Satellite Export Control Policy: Current Status and Prospects for Reform
SIA MEMBER COMPANIES
Legal Framework for Export Controls

Arms Export Control Act of 1976 (as amended)

- “…it remains the policy of the United States to encourage regional arms control and disarmament agreements and to discourage arms races.”
- “The Congress recognizes, however, that the United States and other free and independent countries continue to have valid requirements for effective and mutually beneficial defense relationships in order to maintain and foster the environment of international peace and security…”
- “Accordingly, it remains the policy of the United States to facilitate the common defense by entering into international arrangements with friendly countries…to achieve specific national defense requirements and objectives of mutual concern.”

Export Administration Act of 1979 (as amended)

- “It is the policy of the United States…to encourage trade with all countries with which the United States has diplomatic or trading relations, except those countries with which such trade has been determined by the President to be against the national interest”
- “It is the policy of the United States to use export controls only after full consideration of the impact on the economy of the United States and only to the extent necessary to restrict the export of goods and technology which would make a significant contribution to the military potential of any other country…which would prove detrimental to the national security of the United States”
Dual-use Items
- Regulated by Export Administration Regulations (EAR)
- Administered by Commerce Department, described by Commerce Control List (CCL)
- Presumption of approval of applications, unless to an embargoed country or involving a barred recipient
- No Congressional notification
- No special export controls

Defense Articles and Services
- Regulated by International Traffic in Arms Regulations (ITAR)
- Administered by State Department, described by U.S. Munitions List (USML)
- Presumption of denial of applications, unless in the foreign policy interests of the U.S.
- Possible notification of Congress:
  - If destined for NATO members, Japan, Australia, or New Zealand and contract value exceeds $100 million
  - If destined for other countries and contract value exceeds $50 million
  - Contract values above which notification is required are lower for all countries if item being exported meets definition of “major defense equipment”
- “Special export controls” or launch monitoring required by law for some satellite- and launch-related exports
Strom Thurmond National Defense Authorization Act FY99 Sec. 1513:

• “Notwithstanding any other provision of law, all satellites and related items that are on the Commerce Control List of dual-use items in the Export Administration Regulations (15 CFR part 730 et seq.) on the date of the enactment of this Act shall be transferred to the United States Munitions List and controlled under section 38 of the Arms Export Control Act (22 U.S.C. 2778).”

  – Note: Satellites are ONLY category where Congress mandates USML treatment under International Traffic in Arms Regulation (ITAR)

• Effect:
  – Moved communications satellites from Commerce-regulated CCL to State-regulated USML (Category XV)
  – Reduced international competitiveness of U.S. space/satellite manufacturing industry, with resulting effect on space supply chain and U.S. industry employment
Final Section 1248 Report

- Requested in 2010 NDAA; Delivered to Congress April 2012
  - Interagency assessment of the national security impact of removing space and space-related technologies from the USML
    - Approved by White House and Departments of Defense and State; interagency review included Commerce, Intelligence Community, NASA, other agencies
  - Recommends:
    - “Congress should return to the President authority to determine the export control jurisdictional status of satellites and related items”
  - Evaluated all satellites and related items within USML Category XV, with technical recommendations for types of items to consider transferring off USML to CCL, if permitted by legislation

- Bi-partisan sponsorship (HASC, HFAC) and non-controversial adoption
- Returns authority to the President to determine export control jurisdiction for “commercial satellites and related components and technology”
  - Defined as “communications satellites that do not contain classified components, including remote sensing satellites with performance parameters below thresholds identified on the USML; and systems, subsystems, parts, and components associated with such satellites and with performance parameters below”
- Prohibits trade with China and state sponsors of terrorism
- Similar language passed again in Foreign Relations Authorization Act, FY 2013 (H.R. 6018)

Senate: Stand-alone reform legislation (S. 3211)

- Introduced by Sen. Michael Bennet (D-CO)
- Returns authority to the President to determine export control jurisdiction for “satellites and related items”
Current Reform Efforts: Effects on Satellites and Related Items

• **Commercial Communications Satellites**
  - Regulated by Commerce Dept on CCL in 1999;
  - Moved to State Dept regulation on USML by FY99 NDAA
  - Eligible for transfer to CCL under definitions in current NDAA, Bennet
  - Most items recommended to move to CCL by Administration in Sec. 1248

• **Launch Vehicles**
  - Regulated by State Dept on USML in 1999 and now
  - Considered by Executive Branch to be military items, including in Sec. 1248
  - Not addressed in any current legislation or recommended for transfer

• **Scientific, Experimental, Research and other Spacecraft**
  - Regulated by State Dept on USML prior to 1999 and now
  - Not explicitly mentioned by FY99 NDAA language, but many items interpreted by Executive Branch as legally required to be on USML
  - Depending on legislative definition, may be “stranded” on USML
  - Not explicitly included in NDAA; likely would be included in Bennet Bill