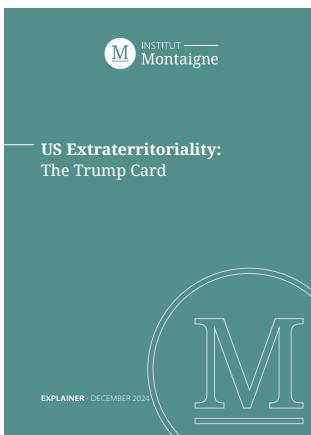


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# US Extraterritoriality: The Trump Card



**T**he new European Commission has made economic security a priority for its 2024-2029 agenda. It has promised to make the EU more competitive and protect its single market from distortion, technology theft and coercion. The EU has already adopted new instruments to reduce its supply chain vulnerabilities and is rethinking its industrial policy. However, its strategy has one key blind spot: the EU lacks a clear policy on extraterritoriality, not least on how to respond to coercive unilateral sanctions. This is shortsighted and could damage the EU's long-term economic and political interests.

## US EXTRATERRITORIALITY: A FUTURE TRUMP CARD?

**Extraterritoriality is a key tool to promote and defend US interests.** Extraterritoriality – understood as the application of national laws abroad – is not a new phenomenon, but it is gaining traction. In a world characterized by strategic competition, mass subsidies, de-risking and weak multilateral organizations, countries are looking for new ways to safeguard their political and economic interests. Many are turning to law to achieve this. None more than the United States.

**US extraterritoriality can target almost any individual, entity or company in the world.** It can take many forms: primary sanctions to weaken hostile countries and criminal/terrorist organizations; secondary sanctions to target individuals, entities or companies whose activities threaten US national security interests; privacy, data-protection and intelligence-gathering laws; as well as regulations designed to limit market access and exports of sensitive dual-use technologies to hostile countries.

**It is very difficult for European governments to ignore, let alone stop, US extraterritorial norms from applying.** Companies that fail to comply with US rules risk huge fines, handover of sensitive data, exclusion from the US market and its financial system and possibly prison time for their directors. The risk of exclusion is such a forceful deterrent that European companies prefer to comply with US rules, rather than abide by European measures designed to block their application.

**There are good, bad and ugly uses of US extraterritoriality.** The US has a very broad definition of national security, which it has used to justify its use of extraterritorial norms. Stated aims include: protecting the US' vital security interests when treaties and international organizations fail to; upholding and defending human rights, international law and global competition rules; preventing excessive risk-taking by companies; and curbing the threat posed by hostile countries, money-laundering networks and criminal organizations. In many cases, these goals align with European interests. However, the US has also been accused of using extraterritoriality as a way to secure market dominance and for industrial espionage and intellectual property theft.

**Extraterritoriality has become a key tool to manage US-China systemic rivalry.** Export controls are central to US strategy to hinder China's efforts to achieve greater technological self-reliance, particularly in sensitive and critical technologies. They target US firms exporting to China, but also European firms that are found to use software, components or processes from the United States. In response, China has also adopted its own set of export controls, which could soon apply to European companies doing business in, and with, China.

**President-elect Trump has a love-hate relationship with extraterritoriality.** During his first term, President Trump tightened export controls and expanded laws to punish those committing human rights abuses. At the same time, he rolled back banking regulations set up in the aftermath of the 2008 financial crisis. He has also criticized other extraterritorial measures, like the US' anti-corruption laws, arguing that they created

unnecessary red tape and dissuaded foreign companies from working with US firms. During the 2024 campaign, he warned that he would remove any sanctions that threatened the dollar's dominance in international financial transactions.

**It is not clear whether a Trump 2 Administration would use extraterritoriality as a coercive tool – making it the perfect Trump card.** President Trump is expected to be much tougher on export controls and have a tailored approach to sanctions. He has called "tariffs" "the most beautiful word in the dictionary", and he is likely to rely more on tariffs than on other measures to attain US strategic goals. The real uncertainty is whether he would use extraterritoriality – or the threat of it – as a coercive tool to pressure the EU into reversing laws he does not like, such as the EU's General Data Protection Regulation (GDPR) or digital market rules, which affect the way US companies operate in Europe.

## A MIXED BAG FOR EUROPE

**US extraterritoriality has a mixed reputation in Europe.** There are many reasons why US extraterritoriality is necessary. It has reduced global cases of corruption worldwide and has minimized risk-taking by banks since the 2008 financial crisis. It ensures that European companies do not support criminal activities and allows the US to sanction foreign governments accused of breaching international law (such as Russia and Syria).

