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Quentin Genard¹

Centre for International Initiatives

***European Union responses to extraterritorial claims by the
United States: lessons from the case of trade controls²***

Abstract

Recently, the need for laws to regulate the trade of certain categories of goods has become apparent. Strategic trade controls are an element of compliance with international arms control and disarmament treaties, and other foreign and security policy commitments. If states possess proper trade control systems, what happens when they disagree about their application? The United States has adopted legislation to regulate the movement of goods that contain extraterritorial provisions. When such laws do not comply with international law, disputes may occur, complicating transatlantic relations. This paper scrutinizes the responses of the European Union (EU) to US extraterritoriality claims and predicts possible future EU behaviour. Formal and informal regimes regulate international trade, but their legal nature remains to be determined. States can conclude agreements to avoid disputes about the legality of an action, but trade controls remain ambiguous. EU member states have adopted various approaches to extraterritoriality. Differing applications of extraterritoriality and related national laws create uncertainty for EU members and industrial operators, increasing the possibility of an EU-US confrontation, particularly if views vary on the threat a country poses to international peace and security

Keywords: United States of America, European Union, trade control, extraterritorial claimers

¹ Quentin Genard (Belgium) is adviser on EU and international affairs to a Belgian government Minister, an associate researcher at Groupe de Recherche et d'Information sur la Paix et la sécurité (GRIP) in Brussels, and an expert on non-proliferation policies at the Centre for International Initiatives (Poland).

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*The extraterritoriality problem is worth serious attention, and is most constructively viewed not as a primarily legal but as a primarily political and economic problem, too important to be left to lawyers.*³

I. Introduction

The relationship between trade and foreign policy has always occupied a central place in European integration. In his famous declaration of 9 May 1950, Robert Schuman stressed that trade serves both as a means to achieve peace throughout Europe and as a way to meet obligations abroad.

The solidarity in production thus established will make it plain that any war between France and Germany becomes not merely unthinkable, but materially impossible. . . . This production will be offered to the world as a whole without distinction or exception, with the aim of contributing to raising living standards and to promoting peaceful achievements. With increased resources Europe will be able to pursue the achievement of one of its essential tasks, namely, the development of the African continent.⁴

³ Ergéc, R., *La compétence extraterritoriale à la lumière du contentieux sur le gazoduc Euro-sibérien* [Extraterritorial jurisdiction in light of the dispute over the Euro-Siberian pipeline], Collection de droit international, Editions de l'Université de Bruxelles (University of Brussels: Brussels, 1984), p. 11.

⁴ 'The Schuman Declaration, 9 May 1950', <http://europa.eu/about-eu/basic-information/symbols/europe-day/schuman-declaration/index_en.htm>.

Using a similar argument, Sophie Meunier and Kalypso Nicolaïdis have presented the European Union (EU) as a 'trade power', whose strength derives from the size of its market and its experience in negotiating international trade agreements. In their view, Europe should be seen as the most powerful trading bloc in the world as, since the 2004 enlargement, the EU has become the largest trader of services and a giant in the trade of goods.⁵ The EU is a 'power *through* trade' because it seeks to achieve political goals via economic means.⁶ Free trade is not the rule for every aspect of the EU's trade patterns: some goods and technologies are subject to restriction and are encompassed in a 'trade control regime'.⁷ The EU has adopted several of these, which are characterized by their diversity: they pursue divergent objectives and regulate the trade of various goods. Some of the regimes were conceived as part of the Common Foreign and Security Policy (CFSP), while others are completely unrelated to it.⁸ However, the EU is not an

⁵ Meunier, S. and Nicolaïdis, K., 'The European Union as a conflicted trade power', *Journal of European Public Policy*, vol. 13, no. 6 (Sep. 2006), pp. 907, 908.

⁶ Meunier and Nicolaïdis (note 3), pp. 910–11 (emphasis in original).

⁷ A trade control regime can be defined as a framework of rules, legally binding or not, that aims at controlling the movement of specific goods, including usually import, export, transit, trans-shipment, brokering and financing in order, most of the time, to achieve an objective of foreign policy. This definition is based on Bauer, S., 'Arms trade control capacity building: lessons from dual-use trade controls', SIPRI Insights on Peace and Security, no. 2013/2, Mar. 2013, <<http://books.sipri.org/files/insight/SIPRIInsight1302.pdf>>, pp. 3–4.

⁸ To illustrate by one example, although many can be given, the trade of cultural goods is strictly regulated in the common market but also when an EU member state is trading with a third country. The development of such a regime is linked to the completion of the internal market: regarding 'the completion of the internal market, rules on trade with third countries are

isolated actor; instead, it is part of a more complex network of rights and duties in which international law plays a special role.

Two elements deserve mention: the 1947 General Agreement on Tariffs and Trade (GATT), which was a major step in the development of international economic integration, and United Nations Security Council Resolution 1540, which represents a milestone in the international fight against the proliferation of nuclear, biological and chemical weapons and their means of delivery.⁹ The EU has regularly emphasized the role of Resolution 1540 in promoting universal participation in the 1968 Non-Proliferation Treaty (NPT), the 1972 Biological and Toxin Weapons Convention (BTWC) and the 1993 Chemical Weapons Convention (CWC), as well as the effective national implementation of those three treaties.¹⁰ The resolution was adopted under Chapter VII of the UN

needed for the protection of cultural goods'. The framework of the trade control regime is comprised by Council Regulation (EEC) no. 3911/92 of 9 December 1992 on the export of cultural goods, *Official Journal of the European Communities*, L395, 31 Dec. 1992; and Council Regulation (EC) no. 116/2009 of 18 December 2008 on the export of cultural goods (codified version), *Official Journal of the European Union*, L39, 10 Feb. 2009.

⁹ Vincent, P., *Institutions économiques internationales: Éléments de droit international économique* [International economic institutions: elements of international economic law] (Larcier: Brussels, 2009), pp. 29–30; and UN Security Resolution 1540, 28 Apr. 2004.

¹⁰ Beaucillon, C., 'Multilateralism, the EU, and UNSCR 1540: reinforcing national responsibilities', European Union Institute for Security Studies Policy Brief no. 10, Dec. 2012, <http://www.iss.europa.eu/uploads/media/PolicyBrief_10.pdf>, p. 2. Treaty on the Non-Proliferation of Nuclear Weapons, opened for signature 1 July 1968; entered into force 5 Mar. 1970; Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction, opened for signature 10 Apr. 1972, entered into force 26 Mar. 1975; and Convention on the Prohibition of the Development, Production,

Charter, which means that states are legally bound by its provisions. Four elements of the resolution constitute the minimum international standards for non-proliferation.

