

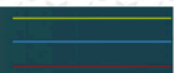


# *The need for a global level-playing field: foreign availability, extraterritoriality and the globalisation of export controls*

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# Extraterritoriality for EU exporters ?

- Essentially implementing US export control law (EAR) for
- Re-transfers
  - Deemed reexport
  - Foreign-made items
  - Strategic Trade authorisation (STA)

# Re-transfers

Retransfer of an items **previously** exported from the US from one third state to another third state

- Including **between** two EU Member states
- **Within** a EU Member State (in country transfer)

# Deemed reexport

Release of US **technology** or source code to a foreign national **in the US** or **in a third country**

# Foreign-made items

## *De minimis principle*

Products manufactured in Europe

- containing more than 25% of US controlled items
- containing more than 10% of US controlled items for certain destinations
- Regardless of the value for certain sensitive items

% calculated on a fair market value

# Strategic Trade Authorisation

**No authorisation requirement** for trade of certain US items between EU Members States

- Submit to documentation and records keeping requirements
- Cyprus and Malta excluded

# Extraterritoriality proactive/ reactive

**Pro-active** : imposing  
constraints to third states

**Reactive** : supporting  
constraints imposed by  
third states



# Proactive

**No common understanding**

between Member States or not  
perceived as an problem

**Up to each Authority** to decide if  
specific conditions will be  
required

Re-export authorisation

# Reactive

EU reaction to US extraterritoriality provisions

- Non EU institutional specific policy/rule
- Non EU Member States common policy/rule
- Diverse national policies

# Member States policies

- Most are **NEUTRAL** regarding compliance with third states legislation and leave the decision to their operators
- Some **INFORM** through guidelines to exporters or by way of other outreach activities of the need to conform to the legislation of the country of origin
- Few agree to **EXCHANGE** information and/or **COOPERATE** with third countries on the implementation of extraterritorial application of national regulations-

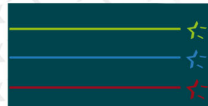
# Consequences

- **No level playing field** for EU exporters
- **Lack of political will** from Member States and EU Institution to act and adopt rules or policies

# Preceding cases

EU has acted in the past to counter extraterritorial effect on EU industries of Helms -Burton and D'Amato - Kennedy Acts (Cuba, Iran, Libya)

*Regulation (EC) n° 2271/96 and Joint Action 96/668/CFSP96 aiming at protection against extraterritorial application of legislation adopted by third countries*



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