September 9, 2004

The Honorable Condoleezza Rice
Assistant to the President for National Security Affairs
1600 Pennsylvania Avenue, NW, 1st Floor, West Wing
Washington, DC  20500

The Honorable John H. Marburger, III
Director
Office of Science and Technology Policy
424 Eisenhower Executive Office Building
Washington, DC  20502-0001

The Honorable Stephen Friedman
Assistant to the President and
Director, National Economic Council
1600 Pennsylvania Avenue, NW, 2nd Floor, West Wing
Washington, DC  20500

The Honorable Margaret Spellings
Assistant to the President for Domestic Policy
1600 Pennsylvania Avenue, NW, 2nd Floor, West Wing
Washington, DC  20500

Dear Dr. Rice, Dr. Marburger, Mr. Friedman, and Ms. Spellings:

We respectfully request your counsel and assistance regarding troubling developments in national export control policy and its application to university research. In particular, we draw your attention to recent reinterpretations and proposed changes in regulations that we believe should be of great mutual concern to the federal government and the U.S. research university community.

This letter is occasioned by findings and recommendations issued by the Department of Commerce Inspector General (IG) following a recent assessment of university compliance with export regulations that was conducted by the IGs of the Departments of Commerce, Defense, and State. We have a sense of urgency, because we have been told that these recommendations may be implemented very soon. In our view, these are very serious matters of national policy that require your attention and dialogue with the research university community.

Therefore, we seek your prompt attention to the need for a government-wide consensus on export policy that will both be responsive to our security needs in the face of terrorist and other threats and provide for continuing U.S. global leadership in fundamental research and education and the industrial innovation that flows from it.
We especially believe that we must work together to avoid proposed narrowing of the definition of “fundamental research” and widening of the definition of “deemed exports” when foreign nationals engage in certain research or study, and thereby come into contact with associated equipment on our campuses. Our deep concern in this regard is triggered by the DoC IG’s March 2004 Report IPE-16176, in which it is stated that

according to BIS [Bureau of Industry and Security], the technology for the “use” of controlled equipment—regardless of how that is defined—is subject to the deemed export provisions regardless of whether the research being conducted with that equipment is fundamental or not

and the ensuing recommendation that BIS amend its policy to

require U.S. entities to apply for a deemed export license for employees or visitors who are foreign nationals and have access to dual-use controlled technology if they were born in a country where the technology transfer in question is EAR-controlled regardless of their most recent citizenship or permanent resident status.


As you know, fundamental research of the type generally conducted on our campuses has been protected from such controls by reasoned application of National Security Decision Directive 189 (NSDD 189) since it was signed by President Reagan in 1985. In November 2001 Dr. Rice affirmed that this directive remains in effect. Under various reinterpretations and recommendations suggested by the DoC IG, we estimate that large research universities would need to apply for thousands of such export licenses annually. To put this in context, we understand that last year Commerce received only a sprinkling of applications for export licenses of this type.

To further demonstrate why we believe that the interpretations and recommendations of the IGs are overly, and nonproductively inclusive, we note that in their report IPE-16176, the Office of Inspections and Program Evaluations of DOC’s Bureau of Industry and Security, stated that

- “Use” of EAR-controlled equipment is defined as “operation, installation (including on-site installation), maintenance (checking), repair, overhaul, and[/or] refurbishing.”

- U.S. academic institutions and the Federal research community generally use the fundamental research exemption under the EAR for most of the research they conduct on campus. However, when foreign nationals at a U.S. university or Federal research facility use controlled equipment, it is most likely accompanied by some transmittal of use or other information or instruction constituting “technology.”

We are deeply concerned by these and other export control matters in the IG reports for several reasons:
1. We could inadvertently move down a path of requiring U.S. universities to track in detail and restrict their international students’ participation in classes and research in ways that are antithetical to the long-standing principle of openness and in ways that would compromise the international competitiveness and leadership of our institutions. It would create two “classes” of students on our campuses, despite the fact that all international students are screened before they are granted a visa to study here.

2. Processing the required thousands of export licenses would require expanded bureaucracy, delay research, and encourage international students to study in other countries rather than in the United States.

3. By training tomorrow’s leaders, discovering new knowledge, and developing new technologies, university education and research contribute in unique and important ways to our nation’s role as a world leader and to our national economic vitality, health, quality of life, and security. We must preserve this capability.

Our nation faces dangers that are all too real, but we trust that as key policy makers, you will work to avoid overreaction that could be counterproductive to our ultimate security and to our power to innovate.

Following the terrorist attacks of September 11, 2001, Executive Branch officials worked closely with university representatives to formulate appropriate and workable changes in visa policy and procedures. Working collaboratively, federal government and university officials have made substantial progress toward meeting legitimate national security goals without compromising the openness and strength of our research and education enterprise. Following this working model we strongly urge your prompt intervention to ensure that new export policies and regulations are not adopted until their consequences have been fully assessed in substantive and sustained dialogue with the university community.

Thank you for your attention to these important matters. We look forward to your leadership and to working with you to resolve these matters in the national interest.

Sincerely yours,

Charles M. Vest, President
Massachusetts Institute of Technology

Lee C. Bollinger, President
Columbia University

William R. Brody, President
Johns Hopkins University

David Baltimore, President
California Institute of Technology

David L. Boren, President
University of Oklahoma

Wayne Clough, President
Georgia Institute of Technology
Jared L. Cohon, President
Carnegie Mellon University

Robert C. Dynes, President
University of California System

Marye Anne Fox, Chancellor
University of California, San Diego

John L. Hennessy, President
Stanford University

Jeffrey Lehman, President
Cornell University

James Bernard Machen, President
University of Florida

Lawrence H. Summers, President
Harvard University

John D. Wiley, Chancellor
University of Wisconsin-Madison

Mary Sue Coleman, President
University of Michigan

Larry R. Faulkner, President
University of Texas at Austin

Robert M. Gates, President
Texas A&M University

Karen Holbrook, President
Ohio State University

Richard C. Levin, President
Yale University

Don M. Randel, President
University of Chicago

Shirley M. Tilghman, President
Princeton University

Mark S. Wrighton, Chancellor
Washington University in St. Louis

cc: The Honorable Andrew H. Card
The Honorable Donald L. Evans