1. States are forbidden to provide support to any non-state actor involved in activities related to weapons of mass destruction (WMD).
2. Each state is required to 'adopt and enforce appropriate effective laws' to prevent non-state actors from acquiring materials that can constitute part of a WMD.¹¹
3. To that end, each state is required to put in place domestic controls, including physical protection and trade control regimes.
4. A committee, the '1540 Committee', is established within the UN framework to monitor the implementation of the resolution.

As some scholars have pointed out, Resolution 1540 was warmly welcomed by the EU because of its focus on non-state actors, in line with the 2003 European Security Strategy and the 2003 EU strategy against the proliferation of weapons of mass destruction (WMD).¹² It

Stockpiling and Use of Chemical Weapons and on their Destruction (Chemical Weapons Convention, CWC), opened for signature 13 Jan. 1993, entered into force 29 Apr. 1997. See United Nations Treaty Collection, <<https://treaties.un.org/>>.

¹¹ Resolution 1540 (note 7), point 2.

¹² Beaucillon (note 8); Council of the European Union, 'A secure Europe in a better world: European security strategy', 12 Dec. 2003, <<http://www.consilium.europa.eu/showPage.aspx?id=718>>; and Council of the European Union, 'Fight against the proliferation of weapons of mass destruction: EU strategy against proliferation of weapons of mass destruction', 15708/03, 10 Dec. 2003. Most Council documents are available at <<http://ue.eu.int/documents/>>.

therefore emphasized the signing of international treaties that aim to control the trade between states of certain categories of goods.

These elements represent the *de minimis* requirements with which a state has to comply. But a trade control regime may also include other elements, depending on the level of maturity and complexity of the regime. In the case of the EU, if every member state now possesses a proper trade control system, can there be any place for extraterritorial legal competence—that is to say, competence exercised vis-à-vis persons or goods located in another state? The United States has adopted several laws and regulations to regulate the movement of sensitive goods that contain provisions related to extraterritoriality: the Export Administration Act (EAA), the Export Administration Regulations (EAR) and the International Traffic in Arms Regulation (ITAR).

This paper scrutinizes the responses of the EU and some of its member states to the US claims related to extraterritoriality, the presence of extraterritorial elements in the EU trade control regime and assesses possible future EU behaviour. It first presents some elements of international trade control regimes in relation to extraterritoriality, then analyses US justifications for extraterritoriality claims in relation to international public law, followed by discussion of the reactions of the EU and its member states. Finally, the views of industrial enterprises are examined.

II. The US trade control system in the framework of international trade control regimes

As scholars have noted, when the issue is limiting trade, states generally prefer informal regimes to formal ones.¹³ GATT and the NPT are examples of formal regimes.¹⁴ On the other hand, the best example among the informal regimes is the Nuclear Suppliers Group (NSG). The NSG participating states exchange information and agree guidelines intended to strengthen national export controls on nuclear and nuclear-related dual-use items in order to reduce the risk that legitimate international commerce will contribute to nuclear weapon proliferation.¹⁵ All EU member states and the USA are among the members of the NSG, and the European Commission is an observer.

The controls on re-transfer in the NSG Guidelines for Nuclear Transfers specify that the prior consent of the original supplier must be obtained before a recipient re-transfers certain nuclear items.¹⁶ The same logic is applied in the dual-use guidelines, which specify that the supplier must

¹³ Michel, Q., *Concilier l'inconciliable: Les régimes internationaux et européens de contrôle du commerce nucléaire* [Reconciling the irreconcilable: international and European nuclear trade control regimes] (Peter Lang: Brussels, 2012), p. 114.

¹⁴ For a deeper analysis see Michel (note 11), pp. 91-114.

¹⁵ Nuclear Suppliers Group, <<http://www.nuclearsuppliersgroup.org/>>.

¹⁶ See the NSG's Guidelines for Nuclear Transfers, 'Controls on retransfer', reproduced in International Atomic Energy Agency, 'Communication received from the Permanent Mission of the Netherlands regarding certain member states' guidelines for the export of nuclear material, equipment and technology', INFCIRC/254/Rev.10/Part I, 26 July 2011.

require the importing state to obtain its consent before any re-transfer of specified items.¹⁷

The exact legal nature of international regimes like the NSG has yet to be determined. The agreed texts are discussed and revised as if they were treaties by individuals who represent and make commitments on behalf of their government, but these regimes do not have the legal status of a treaty. Some scholars refer to them as ‘unconventional concerted acts’.¹⁸ A state can therefore only be criticized on political grounds for failing to abide by the rules or guidelines of these international regimes, because the regimes contain ‘behavioural commitments’ agreed by the participating states for themselves.¹⁹

The right of states to create laws that apply to territory is indisputable. Political authorities retain the monopoly of legislative action as long as they are regulating behaviours taking place on the national soil. Thus, a state may adopt laws regarding goods imported to or exported from its territory. However, some states—including the USA—have tried to alter this concept and have been highly creative. The USA’s case law and political attitude, for example, endorses the ‘effects doctrine’ as regards US jurisdiction, arguing that individuals involved in events that happen elsewhere in the world, but which can have an impact on US territory,

¹⁷ International Atomic Energy Agency, ‘Communication received from certain member states regarding guidelines for transfers of nuclear-related dual-use equipment, material, software and related technology’, INFCIRC/254/Rev.8/Part 2, 30 June 2010.

¹⁸ Michel (note 11), p. 116 (author’s translation).

¹⁹ Michel (note 11), p. 115 (author’s translation).

are subject to US laws. By extension, this approach leads to global jurisdiction, and its validity is generally contested in international law.²⁰

The US trade control system: considering goods as humans

The extraterritorial competence of a state is defined as the ‘competence exercised vis-à-vis persons or goods located in another state’.²¹ This approach rapidly comes into conflict with the underlying logic of international public law, which allows extraterritoriality but limits it. The International Court of Justice has given some guidelines in the so-called Lotus case:

Far from laying down a general prohibition to the effect that States may not extend the application of their laws and the jurisdiction of their courts to persons, property and acts outside their territory, it leaves them in this respect a wide measure of discretion which is only limited in certain cases by prohibitive rules; as regards other cases, every State remains free to adopt the principles which it regards as best and most suitable.²²

²⁰ de Mestral, A. L. C. and Gruchalla-Wesierski, T., *Extraterritorial Application of Export Control Legislation: Canada and the U.S.A.* (Martinus Nijhoff: The Hague, 1990), p. 20.

