



SPECTARIS e. V.  
14. January 2022

## STATEMENT

# SPECTARIS Statement on the priorities for the U.S.-EU Trade and Technology Council (TTC) working group on export controls

---

Anne-Kathrin Schmalz, Senior Manager Foreign Trade and Export Promotion

SPECTARIS German Industry Association for Optics,  
Photonics, Analytical and Medical Technologies e.V.

Werderscher Markt 15  
101117 Berlin

Fon +49 30 414021-58  
Fax +49 30 414021-33  
E-Mail: [schmalz@spectaris.de](mailto:schmalz@spectaris.de)



SPECTARIS e. V.  
14. January 2022

## STATEMENT

SPECTARIS is grateful for the opportunity to provide feedback on the TTC's Export Controls Working Group. The Trade and Technology Council (TTC) is a promising initiative and opportunity to improve the coordination and approaches on many global trade and policy challenges which jointly affect both the United States of America (USA) and the member states of the European Union (EU).

As the German Industry Association for Optics, Photonics, Analytical and Medical Technologies, we welcome the joint decision of the United States of America and the European Union to define export controls as one of the areas the TTC will initially focus on. The continuously growing export rate of more than 60 percent in the SPECTARIS industries shows the importance of access to foreign markets for our members.

In recent years, we have seen an increased unilateral approach to the imposition of export control as well as restrictive measures and a divergence in the interpretation of multilateral export control regimes. These developments have made it increasingly difficult for our export-strong members to navigate the often-contradicting national export control regulations and to comply with them.

In the field of export control, we would especially welcome a joint cooperation in the multilateral export regimes such as the Wassenaar Arrangement and close coordination within the multilateral export control regimes when it comes to the definition of new export control regulations e.g., for emerging technologies. Other areas for enhanced cooperation include facilitating lawful exports, reducing the administrative burden for businesses on both sides of the Atlantic and increasing the transparency and information sharing on licensing decisions and exemptions within the respective legislations.

In this statement SPECTARIS has highlighted **six suggestions** for areas where the United States and the European Union could increase collaboration within the TTC's working group on export controls:

### ■ Follow a multilateral approach over a unilateral approach

The Inaugural Joint Statement states that the TTC is intended to feed into coordination in multilateral bodies and wider efforts with like-minded partners. It also affirms a multilateral approach to export controls as being most effective for protecting international security and supporting a global level-playing field.

SPECTARIS also believes that a multilateral approach should always be favored over a unilateral approach in the field of export controls. Multilateral export control regimes function as key norm-setters in the area of supply-side non-proliferation policies and as a forum for licensing, enforcement and as a



SPECTARIS e. V.  
14. January 2022

## STATEMENT

dialogue platform for technical experts to discuss the control of new and emerging technologies. They also serve as a role-model for non-participating states which voluntarily comply with their guidelines and implement their control lists.

**The TTC working group on export control could therefore allow for enhanced consultations with the industry from the respective countries, serve as an additional platform for technical consultations which affect both the United States and the EU and allow coordination for issues to be raised within the multilateral export control regimes.**

### ■ Collaboration on export exemptions

The TTC working group on export controls also provides for a basis to find a common approach about products which should be exempted from export controls. Against the back drop of the corona pandemic, we have seen a trend to impose temporary export prohibitions for medical devices or to classify medical technologies and devices as foundational technologies essential to national security, as plans by United States to define a list of “emerging and foundational technologies” have shown.<sup>1</sup>

**The access to health care is a basic human necessity that should not be impeded by unilateral controls on export. An area for collaboration within the working group could therefore also be the agreement on export exemptions or mutually recognized license exceptions for products such as medical devices as well as raw materials and components that are intended for use and functioning of medical devices.**

### ■ Align approach and understanding of the Wassenaar Arrangement

Both the United States and the European Union are faced with adapting their export control regulations to cover new and emerging technologies. In order to ensure a global level-playing field, it is however important that the aim of the discussions in the working group on export control is to introduce any new export control regulations on a multilateral level. For the SPECTARIS industries, this is especially important, as not all competitors are bound by the multilateral export regulations.

<sup>1</sup> Bureau of Industry and Security: Identification and Review of Controls for Certain Foundational Technologies:

<https://www.federalregister.gov/documents/2020/08/27/2020-18910/identification-and-review-of-controls-for-certain-foundational-technologies>



SPECTARIS e. V.  
14. January 2022

## STATEMENT

The Wassenaar Arrangement is the central multilateral export control regime for the SPECTARIS industries, especially in the photonics industry. To align our proposals from the photonics industry and to communicate them towards the German and the United States government authorities, SPECTARIS and SPIE, the international society for optics and photonics, based in the United States, have founded a bilateral working group in 2019.<sup>2</sup>

**The SPECTARIS and SPIE Wassenaar Working Group meets twice a year and has been able to agree on several proposed modifications for the Wassenaar Arrangement which have been shared with the German and U.S. authorities. During the work in our joint working group, SPECTARIS and SPIE have experienced some challenges in regards to the Wassenaar Arrangement which also could be addressed and highlighted within the working group on export controls.**

There is a need to deal and address challenges associated with the fast pace of innovation and evolving emerging technologies quickly on a multilateral level and to develop a common approach that will protect but also promote these technologies and not put U.S. or European companies at a disadvantage compared to their competitors from Non-Wassenaar member states. The approval process within the Wassenaar Arrangement is often perceived as slow and arduous. This bares the risk that some member countries turn to a more unilateral approach to regulate the export of evolving emerging technologies. Whereas the United States has the control to propose new controls themselves within the Wassenaar Group, the European Union currently does not have a mandate to propose new export controls within the Wassenaar Arrangement and has to rely on their members states who are members of the Wassenaar Group.

