

LERU calls for a strong voice for research-intensive universities on export control issues within the EU-US Trade and Technology Council.

Background

The League of European Research Universities (LERU) is an association of 23 leading research-intensive universities in Europe. LERU welcomes the creation of the EU-US Trade and Technology Council (TTC) and its aim to promote common understanding across multiple domains relevant to the competitiveness of both the European Union (EU) and the United States (US)¹.

This short statement from LERU is applicable to Working Group 7 on Export Control of the TTC. However, LERU notes that several other areas of the TTC are also highly relevant to research-intensive universities, and we urge the US and EU authorities to ensure that the views of research-intensive universities are included in these working groups too.

Why research intensive universities are important in EU-US TTC discussions

The importance of export controls for appropriate research governance in universities in Europe is increasingly widely understood. The European Commission released an excellent guidance document for research institutions in September 2021² which provides a basis for researchers to understand what export controls are, and the key issues involved in assessing whether a technology is controlled or not. However several critical elements were left uncovered, including information on the applicability of export controls on patent applications, information about the future restrictions on sharing '*emerging*' and '*foundational*' technologies, and procedures for dealing with publications, collaborations, technical assistance, and the catch-all clause for human rights issues and cybersurveillance. These 'missing' elements are crucial to researchers to be able to effectively comply with the dual use regulation and are, ironically, those which a multilateral discussion of terminologies and approaches to dealing with would be most useful, especially for research-intensive universities which have a strong culture of international collaboration. Without clarity on these issues, research on these sensitive, but potentially economically important technologies, will likely stall.

LERU outlines several challenges which should be addressed to help improve EU-US research collaborations. LERU calls on the authorities to ensure a strong representation from both the US and EU university sector, amongst other players, to ensure that any guidance produced by the TTC is practical.

¹ <https://www.consilium.europa.eu/en/meetings/international-summit/2021/06/15/>

² <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:32021H1700&from=EN>

Ideally the TTC should:

1. Clarify the situation regarding cybersurveillance and human rights issues, including application of the *catch-all* clause;
2. Clarify the scope and application of controls on '*foundational*' and '*emerging*' technologies;
3. Outline how to manage controlled technology and patent applications;
4. Develop standard procedures for dealing with intangible technology transfers (ITT), particularly regarding publications, collaborations and technical assistance/deemed exports;
5. Develop a common EU-US agreement on terms such as '*basic*' and '*applied*' research and '*in the public domain*'.

This statement gives further information on these priorities.

Introduction

Research-intensive universities face several unique challenges when it comes to complying with dual use export control regulations. As acknowledged in the EU export control regulation:

'...academic and research institutions face distinct challenges in export control due to, inter alia, their general commitment to the free exchange of ideas, the fact that their research work often involves cutting edge technologies, their organisational structures and the international nature of their scientific exchanges'.

While tailored guidance exists for universities, there are still several significant issues which are not sufficiently covered and need clarification. These are also areas where international cooperation and (eventual) standardisation can add significant value.

LERU was pleased to read in Annex II of the Pittsburg Statement³ that:

- I.*the US and EU intend to enhance information exchange on the risks associated with technology transfers and exchanging best practices to support the effective application of controls while facilitating research collaboration between the EU and US research organisations.*

and that:

- II.*The European Union and the United States also recognise the responsibility of the private sector, as well as public R&D institutions, under export control rules, as well as the importance of raising awareness in the private and the research sectors, and that promoting cooperation and self-regulation is integral to effective export controls. They are committed to working closely in partnership with the private sector and public R&D institutions in that regard.*

LERU would like to argue for a strong representation for universities on export control within working group 7 of the EU-US TTC. The challenges faced by universities are often distinct to those faced by industry and LERU is concerned that the views of universities will be swamped

³ <https://ec.europa.eu/commission/presscorner/api/files/attachment/870149/210929%20Pittsburgh%20Statement.pdf>

by those of industry. This would be at the detriment of EU and US research collaborations on dual use items, and potentially, future economic opportunities.

The role of universities in these discussions should be two-fold:

- Firstly, to provide cutting-edge technical expertise on specific topics (whether they be technical, for example on potential applications of emerging technologies, or on more socio-legal issues such as human rights);
- Secondly, to provide guidance on the possible challenges to implementation of specific guidelines within the university context.

A key objective for the TTC should be to maximise research collaborations. This should consider:

1. Novel elements (such as human rights considerations);
2. Areas where *either* the US or EU have provisions (for example identification of specific emerging technologies) but where a joint approach would be beneficial;
3. Areas where *both* the US and EU already have provisions but where a common understanding of terms would lead to a significant reduction in bureaucracy and in wasted time.

This statement outlines those areas where we believe dialogue between the EU and US would be productive. While these areas are of course crucial to universities, they will, to varying degrees, be important for industry too.