²¹ Association of Francophone Universities, *Dictionnaire de droit international public* [Dictionary of international law] (Bruylant: Brussels, 2001), p. 211 (author’s translation).

²² Permanent Court of International Justice, ‘The case of the S. S. “Lotus”’, *Collection of Judgments*, Series A, no. 10, 7 Sep. 1927, <http://www.icj-cij.org/pcij/serie_A/A_10/30_Lotus_Arret.pdf>, p. 19.

What are therefore the limits of the extraterritorial competence of states? According to some scholars, the link should be based on a 'certain tie between the extraterritorial events considered or the extraterritorial situation and the states'.²³ The rationale of a state's jurisdiction is commonly related to its population, its territory or its very existence as a state (i.e. its sovereignty).²⁴

The US trade control laws adopt a peculiar interpretation of the population criteria, expressed through citizenship. Indeed, a licence for the re-export of some goods that are located outside the territory of the USA is required. This would, for example, apply to the case of a listed item built on US soil and then exported to a company based in Germany. If the latter were willing to re-export the item, it would have to ask US authorities for prior consent to do so. However, the idea that items have a nationality is not self-evident. In international practice, items usually do not possess a nationality, and courts have upheld this view.²⁵ As some scholars have argued: 'identifying any "genuine connection of existence, interests and sentiments" between the United

²³ Stern, B., 'Quelques observations sur les règles internationales relatives à l'application extraterritoriale du droit' [Some observations on the international rules on extraterritorial application of law], *Annuaire français de droit international*, vol. 32 (1986), p. 20 (author's translation).

²⁴ Behrendt, C. and Bouhon, F., *Introduction à la théorie générale de l'Etat: manuel* [Introduction to the general theory of the state: a manual] (Larcier: Brussels, 2011), pp. 76–80.

²⁵ Stern (note 21), p. 36. On relevant rulings see, notably, American President Lines Ltd v. China Mutual Trading Co. Ltd, Supreme Court of Hong Kong (1953), quoted in Meessen, K. M. (ed.), *Extraterritorial Jurisdiction in Theory and Practice* (Kluwer Law International: The Hague, 1996), p. 95.

States and compressor equipment located in a foreign nation defies ordinary powers of analogy'.²⁶

The US authorities also require licencing for any goods or technologies that have been made with US goods or technologies, or using such goods and technologies. This US view is unique, and not echoed or accepted in the international community.

Finally, US extraterritorial claims can also focus on individuals. This point is less litigious since international law recognizes as legal and legitimate the right of a state to control the behaviour of its nationals abroad.²⁷ Therefore, if a government rules that its citizens should not comply with an embargo, the people who possess the nationality of the state are bound by the obligation according to international public law. However, if the citizens are based in a third country, the country of residence may prosecute them if they decide not to comply with that country's laws. This is a rather uncomfortable position. The claims used by a state to justify its extraterritorial application of a norm can be examined against international public law to determine the existence, or absence, of a genuine link that would define what is permissible and what is forbidden. The US view of the jurisdiction of its trade control legislation seems to encompass both people and goods, and always on the basis of nationality.²⁸ Table 1 presents situations where US

²⁶ 'Extraterritorial application of the Export Administration Act of 1979 under international and American law', *Michigan Law Review*, vol. 81, no 5 (1983), p. 1325.

²⁷ Stern (note 21), p. 33.

²⁸ de Mestral and Gruchalla-Wesierski (note 18), p. 28.

authorization is necessary and the justification for the requirement given by US authorities.

Table 1. Situations where US authorization is required and the US doctrine governing the requirement

Situation	Doctrine
<i>Goods or technology</i> Re-export of US-origin goods	Doctrine of the nationality of goods or technologies: goods or technologies remain under US jurisdiction throughout their life because they were made on US soil and therefore possess US nationality
Export of goods or technologies that contain a certain percentage of US components or if the goods or technologies have been made using US-origin goods or technologies	Effects doctrine: all goods or technologies that are by-products or secondary products, in any manner, of their US equivalents possess US nationality and therefore fall under US jurisdiction
<i>Individuals</i> US citizens cannot export goods or technologies to certain destinations without prior authorization by US authorities	Doctrine of personal jurisdiction: because individuals are its citizens, the authorities of a country have the right to regulate their behaviour throughout the world

When US extraterritorial claims are not compliant with international law, the absence of a permanent public prosecutor leads to disputes about these rules only during conflicts between states. The following section focuses on EU-US relations in this regard when extraterritorial application of the two parties' law was at the heart of the dispute.

III. Extraterritoriality and the trade control system of the European Union and its member states

The position of the member states

EU member states have adopted different approaches to extraterritoriality. As noted elsewhere, extraterritoriality can be proactive and reactive.²⁹ Both aspects are discussed in this section, which focuses on the examples of France and the United Kingdom. The UK's legislation contains elements of active extraterritoriality, notably as regards its citizens, who, regardless of location, can be subject to specific controls depending on the goods for which they intend to provide brokering services.³⁰ For some goods (e.g. cluster munitions and equipment that could be used for torture) authorization is required for all brokering activities.³¹ The British Parliament does not seem to be

²⁹ Jankowitsch-Prevor, O. and Michel, Q. (eds), *European Dual-Use Trade Controls: Beyond Materiality and Borders* (Peter Lang: Brussels, 2013).

³⁰ 'The term "United Kingdom person" is defined as 'a UK national, a Scottish partnership or a body incorporated under the law of any part of the UK. A UK national is an individual who is: a British Citizen, a British overseas territories citizen, a British National (Overseas) or a British Overseas Citizen; a person who under the British Nationality Act 1981 is a British subject; [or] a British protected person within the meaning of that Act'. British Department for Business Innovation & Skills, 'Extraterritorial trade controls', <<https://www.gov.uk/extraterritorial-trade-controls>>.

