



"Bliss it was in that dawn to be a businessperson. But to be an exporter was very heaven." Or so William Wordsworth might have written, if he'd been around nowadays. And in international trade. And willing to look at Brexit as an opportunity rather than a problem.

This is the first issue of *The Exporter* to be published after January 31st, 2020, the date when the UK left the EU. On the face of it, nothing much has changed. And nothing much about Britain's future trading relationship with the European Union has been set in stone yet. But governments are setting out their positions and canny businesses will be looking at them and working out how they may affect their own plans. Which means that this is the perfect issue for our expert contributors to look at the countries of Europe - EU members as well as those outside the Union - and look at the opportunities available to those who think ahead.

We know it won't be easy for you. There will be many obstacles to overcome, new regulations to learn and big commercial decisions to make. *The Exporter* aims to help you along the way.

By the way, you may have spotted a new magazine feature on the page opposite: The Resource, our new directory of useful suppliers. Please check them out, and if you contact them say you found them in *The Exporter*. And if you have a product or service that would be useful to exporters or importers, drop my colleague Daniel Byway an email at [dan@the-exporter.com](mailto:dan@the-exporter.com) or call 01747 830520 to find out how you can get into The Resource. Plug over!

Enjoy your magazine,

Michael Burland, Managing Editor  
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## THIS MONTH'S GUEST CONTRIBUTORS



Shan Hassam  
*International Pharmaceuticals Entrepreneur*

The time has come for a re-alignment of priorities away from a reliance on the comfortable and nearer EU markets to seizing opportunities further afield, says Shan, and he has some ideas to share with you.

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Anne-Marie Martin  
*BCC's Director of Global Business Networks*

If you're looking to export - or import - it surely makes sense to get information and help from people on the ground who know what's what locally. Anne-Marie explains how BCC can do that for you.

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Philip Haellmigk  
*Trade, Export Control and Compliance Lawyer*

Your business is increasingly digital, whether you think it is, or want it to be. Philip explains how export control laws on technology transfer can affect any business transactions involving technology - even just sending data in an email.

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# Technology Transfer

What is it, what licenses and prohibitions are there, and what are the risk points? Dr. Philip Haellmigk (head of boutique German law firm HAELLMIGK and Professor of Law at the FOM University of Munich) explains



IMAGE COURTESY CARLOS MUZA

## I. Introduction

Technology transfer is increasingly coming under close observation in the context of export controls. The main reason for this is that general business is becoming increasingly digital: every company uses digital media for its internal communication or communication with its clients. In addition, data is stored on internal or external servers for access from abroad (shared services). In short: exports are becoming less physically transported, and more transmitted.

Against this background, companies should know the content and scope of the export control laws on technology transfers to identify potential risk points of their export business. This short article provides an overview of how export controls define technology transfer; it further illustrates when and how business transactions involving technology must be considered technology transfers. Finally, it shows the risk points companies should consider with respect to the exchange of technology.

## II. Definition of technology transfer

Export controls do not only cover the transport of items to a foreign country. They also cover cross-border deliveries and transmissions of technology. The transmission of technology can take place in two ways: either in a physical (e.g. by post, carriage in paper form, memory stick) or in an electronic manner (e.g. via computer internet, email, fax). Further, technology transfer also takes place when technical data is made available for electronic access from abroad. For example, if a UK company sets up a server in the UK to allow access for its customers from third countries, this is a technology export. In addition, technology transfer is not restricted to an exchange of data with external parties. Regulatory bodies require that cross-border transmissions are appropriately controlled. It is irrelevant whether technology is transferred to a foreign customer or an employee of the same company working in a third country. In both cases, technology is technically being transferred abroad, regardless of who the recipient of the technology may be. There-

fore, intra-company technology transfer is subject to export controls too.

## III. Examples of transfer modalities falling under the notion of technology transfer

Against this background, typical technology transfer modalities include:

- Carriage of technical data in paper form to a third country
- Carriage of technical data on a mobile terminal device, storage medium (laptop, smartphone, USB stick, CD/DVD) to a third country
- Transmission of technical data by post, email or fax to a third country
- Storage of technical data in a server in a third country
- Setting up a server with technical data & granting access to the server from a third country
- Publication of technical data on a website
- Webinar/online training including the exchange of technical data for foreign (potential) customers
- Publication of articles containing technical data
- Presentation at an international conference containing technical data

## IV. License requirements

Technology transfer is subject to the same restrictions as the export of an item. Therefore, a technology transfer requires an export license or could potentially be prohibited, if:

- The technology is controlled, i.e. it is military or dual-use technology
- The exporter is aware of a sensitive end-use by the customer, i.e. is aware that it will be used for mass destruction weapons or for military purposes in a country subject to an arms embargo
- The destination country is subject to an embargo, i.e. embargo regulations include special provisions regarding the transfer of technology to this country
- The customer is listed on a sanctions list, i.e. no economic resources including technical data can be made available to listed persons

## V. Risk points for companies

Due to the wide scope of export control regulation on technology transfer, there are many situations where a company's business may be affected. The following checklist provides an overview of the possible risk scenarios including technology transfers. ●

Risk scenario	Reason for control
The company export business involves embargoed countries	Embargos include separate regulations restricting technology transfers
Company business involves technical services abroad such as repair, maintenance or training	These services contain technology transfers
Company business involves participation in international research and development projects.	These projects include the sharing and exchanging technology
Company business involves electronic communication with affiliates and employees abroad	Intra-company technology exchange is a technology transfer
Company business involves business trips abroad	Carrying a laptop containing technical data is a technology transfer
Company business involves electronic data transfer models (intranet, cloud computing, shares services)	Using electronic data transfer models includes technology transfers
Company business involves site visits by foreign (potential) customers	Site visits can involve an exchange of technology
Company business involves speaking at international conferences	Speaking at conferences can include the exchange of technology
Company business involves recruiting foreign employees	During working practice a foreign employee can be provided with technology