Areas for EU and US Dialogue

1. Novel Elements

Human rights and cybersecurity provisions

Human rights considerations have only been explicitly addressed in the new EU export control regulation, and are also of significant importance to the US⁴. At present, there is no guidance about how exporters should comply with this issue and LERU believes that this should be one of the key themes of discussions between the US and EU authorities, both in terms of defining the cybersurveillance technologies that are considered problematic and in determining how to assess potential risks for human rights violations. By developing a common approach on dealing with human rights and cybersecurity issues, in close consultation with other likeminded countries and initiatives⁵, and with Working Group 6 of the EU and US TTC on Misuse of Technology Threatening Security and Human Rights, the EU and US could become leaders internationally on this fundamental topic and lead the development of a more just approach to dealing with potentially oppressive technologies in export controls.

2. Areas where either the US or EU have an established position, but where cooperation would be beneficial.

The scope and application of controls on ‘foundational’ and ‘emerging’ technologies

LERU supports further clarity over the scope and application of controls over ‘*foundational*’ and ‘*emerging*’ technologies in the EU. At present, these terms are ambiguous, and have the potential,

⁴ Export Controls and Human Rights Initiative
<https://www.nytimes.com/2021/12/10/business/economy/human-rights-export-controls.html>

⁵ For example see <https://the-japan-news.com/news/article/0008166517> and
<https://www.nytimes.com/2021/12/10/business/economy/human-rights-export-controls.html>

along with ‘catch-all’ clauses⁶, to include (and hinder) a significant amount of science and technology research at universities if not precisely formulated. LERU argues that university representatives should be included in discussions over the applications of foundational and emerging technologies, because in many cases, universities are at the vanguard of technology development.

Controlled technology and patent applications

The current EC guidance exempt from control ‘*the minimum information needed for patent applications*’. This definition is extremely vague and there is a crucial need for information from the authorities over how patent applications covering controlled technology could proceed. A dialogue between the export control authorities, patent authorities, patent lawyers (from both commercial and academic environments) would be welcomed by LERU.

Standard procedures for dealing with Intangible Technology Transfers (ITTs)

The open sharing of knowledge, collaboration and publications is sacrosanct to research-intensive universities. While universities clearly have an important role to play in raising awareness of the issues surrounding Intangible Technology Transfers amongst staff, students and visitors, further detail is needed on the practicalities of dealing with such technology transfers. In LERU’s view, there are (at least) three areas which the US and the EU should focus upon in the area of Intangible Technology Transfers. These are:

a. Collaborations

LERU has long questioned the practicalities associated with carrying out international research collaborations on controlled items (see our 2018 statement [The Dual Use Regulation - Specific Concerns from the Academic Sector](#)). Researchers frequently interact with their peers across the world in many ways, yet there is little practical guidance on how this can be controlled in a practical and non-discriminatory manner. Whilst the EU Regulation contains text on large projects, it does not solve many of the issues universities are faced with. Moreover, deeper coordination regarding visa screenings for particular individuals (e.g. Ph.D. students, visiting researchers) should be fostered (at a national level and EU/US level).

b. Technical Assistance

The term ‘*technical assistance*’ is present in the new EC regulation. It covers in-person exchanges with foreigners temporarily visiting a research institution, and this could for example, have a big impact on sharing knowledge with foreign students or temporary staff, without any guidance on what ‘*temporary*’ means. Practical guidance is sorely needed in this area, otherwise international mobility, which is invaluable for universities, will be stifled.

c. Publications

Publishing is an international enterprise, so it makes sense for there to be an international agreement and guidance on how publications should be managed when it comes to export controlled material. LERU asserted in its statement [Publications and Export Control](#) (2021) that authorities, universities, publishers, and funders should all be involved in discussions on how to control publications and knowledge exchange within research institutions to make a workable system. Publishers should also be recognised as crucial stakeholders in this sector, and should receive guidance consistent with that given to universities (and industry).

⁶ Such as in the EU

3. Areas where there are existing provisions in both the EU and US, but where a US-EU agreement is desirable.

a. 'basic' and 'applied' research

In the European Union, basic research (also known as fundamental research) has been defined in the EC as being research carried out at TRL 1 and 2. Applied research has been defined as being TRL 5 and above, whilst research carried out at TRL 3 and 4 are assessed on a case-by-case basis. However, it is still unclear how these TRL levels should be interpreted. Coherence with the definition of '*fundamental*' research in the US would greatly simplify transatlantic research partnerships where inconsistencies could lead to significant downtime in sorting out whether a project is either '*fundamental*' or '*applied*'.

b. 'In the public domain'

Information already in the public domain is exempted from controls in both the EU and USA, yet further clarification of what this means in practice is needed, and a multilateral agreement on this should be facilitated.

Conclusion

Research-intensive universities are at the cutting-edge of developments in science and technology, often working in collaborative teams and across international borders. As such, research-intensive universities have a significant interest in dual use export controls. LERU would be pleased to discuss the needs of research-intensive universities with the European Commission, the US Administration, and other like-minded organisations in future activities in this area.