³¹ 'Supplying or delivering, agreeing to supply or deliver, or doing any act calculated to promote the supply or delivery of Category A goods where that person knows or has reason to believe that their action or actions will, or may, result in the removal of those goods from one third country to another'. British Department for Business, Enterprise & Regulatory Reform (BERR), 'Export Control Act 2002: review of export control legislation (2007), supplementary guidance note on trade ("trafficking and brokering") in

reducing its extraterritorial control efforts, quite the contrary. A recent report states that: 'We conclude that it is disappointing that the Government chose to reject the joint proposal prepared by industry and NGOs on the extension of extra-territorial controls on the trade of strategic exports. . . . At the same time we adhere to our previous recommendation that extra-territorial controls should be extended to all items on the Military List. We conclude that we see no justification for allowing a UK person to conduct arms exports overseas that would be prohibited if made from the UK.'³²

Some licences issued by British authorities contain specific obligations that require an end-use certificate with a statement that the item will not be re-exported to an embargoed country.³³ In such a case, the legal obligation cannot be considered as extraterritorial because the buyer has agreed to the obligations by signing the contract. In 2011 the British Parliament considered a bill that would have required prior consent by the British authorities for every re-export of goods primarily exported

controlled goods (in effect from 6 April 2009)', Jan. 2009, <<http://www.bis.gov.uk/files/file49827.pdf>>, p. 5.

³² British House of Commons, Business, Innovation and Skills, Defence, Foreign Affairs, and International Development Committees, 'Scrutiny of arms export controls (2010): UK strategic export controls annual report 2008, quarterly reports for 2009, licensing policy and review of export control legislation', 30 Mar. 2010, <<http://www.publications.parliament.uk/pa/cm200910/cmselect/cmquad/202/202.pdf>>.

³³ British Export Control Organisation, 'Notice to exporters, 2010/14: revised requirement and new template for end-user undertakings for standard individual export licence applications', NTE201014, 6 Apr. 2010, <<http://www.bis.gov.uk/assets/biscore/eco/docs/notices-to-exporters/2010/nte201014.doc>>.

from the UK, but no agreement could be reached while the Parliament was in session.³⁴

In the context of reactive extraterritoriality, the British position is noteworthy as it manifests British acceptance of US claims. The British-US Defence Trade Cooperation Treaty authorizes the export of items that fall under the USA's ITAR to British territory without prior consent.³⁵ Interestingly, Article 9 of the treaty states that re-export of a US item that is present on British territory requires the British authorities to approve the re-transfer, after first verifying that US authorization has been granted. This is a perfect example of legal compliance.³⁶

³⁴ For the proposed bill see British House of Commons, 'Re-export control bills, a bill to make provision for the regulation of the re-export of military equipment and goods further to their original exportation from the United Kingdom, Bill 138, 55/11', 27 Jan. 2011, <<http://www.publications.parliament.uk/pa/cm201011/cmbills/138/11038.pdf>>.

³⁵ Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning defense trade cooperation, signed 21 and 26 June 2012 (in London and Washington, DC), entered into force 13 Apr. 2012, <<http://www.official-documents.gov.uk/document/cm86/8684/8684.pdf>>.

³⁶ 'All Re-transfers or Re-exports of Defense Articles shall require authorization by Her Majesty's Government. In reviewing requests for such authorization, Her Majesty's Government shall...require supporting documentation that includes United States Government approval of the proposed Re-transfer or Re-export. The procedures for obtaining United States Government approval and Her Majesty's Government authorization shall be identified in the Implementing Arrangements'. Treaty between the Government of the United Kingdom of Great Britain and Northern Ireland and the Government of the United States of America concerning defense trade cooperation (note 33).

The UK has not always been so compliant as, from the mid-1960s, US legal actions considered inconsistent with British interests were contested—in the first instance in a dispute over commercial fishing, but also including reforms to US export control laws to incorporate extraterritorial provisions. Diplomatic pressure reached a climax when British uranium suppliers were taken to court by the USA.³⁷ In response, the British Parliament passed the 1980 Protection of Trading Interests Act (PTIA) to protect British interests.³⁸ Under the PTIA, firms may receive a direct order from the government that prohibits compliance with the extraterritorial laws of a third state.³⁹ British courts are also prohibited from requiring evidence to be produced for a case based on an extraterritorial claim of a third country. Finally, a British company may ask a court for a refund of penalties that it has been forced to pay in a third country on the basis of extraterritorial laws.⁴⁰ The first application of the law was the 1981–82 Laker Airways case.⁴¹ In 1982 the USA also threatened British business interests in Central and Eastern

³⁷ Ryngaert, C., 'Jurisdiction in international law: United States and European perspectives', Unpublished PhD dissertation, Katholieke Universiteit Leuven, 2007, <<https://lirias.kuleuven.be/bitstream/1979/911/2/doctoraat.pdf>>, p. 505.

³⁸ Protection of Trading Interests Act 1980, 20 Mar. 1980, <<http://www.legislation.gov.uk/ukpga/1980/11>>.

³⁹ Protection of Trading Interests Act 1980 (note 36), paras 1–2.

⁴⁰ 'United States diplomatic note concerning the U.K. Protection of Trading Interests bill', *International Legal Materials* (1982), p. 840.

⁴¹ Hartley, T. C., *International Commercial Litigation: Text, Cases and Materials on Private International Law* (Cambridge University Press: Cambridge, 2009), pp. 848–49.

Europe by applying an export embargo related to the construction of the trans-Siberian pipeline.⁴²

In 1996, a few days before the adoption by the US Congress of the Cuban Liberty and Democratic Solidarity (Libertad) Act (known as the Helms-Burton Act) and the Iran and Libya Sanctions Act (ILSA, also called the D'Amato-Kennedy Act), the British Parliament voted to extend the PTIA to protect British firms from extraterritorial claims based on the US acts.⁴³ In 1996 the EU adopted Council Regulation EC 2271/96, its own blocking statute (a law that is passed in one jurisdiction to obstruct a law passed in another jurisdiction).⁴⁴ The British legislation remains in force but 'has shifted from a means of enforcement to that of a deterrent'.⁴⁵ The answer to a parliamentary question asked by Lord Laird summarized the situation:

⁴² 'United Kingdom: statement and order concerning the American export embargo with regard to the Soviet gas pipeline', *International Legal Materials* (note 38), pp. 834–38.

⁴³ Alexander, K., *Economic Sanctions: Law and Public Policy* (Palgrave Macmillan: London, 2009), p. 235. The Helms-Burton Act is the Cuban Liberty and Democratic Solidarity (Libertad) Act of 1996, US Public Law 104-114, signed into law on 12 Mar. 1996, <<http://www.gpo.gov/fdsys/pkg/PLAW-104publ114/html/PLAW-104publ114.htm>>. The D'Amato-Kennedy Act is the Iran and Libya Sanctions Act (ILSA) of 1996, Public Law 104-172, signed into law 5 Aug. 1996, <<https://www.govtrack.us/congress/bills/104/hr3107>>.

