

A Study on the Legitimacy of the Extraterritorial Application of U.S. Export Control Regulations

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Taking the connecting factors of U.S. export controls as a clue, this paper constructs a three-tier analytical framework from the factual rationality of the connecting factors, the legitimacy under legal normative evaluation, and the effects of extraterritorial application, revealing how the extraterritorial application of U.S. export controls moves from a formally legal hierarchical structure to a systemic conflict of substantive legitimacy. Penetrating technical facades such as the “De Minimis Rule” and the “Foreign-Produced Direct Product Rule” (FDPR), U.S. export control regulations not only break through the genuine link principle of jurisdiction in international law, but also shift the regulatory purpose from traditional trade management to technological containment through the generalization of the national security concept and the absence of the principle of proportionality. The deep-seated contradiction lies in the fact that the domestic legal system allows executive power to escape the control of legislative purpose through layers of authorization, causing a divergence between formal legality and substantive legitimacy, while at the international law level, due to the lack of effective enforcement mechanisms, it is difficult to constrain this “legal but illegitimate” expansion of power. The effect test shows that this system not only triggers a spiral escalation of global legal fragmentation and jurisdictional conflicts, but also produces a backlash against the rule of law within the United States. Finally, the extraterritorial application of U.S. export control regulations is precisely a contemporary manifestation of the “jealousy of trade” criticized by Hume. The reconstruction of the export control governance order should return to the concept of “enlightened self-interest”, establish technology transfer rules based on reciprocal reciprocity and mutual recognition at the bilateral and multilateral levels, and correct unilateralism through international coordination mechanisms, thereby repairing the normative rupture between formal legality and substantive legitimacy.

Keywords: U.S. export controls, extraterritorial application, rationality, legitimacy, international law, jealousy of trade

Currently, in the name of national security, the United States frequently extends its export control laws extraterritorially to global industrial chains through mechanisms such as the “Foreign-Produced Direct Product Rule (FDPR)” and the “Entity List” of the *Export Administration Regulations* (EAR), attempting to block the technological development of specific countries by legal means. This practice has transcended the scope of

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traditional trade policy, becoming a unilateral hegemonic form that reshapes the international legal order, posing a systemic impact on the rules-based international economic order.

However, this unilateral practice has triggered widespread international backlash and institutional conflicts. For China, hundreds of enterprises such as Huawei and ZTE have been placed on the Entity List, suffering systemic technological blockades, and global supply chains have been forced to restructure; for traditional allies such as the European Union, U.S. export controls also constitute an erosion of sovereignty and market fragmentation, and the introduction of the *Blocking Statute* and the *Anti-Coercion Instrument* marks an intensification of conflicts in the legal order; it has also triggered widespread condemnation in the international community, with many countries condemning its violation of sovereign equality and the multilateral trading system, and the WTO (World Trade Organization) dispute settlement mechanism has also fallen into a remedial dilemma due to the suspension of the Appellate Body. Existing research mostly focuses on the technical analysis of jurisdiction in international law or the countermeasure construction of blocking laws, and rarely systematically examines the legitimacy of U.S. export control regulations from the deep structure of rationality and legality.

Based on this, this paper deeply analyzes the legal structure, expansion logic, and normative boundaries of the extraterritorial application of U.S. export control regulations, in order to provide theoretical support for responding to extraterritorial legal conflicts, improving the anti-sanction legal system, and reconstructing the global technology governance order.

Legal Sources of the Extraterritorial Application of U.S. Export Control Regulations

Conceptual Definition and the Stance of This Paper

The extraterritorial application of U.S. export control regulations is essentially a phenomenon of power expansion in which a country forcibly extends its public law norms to persons, objects, and behaviors outside its territory. To accurately define this research object, it is necessary to first clarify the relevant conceptual tools. Strictly speaking, “extraterritorial jurisdiction” refers to a country’s power to apply its laws to persons, objects, or behaviors outside its territory (Ryngaert, 2015); “extraterritorial application” emphasizes the actual enforcement of legal norms outside the territory, while “long-arm jurisdiction” originates from U.S. civil litigation procedures, specifically referring to the expansion of a court’s jurisdiction over non-resident defendants (Li & Ou, 2017). Although academia has clarified the connections and differences among the above concepts, there has always been theoretical tension between territorialism and universalism regarding the reasonable boundaries of extraterritorial jurisdiction, especially when it involves public law fields such as economic sanctions and export controls, making it difficult to form a consensus (Ma, 2024).

For the purpose of substantive analysis, this paper adopts a broad concept of extraterritorial application, that is, situations where the United States asserts jurisdiction and implements regulation over behaviors occurring outside its territory, extraterritorial entities, or extraterritorial items based on its domestic export control regulations, regardless of whether it is based on the expansion of the territorial principle, the extension of the nationality principle, or the application of the effects principle, all are included in the scope of discussion in this paper. This conceptual choice does not ignore the restrictions of international law on the basis of jurisdiction, but

is to more comprehensively examine the legal technical paths and normative legitimacy issues of the expansion of the U.S. export control system.

Domestic Law Authorization Chain and Judicial Review Boundaries

The formal legality of the extraterritorial application of U.S. export controls is first established on its domestic constitutional and legal framework. Article I, Section 8 of the U.S. Constitution grants Congress the power to regulate foreign commerce, while Article II, Section 2 grants the President the foreign affairs power to make treaties and appoint ambassadors¹. The constitutional text does not explicitly list specific powers for export controls. However, the case of *United States v. Curtiss-Wright Export Corp.* (1936) established the highly influential “inherent powers” theory. The Supreme Court pointed out that the foreign affairs power “is inherently a part of national sovereignty”, and its exercise does not have to rely entirely on the explicit enumeration of the Constitution². This precedent essentially liberated the foreign affairs power from the constraints of explicit constitutional enumeration, providing constitutional space for subsequent legislative and executive branches to expand export control jurisdiction.

The formal legality of the extraterritorial application of U.S. export controls relies on the three-tier normative structure of congressional legislation, presidential authorization, and administrative rules in the domestic legal system, as well as the closed loop of power formed by the retreat of judicial review. In this hierarchical architecture, the abstract authorization of higher-level laws is passed down and specified to lower-level laws, and finally, through the high degree of judicial deference to administrative discretion, the transformation of extraterritorial application from formal legality to substantive expansion is completed. Specifically manifested as:

1. Congressional authorizing legislation constitutes the formal legal source of the export control system. The *Export Administration Act* (EAA) of 1979 was an authorizing law specifically enacted by Congress for export controls, systematically establishing the export control system for the first time. Although the act expired in 2001, its core system was continued through presidential executive orders and the *International Emergency Economic Powers Act* (IEEPA)³—IEEPA itself is a general authorizing law enacted by Congress in 1977 granting the President the power to implement economic sanctions in international economic emergencies, not a specific legislation for export controls, but it was invoked by the President during the EAA gap period as an alternative authorization basis to maintain the export control system. The *Export Control Reform Act* (ECRA) of 2018, as the currently effective specific congressional legislation, re-established the authorization framework for export controls. Its Section 4813 authorizes the President to implement export controls based on standards such as “national security, foreign policy, and short supply”, establishing the authorization basis from congressional legislative power to presidential executive power.

