The inclusion of an amendment providing for export control reform in the House version of a defense bill this month raises hopes the Senate will follow suit. (credit: J. Foust)

Renewed hope for export control reform

by Jeff Foust
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The story of export control reform for the space industry over the last several years has been one of hopes raised and then dashed. Legislation has been introduced in Congress, only to die; reform efforts by the executive branch have had a limited impact, at best, on the industry. However, proponents of reform continue to make the case that such reforms are needed and hope that next time will be different (see “The Sisyphean task of export control reform”, The Space Review, November 7, 2011).

And, perhaps, next time will be different. The industry’s hopes are raised again thanks to several recent milestones, including the release of a long-awaited report on the
effects of such reform and the passage of a defense authorization bill in the House earlier this month that includes a provision key to reform efforts. Given past experience, though, some remain skeptical that real progress in export control reform is possible this year.

The Section 1248 report

The current wave of activity of export control reform started in April with the release of a report by the Departments of Defense and State titled “Risk Assessment of United States Space Export Control Policy”, but more commonly known as the “Section 1248” report after the section of the 2010 defense authorization act that called for the report. That legislation called for “an assessment of the national security risks of removing satellites and related components from the United States Munitions List,” or USML. Congress placed satellites and related components on the USML in the late 1990s in another defense authorization bill, putting them into the more restrictive export control system known as the International Traffic in Arms Regulations, or ITAR. That has made it more difficult for US companies to export these items even to close allies, raising concerns about the country’s competitiveness and the health of the space industrial base.

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The final version of the Section 1248 report, released last month, offered good news for the industry. It recommended that communications satellites that do not contain classified components, remote sensing satellites that fall below specific technical performance thresholds, and components for such satellites be moved from the USML to the less restrictive Commerce Control List (CCL), making it easier for US companies to sell those items to foreign customers.

“The report we sent to Congress reflects a very thorough review” of what should be on the USML, said Ambassador Greg Schulte, Deputy Assistant Secretary of Defense for Space Policy, during a briefing in Colorado Springs last month unveiling the report.

That thoroughness, though, did come at a cost: the report was delivered almost exactly two years after the deadline in the law. The administration did provide Congress with a draft Section 1248 report a year ago, but wasn’t sufficient to address all Congressional concerns about proposed reforms. Schulte said that they needed to do more “homework” as part of the administration’s broader export control reform effort, grounding the report’s recommendations in a greater degree of technical analysis. “We think that should give Congress greater confidence in how we would carry out, how we would apply, the President’s authority [to take items off the USML] if it were given back to him.”

So far, the report appears to be living up to those expectations. The report “has been enormously influential and gives Congress the confidence to consider restructuring satellite export controls,” said Patricia Cooper, president of the Satellite Industry Association,
during a panel session on export control reform at the National Space Society’s International Space Development Conference (ISDC) in Washington, DC, on Friday.

**Congressional action**

Members of Congress have attempted export control reform in the past. Last fall, Rep. Howard Berman (D-CA) and a bipartisan group of cosponsors introduced HR 3288, legislation that would restore to the President the ability to remove satellites and related components off the USML. Such legislation is required for export control reform since space is the only area in which the President doesn’t already have that authority, as Congress explicitly placed these items on the USML in the 1990s. The legislation would still specifically ban exports of satellites and their components to China and several other nations.

While the legislation made no progress as a standalone bill, it found new life last month as an amendment to the fiscal year 2013 defense authorization bill when it was debated in the House. That amendment, supported by both the chairman and ranking member of the House Armed Services Committee, was included in a block of uncontroversial amendments that the full House accepted by voice vote during debate on the bill May 17.

“Treating commercial satellites and components as if they were lethal weapons, regardless of whether they’re going to friend or foe, has gravely harmed American space manufacturers,” Berman said in a statement celebrating the amendment’s passage. That has been a major argument for export control reform: by making it difficult for US

“I’ve been in Washington too long to be particularly optimistic,” Gold cautioned, giving the proposed reform language only a 20% chance of passage.
companies to sell satellites and components even to close allies, it has caused them to lose business and thus jeopardize their ability to remain in operation. “We depend on these manufacturers for our own critical defense needs; if onerous restrictions prevent them from competing in the international marketplace, then they can’t innovate and ultimately cannot survive.”

Last week, Sen. Michael Bennet (D-CO) introduced a companion bill, S. 3211, in the Senate. “The report released by the Administration highlights how our outdated export controls undermine our nation’s ability to compete and innovate in the international marketplace,” Bennet said in a statement, referring to the Section 1248 report. “This bill will ensure that our nation’s export controls will treat satellites and their components in a manner that is consistent with other items that serve both a military and a commercial purpose.”

As in the House, the best hope for passing S. 3211 is to incorporate it as an amendment to another bill, such as the defense authorization bill. The Senate Armed Services Committee completed its markup late last week of its defense authorization bill, with the full Senate expected to debate it, and potential amendments to it, as early as mid-June. Even if the provision isn’t included in the Senate version, Cooper said, it could still make its way into the final version when the House and Senate reconcile their separate versions of the bill in conference later this year.

One person who has closely followed export control reform efforts remains skeptical about the prospects of real reform this year. “I’ve been in Washington too long to be particularly optimistic,” said Bigelow Aerospace’s Mike Gold, chairman of the export control working group of the FAA’s Commercial Space Transportation Advisory
Committee (COMSTAC), at the ISDC panel. He thinks there may not be enough time this year to consider the bill in the Senate. “If this had been introduced in November of last year we might have had a fighting chance. Now I think there will be hearings and not enough time to get it through.”

The Senate has been the obstacle to export control reform in the past. In 2009 the House included a similar provision in a State Department authorization bill, returning authority to transfer satellites and related components off the USML to the President. The bill, though, died in the Senate.

“There’s a lot of work to be done to update, educate, and encourage individual senators to weigh in on this issue,” Cooper said. “We haven’t had legislation in the Senate in 2003. This is not an issue senators have been spending a lot of time on.”

When asked to predict the chance reform passes Congress, Cooper declined to give a specific percentage. Gold, though, said he thought there was only a 20 percent chance the reforms make it into law this year. “We’ve been to this movie before, and we know how it ends,” he said. “I would have liked to have seen a bipartisan bill in the Senate” rather than current bill that is sponsored by only a Democrat.

Even if the bill does pass, there is another obstacle: action by the President to move selected space items off the USML. The Obama Administration’s position is fairly clear, Gold noted, based on both the language of the Section 1248 report as well as other items, including “There has been more activity on ITAR in the last year than in the past ten years combined,” Cooper said.
language endorsing such reform in his campaign’s 2008 space policy. It’s not clear, though, what would happen if expected Republican presidential nominee Mitt Romney wins in November, as his campaign has said little on space policy in general, let alone a niche issue like export control reform. “I’m not going to say they’re against it,” Gold said. “I just haven’t heard what their policy is yet.”

The events of recent weeks still provide some hope for export control reform proponents that, just maybe, this time will be different. “There has been more activity on ITAR in the last year than in the past ten years combined,” Cooper said.

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