⁴⁴ Council Regulation (EC) no. 2271/96 of 22 November 1996 protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom, *Official Journal of the European Communities*, L309, 29 Nov. 1996.

⁴⁵ British House of Commons, 'Protection of Trading Interests Act', Written answers, *Hansard*, 2 Dec. 2005, column 896W.

The European Commission has competence for dealing with extraterritorial measures taken by third countries against EU member states. Council Regulation EC 2271/96 was introduced by the EU in 1996 to offer protection to EU individuals and companies against extraterritorial legislation including the Helms-Burton Act and the Iran/Libya Sanctions Act, both of which are explicitly extraterritorial in content and whose adoption in the US prompted the introduction of the above so-called blocking legislation.⁴⁶

In France US actions also triggered fears but the answer was different. The French legislation that establishes strategic trade controls does not contain active extraterritoriality provisions.⁴⁷ A conflict involving

⁴⁶ British House of Lords, 'Extraterritorial jurisdiction', *Hansard*, 25 July 2005, column WA277.

⁴⁷ Loi no. 92-1477 du 31 décembre 1992 relative aux produits soumis à certaines restrictions de circulation et à la complémentarité entre les services de police, de gendarmerie et de douanes telle que modifiée par la loi no. 93-1420 du 31 décembre 1993 [Law no. 92-1477 of 31 December 1992 relating to products subject to certain restrictions on movement and complementarity between the police, gendarmerie and customs services as amended by Law no. 93-1420 of 31 December 1993], *Journal Officiel de la République française*, 1 Jan. 1994, <<http://legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000542776>>; and Décret no. 2001-1192 du 13 décembre 2001 relatif au contrôle à l'exportation, à l'importation et au transfert de biens et technologies à double usage tel que modifié par le décret no. 2010-292 du 18 mars 2010 et l'Arrêté du 13 décembre 2001 relatif au contrôle à l'exportation vers les pays tiers et au transfert vers les États membres de la Communauté européenne de biens et technologies à double usage tel que modifié par l'Arrêté du 18 mars 2010 [Decree no. 2001-1192 of 13 December 2001 on the control of export, import and transfer of goods and dual-use technologies, as amended by Decree no. 2010-292 of 18 March 2010 and the Order of 13 December 2001 on the control of exports to third countries and the transfer to the members of the European Community of goods and dual-use

commercial fishing triggered the first French reaction: French fishermen were forming a cartel that US authorities intended to break up.⁴⁸ In response, the French Parliament adopted Law 68-678 to protect them.⁴⁹ This law is similar to the British one that has inspired many others throughout Europe.

The issue was raised again by the application of US law to British, French, German and Italian firms that were subsidiaries of US companies and that sought to take part in the building of the trans-Siberian pipeline in the 1980s. This issue was particularly salient in France as French firms were deeply involved, and had strong economic interests in the construction of the pipeline. The existing law was not relevant as it focused only on the transmission of documents. However, French politics can be imaginative, and it was noted that ‘The Government informed the French firms targeted by the American measures that it expects that the contracts concluded in order to build

technologies such states as amended by Decree of 18 March 2010], <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000405988&categorieLien=cid>>.

⁴⁸ Didier, P., ‘Information sur l’entreprise et patriotisme économique’ [Information on business and economic patriotism], ed. G. Virassamy, *Entreprise et patriotisme économique* [Business and economic patriotism] (L’Harmattan: Paris, 2008), p. 79.

⁴⁹ Loi no. 68-678 du 26 juillet 1968 relative à la communication de documents et renseignements à des autorités étrangères dans le domaine du commerce maritime [Law no. 68-678 of 26 July 1968 on the disclosure of documents and information to foreign authorities in the field of maritime trade], *Journal Officiel de la République française*, 27 July 1968, <<http://www.legifrance.gouv.fr/affichTexte.do?cidTexte=JORFTEXT000000501326>>, p. 7267.

the Ourengoj pipeline will be duly fulfilled and that it keeps open the option to take any measure to achieve that purpose.’⁵⁰

The French firm, Dresser France, was instructed to complete a contract to produce and deliver materials for the pipeline construction under the provisions of a law aimed at unifying the national response in time of war.⁵¹ The USA responded by denying export licences where Dresser France was the end user, and US firms cancelled contracts with the French firm. The company declared bankruptcy a few months later.

The case of the European Union

As illustrated above, in the turbulent context of the cold war, economic pressure was a major tool of US diplomacy. In December 1981, when Poland declared a state of emergency and suspended some civil liberties, the administration of US President Ronald Reagan announced economic restrictions.⁵² The resulting legislative package included the imposition of a prior consent restriction on third countries for the re-export of US-origin goods linked to natural resources, such as gas or

⁵⁰ [Parliamentary question of 26 July 1982], no. 17947, *Journal Officiel de la République française*, 4 Oct. 1982, p. 3966, (in French), <<http://archives.assemblee-nationale.fr/7/qst/7-qst-1982-10-04.pdf>> (author’s translation).

⁵¹ Audit, B., ‘Extra-territorialité et commerce international: L’affaire du gazoduc sibérien’ [Extra-territoriality and international trade: the case of the Siberian pipeline], *Revue critique de droit international privé* (1983), p. 404.

⁵² ‘Extraterritorial application of United States law: the case of export controls’, *University of Pennsylvania Law Review*, vol. 132, no. 2 (1984), p. 364.

petroleum.⁵³ Persons under US jurisdiction had to seek authorization from US authorities in order to receive such goods or technologies, while no individual, under any jurisdiction, was permitted to export goods or technical know-how if they were derived from US products or know-how. Violation of these rules led to a complete suspension on access to US patents, technologies and goods.⁵⁴

The extraterritorial reach of such legislation is easy to demonstrate: out of the 20 firms affected, 13 were located in Europe.⁵⁵ The stakes were therefore high for Europe as the trans-Siberian pipeline was constructed in order for the Soviet Union to supply the continent with natural gas.