2. Under the congressional authorization framework, the President delegates specific enforcement powers to the Bureau of Industry and Security (BIS) of the Department of Commerce through executive orders, forming the intermediate link of the authorization chain. The EAR formulated by BIS based on presidential executive authorization, as federal administrative regulations, has a lower legal status than congressional legislation, but constitutes the most operational source of rules. The EAR extends jurisdiction to extraterritorial items and foreign

¹ U.S. Constitution, Art. I, §8, cl. 3; Art. II, §2, cl. 2. <https://www.law.cornell.edu/constitution>.

² *United States v. Curtiss-Wright Export Corp.*, 299 U.S. 304 (1936). <https://supreme.justia.com/cases/federal/us/299/304/>.

³ *International Emergency Economic Powers Act* (IEEPA), 50 U.S.C. §§1701-1707.

entities through systems such as the “De Minimis Rule”, “FDPR”, and “Entity List”. The exercise of this rule-making power forms the refinement of congressional authorization by administrative rules, essentially transforming the abstract authorization of Congress into specific technical standards with extraterritorial effects, forming an expansion model of administrative legislative power.

3. At the level of judicial review, the case of *Regan v. Wald* (1984) established the court’s review stance on administrative actions. The Supreme Court explicitly stated that in fields involving foreign affairs and national security, courts should give high deference to the judgments of administrative agencies because they possess more national security and foreign policy information⁴. The court emphasized that “decision-making in the field of foreign affairs requires centralization, unity, and secrecy”. This stance of avoiding review on the grounds of political questions established the review boundaries of judicial power in the field of export controls, completing the closed loop of power at the end of the authorization chain.

Sources of International Law

From the perspective of normative hierarchy, the substantive legitimacy of the extraterritorial application of U.S. export controls is also under the constraint framework of international law, mainly involving WTO rules and customary international law jurisdictional principles.

As a WTO member, U.S. export controls are bound by the prohibition of quantitative restrictions in Article XI, the Most-Favored-Nation Treatment in Article I, and the National Treatment in Article III of the *General Agreement on Tariffs and Trade* (GATT 1994). At the same time, the “security exceptions” in Article XXI of GATT provide a possible exemption basis for export controls, but the text itself does not explicitly define the specific connotation of “essential security interests”, nor does it stipulate review procedures. The International Court of Justice pointed out in the *Nottebohm Case* (1955) that the legitimacy of jurisdiction depends on a “genuine and effective link” between the state and the object of regulation⁵. In addition, §403 of the *Restatement (Third) of the Foreign Relations Law of the United States* established the principle of reasonableness of jurisdiction, requiring the weighing of factors such as links with the United States, the interests of other countries, and international comity, providing soft law guidance for extraterritorial application.

In the U.S. domestic legal system, international law is mainly implemented through the principle of non-self-executing, that is, treaties must be transformed by congressional legislation to have domestic effect. Although customary international law is recognized as part of federal common law, when it conflicts with congressional legislation, it follows the principle that later laws prevail over earlier laws. Therefore, international law norms mainly play a background normative role in the U.S. export control system—they not only constitute the external boundaries of authorization but also provide legitimacy argumentation resources for extraterritorial application, but their specific effectiveness depends on the application and interpretation of domestic courts.

Rationality Test of the Extraterritorial Expansion of Export Controls Under U.S. Long-Arm Jurisdiction Rules

Although “long-arm jurisdiction” originated from U.S. civil litigation procedures, its logical rule is

⁴ *Regan v. Wald*, 468 U.S. 222 (1984). <https://supreme.justia.com/cases/federal/us/468/222/>.

⁵ International Court of Justice (ICJ). *Nottebohm Case (Liechtenstein v. Guatemala)*, 1955 I.C.J. 4, p. 23.

essentially the outward expansion of jurisdiction. The United States uses the logic of “long-arm jurisdiction” in the field of export controls to formally realize the legal technical structure of extraterritorial expansion through the rule design of domestic law. The rationality test in this chapter will focus on the expansion of connecting factors at the factual level, examining the matching method and reasonable limits between the means and ends of the U.S. export control system.

Weak Genuine Link of Extraterritorial Expansion

Expansion of item jurisdiction. For the U.S. control of items, no matter what changes or upgrades its form undergoes outside the territory, and regardless of whether its circulation process or owner changes, the item always has “U.S. nationality” and is bound by U.S. export control regulations. The U.S. EAR has established two core rules for the extraterritorial application of item jurisdiction. The first is the “De Minimis Rule” in EAR §734.4, which is the foundational rule for determining whether foreign-made items are subject to EAR jurisdiction. It uses the proportion of U.S.-origin items contained in foreign products: 25%, 10%, or 0% as the jurisdictional threshold, aiming to comprehensively cover and horizontally broaden the jurisdictional boundaries; the second is the “FDPR” in §734.9, aiming to penetrate downwards and bring foreign products produced using U.S. technology under control, vertically extending the depth of jurisdiction.

Regarding the requirement of international law for extraterritorial application to have a genuine link, which needs to meet direct, substantive, and foreseeable standards (Shurson, 2025), the item jurisdiction in U.S. export controls essentially deviates from this standard, manifested as the connecting factors being significantly weakened or even indirect. Especially under the FDPR, jurisdiction can be established solely based on technical paths, and the connecting object shifts from traditional “persons” and “behaviors” to technical control, lacking a clear basis in international law. This rule has significant spillover effects on the sovereignty and trade freedom of third countries. Therefore, from the perspective of rationality standards in international law, the extraterritorial application of items in U.S. export controls presents a structural imbalance of obvious insufficient factual connection and over-regulation.

Expansion of personal jurisdiction. The personal jurisdiction in U.S. export controls has evolved from the traditional constraint on its own nationals to a regulatory mechanism centered on “U.S. persons” and spilling over to global transaction chains. According to EAR regulations, the so-called “U.S. persons” include not only U.S. citizens and permanent residents but also U.S. companies and their overseas branches, which are obliged to comply with export controls globally⁶.

Furthermore, the United States extends personal jurisdiction to the transaction activities of foreign entities through participation behavior rules. Even if both parties to the transaction are foreign entities, as long as there is “assistance, support, or facilitation” of the transaction by U.S. persons, it may trigger the application of U.S. export controls⁷. In addition, personal jurisdiction also intersects with item rules, shifting the jurisdictional basis from the place where the behavior occurs to the process of technology flow through the deemed export system and FDPR, forming a composite jurisdictional structure.

⁶ 15 C.F.R. §734.13(a) (2024), <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-734>.

⁷ 15 C.F.R. §764.2(b) (2024), <https://www.ecfr.gov/current/title-15/subtitle-B/chapter-VII/subchapter-C/part-764>.

