity in the application of export control regulations across the US and individual EU Member States. This disparity can result in an uneven playing field in which those with global operations obtain different outcomes based on which licensing body they approach.

The principles articulated in Annex II of the Inaugural Joint Statement provide a sound basis for further discussion on Transatlantic Export Controls cooperation. We are particularly supportive of the stated goal of achieving greater convergence in approaches to exports controls, both between the EU and the US and within the broader multilateral framework: in a world of deeply integrated and global supply chains, Export Controls need to be coordinated internationally to be effective and lead to a level-playing-field. To achieve these aims we set out the following proposals for the TTC working group on export controls cooperation.

[1] https://www.digitaleurope.org/resources/ten-priorities-for-the-eu-us-trade-and-technology-council-a-partnership-that-can-deliver/

Concrete proposals for the TTC working group on export controls cooperation

1. Alignment on software and technology transfers

As we lay out in our Position on Export Controls Tech Transfers[2], the EU definition of “export” is also currently ambiguous as it relates to intangible transfers of software and technology. This ambiguity creates differing interpretations and regulatory requirements for intangible transfers within the EU and between the EU and the United States. It also creates unnecessary complexity and costs for exporters in the EU, putting them at a competitive disadvantage. DIGITALEUROPE asks that the US and EU, examine approaches with respect to intangible transfers of software and technology as part of their technical consultations and efforts to develop convergent approaches.

2. Improved Wassenaar control list alignment

The EU and US currently adopt changes in Wassenaar Arrangement control lists on different timelines, with the EU typically adopting Wassenaar updates approximately one year after they are adopted by the US. This lack of synchronicity significantly increases the compliance burden for US and European businesses, particularly in cases where they have to balance US re-export controls for US-origin technologies and EU export controls for indigenous technologies and commodities.

There is also disparity in interpretation and implementation of Wassenaar dual-use control list decontrols of categories 5 part 1 and part 2. Different interpretations of Cryptography note 3 create not only complexity but also significant gaps in classification putting certain exporters at a competitive disadvantage. In addition, while items eligible to cryptography note 3 or 5A002.a note 2 are considered to be non-listed in the EU, they have dedicated control entries in the US EAR Commerce Control list under ECCNs 5x991 and 5x992 and remain a burden for many exporters and re-exporters.

DIGITALEUROPE asks that the US and EU, examine approaches to minimise the burden on exporters in Wassenaar control list interpretation and adoption.

3. Coherence across Wassenaar members

To facilitate lawful exports and reduce administrative frictions on businesses on both sides of the Atlantic, the EU and US should seek to achieve a coherent

[2] https://www.digitaleurope.org/resources/export-controls-tech-transfers/

application of export control measures to Wassenaar Arrangement participating states, particularly towards allies and partners with a functioning export control system in place.

4. Harmonised license validity periods

The approval period for export licenses in the EU and the US can vary tremendously. Whereas export licenses in the US generally have a four-year period of validity, it is not uncommon for licensing bodies in the EU to issue licenses that are valid for as little as one year. More harmonized license validity (in the direction of longer periods) would provide more business stability and facilitate lawful exports by better aligning licensing with the long-term nature of many overseas commercial relationships. A longer license validity period does not mean that the licenses cannot be revoked by authorities if conditions upon which licenses were granted change. Therefore, in our view, such alignment would facilitate exports without creating any additional risks for the respective governments, helping to secure national security and a level playing field.

5. Certainty in export authorization requirements

Wherever possible, the EU and US should ensure clear and objective authorization requirements for goods and technologies subject to export controls. List-based approaches that identify specific items subject to controls enable easier compliance and thus help facilitate legitimate trade. By contrast, requirements that place the onus on businesses to investigate and assess subjective conditions in export markets generate significant compliance burdens, regulatory unpredictability, and the potential for inconsistent application of rules.[3]

6. License-free transatlantic exports

In addition to seeking convergence in measures vis-à-vis exports to third countries, the US and EU should strive to create a license-free bilateral regime that enables trade between the EU and US of dual-use technologies included in the Wassenaar Arrangement without the need for export licenses or filing requirements, akin to the current relationship between the US and Canada. The EU and US already currently enable bilateral transfers of a limited set of technologies (enabled, for example, through license exceptions/general authorisations such as EU001). In the event that such an agreement cannot be

3 For example, Article 5 of Regulation (EU) 2021/821 requires “due diligence findings” wherein exporters must determine the intended use of exported items, as well as assess whether these items may be used in connection with “internal repression” or the commission of “serious violations of human rights and international humanitarian law,” terms that are undefined in the Regulation.

reached, they should consider expanding the scope of items eligible to these authorisations as well as reducing associated administrative burden.

7. Limit application of extraterritorial export controls

Both parties should reach a mutual understanding that national export control regulation should not have an extraterritorial reach on items subject to export controls. The mutual recognition of export licenses would alleviate compliance burden for EU exporters. In addition, and as with multilateral controls, national export controls need to be transparent with clear legal concepts and security objectives.

8. Limit the introduction of controls outside the multilateral regimes

We welcome the affirmation in the Inaugural Joint Statement that a multilateral approach to export controls is most effective for protecting international security and supporting a global level-playing field. As such, technical consultations between the parties should allow to facilitate discussions and adoption of new controls within the multilateral regimes. This will create a basis for a coordinated approach to an ever-evolving environment and ensure a strong basis to multilateralise any new controls at the level of the Wassenaar Arrangement. In doing so both parties could also allow for enhanced industry consultation.

DIGITALEUROPE thanks the EU and US for the opportunity to share these suggestions, and we look forward to continued engagement in the work of Working Group 7 and the broader Trade and Technology Council agenda.

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About DIGITALEUROPE

DIGITALEUROPE represents the digital technology industry in Europe. Our members include some of the world's largest IT, telecoms and consumer electronics companies and national associations from every part of Europe. DIGITALEUROPE wants European businesses and citizens to benefit fully from digital technologies and for Europe to grow, attract and sustain the world's best digital technology companies. DIGITALEUROPE ensures industry participation in the development and implementation of EU policies.

DIGITALEUROPE Membership

Corporate Members

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National Trade Associations

Austria: IOÖ
Belarus: INFOPARK
Belgium: AGORIA
Croatia: Croatian Chamber of Economy
Cyprus: CITEA
Denmark: DI Digital, IT BRANCHEN, Dansk Erhverv
Estonia: ITL
Finland: TIF
France: AFNUM, SECIMAVI, numeum
Germany: bitkom, ZVEI
Greece: SEPE
Hungary: IVSZ
Ireland: Technology Ireland
Italy: Anitec-Assinform
Lithuania: INFOBALT
Luxembourg: APSI
Moldova: ATIC
Netherlands: NLdigital, FIAR
Norway: Abelia
Poland: KIGEIT, PIIT, ZIPSEE
Portugal: AGEFE
Romania: ANIS
Slovakia: ITAS
Slovenia: ICT Association of Slovenia at CCIS
Spain: AMETIC
Sweden: TechSverige, Teknikföretagen
Switzerland: SWICO
Turkey: Digital Turkey Platform, ECID
United Kingdom: techUK