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

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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
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
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
No common understanding between Member States or not perceived as a problem.

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

Re-export authorisation.
EU reaction to US extraterritoriality provisions
- Non EU institutional specific policy/rule
- Non EU Member States common policy/rule
- Diverse national 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
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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