From the perspective of international law, the expansion of personal jurisdiction in U.S. export controls is highly controversial. In the above systems, the regulated entities are often not U.S. nationals, and are included in the scope of jurisdiction merely because of indirect associations with U.S. persons, resulting in a significantly weakened jurisdictional basis, which clearly does not meet the requirement of a genuine link in international law (Ryngaert, 2015). This practice extends the scope of application of domestic law to the economic activities of other countries, compressing the regulatory space of other countries, and has typical “long-arm jurisdiction” characteristics.

Generalization of connecting elements. In the U.S. export control system, the basis for extraterritorial application is shifting from traditional substantive links to political functional links centered on “potential impact” or “potential risk”. This generalization of connecting elements is manifested in no longer strictly relying on specific, identifiable connecting points, but incorporating indirect links into the jurisdictional basis through institutional design.

The “minimum contacts” standard established in the case of *International Shoe Co. v. Washington* (1945) requires a substantive connection between the subject of jurisdiction and the forum state, and the exercise of jurisdiction must not violate traditional notions of fair play and substantial justice⁸. However, U.S. export control practices assert jurisdiction through the following connecting factors: (1) items containing U.S.-origin technology or software; (2) transactions using the U.S. dollar settlement system; (3) transaction chains involving U.S. entities or technology. This practice of transforming spatial territorial links into highly abstract technical associations is more indirect and uncertain compared to the traditional “minimum contacts” standard, and the normative standard of “minimum contacts” is highly generalized.

The most representative is the effect-oriented secondary sanctions mechanism. Under this mechanism, the United States does not only regulate its own entities, but imposes adverse consequences on foreign entities that transact with sanctioned targets, thereby indirectly shaping the behavioral choices of third-country enterprises. As the European Union Institute for Security Studies (EUISS) pointed out, the extraterritorial effect of U.S. sanctions is mainly realized through its structural position in the global financial system (2020). The jurisdictional basis of such a jurisdictional model is no longer built on traditional legal links, but on institutional influence and market coercion, which easily leads to the infinite expansion of jurisdictional boundaries.

Absence of the Principle of Proportionality in Extraterritorial Expansion

The previous analysis shows that U.S. export controls have shown characteristics of expansion and generalization of connecting points at the level of jurisdictional basis. However, even if it is recognized that it has a certain jurisdictional basis, its extraterritorial application still needs to accept the review of the principle of proportionality, that is, whether the relationship between means and ends meets the requirements of appropriateness, necessity, and proportionality.

Generalization of purpose and insufficient necessity. U.S. export controls take “national security” as the core basis, but this purpose shows a clear trend of generalization in practice, gradually expanding to fields such as technological competition, industrial advantage, and even geopolitical games (Sun & Hu, 2025). This turns the legitimate purpose that should have served as a limiting condition into an elastic tool supporting

⁸ *International Shoe Co. v. Washington*, 326 U.S. 310 (1945). <https://supreme.justia.com/cases/federal/us/326/310/>.

jurisdictional expansion. At the same time, the United States establishes a jurisdictional basis through technical factors such as the U.S. dollar clearing path, treating highly indirect “instrumental links” as means to achieve national security goals (Guan & Sun, 2023), making it difficult to verify the relationship between means and ends through empirical facts. Taking the relevant sanction measures in *Huawei Technologies Co. v. United States* (a constitutional lawsuit filed by Huawei in March 2019 against Section 889 of the U.S. *National Defense Authorization Act* (NDAA) for Fiscal Year 2019) as an example, the United States restricted the supply of goods to Huawei by enterprises using U.S. technology globally by placing Huawei on the “Entity List” and combining it with the FDPR. This case shows that the United States relies more on normative presumption rather than factual proof, that is, assuming that all transactions involving U.S. technology may pose a risk to national security. However, it is difficult to meet the requirement in the principle of proportionality that there should be a genuine and verifiable link between means and ends.

From a comparative law perspective, when the EU responds to U.S. extraterritorial sanctions, it restricts the effectiveness of extraterritorial laws within the EU through blocking statutes, emphasizing multilateral coordination and rule constraints (Bradford, 2020). In contrast, the United States is more inclined to directly impose extraterritorial constraints through unilateral legislation, and relies less on international coordination mechanisms, thus making it difficult to meet the requirement of necessity in the principle of proportionality.

Lack of proportionality. The third review of the principle of proportionality—the narrow principle of proportionality or the principle of balance, requires that the exercise of state power must be proportionate to the damage caused to the counterpart and the interests pursued, and must not be manifestly unbalanced. U.S. export control measures clearly fail to meet this requirement.

From the perspective of cost-benefit analysis, the control system constructed by the United States through FDPR and secondary sanctions presents significant over-inclusiveness: Its restriction scope covers the global semiconductor industry chain, bringing non-sensitive commercial activities such as civilian consumer-grade chips and general software licensing into control, causing overkill. Taking the “Huawei Rule” as an example, the United States not only prohibits the export of U.S.-origin technology to Huawei, but also prohibits any enterprise globally from supplying chips produced using U.S. equipment or software to Huawei. This one-size-fits-all control method completely fails to conduct individualized interest weighing, violating the principle of minimum impairment.

Furthermore, this lack of balance is also reflected in the systemic infringement on the right to development of third countries. The United States forces global enterprises to interrupt normal commercial exchanges with sanctioned parties, essentially depriving specific countries of the legal ability to acquire the technology needed for development. The damage caused to global trade freedom and the sovereign interests of third countries is clearly out of balance with the economic competitive interest of maintaining technological leadership it seeks to protect. In contrast, the EU export control system places more emphasis on the precise matching of end-use and sensitive item lists, while the comprehensive blockade feature of the U.S. model highlights the complete absence of its proportionality review.

Diverse Enforcement Means Conceal Substantive Extraterritorial Expansion

The aforementioned jurisdictional expansion is realized through specific enforcement mechanisms. It is worth noting that U.S. export controls do not solely rely on traditional state coercive power, but through the

diversification and concealment of enforcement means, formally weaken the appearance of extraterritorial application while substantively strengthening regulatory effects.

In terms of state coercive power, the United States has constructed a composite enforcement system combining administrative, criminal, and financial sanctions. The United States has formed a linkage mechanism of export controls, economic sanctions, and criminal enforcement, transforming extraterritorial application into an actually executable mandatory institutional arrangement through high fines and criminal liability accountability (Guan & Sun, 2023). For example, in the ZTE case, the United States imposed a total fine of \$1.19 billion on it for violating export controls, although the relevant transactions mainly occurred outside the United States (U.S. Dep't of Justice, 2017); another example is the Meng Wanzhou case, where the United States realized criminal regulation of extraterritorial behavior on the grounds of using the U.S. dollar settlement system. More crucially, the United States forces companies to admit facts, pay fines, and establish strict internal compliance systems through "Deferred Prosecution Agreements". This method of substituting penalties for criminal punishment not only punishes violators but also transforms them into private enforcers of U.S. rules.

Such mechanisms do not directly exercise jurisdiction over foreign entities, but force relevant entities to actually comply with U.S. rules through their control over key resources and institutional nodes. The above enforcement methods often formally manifest as contractual obligations, compliance requirements, or market access conditions, rather than traditional state coercive actions, thereby to some extent weakening the appearance of their extraterritorial application and concealing the logic of jurisdictional expansion centered on the United States in substance.