On 11 August 1982 the European Commission, together with the Danish Presidency of the Council of the European Union, sent a detailed legal memorandum to the US authorities emphasizing the inefficiency and probable illegality of such measures. Lord Ellenborough summarized the European position: ‘Can the island of Tobago pass a law to bind the rights of the whole world? Would the world submit to such an assumed jurisdiction?’⁵⁶

In 1996 the United States enacted the Cuban Liberty and Democratic Solidarity Act and the Iran and Libya Sanctions Act, which are important pieces of legislation in the context of extraterritoriality.⁵⁷ The

⁵³ ‘Export of oil and gas equipment to the Soviet Union’, *International Legal Materials* (1982), p. 864.

⁵⁴ See ‘Extraterritorial export control (secondary boycott)’, Ryngaert (note 35), p. 630.

⁵⁵ Ergec (note 1), p. 7.

⁵⁶ Quoted in Stern (note 21), p. 19.

⁵⁷ Cuban Liberty and Democratic Solidarity Act (note 41); and ILSA (note 41).

international legality of this legislation has been widely questioned.⁵⁸ Their adoption was primarily motivated by terrorist attacks that affected the USA. Initially, US President Bill Clinton refused to sign them, although he did so after two US aircraft were attacked by the Cuban Air Force.⁵⁹ The Cuban Liberty and Democratic Solidarity Act aimed to precipitate the fall of Cuba's leader, Fidel Castro, and was a rare example of potential efficacy. In part, it focused on providing compensation for Cuba's nationalizing of businesses and private property that had occurred since 1959, when Castro assumed power. Any US citizen could request a court to recognize the confiscation of property and ask for compensation. As noted by Brigitte Stern: 'Acknowledging that almost all companies—Cuban, US, or foreign firms—were expropriated after Fidel Castro took power, we can witness the scope of the competences the US has taken: any individual or firms having economic ties with Cuba is potentially concerned.'⁶⁰

The Iran and Libya Sanctions Act aimed to weaken Iran and Libya by focusing on petroleum resources and imposing economic sanctions on firms with economic ties with the countries in order to 'deprive these two states of the financial resources to prevent the continuation of the current policy'.⁶¹ The US president could punish any person who

⁵⁸ Stern, B., 'Vers la mondialisation juridique ? Les lois Helms-Burton et d'Amato-Kennedy' [Towards legal globalization? The Helms-Burton and D'Amato-Kennedy laws], *Revue générale de droit international public*, no. 4 (1996), pp. 992–1002.

⁵⁹ Stern (note 56), p. 980.

⁶⁰ Stern (note 56), p. 984 (author's translation).

⁶¹ Stern (note 56), p. 981 (author's translation).

invested more than \$40 million in petroleum resources.⁶² European, Canadian and Mexican companies were those most affected by the legislation.⁶³ These countries refused to let their foreign policy be imposed by a third state, particularly when important commercial transactions were threatened.⁶⁴ Canada and Mexico were the first two countries to adopt a blocking statute to counter the US legislation. In addition to these blocking statutes, a number of other diplomatic and legal actions took place. At the diplomatic level, discussions on the topic were held in international forums, such as the Organization of American States and the Organisation for Economic Co-operation and Development, and transatlantic dialogue also occurred.⁶⁵ The UN General Assembly also condemned the US laws.⁶⁶ Moreover, the Dispute Settlement Body of the World Trade Organization (WTO) discussed the matter, as did its counterpart in the North American Free Trade Agreement.

The European authorities also chose to adopt a blocking statute. In a twofold response, the EU dealt with foreign extraterritoriality via Council Regulation 2271/96 and Joint Action 96/668/CFSP.⁶⁷ Adopted in

⁶² ILSA (note 41), sections 2 and 5.

⁶³ Stern (note 56), p. 986.

⁶⁴ Clark, H. L., 'Dealing with U.S. extraterritorial sanctions and foreign countermeasures', *University of Pennsylvania Journal of International Economic Law*, vol. 20, no. 1 (1999), pp. 470–71.

⁶⁵ Vaughan Lowe, A., 'US extraterritorial jurisdiction: the Helms-Burton and D'Amato acts', *International and Comparative Law Quarterly*, vol. 46, no. 2 (1997), p. 390.

⁶⁶ Stern (note 56), p. 991.

⁶⁷ Council Regulation (EC) no. 2271/96 (note 42); and Joint Action of 22 November 1996 adopted by the Council on the basis of Articles J.3 and K.3

1996, in a period of international tension, this ‘integrated system’ gave life to the will expressed by the European Council in Florence in June 1996: ‘to react in defence of the European Union’s interest in respect to this legislation and any other secondary boycott legislation having extra-territorial effects’.⁶⁸ However, the adoption of such legislation was first conceived in 1992.⁶⁹

It is noteworthy that the regulation was adopted on the basis of Article 235 TEC (352 TFEU), which allows the Commission to table proposals and actions that are not expressly stipulated by the treaties, but necessary to reach the goals identified by them. The nature of the regulation is also specific: it deals with the relations among several legal orders. As the treaties only provide core legislation, Article 352 TFEU can legitimately be used as the legal basis for action. The mechanism provided by Council Regulation 2271/96 is simple: the extraterritorial effect of the foreign laws that are enumerated in the annex to the regulation (i.e. the Cuban Liberty and Democratic Solidarity Act and ILSA) are invalid for individuals who reside on European soil and hold the nationality of one of its member states. The same logic applies to firms (legal persons) established under EU jurisdiction. Article 4 provides

of the Treaty on European Union concerning measures protecting against the effects of the extra-territorial application of legislation adopted by a third country, and actions based thereon or resulting therefrom (96/668/CFSP), *Official Journal of the European Communities*, L309, 29 Nov. 1996.

⁶⁸ The term ‘integrated system’ is from the Joint Action (note 65). See also European Parliament, ‘Presidency conclusions’, Florence European Council, 21–22 June 1996, <http://www.europarl.europa.eu/summits/fir1_en.htm>.

⁶⁹ See ‘Extraterritorial export control (secondary boycott)’, Ryngaert (note 35), p. 647, fn 109.

a mechanism for judicial protection: no judgements or requests from a third state shall be recognized if they are based on one of the legal texts listed in the annex to the regulation. Article 5 prohibits Europeans from complying with decisions based on such foreign legislation. However, the regulation allows individuals and firms to comply with the law if their interests, or those of the Community, are seriously threatened (with the approval of the Commission). Article 6 provides a restitution clause: persons judged on the basis of these laws may seek to recover damages in a European court. Such restitution may take the form of the seizure of goods held by the entities that caused the damage or of any subsidiary entity established on European soil.⁷⁰ The Council may add to, modify or delete legislative acts that are contained in the annex.