**Regarding the introduction and discussion of new export control measures for emerging technologies within the Wassenaar Arrangement, the TTC working group on export control would therefore allow for a pre-discussion and alignment of new export control measures between the European Union and the United States prior to the Wassenaar meetings which then can be advocated within the Wassenaar Group meetings by the United States and the European Wassenaar member states.**

---

<sup>2</sup> German Information page on SPECTARIS and SPIE Wassenaar (Laser) Working Group: <https://www.spectaris.de/photonik/termine/detail/wassenaar-working-group/>



SPECTARIS e. V.  
14. January 2022

## STATEMENT

Additionally, the timing for the implementation of changes in the Wassenaar Arrangement control lists into the national legislation currently differs between the United States and the European Union. Whereas the United States usually adopt new regulations quickly, the European Union codifies the changes about one year later. For our members having to respect both European and U.S. re-export control regulations, the lack of harmonisation to implement changes proves to be a compliance challenge when they export dual use items or technologies.

**SPECTARIS therefore suggests that the United States and the EU examine possibilities on how to strengthen and streamline the Wassenaar approval and implementation process, in order to keep pace with the rapid technology development. Other areas of discussions could be how to reduce the frictions caused by the different understanding of the Wassenaar Regulations and implementation speed and to explore possibilities to minimise the burden on exporters in Wassenaar control list interpretation. We would also suggest to foster the dialogue with industry stakeholders such as the SPECTARIS SPIE Wassenaar Working Group.**

### ■ Harmonising license requirements and validity periods

Our member companies develop and produce innovative high-technology products with components often originating in the United States. When exporting their products, they often do not solely require a European export license but also need to obtain an export license from the U.S. Bureau of Industry and Security (BIS), the Directorate of Defence Trade Controls (DDTC) or other U.S. authorities.

The requirements to obtain an export license for certain products, components or end-users vary greatly between the European Union and the United States. Additionally, the validity periods also for export licenses differ, which often leads to companies having to re-apply for a new export license from one country while the export license from the other is still valid.

**During their meetings the members of the working group on export controls could therefore focus on harmonising export controls' policies, the processing times for the authorities to decide on export licenses and the validity of export licenses, in order to reduce the administrative burden on the affected companies.**



SPECTARIS e. V.  
14. January 2022

## STATEMENT

**In order not to hinder innovation in the United States or the European Union and since the United States and the EU member states are all Wassenaar member states, a fast-track system for bilateral exports or even the abolishment of export licenses for transatlantic trade of dual-use technologies included in the Wassenaar Arrangement could also be discussed.**

### ■ Reducing the application of extraterritorial export controls

The adoptions of restrictive measures or sanctions is one of the most used foreign policy tools in international relations. In the United States the use of sanctions applied by the U.S. Department of Treasury in close coordination with the U.S. Department of State has increased by 933% in the past 20 years.<sup>3</sup> The United States government also claims extraterritorial application of the U.S. regulations in the pursuit of national security and foreign policy objectives.

While the legality of extraterritorial sanctions remains controversial under international and trade law, the extraterritorial application of U.S. export controls creates regulatory burdens on European stakeholders and puts them between a rock and a hard place. The possibility to violate U.S. export control regulations could in the long term also discourage European companies from collaborating with U.S. partners, employing U.S. persons and create incentives to replace U.S. origin technologies in their products.

**To further strengthen the collaboration between EU and U.S., both TTC parties should use the working group on export control to find a common ground and further align their export control policies. They should work towards an agreement that national export controls should not apply extraterritorially for items subject to multilateral export controls. Especially in the field of humanitarian aid and goods such as medical devices the U.S. and the EU need to agree on export control practices that do not hinder innovation or access to humanitarian goods.**

### ■ Improve communication between license authorities and on existing license exemptions

The TTC working group on export controls offers great possibilities to share information between the licensing authorities in the respective countries. To facilitate lawful exports and to reduce the administrative

<sup>3</sup> U.S. Department of Treasury: The Treasury 2021 Sanctions Review, October 2021; <https://home.treasury.gov/system/files/136/Treasury-2021-sanctions-review.pdf>



SPECTARIS e. V.  
14. January 2022

## STATEMENT

burden on companies, who have to respect EU and U.S. export rules, the licensing authorities should work on sharing more information about license policies, reasons for license denials and license exemptions.

The extraterritorial application of U.S. export controls and the risks of violations has discouraged European entities from continuing their business activities in certain markets, although this would have been possible for some industries, such as the medical device industry.

The decline in export of medical devices to Iran serves as one of those examples, where a better communication on existing general licenses would have ensured the continuous supply of medical devices and humanitarian aid.

Although a General License is in place, which exempts medical devices from the Iran export restrictions and sanctions, reimposed by the United States after leaving the Joint Comprehensive Plan of Actions and also allows partners such as banks and logistics supplier to participate in these transactions without punishment, many European companies were nevertheless forced or decided to seize their Iran business due to reputation risks, fear of loss of business in the United States or simply because their banks and other business partners stopped their Iran business and upholding trade is not possible anymore.

**We would therefore suggest a better communication about the exemption of products such as medical devices from U.S. sanction regulations towards stakeholders in the United States and the EU as an area of cooperation or a topic, which can be addressed during the TTC meetings.**

*SPECTARIS is the German Industry Association for Optics, Photonics, Analytical and Medicinal Technologies. The association represents 450 mainly small and medium sized German companies. The represented industries achieved a total turnover of around 72 billion euros in 2020 and employed around 327,0000 people. Our members are very export-oriented with an average of two thirds of their products being exported.*