Legitimacy Test of the Extraterritorial Application of U.S. Export Controls

Based on the rationality review above, a legitimacy test under the norms of the legal system is still needed, that is, to examine the normative validity of this technological expansion of the United States, and then the progression of factual structure-normative evaluation jointly constitutes a complete review of the extraterritorial application of U.S. export controls.

Legitimacy Review Under the U.S. Domestic Legal Framework

Expansion and blurred boundaries of the constitutional authorization basis. Based on the structure of constitutional authorization mentioned above, its legitimacy defects are further analyzed. The non-delegation doctrine requires that Congress must not completely surrender core legislative power to the executive branch, but in practice, this constraint has been significantly weakened:

Broadening of legislative authorization. EAA and ECRA grant extensive discretionary power to the President and BIS through vague clauses. ECRA authorizes the President to formulate control lists "to promote world peace and the national security and foreign policy of the United States", but does not define the specific connotation of national security. This empty and vague authorization allows executive power to essentially escape the explicit constraints of Article I of the Constitution.

Retreat of judicial review. In the case of *United States v. Mark Henry* (2018), the Second Circuit Court confirmed that the *Arms Export Control Act* (AECA) met the "intelligible principle" standard, ruling that Congress setting the general goal of "promoting world peace and the national security and foreign policy of the United States" was sufficient to constrain presidential power. The court adopted a stance of "special deference"

in the field of foreign affairs, greatly relaxing the application standard of the non-delegation doctrine⁹. In 2025, the U.S. Court of International Trade pointed out when reviewing the tariff policy of the Trump administration that if IEEPA is interpreted as granting the President unlimited tariff power, it would constitute an improper surrender of legislative power. The logic of this ruling is equally applicable to the field of export controls, exposing the constitutional risk of the hollowing out of the authorization chain.

Scholars such as Harold Hongju Koh point out that if foreign affairs power is understood as an unrestricted residual power, it may lead to the infinite expansion of the power of administrative agencies in the field of foreign-related economic regulation, weakening the structure of separation of powers and checks and balances established by the Constitution (1990). When export controls have clearly exceeded the scope of traditional foreign trade management and directly affect the behavior of extraterritorial entities and even the transaction structure of third countries, there is a fundamental doubt as to whether they can still rely entirely on domestic constitutional authorization to obtain legitimacy.

Hollowing out of due process constraints and lack of rights protection. While the authorization basis expands, the due process principle established by the Fifth Amendment to the U.S. Constitution should have constituted a substantive constraint on extraterritorial application, but it has also been systematically weakened in practice.

Procedural rights are deprived. ECRA explicitly excludes Entity List designation decisions from judicial review under the *Administrative Procedure Act* (APA), which leads to three procedural defects: first, the deprivation of prior notice and hearing opportunities. Enterprises placed on the Entity List have no opportunity to comment or defend themselves before the list is published. In the case of *Esquel Group v. Bureau of Industry and Security*, the plaintiff accused BIS of failing to provide specific and clear factual evidence to prove its alleged forced labor behavior, nor did it give prior notice or an opportunity to fully express its views; second, the limited nature of ex post remedies. Although ECRA allows lawsuits against specific enforcement actions (such as procedural violations in penalties), the Entity List designation decision itself is not actionable. Enterprises can only resort to ultra vires lawsuits, but the scope of this review is extremely limited, confined only to superficial violations of the law, and cannot review factual findings or interpretations; third, the lack of substantive defense paths. In cases such as *KindHearts for Charitable Humanitarian Development, Inc. v. Geithner*, the court recognized that when the Office of Foreign Assets Control (OFAC) of the Treasury Department makes sanction designations based on classified information, it must take measures to mitigate potential unfairness to due process, such as providing summaries of classified information or allowing lawyers to view classified documents after security clearance. However, in practice, OFAC often refuses to disclose on the grounds of national security, making it difficult for sanctioned entities to effectively defend themselves.

The core of the due process principle lies in the fact that the state must have a sufficient legitimacy basis when imposing legal obligations on individuals or enterprises. However, the clauses in ECRA excluding APA review, unilateral sanctions based on classified information, and the abuse of the national security concept all constitute an erosion of the core values of the U.S. Constitution. The superposition of blurred authorization boundaries and the lack of procedural guarantees makes the extraterritorial application of export controls present the characteristics of formal legality and substantive arbitrariness.

⁹ *United States v. Henry*, 888 F.3d 589 (2nd Cir. 2018). <https://case-law.vlex.com/vid/united-states-v-henry-890164288>.

Structural connection between judicial restraint and normative weakening. Against the background of the expansion of the authorization basis and the hollowing out of procedural constraints, the judicial restraint stance adopted by U.S. courts on export control cases further solidifies the aforementioned defects, forming a closed-loop structure of power expansion, procedural deficiency, and judicial retreat.

Judicial restraint is not an isolated phenomenon, but forms a structural coupling with the institutional design of export control laws. Congress uses national security as an open authorization container through bills such as ECRA and IEEPA without setting clear standards, and courts refuse to review the substantive content of administrative discretion on the grounds of special deference. This combination of legislative silence and judicial retreat allows executive power to essentially escape the constraints of Article I of the Constitution. From the *Trading With the Enemy Act* (TWEA) to IEEPA, Congress has continuously expanded the President's emergency powers in the field of export controls, forming an institutional normality of permanent emergency. The 2025 case of *Learning Resources, Inc. v. Trump* (the Supreme Court ruled that IEEPA does not authorize global tariffs) exposed the institutional rot caused by Congress's long-term surrender of trade power to the executive branch, but it has not yet fundamentally reversed the power imbalance in the field of export controls.

Theoretically, principles such as the "presumption against extraterritoriality", the "principle of international comity", and the "Charming Betsy principle" aim to limit the excessive intervention of domestic law in international affairs. However, in practice, these principles are weakened or even hollowed out by national security and foreign policy reasons (Tian, 2025). The result is that although U.S. domestic law formally constructs a complete constraint system, in practice, these constraints often remain at the formal level. As scholar Tian Jing pointed out, the extraterritorial application mechanism of U.S. public law presents a separation of formal legality and substantive binding force: Courts provide a cloak of legality for the expansion of executive power through the loose application of the "intelligible principle", the exclusion of APA review, and judicial tolerance of classified information, but fail to provide substantive rights protection.

Legitimacy Test Under the International Law Framework

The instrumentalist stance of U.S. political circles towards international law has been particularly evident in recent years. According to a report by *The New York Times* in January 2026, U.S. President Trump publicly stated in an interview that he does not recognize the constraints of international law and only accepts "moral constraints" (Sanger, 2026). Although this stance is a personal statement, it reflects the deep logic in U.S. practice of treating international law as a tool of power rather than a constraining norm.