Under pressure from the international community and in reaction to the European defensive stance, the USA decided to comprise with the European Commission. In April 1997 the EU and the USA signed a memorandum of understanding (MOU).⁷¹ The EU committed itself to support initiatives aimed at promoting democracy in Cuba, while the US authorities agreed to suspend the provisions on confiscation of property in the Cuban Liberty and Democratic Solidarity Act. Initially, the agreement was temporary but the US authorities pledged to seek a solution with the Congress and adopt a permanent waiver for European citizens.⁷²

⁷⁰ Council Regulation 2271/96 (note 42), Articles 1, 4, 5 and 6.

⁷¹ Understanding between the European Union and the United States on US extraterritorial legislation, 11 Apr. 1997.

⁷² Roy, J., 'The "understanding" between the European Union and the United States over investments in Cuba', *Cuba in Transition*, no. 10 (2000).

The dialogue raised awareness on both sides of the Atlantic of the need to discuss economic cooperation and establish a transatlantic partnership for political cooperation, and the parties worked to agree on a text that embodied these principles.⁷³ Nonetheless, in a 2004 report the European Commission stressed the failure of the US Congress to reach consensus on a permanent waiver.⁷⁴ However, Europeans continued to benefit from a six-month exemption granted by the US Congress. The situation therefore remains fragile.

Despite the failure of ILSA, the revelations about Iran's nuclear ambitions led the US authorities to adopt a new regulation containing extraterritorially elements.⁷⁵ Its jurisdiction included any person involved in the manufacture by Iran of a WMD. In the event of non-compliance, US authorities would blacklist the person or the firm. The EU complained about the legislation before its adoption as the Commission perceived it to be a breach of the 1997 EU-US MOU. However, no European firm was threatened under the law.⁷⁶ The blocking statute was not modified and therefore not applied. This issue was different as there was international consensus about the WMD risk, the scope was limited

⁷³ Smis, S. and van der Borch, K., 'The EU-US compromise on the Helms-Burton and D'Amato acts', *American Journal of International Law*, vol. 93, no. 1 (1999), pp. 23-31.

⁷⁴ European Commission, 'Report on United States barriers to trade and investment: report for 2007', Apr. 2008, <http://trade.ec.europa.eu/doclib/docs/2008/april/tradoc_138559.pdf>.

⁷⁵ Iran Nonproliferation Act of 2000, Public Law 178, 14 Mar. 2000, <<http://www.gpo.gov/fdsys/pkg/PLAW-106publ178/html/PLAW-106publ178.htm>>.

⁷⁶ See 'Extraterritorial export control (secondary boycott)', Ryngaert (note 35), p. 650.

to actions related to proliferation behaviour, the sanctions were internal to the US judicial system and several UN resolutions existed on the issue.

In 2010 the US Congress passed a bill to impose additional sanctions on Iran, the Comprehensive Iran Sanctions, Accountability, and Divestment Act (CISADA), which prohibited investment in the Iranian petroleum industry and established limitations on financial transactions and banking services.⁷⁷ The *Harvard Law Review* called these measures ‘as provocative as Helms-Burton’, but highlighted the fact that this time the EU did not react in the same way as before—preferring to put in place measures that largely mirror the content of CISADA.⁷⁸

The authors of the *Harvard Law Review* article noted that the economic stakes for European companies in respect to Iran in 2010 were smaller than they had been in relation to the trans-Siberian pipeline in the 1980s, and that there was a convergence in the EU and US foreign policy approach towards Iran (in contrast to the contested view on confrontation with the Soviet Union in 1982 or Cuba). However, the article also pointed to the changes in Europe after the adoption of the Lisbon Treaty, in particular the enhanced political cooperation in foreign affairs matters. In the 1980s the interests of individual member

⁷⁷ Comprehensive Iran Sanctions, Accountability, and Divestment Act of 2010, Public Law 111-195, 1 July 2010, <<http://www.treasury.gov/resource-center/sanctions/Documents/hr2194.pdf>>.

⁷⁸ ‘Developments in the law—extraterritoriality’, *Harvard Law Review*, vol. 124, no. 5 (2011), p. 1246, 1255–56. See also Treaty of Lisbon amending the Treaty on European Union and the Treaty establishing the European Community, signed 13 Dec. 2007, entered into force 1 Dec. 2009, <http://europa.eu/lisbon_treaty/index_en.htm>.

states drove the response. By 2010 the EU was both more able and more inclined to speak with one voice. As a result, according to the analysis in the *Harvard Law Review*, the US administration took greater account of EU perspectives when discussing legislation with the Congress and spent more time to ensure that European interests were taken into account in US laws.

In Europe the perception was quite the opposite: the EU's CFSP policymaking remained largely unproductive and the Council continued to lack the competence to bring about the political breakthrough endorsed by the US experts. The lack of European reaction to extraterritorial provisions in US law was attributed instead to the existence of UN resolutions on the issue (from which the EU and US measures were derived) and the international consensus that deemed the Iranian nuclear programme to be potentially dangerous.

IV. The perspective of the industrial operators

Industrial operators are central actors in the fight against the proliferation of nuclear weapons and the control of the export of dual-use goods. As producers they are obligated to comply with the law; they possess expertise that can help states prevent proliferation; and, finally, the European legislative corpus place them in a central position. However, their situation is unequal compared with that of states since the current system of international relations is based on states. Therefore, unless a profound change were to occur, an industry representative will not be sitting at the NSG's negotiating table in the next round. States still jealously guard their competence as regulators. In

interviews conducted in 2012, the industrial operators stressed four points.⁷⁹

First, they are compliant with US law. Focus on export control must start at the beginning of the supply chain and take into account US requirements. For major European firms compliance is automatic as they often have a presence on US soil, while the potential to be blacklisted is regarded as threatening trade opportunities. Moreover, the strength of the US system is an influential factor: the US administration has the means and the will to pursue non-compliance, even abroad. The situation is not the same in Europe, where the main characteristic is the heterogeneity of the means used to implement common legislation, including enforcing its provisions using criminal and other penalties.⁸⁰ Finally, it is almost impossible to build a dual-use or a defence item without the use of US goods or technologies.

