

## 出口管制之法律定性衝突與國際經濟法秩序轉型 ——以歐盟軍商兩用貨品出口管制制度為中心

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### 摘要

出口管制原本主要被理解為防擴散與軍備控制工具，惟隨地緣政治競爭加劇、關鍵技術成為國家競爭核心，以及數位監控技術可能助長人權侵害，其功能已擴張至人權保護、經濟安全與科技治理。本文以歐盟軍商兩用出口管制制度（Regulation (EU) 2021/821）為中心，探討其功能擴張所引發之「法律定性衝突」：同一措施在不同法規中，可能同時被理解為防擴散安全工具、人權保護機制、經濟安全手段，以及應受審查之出口限制，各定性之正當化基礎與審查標準彼此互不化約。本文以網路監控物項出口管制為案例，呈現此種多重定性並存之制度接縫。

本文進而建構由功能辨識、比例原則審查與程序課責構成之「三階審查框架」，並以系統性解釋方法處理定性間之動態競合，同時檢視此框架得以透過判例解釋調整、「技術安全例外」條約化，以及建制間協調機制，轉化為具拘束力之制度安排。本文主張，出口管制之法律定性衝突並非制度失靈，而是國際經濟法秩序正自市場開放為核心之架構，轉向市場、安全、技術與韌性交錯之複合秩序之訊號。

關鍵字：出口管制、軍商兩用貨品、比例原則、經濟安全、法律定性衝突

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## Abstract

Export controls have traditionally been understood primarily as instruments of non-proliferation and arms control. As geopolitical competition has intensified, critical technologies have become central to strategic competition among states, and digital surveillance technologies have increasingly raised concerns about their potential contribution to human rights abuses, the functions of export controls have expanded to encompass human rights protection, economic security, and technology governance. Focusing on the European Union's dual-use export control regime under Regulation (EU) 2021/821, this Article examines what it terms a "conflict of legal characterizations" arising from this functional expansion. The same export control measure may, across different legal regimes, be characterized as an instrument of non-proliferation and security, a mechanism for human rights protection, a measure of economic security, or an export restriction subject to trade-law scrutiny. Each characterization rests upon a distinct justificatory basis and entails a different standard of review, none of which can be fully reduced to another. Using export controls on cyber-surveillance items as a case study, this Article illustrates the institutional interfaces created by the coexistence of these multiple legal characterizations.

This Article further develops a three-stage framework of review consisting of functional identification, proportionality review, and procedural accountability. It employs systemic integration as a means of addressing the dynamic interaction among competing legal characterizations and examines how this framework might be institutionalized through the incremental development of judicial interpretation, the treaty-based establishment of a "technology security exception," and mechanisms for inter-regime coordination. This Article argues that conflicts of legal characterization in export control governance should not be understood as evidence of institutional failure. Rather, they signal a broader transformation of the international economic legal order: from an architecture centered primarily on market openness toward a more complex order in which markets, security, technology, and resilience increasingly intersect.

Keywords: Export Controls, Dual-Use Items, Proportionality, Economic Security, Conflicts of Legal Characterization