International law restrictions on jurisdictional principles. The research of the International Law Commission (ILC) on the extraterritorial jurisdiction of states and the consensus of state practice show that the legitimacy of jurisdiction must be based on a genuine and effective link between the state and the object of regulation, rather than merely relying on formal technical associations or indirect touches of economic chains. The United States asserts jurisdiction through indirect connecting points such as technology sources and U.S. dollar clearing, essentially expanding the effects principle to potential impacts, which has already escaped the normative boundaries of traditional international law jurisdiction.

The item origin principle relied upon by U.S. export controls (i.e., asserting jurisdiction based on technological content) has not been universally recognized by international law as an independent jurisdictional

basis (Shi & He, 2025). This principle essentially applies the nationality principle to items, but customary international law only recognizes nationality jurisdiction over individuals and legal persons, and does not take item nationality as a jurisdictional connecting point. When the United States regulates items produced entirely outside its territory based on FDPR, it asserts jurisdiction merely because of the indirect link of technology tracing, which does not meet the requirement of a genuine link. When invoking the protective principle, the United States broadens the concept of national security. For example, in the “Huawei Rule”, the U.S. Department of Commerce implemented controls on the grounds of the loss of 5G technology advantage, essentially equating economic competitive advantage with national security threats. This trend of security generalization deviates from the original connotation of the protective principle in international law and constitutes an abuse of the jurisdictional basis.

The effects principle requires that extraterritorial behavior has a direct, substantial, and reasonably foreseeable impact on the home country. However, in transactions involving third-country enterprises and Chinese entities, the United States asserts jurisdiction based on the chain reaction that may ultimately enhance China’s military capabilities. This overly remote causal chain has exceeded the scope accepted by international law. The International Law Commission (ILC) emphasizes that there must be a sufficient and substantive link between a state and its regulated object; otherwise it constitutes an excessive infringement on the sovereignty of other countries.

Violation of sovereign equality and the principle of non-intervention. The principle of sovereign equality and the principle of non-intervention established in Article 2 of the *Charter of the United Nations* constitute peremptory norms restricting extraterritorial application. The United States imposes compliance obligations on global enterprises through the Entity List system, which essentially constitutes mandatory intervention in the economic decision-making of other countries. When third-country enterprises face U.S. sanctions for continuing to trade with sanctioned parties, they are forced to choose between “the U.S. market” and “cooperation with the sanctioned party”. When this uses legal means to exert mandatory influence on affairs within the territory of other countries and forces them to change policy choices, it may constitute an intervention in their sovereignty (Ma, 2024). The 1981 UN General Assembly *Declaration on the Inadmissibility of Intervention and Interference in the Internal Affairs of States* explicitly prohibits any state from directly or indirectly interfering in the internal affairs of other states for any reason, while U.S. export controls, by blocking normal commercial exchanges between enterprises of other countries, essentially restrict the industrial policy-making power of other governments.

The United States often defends extraterritorial application with the principle that whatever is not prohibited is permitted, established in *The Lotus Case*. However, contemporary international law theory generally believes that this principle only applies to purely domestic matters. When jurisdictional behavior involves the core interests or sovereign scope of other countries, the principle that whatever is not prohibited is permitted cannot be simply applied, but it should be examined whether it conforms to recognized jurisdictional bases and their invocation conditions. The objection statement of the European Community in the 1982 Soviet gas pipeline case explicitly pointed out that the U.S. exercise of jurisdiction over foreign subsidiaries based on ownership or control standards violated the principle of sovereign equality in international law.

Rule conflicts in the international economic law system. U.S. export control measures have significant conflicts with the rules of the multilateral trading system, especially reflected in the abuse of WTO obligations

and exception clauses. Under the WTO framework, based on the principles established by GATT, the U.S. Entity List system implements discriminatory restrictions on specific countries or enterprises, essentially constituting a violation of Most-Favored-Nation Treatment and National Treatment. Although the United States can invoke the national security exception for defense, the application of this clause is bound by the principle of good faith and is not entirely self-judging.

When U.S. export control measures target civilian technologies and lack clear evidence of military end-use, the legitimacy of invoking the security exception is questionable. This trend of security generalization essentially equates economic competitive advantage with national security threats, constituting a structural abuse of the WTO security exception clause. In addition, extraterritorial legislation such as the *Helms-Burton Act* directly restricts third-country trade with sanctioned countries, violating the core principle of territorial application of the WTO and constituting a systemic impact on the multilateral trading system. U.S. export control measures may also violate the fair and equitable treatment and expropriation clauses in Bilateral Investment Treaties (BITs). In the case of *S.D. Myers v. Canada*, the arbitral tribunal ruled that Canada's export control measures were discriminatory and arbitrary, violating National Treatment under Article 1102 and Minimum Standard of Treatment under Article 1105 of the *North American Free Trade Agreement* (NAFTA). The United States frequently deprives foreign investors of market access and contractual rights on the grounds of export controls, which may trigger state responsibility in investment arbitration.

Although international law provides the above normative framework, its binding force on U.S. export controls is still insufficient. The suspension of the Appellate Body of the WTO dispute settlement mechanism makes it difficult for victimized countries to obtain effective remedies; the high threshold and difficulty of enforcement of international investment arbitration limit the remedial avenues for investors; and the ambiguity of customary international law and the difficulty of allocating the burden of proof further weaken the effectiveness of international law. This dilemma of relatively sufficient norms but absent enforcement allows the United States to continuously expand the extraterritorial application of its export controls in the gray area of international law.

Comprehensive Evaluation of Legitimacy Standards

Separation of domestic law and international law legitimacy. The extraterritorial application of U.S. export controls presents a structural split at the level of normative hierarchy. In the dimension of domestic law, the U.S. export control system relies on broad congressional authorization (such as ECRA, IEEPA), the rule-making power of the executive branch, and the restraint stance of the judicial system to construct a self-referential closed loop of legality. In the dimension of international law, however, it loses substantive legitimacy due to the lack of genuine links and reasonable limits. This separation structure of domestic legality and international controversy is essentially a normative dislocation between a single country's legal order and the international legal order in the context of globalization. Furthermore, U.S. domestic law transforms political judgments into legal forms through the open authorization of the national security concept, while international law requires that extraterritorial application must have factual connections and proportional balance. When formal legality breaks away from the constraints of substantive legitimacy, law degenerates into a tool for power expansion rather than a shield for rights protection.

Observed from the perspective of legal pluralism, the extraterritorial application of U.S. export control laws constitutes a conflict between the global expansion of domestic legal order and the international legal order. The famous Dutch international law scholar Nollkaemper pointed out that the extraterritorial application of domestic law is essentially an imperialism of jurisdiction. When a country unilaterally regulates global behavior through domestic law, it is essentially imposing its own value judgments on other countries in the absence of international democratic legitimacy. This unilateral legislative behavior destroys the principles of sovereign equality and non-intervention maintained by international law, leading to the paradox of the internationalization of domestic law: Domestic legal actions that are formally legal produce illegal effects at the international level.

Therefore, the separation structure presented by the extraterritorial application of U.S. export controls: The detachment of formal legality in domestic law from substantive legitimacy in international law, not only reflects the deep conflict between a single country's legal system and the international legal order, but also reveals the tension between state sovereignty and global governance in the context of globalization.