Second, the US requirements imply a number of practical adaptations of the production line. If US materials are involved, the production line will be separated from other production and access will be restricted. This implies a huge cost for the company that may result from administrative delay, time devoted to fulfilling licences or the cost of a licence itself.

⁷⁹ Senior officials of EU institutions and major European industrial firms active in the field of dual-use items and technologies, Interview with author, Apr. 2012.

⁸⁰ Bauer, S., 'WMD-related dual-use trade control offences in the European Union: penalties and prosecutions', Non-proliferation papers no. 30, EU Non-proliferation Consortium, July 2013, <<http://www.nonproliferation.eu/activities/activities.php>>.

Third, while blocking statutes may be a political matter, they put industrial firms in a difficult position: if they disobey US requirements, they may face legal action in the USA. However, if they comply with US requirements, they may face action in their own country. Both cases lead to an economic 'dead end'.

Fourth, internal awareness programmes have been established and are important. Information sharing between firms is also crucial because major groups have to rely on a network of small- and medium-sized enterprises that is largely aware of these issues. The compliance reputation of a firm may be crucial to its future. Banks and investment funds devote significant attention to the issue of proliferation in order to ensure corporate social responsibility. This is a peer pressure-based system as the actions of states are considered inadequate or insufficient. Governments should consider complementing outreach, intended to strengthen the strategic trade controls of other states, with 'inreach' to ensure that credible controls are in place in their own country.⁸¹

In the context of industrial operators, one last issue deserves attention. In a contract between economic partners, the legal authorities often require the inclusion of a non-re-exportation clause. These clauses oblige one party to the contract to comply with a determined legal order, which becomes relevant when a blocking statute protects an economic operator. According to Stern, 'such provisions are absolutely in contradiction with international public law as they threaten the exclusive competence of the state, the competence to pass rules in

⁸¹ Bauer (note 5).

relation to the exportation of goods from a territory and more generally to organize its economy without interference'.⁸² The EU defended the same position in a diplomatic note related to the trans-Siberian pipeline:

The statutory encouragement of voluntary submission to U.S. public policy in trade matters within the E.C. is strongly condemned by the European Community. Private agreements should not be used in this way as instruments of foreign policy. If a Government in law and in fact systematically encourages the inclusion of such submission clauses in private contracts the freedom of contracts is misused in order to circumvent the limits imposed on national jurisdiction by international law.⁸³

On the other hand, according to Cedric Ryngaert, these clauses are valid as long as the territorial state has not passed a blocking statute.⁸⁴ Ryngaert fails to see why a firm would not decide to comply with higher standards. The situation therefore remains unresolved and it is unlikely that a solution will be found in the near future.

V. Conclusions

The US authorities have adopted an aggressive stance regarding extraterritoriality. In the case of trade controls, it is the nationality of the goods or the person that triggers US jurisdiction. This approach is not

⁸² Stern (note 21), p. 28.

⁸³ 'European communities: comments on the U.S. regulations concerning trade with the U.S.S.R.', *International Legal Materials*, vol. 21, no. 4 (1982), p. 896.

⁸⁴ See 'Extraterritorial export control (secondary boycott)', Ryngaert (note 35), p. 634.

self-evident and is widely criticized. By contrast, in the EU context, no element of the dual-use regulation aims to be applied outside the EU. On the contrary, much attention has been devoted to limiting its application to European territory.⁸⁵ When the first EU-US tensions occurred, at the beginning of the 1980s, European representatives sent a diplomatic note contesting the international legality of the US legislation. In 1996 the Council adopted a blocking statute to counter the extraterritorial effects of foreign laws. However, this regulation is not universal: only the laws listed in an annex are blocked, and the annex itself has not been modified since 1996. More recently, Iran has drawn much attention and US authorities have adopted sanctions with extraterritorial reach. However, in this instance, the EU has not objected as it shares the view of the USA regarding the risk posed by Iran (at least since the discovery of its nuclear programme). The positions of the member states remain more ambiguous.

British legislation contains certain provisions with extraterritorial reach, but the UK has also concluded a treaty with the USA that formalizes recognition of US prior consent. However, the UK was one of the first EU member states to adopt a blocking statute. In contrast, French laws regulating dual-use trade do not contain extraterritorial provisions or official procedures for US prior consent. The French Parliament has

⁸⁵ E.g. according to Regulation 428/2009 “‘broker” shall mean any natural or legal person or partnership resident or established in a Member State of the Community that carries out services defined under point 5 from the Community into the territory of a third country’. Council Regulation (EC) no. 428/2009 of 5 May 2009 setting up a Community regime for the control of exports, transfer, brokering and transit of dual-use items (recast), *Official Journal of the European Union*, L134, 29 May 2009.

adopted a blocking statute but it is limited to the transmission of documents. When French authorities decide to force a firm not to comply with US requirements, they take measures to ensure that delivery will not be impeded.

Industrial operators are in an uncomfortable position as they have no right to be heard on the international stage, while they have increasing responsibilities related to dual-use trade. The community of firms complies with US requirements because the US system is highly efficient, and because so much is at stake, economically speaking. Awareness is keen inside a company as well as in the industrial network surrounding major actors, as they cannot afford to acquire a reputation as a proliferator, even if this involves extra burdens and costs.

Therefore, it can be concluded that European firms comply with US claims of extraterritoriality as long as the state decides, on the basis of a 'greater good' motivation, to block the effect of these claims. However, this places the industrial operators in a difficult position.

The state basically adopts, and applies, a blocking statute only when it disagrees with the goals of the extraterritorial law. When both states have a shared view of the risk linked to commercial transactions with a particular state, they do not come into conflict with each other in that respect.

The international influence of the EU is greater than that of any one of its member states. In 1996, when the EU adopted a blocking statute, the USA decided to find a solution to the underlying difference of view. According to some analysts, European views carry more weight in

discussions of US export law because of the greater coherence in EU policy in relation to the political dimensions of foreign trade after the entry into force of the Lisbon Treaty.

What will the future hold? No discussion of this issue has taken place in recent years, and the underlying approaches to extraterritoriality have not been clarified or resolved. A new EU-US confrontation could doubtless arise if the visions of the two actors diverge regarding the risk that one of them experiences. In this regard, it is interesting to note that the two visions of the world are still in confrontation. Analysing the outreach activities conducted in the framework of UN Security Council Resolution 1540 may be particularly revealing because every such activity is influenced by the vision of what constitutes a good export control system and, obviously, for the USA, it must contain extraterritorial elements.

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