

Congress Expresses Interest in Export Control Reform and the Impact on U.S. Competitiveness: Possible Changes to the Control of Satellites Under ITAR?

by Nancy Fischer, Joshua Fitzhugh and Michael Noonan

Congressional interest in the application of military export controls to satellite technology is heating up in the 111th Congress. At a Capitol Hill event on April 29, 2009, a leading member of the House Committee on Intelligence told industry representatives that ITAR reform is to be a legislative priority. This follows recent hearings by the House Committee on Science and Technology on February 25, 2009 on the “Impacts of U.S. Export Control Policies on Science and Technology Activities and Competitiveness” and the House Committee on Foreign Affairs, Subcommittee on Terrorism Non-Proliferation and Trade on April 2 entitled “Export Controls on Satellite Technology.” The chairs of both hearings indicated these were only the first of more hearings to come as the U.S. looks to possible alternatives to the status quo, which restricts the export of satellite technologies as military goods under the International Traffic in Arms Regulations (“ITAR”), 22 C.F.R. §§ 120-130.

At an American Institute of Aeronautics and Astronautics event, “Entrepreneurial Space and Export Control: Red Tape in the Final Frontier,” held on April 29, Rep. C.A. “Dutch” Ruppertsberger (D-MD) declared that it is time “to move forward with some action” on ITAR reform. Rep. Ruppertsberger, who is a member of the House Intelligence Committee and chairs the subcommittee on Technical and Tactical Intelligence, cited the weakened space industry as his motivation for addressing space export controls and raised concerns about U.S. positioning in the future if the situation worsens. Noting that President Obama’s campaign positions included ITAR reform, Rep. Ruppertsberger expressed his intention to lead congressional efforts to involve the executive branch in pushing for reform, and to work with other Committees and agencies to move “as quickly as possible.”

The Committee on Science and Technology hearing, chaired by Congressman Bart Gordon (D-TN), discussed the broader impact of export controls on science and technology in general, with an emphasis on the impact of export controls on U.S. commercial space activities. A number of prominent witnesses testified at the hearing in favor of rationalized export controls for satellite technology, including Lt. Gen. Brent Scowcroft (Retd.) (Co-chair National Academies Committee on Science, Security and Prosperity), A. Thomas Young (Co-chair CSIS Working Group on Health of U.S. Space Industrial Base and the Impact of Export Controls), Dr. Claude R. Canizares (Associate Provost, MIT), and Maj. Gen. Robert Dickman (Exec. Dir., AIAA). The House Foreign Affairs Subcommittee on Terrorism, Non-Proliferation and Trade, chaired by Rep. Brad Sherman (D-CA), focused specifically on the effects of military export controls on the satellite

industry. Prominent witnesses for that hearing included Dr. Larry Wortzel (Vice Chairman U.S.-China Economic and Security Review Commission), Pierre Chao (Non-Resident Senior Adviser, CSIS, Co-chair of The Health of the U.S. Space Industrial Base and the Impact of Export Controls), and Patricia Cooper (President, Satellite Industry Association). Both hearings provided credible arguments that the application of military export controls to satellite technologies has harmed the U.S. space industry and negatively impacted U.S. intelligence capabilities. Rep. Sherman concluded his hearing by stating that Congress should re-examine 1999 legislation applying military export controls to satellite technologies.

Satellites are currently the only U.S. technology that Congress has specifically subjected to military export controls under the ITAR. All other U.S. technologies are controlled under military or civil “dual use” export controls based on their military application, as determined by the U.S. Department of State. Several hearing witnesses argued that returning the determination for satellites to the executive branch would resolve concerns over both U.S. competitiveness and U.S. national security.

Although no follow up hearings are currently shown on either Committee’s schedules, communications between industry representatives and congressional staff are continuing, and it is expected that additional hearings will take place, along with the possibility of the introduction of legislation in the House. Witness testimony and congressional questioning during the hearings indicate that any possible legislation most likely will focus on the removal of the congressional mandate placing satellites under ITAR control, and returning the authority for the determination of satellite controls to the executive branch and the Department of State. The end result of this approach, if successful, is that for the first time in over a decade there will be no congressional requirement for satellites in their entirety to remain ITAR controlled. The aim would then be to conduct executive branch review with industry contribution and involvement, potentially resulting in the movement to the control of the Department of Commerce of appropriate portions of commercial satellite technology and its related components. Indications are that some agencies have begun their analyses of satellite technologies in anticipation of such a result.

These possible developments present many important implications for the satellite industry, including increased access to foreign markets, decreased regulatory burdens, reduced licensing requirements, and a lessening of restrictions on employment of foreign nationals. Pillsbury will continue to monitor developments in this area and assist its clients with evaluating and responding to potential proposals for revisions to export controls on satellite and space based technologies.

For further information, please contact:

Nancy Fischer
Washington, DC
+1.202.663.8965
nancy.fischer@pillsburylaw.com

Joshua Fitzhugh
Washington, DC
+1.202.663.8416
joshua.fitzhugh@pillsburylaw.com

Michael Noonan
Washington, DC
+1.202.663.9346
michael.noonan@pillsburylaw.com

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