Unilateralist logic and normative order conflict. From a more macro institutional perspective, the extraterritorial application of U.S. export controls reflects a unilateralist logic guided by national interests. This logic extends domestic legal rules to the global scope through the triple leverage of technological control, financial systems (such as the U.S. dollar clearing system), and market access, thereby de facto reshaping the international economic and trade order. However, this practice of replacing international rules with domestic law not only weakens the normative authority of international law, but also exacerbates institutional conflicts and legal uncertainty in global governance.

The "Global Administrative Law" (GAL) theory proposed by Kingsbury, Krisch, and Stewart points out that in the era of globalization, the exercise of administrative power has transcended the boundaries of nation-states, forming a global administrative space including international organizations, non-governmental actors, and unilateral state measures (2005). According to GAL theory, the legitimacy of global administrative actions depends on elements such as procedural guarantees (e.g., transparency, right to participate, judicial review), the principle of proportionality, and rational decision-making. Compared with this framework, U.S. export control measures present a clear legitimacy deficit: First, the lack of transparency. The criteria and evidentiary basis for inclusion in the Entity List are often kept secret, lacking open and transparent decision-making procedures; second, the deprivation of the right to participate. Sanctioned entities have no opportunity for a hearing before being placed on the list, and ex post remedial avenues are limited (the scope of ultra vires lawsuits is narrow); third, the violation of the principle of proportionality. Control measures often adopt a one-size-fits-all approach without individualized interest weighing, and there is excessive expansion, such as FDPR extending jurisdiction to third-country enterprises that have no direct transactions with sanctioned parties.

The unilateralist logic of U.S. export controls also leads to the fragmentation of international law. When the United States replaces multilateral rules (such as the WTO non-discrimination principle) with domestic law (such as EAR), it is essentially promoting legal unilateralism globally, destroying the unity and predictability of international law. This institutional conflict is not only reflected in the direct contradiction between WTO rules and domestic law, but also in jurisdictional conflicts—when the United States, the European Union, China, etc., all assert jurisdiction over the same transaction based on their own laws, multinational enterprises will fall into a compliance dilemma and face conflicting legal obligations.

Furthermore, the extraterritorial application of U.S. export controls also constitutes a potential subversion of the international normative hierarchy. Peremptory norms in international law, such as sovereign equality and non-intervention in internal affairs, have higher validity than ordinary treaties and domestic laws. However, through the generalized interpretation of the national security exception, the United States essentially elevates domestic policy goals (such as technological leadership) to essential security interests, thereby hollowing out the binding force of international law. This security generalization strategy threatens the stability of the rules-based international economic order.

From factual defects to normative crisis. If the rationality analysis mainly reveals the factual examination of the jurisdictional basis, then the legitimacy evaluation further reveals the dual defects of this system at the levels of normative sources and normative content. From the perspective of legal argumentation theory, the legitimacy of a norm needs to simultaneously meet source legitimacy and content legitimacy. At the source level, U.S. export controls rely on the formal authorization of domestic law, but lose external legitimacy due to the lack of genuine links in international law; at the content level, its measures violate the substantive rule of law principle due to the lack of proportionality, necessity, and non-discrimination. The accumulation of these dual defects puts the extraterritorial application of U.S. export controls in a state of unstable legitimacy.

The necessity test in international economic law requires that when a state adopts trade restriction measures, it must prove that the measure is the least restrictive means to achieve a legitimate goal, and the degree of trade restriction brought about is proportionate to the interests protected. U.S. export control measures, especially broad restrictions on civilian technologies, are often difficult to pass this test: On the one hand, there are alternative measures (such as precise controls targeting specific military end-users) that can achieve the same security goals; on the other hand, the trade restrictions caused by the extraterritorial effects of rules such as FDPR far exceed their claimed security benefits, violating the sub-principles of appropriateness and necessity in the principle of proportionality.

Ultimately, the legitimacy crisis of the extraterritorial application of U.S. export controls is rooted in the structural asymmetry between domestic law and international law. At the domestic law level, national security, as an open concept, is given almost unlimited interpretative space, and the retreat of judicial review further strengthens the expansion of executive power; at the international law level, the lack of effective enforcement mechanisms and dispute settlement avenues makes it difficult for international law norms to form substantive constraints on the United States. This asymmetry allows the United States to continuously expand its jurisdiction in the gray area between legality and illegality, ultimately weakening the normativity and authority of the global legal order.

Effect Test of the Extraterritorial Application of U.S. Export Controls

The effect test of law is a key link connecting normative evaluation and empirical analysis. The extraterritorial application of U.S. export controls not only involves the legality and legitimacy of jurisdictional expansion, but also needs to be examined from the dimensions of regulatory effectiveness and institutional costs.

Internalization of U.S. Domestic Rule of Law Costs and Institutional Backlash

Although the extraterritorial application of U.S. export controls has strengthened technological control in the short term, observed from the perspective of domestic rule of law, the legal costs it generates far exceed the benefits, and present institutionalized and irreversible characteristics.

Legal uncertainty and the destruction of market expectations. Starting from policy goals, the primary function is to maintain national security and technological leadership. On the one hand, by expanding the scope of control over “U.S. elements”, the United States can effectively restrict the proliferation of sensitive technologies to competitors; on the other hand, through institutional tools such as the Entity List, the United States is able to shape a technological blockade network globally, thereby maintaining its institutional advantage in key technology fields. Its extraterritorial application enhances the deterrence and execution of the system, enabling the United States to achieve strategic goals in advance without directly using military means.

However, this extension of jurisdiction to extraterritorial transactions lacking clear minimum contacts leads to unpredictability in legal application. Enterprises face compliance dilemmas; even if they conduct detailed export control classification (Export Control Classification Number review), it is difficult to determine whether items produced outside the territory are subject to jurisdiction because they contain U.S. technology. This legal ambiguity produces a significant chilling effect: To avoid risks, enterprises proactively cut off transactions with non-sensitive entities, leading to market autonomy being eroded by administrative power.

More seriously, the structural lack of judicial remedies destroys the due process principle. The action of ECRA excluding Entity List designation decisions from APA review results in enterprises only being able to resort to ultra vires lawsuits with an extremely limited scope. This review exclusion clause is essentially an improper usurpation of judicial power by legislative power, constituting a constitutional crisis under the framework of separation of powers.

Displacement of regulatory goals and distortion of industrial policy. From the perspective of public choice theory, export control policies face the risk of being hijacked by specific industrial interests. BIS enjoys broad discretionary power in the management of the Entity List, and its decision-making process is easily influenced by the lobbying of the military-industrial complex and specific industrial interest groups, essentially becoming a legal tool to suppress competitors. When export controls degenerate from a national security tool into an industrial protection means, their regulatory goals are displaced, not only failing to maintain national security, but instead distorting the market competition order. More importantly, the excessive expansion of the system may lead to rising compliance costs and legal uncertainty, affecting the stable expectations of enterprises’ cross-border operations. As research points out, the expansive application of export controls may lead to damage to the reasonable expectations of market entities and weaken institutional efficiency (Sun & Hu, 2025).