**US extraterritoriality becomes a problem when the interests of the US and EU do not align.** For example, the US and the EU disagree on how to use European data stored on US servers. They sometimes apply different sanctions against third countries, in the case of Iran or Cuba for example. Since 2018, there has been a recorded €18.8 billion in direct losses for EU companies accused of non-compliance with US laws. Litigation processes have sometimes resulted in handover of commercial data and industrial plans, as well as take-over of US-based activities by US competitors.

**Navigating US laws is extremely complex.** With many extraterritorial provisions in existence, a company's chances of breaking the law, even inadvertently, are high. To avoid penalties, European companies need to understand what their products are made of, where they are fabricated, and whom they are sold to and shared with. They also need to know how complying with US laws can conflict with EU and other third-country measures. European companies are increasingly caught in the crossfire of competing sanctions regimes.

**The current Republican majority is good and bad news for European companies abiding by US laws.** Both Republicans and Democrats embrace extraterritoriality – but disagree on the role that executive agencies should play. The recent Supreme Court's decision to overturn the 40-year-old Chevron precedent makes it clear that it is the courts, not executive agencies, that must clarify the application of US laws when Congress has failed to provide adequate guidance. This is good news for European companies looking to challenge the application and enforcement of US extraterritorial norms in court. However, it also creates greater regulatory uncertainty as action taken by executive agencies on tackling climate change or advancing clean technology, for example, could also be challenged in court.

**The EU has been reluctant to challenge the US over its use of extraterritoriality.** The current geopolitical context means that (most) member states have been reluctant to discuss extraterritoriality or take any measures that could be seen to weaken, or undermine, the transatlantic relationship – or give the US cause to rethink its security guarantees to Europe. It has also been reluctant to adopt a more offensive approach on extraterritoriality fearing that it would be accused of hypocrisy after years of castigating the US for its offensive uses.

**The US prefers to bypass the European Union and discuss extraterritoriality with individual member states instead.** This is especially the case for export controls of critical technologies to China. The US knows that it cannot prevent China from gaining technological supremacy alone and is putting pressure on

the EU to follow its lead. Rather than deal with the EU, it has preferred to exert pressure directly on individual member states like it did when it got Japan and the Netherlands to agree to restrict exports of advanced chip-manufacturing equipment to China in January 2023. Yet, action taken by one member state can have consequences for the whole of the European Union. Since 2023, Beijing has been retaliating by limiting exports to the EU of gallium, germanium, graphite and several compounds used to make semiconductors.

## TRUMP-PROOFING THE EU'S OFFER

**The EU should engage in discussions with the Trump Administration on extraterritoriality, beginning with the US laws that President Trump himself has criticized.** President Trump has been critical of several extraterritorial measures, such as the Foreign Corrupt Practices Act or the Foreign Intelligence Surveillance Act, both of which have historically posed challenges for the EU.

**The EU needs to show why it is in the US's interest to coordinate sanctions.** There are several reasons for this: first, to limit exports of strategic technologies to China; second, to slow down attempts to circumvent Western laws. Trade flows between Moscow, Beijing and Tehran have intensified in recent years, making it easier for their companies to ignore Western regulations. While financial transactions in dollars far outweigh those in other currencies, China has also been thinking of ways to internationalize the renminbi.

**The EU should be clear-eyed about the possibility that dialogue may not yield results and be ready to make bargains.** The Trump 2 Administration will be transactional. If the EU wants to lower the chances of coercive US laws, then it needs to be ready to offer something in return, for example more imports of gas and LNG. President Trump has said he wants to reduce the trade deficit the US has with the EU, making it a good starting point for bargaining.

**The EU should develop an approach to extraterritoriality that is both defensive and offensive.** Not all US extraterritorial norms are bad. But some do pose a challenge to the sovereignty of the EU and its member states. What's more, the EU's defensive measures, like the Blocking Statute, have been largely ineffective in shielding companies from US extraterritorial rules. The EU needs to shift its mindset on extraterritoriality and recognize, like it did in 2021, that it can be used as a coercive tool.

**EU countries should let the European Commission take the lead in coordinating and devising an offensive strategy.** It is not clear that the EU has the legal competence, or political support from member states, to develop a new strategy on extraterritoriality. It would make sense for the European Commission to take the lead, in close coordination with the Council of the EU.

EU coordination is particularly important to thwart US attempts to divide member states and to prevent the fragmentation of the single market if individual member states adopt their own defensive measures. For that, the EU Commission will need to reassure EU governments and European companies that it can store, protect and keep any information confidential.