In addition, excessive expansion leads to U.S. semiconductor companies reducing R&D investment due to the loss of market share, weakening their technological leadership in the long run; financial institutions are forced to exit specific markets due to the risk of secondary sanctions, damaging the sustainability of U.S. dollar hegemony. This backlash reveals the inherent contradictions of unilateralist legal tools.

Erosion of the Sovereignty of Other Countries and Intensification of Legal Conflicts

From a positive perspective, the extraterritorial application of U.S. export controls has to some extent promoted the improvement of the global compliance system, such as promoting enterprises to establish export control compliance systems, promoting some countries to improve their own export control legislation, and promoting rule coordination of multilateral export control mechanisms (such as the Wassenaar Arrangement). But at the same time, the negative impact of the extraterritorial application of U.S. export controls on other

countries presents mandatory and structural characteristics, essentially constituting a systemic erosion of economic sovereignty.

Extraterritorial expansion and the judicialization of jurisdictional conflicts. Through re-export controls and FDPR, the United States applies its domestic law to transactions occurring entirely outside its territory, which is essentially asserting extraterritorial legislative jurisdiction. This practice directly infringes on the territorial jurisdiction of other countries, violates the principle of sovereign equality and the principle of non-intervention in internal affairs, and destroys the norm of territorial sovereign integrity established by the Westphalian system (Ma, 2024).

When U.S. law and host country law impose conflicting obligations, enterprises fall into a dual compliance dilemma. For example, if a Chinese enterprise complies with U.S. export control regulations and cuts off transactions with Iran, it may violate the blocking obligation in Article 12 of China's *Anti-Foreign Sanctions Law*; if it continues the transaction, it faces U.S. secondary sanctions. This normative conflict is essentially the materialization of positive jurisdictional conflicts, destroying the unity of the international legal order. From the perspective of private international law, traditional conflict of laws rules determines the applicable law through "characterization" and "connecting factors", but public law conflicts have inalienability and mandatoriness, and cannot be coordinated through party autonomy or the principle of closest connection.

A deeper problem lies in the politicization during the judicialization process. When enterprises are forced to make legal choices, they are essentially taking political sides between sovereign states, destroying the neutrality and predictability of private international law. The principle of international comity, as a traditional mechanism for coordinating conflicts of extraterritorial application, is hollowed out in U.S. unilateralist practices, leading to the outbreak of legal warfare. This institutional conflict not only increases cross-border transaction costs, but also forces enterprises to become private enforcers of U.S. foreign policy, essentially constituting an indirect erosion of state sovereignty and destroying the unity and stability of the international legal order.

Technological blockade and the deprivation of the right to development. By restricting the flow of key technologies, U.S. export controls implement technological containment against specific countries, essentially constituting a systemic deprivation of the right to development. Examined from the perspective of international human rights law, this right is not merely a political slogan with declarative significance, but a component of customary international law with normative validity. Article 1 of the 1986 UN *Declaration on the Right to Development* explicitly stipulates that the right to development is an inalienable human right, and every human person and all peoples are entitled to participate in, contribute to, and enjoy economic, social, cultural, and political development. Through extraterritorial technological blockades, the United States essentially deprives specific nations of the legal ability to independently determine development paths and acquire development means, violating the "equal rights of peoples" established in Article 55 of the *Charter of the United Nations* and the "obligation of progressive realization" stipulated in Article 2 of the *International Covenant on Economic, Social and Cultural Rights*.

From the analysis of normative nature, the right to development has the characteristic of non-derogability, that is, it must not be restricted or suspended for reasons such as national security or public order. However, the technological containment implemented by the United States on the grounds of the "national security exception" essentially securitizes economic competition and reconstructs the international technological order with the logic

of defensive realism. This practice constitutes structural violence, that is, through the asymmetric design of legal systems, transforming technological monopoly into a permanent deprivation of development opportunities, rather than temporary risk management measures (Galtung, 1969).

More seriously, the legal weaponization of supply chains has produced a chain effect of normative conflicts. From the perspective of international investment law, technological blockades violate the fair and equitable treatment and expropriation clauses in Bilateral Investment Treaties (BITs), constituting indirect expropriation—although not directly depriving property ownership, it substantively deprives the economic value of investments by cutting off technology acquisition channels. Enterprises are forced to establish parallel supply chains to avoid secondary sanctions, leading to the legal fragmentation of global value chains and increasing institutional transaction costs (Baldwin & Freeman, 2022). This compliance race not only harms consumer welfare, but also destroys the unity of international economic law, ultimately forming a regulatory competition pattern where bad money drives out good, eroding the foundation of the rules-based international economic order.

The international law structure of EU blocking legislation and countermeasures. Faced with the erosion of extraterritorial legal systems by U.S. export controls, the EU has adopted a defensive strategy of using law against law, providing a model for analyzing sovereign resistance. The normative structure of the EU *Blocking Statute* is built on the public policy reservation and renvoi techniques of private international law. Article 5 of the statute explicitly prohibits EU enterprises from complying with U.S. extraterritorial sanctions, and Article 6 grants enterprises the right to claim damages from the United States for sanction losses. Examined from the jurisprudential basis, this is essentially the EU exercising legislative jurisdiction to deny the application validity of U.S. law within the EU territory, maintaining judicial sovereignty and regulatory autonomy by establishing a legal firewall.

However, from the perspective of sources of international law, the legitimacy of blocking legislation relies on the theory of countermeasures. According to Articles 49-53 of the *Draft Articles on Responsibility of States for Internationally Wrongful Acts*, countermeasures need to meet the requirements of “proportionality” and “temporariness”. The EU *Blocking Statute*, as a practice of collective countermeasures, has its international law legitimacy in responding to the internationally wrongful act of excessive extraterritorial application by the United States. But critics point out that the statute requires enterprises to actively not comply with U.S. law, which may constitute a violation of *res judicata*, and the enforcement of extraterritorial claims faces the obstacle of sovereign immunity, making its effectiveness questionable.

From a methodological perspective, this reflects the defensive regulatory path in institutional competition theory. However, the dilemma in international law is: When the EU implements extraterritorial measures on the grounds of anti-economic coercion, it has an isomorphism in normative structure with U.S. export controls—both assert unilateral extraterritorial effects. This mirror confrontation may lead to a competitive escalation of regulation, rather than the resolution of conflicts.

A comparative law analysis of the extraterritorial application models of Europe and the United States reveals two forms of legal power: The U.S. model relies on the mandatory obedience of technological and financial hegemony, reflecting hard law characteristics; the EU model relies on the structural power of market size, reflecting the “Brussels Effect” of regulatory influence (Bradford, 2020). However, the expansiveness of both

models leads to the fragmentation of the international legal order. When countries compete to formulate extraterritorial application clauses, the spiral escalation of positive jurisdictional conflicts is inevitable, ultimately eroding the predictability and stability of the rules-based international order.

Erosion of Multilateral Rule of Law in the International Legal System and Normative Fragmentation

U.S. export controls have to some extent promoted the application practice of the “security exception” in GATT Article XXI, making national security gradually become an important consideration in international economic law. This trend reflects the transformation of the international legal system from free trade-oriented to equal emphasis on security and development. At the same time, the negative impact of the extraterritorial application of U.S. export controls on the international legal system has systemic and structural characteristics.

Abuse of the WTO security exception clause and the shaking of the foundation of international rule of law. Examined from the “securitization” theory of the Copenhagen School, the United States transforms the issue of technological advantage, which originally belonged to the category of economic competition, into a national security issue through the discourse construction of “existential threats”, thereby triggering the application of GATT Article XXI (Buzan, Waever, & de Wilde, 1998). This “securitization” operation essentially absolutizes the right of self-judgment, circumventing non-discrimination obligations and transparency principles.

The constituent elements of international rule of law include predictability, stability, and non-discrimination. However, the United States frequently invokes Article XXI to implement discriminatory export controls and refuses to accept the jurisdiction of the WTO Dispute Settlement Mechanism (DSU), essentially constituting a systemic destruction of the constituent elements of international rule of law. In the *Russia—Traffic in Transit* case (2019) and the *Saudi Arabia—IP Rights* case (2020), although the panels attempted to constrain the application of this clause through the principle of good faith and the necessity test¹⁰, the United States refused to comply on the grounds that national security issues are non-justiciable, leading to the complete blurring of the boundary between legal application and political power.

From the perspective of international constitutionalism, the wording “which it considers” in GATT Article XXI is interpreted as self-judging, which constitutes an extreme form of “delegated legislation” at the international level. However, self-judgment does not equal arbitrary judgment. According to the principle of good faith interpretation in Article 31 of the *Vienna Convention on the Law of Treaties*, contracting parties must not abuse rights to circumvent treaty obligations. The United States expanding essential security interests to technological leadership and economic competitiveness has constituted a purposive expansive interpretation of the security exception clause, violating the fundamental principle of *pacta sunt servanda*.

Legal fragmentation and the spiral escalation of institutional competition. The unilateral practice of U.S. export controls has triggered a demonstration effect of legal fragmentation. According to the research report of the International Law Commission (ILC) on the fragmentation of international law, fragmentation is manifested as the erosion of general law by special law, and the exclusion of general international law by

¹⁰ *WTO Dispute Settlement Panel. Russia—Measures Concerning Traffic in Transit, DS512* (Panel Report, 2019), Paras. 7.57-7.123; *Saudi Arabia—Intellectual Property Rights, DS567* (Panel Report, 2020), Paras. 7.10-7.45.

autonomous regimes¹¹. The successive introduction of China's *Anti-Foreign Sanctions Law*, the EU's *Anti-Coercion Instrument*, and Russia's *Anti-Sanctions Law* means the advent of an era of legal warfare responding to sanctions with sanctions. This institutional competition is not a regulatory race to the top in the traditional sense, but a defensive extraterritorial application expansion racing to the bottom. Countries deny the extraterritorial validity of other countries' laws through blocking legislation, leading to negative legal conflicts—that is, countries' laws mutually deny each other, ultimately forming a disordered state where legal vacuums or over-regulation coexist.

From the perspective of private international law, legal fragmentation directly leads to the uncertainty of legal application. When all countries assert priority jurisdiction, international commercial contracts fall into compliance dilemmas. The irreconcilability of this normative conflict destroys the predictable foundation of the global contract order, essentially hindering the normal conduct of cross-border trade and investment.

Structural crisis of international dispute settlement mechanisms. The United States not only abuses the security exception clause, but also causes the functional paralysis of the WTO dispute settlement mechanism by obstructing the appointment of Appellate Body members. This is not only a procedural obstacle, but also constitutes a structural diffusion of “non-justiciability”. When it comes to mixed disputes involving export controls (i.e., involving both trade and security), the political question doctrine is improperly expanded and applied, and the boundaries of justiciability are artificially compressed, leading to the dual alienation of the politicization of legal issues and the de-judicialization of political issues.

More severely, regarding positive jurisdictional conflicts, current international law lacks a coordination mechanism for conflict rules. The jurisdiction of the International Court of Justice (ICJ) over economic and trade disputes is limited, the WTO's review power over security exception disputes is obstructed, and investment arbitral tribunals have inconsistent review standards for public law defenses of sanction measures, leading victimized parties into a dilemma of having no way to seek remedies. This structural lack of judicial remedies further strengthens the substitution of power politics for the rule of law.

Conclusion

The extraterritorial application of U.S. export control regulations presents a situation where domestic law allows executive power to escape the control of legislative purpose through layers of authorization, and politicized decision-making procedures evade the constraints of judicial review. Ultimately, export control laws degenerate into a “dirty cloak” of unilateralism—covering the essence of trade protection with the form of rule of law, and packaging exclusive hegemony with universal discourse. This alienation not only hollows out the normative connotation of international law and distorts the original meaning of jurisdictional principles, but also plunges the United States itself into a governance paradox of seeking security through suppression and seeking advantage through decoupling.

Examined from the deep structure of legitimacy theory, the current situation and trend of the extraterritorial application of U.S. export control regulations reveal a contradiction in modern international rule of law, that is,

¹¹ International Law Commission (ILC). *Fragmentation of International Law: Difficulties Arising From the Diversification and Expansion of International Law: Report of the Study Group* (Finalized by Martti Koskenniemi). UN Doc. A/CN.4/L.682 (13 April 2006), and UN Doc. A/61/10 (2006), Chap. XII, pp. 1-296.

the conflict between the “validity” claim of domestic law and the “legitimacy” requirement of international law. The analysis in this paper shows that the United States attempts to fill the substantive legitimacy gap of international law with the formal legality of domestic law, and replace the certainty of multilateral consultation with the flexibility of administrative discretion, but ultimately both fail—international law is fragmented due to unilateral erosion, and domestic law is hollowed out due to loss of control over authorization. This situation shows that legitimacy is not a concept that can be arbitrarily transplanted; its foundation lies in the unity of power restriction, procedural due process, and constitutional purpose.

Hume’s insight in “Of the Jealousy of Trade” provides a critical benchmark transcending the times for understanding this current situation. The “jealousy” mentality criticized by Hume: The “narrow and malignant opinion” that views commercial relations between countries as a zero-sum game and beggar-thy-neighbor, is precisely the ideological root of contemporary unilateralism, while the “enlarged and benevolent mind” and “enlightened self-interest” he advocated point to a form of rule of law civilization based on mutual recognition and mutual benefit (Hume, 1987). This reveals the inherent conflict of unilateralist legal tools at the normative level. When the extraterritorial application of export control regulations degenerates into an exclusive suppression means, its institutional logic will weaken itself by rejecting competition and reciprocity. The extraterritorial application of U.S. export control regulations is presenting such an institutional backlash. U.S. export control practices not only trigger a legitimacy deficit at the international level, but also weaken their normative foundation by destroying the mutually beneficial expectations of technology governance. Accordingly, the legitimacy reconstruction of export control regulations should return to the concept of “enlightened self-interest”, and replace the unilateral mandatory logic with reciprocal rules on the basis of reciprocal obligations and international coordination mechanisms.

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