

Recovering from ITAR: Possibly Tough for U.S. Satellite Industry



The U.S. International Traffic in Arms Regulations (ITAR) have been the source of much debate in the satellite industry in recent years. While many believe that these laws put U.S. satellite companies at a competitive disadvantage, some say the situation may soon change.

By Sam Silverstein

More than a decade after the United States classified commercial communications satellites as weapons and imposed strict controls on their transfer to non-U.S. entities, industry officials may finally be gaining traction with their message that the restrictions have served mainly to dilute critical American capabilities and should be abolished.

But after so many years operating in the shadow of the U.S. State Department's widely disliked export rules, the U.S. satellite industry faces a steep challenge in trying to regain the global market dominance it once enjoyed even if it is freed from ITAR's grip, according to industry officials and analysts.

"This is market share that is permanently lost," said William Reinsch, formerly U.S. under secretary of commerce for export administration and now president of the National Foreign Trade Council, a Washington, D.C.-based organization that presses for access by U.S. companies to global markets. "We can't get it all back magically."

The U.S. Congress transferred responsibility for satellite exports from the Commerce Department to the State Department in 1999, in the aftermath of the failure of a Chinese rocket carrying a U.S.-built satellite for Intelsat. The legislation was intended to bolster national security by keeping American space technology from potential U.S. adversaries, but it also placed satellites on the U.S. Munitions List, subjecting their exports to ITAR. In addition, Congress required that it generally be notified before the government issues a satellite export license.

The satellite industry has complained that ITAR can slow down and otherwise complicate a U.S. satellite company's plans to deliver parts or a complete spacecraft to a foreign customer.

Industry officials also bristle about the need to obtain government approval to discuss technical information with their non-U.S. customers after a satellite is launched.

In a preliminary report delivered to a divided Congress in May, officials of the State and Defense departments said they had concluded that commercial communications satellites and related components could be conditionally removed from the munitions list without threatening U.S. national security.

Federal officials expect to provide the complete report, requested by Congress in the 2010 National Defense Authorization Act (NDAA), before the end of 2011. The final report is expected to expand on the recommendations in the interim version, which include transferring satellites and related components back to the Commerce Control List, and, consequently, removing them from the jurisdiction of ITAR and the State Department.

Changing Satellite Export Control

Quantifying the lost market share or reduced employment impact of ITAR on U.S. companies is difficult because other factors, including advances in technology and ebbs and flows in demand for spacecraft, blur the picture, said Lauren Airey, director of trade facilitation policy at the National Association of Manufacturers. She said it is clear the industry has been significantly hampered by the constraints under which it must operate.

"If the U.S. satellite industry was on more equal footing [with foreign competitors], it would be incredibly competitive globally," Airey said. "It would certainly be more competitive if we had not bound the satellite industry up in this way."

The Aerospace Industries Association (AIA) has also concluded that ITAR has sharply dented the United States' share of the satellite manufacturing business worldwide. "It's hard to prove, but I can tell you that our market share was extremely high in the pre-ITAR days, and we know that the market share of competitor nations has grown tremendously since then," said Frank Slazer, vice president of space systems for AIA.

According to Slazer, imposing ITAR on the satellite industry may inadvertently have put U.S. national security at risk by giving an incentive to foreign companies to develop advanced capabilities they previously lacked. In addition, the government could find itself without a domestic source of critical space technology if American satellite firms continue losing business to competitors abroad, he said.

The satellite industry has been working to convince federal lawmakers that the executive branch, not Congress, should have the discretion to decide how to administer satellite exports, according to Patricia Cooper, president of the Satellite Industry Association.

The Obama administration also believes that the White House should be in charge of export licenses for satellites, according to a spokesperson for the State Department. "Should the authority to determine the jurisdiction of satellites be returned [by Congress] to the President, more nuanced regulations can be implemented consistent with the sensitivity of the items subject to control," said the spokesperson. "The regulatory rulemaking process is more responsive and efficient [than the legislative process]. Technological changes can be identified, proposed regulations published for comment and final rules implemented in a matter of months."

The State Department spokesperson added that rapid changes in technology are a key reason why the State Department would like Congress to give the White House authority for managing satellite exports. "The legislative process, while well suited to establishing broad policy guidance and requirements, is in our view less suited to identifying and imposing

controls on emerging technologies or adjusting controls on technologies as advances render them of lesser concern at increasingly shorter intervals.”

Although some members of Congress remain steadfastly opposed to freeing commercial satellites from ITAR, others on Capitol Hill are pushing for change.

“Prohibitions on old, simple and widely available technologies are putting American companies at a severe disadvantage to foreign competitors” and have led to a sharp decrease in the United States’ portion of the global satellite market, said Maryland Democratic Rep. C.A. “Dutch” Ruppertsberger, a vocal proponent of satellite export control reform, in a statement provided to *Via Satellite*. “We’ve made progress relaxing export regulations that are stifling the American space industry, but more needs to be done. U.S. space companies should be able to sell more of their technologies overseas, increase their market share and offer the United States better products at more competitive prices.”

Restoring Commerce’s responsibility for handling satellite exports — and ending the requirement that Congress be alerted about export license requests before they can be approved — would significantly speed up the government’s ability to handle export license applications, according to the State Department spokesperson.

“Should the terms of removal not impose a notification requirement, a commerce license for the export of a communications satellite should be able to be decided in less than half the time required by State today,” the spokesperson said.

Even as Congress considers legislative action that would be necessary to remove satellites from the munitions list, industry analysts and executives say returning to its glory days as the undisputed global leader may be out of reach for the U.S. satellite-manufacturing sector. They point in particular to the emergence of so-called “ITAR-free” satellites from European satellite manufacturers as evidence that at least some buyers put off by U.S. export controls may not be coming back.

“There is a lot of talk that if ITAR were dropped, all of a sudden more companies would come to the United States,” said Marco Caceres, a senior space analyst at the Teal Group. “But the truth is that ITAR has been around for a long time, and even if they did drop it I’m not sure what the impact on U.S. [suppliers] would be. It wouldn’t make a radical difference.”

In a prime example of how the introduction of ITAR-free satellites has affected the market, Eutelsat contracted with the European satellite manufacturer Thales Alenia Space for two spacecraft to be built without any American components. By entirely avoiding U.S. components, the Paris-based satellite operator circumvented ITAR, which applies even in the case of satellites built by prime contractors outside the United States if any parts in the spacecraft are of U.S. origin.

Among the benefits for Eutelsat of directing its supplier to steer clear of U.S. components in the satellites was the option of launching from China on a Long March rocket. The U.S. government prohibits satellites with any U.S. components from being exported to China for launch, and industry officials said they expect that ban to remain in place even if satellites are removed from the munitions list.

Quality Versus Risk

Although ITAR comes into play whenever a satellite with U.S. parts is launched from a foreign location, the rules have not affected the ability of International Launch Services (ILS) to do business, said general counsel Thomas Tshudy. Virginia-based ILS provides commercial launch services on Russian Proton rockets launched from Baikonur Cosmodrome in Kazakhstan.

"ILS has adapted well to the change in enforcement entity from Commerce to State—it was a seamless transition for us," Tshudy said in a written statement provided in response to questions from Via Satellite. "ILS works well within the ITAR regime and knows and understands the ITAR policies and regulations, as we have for many years."

A top official of European satellite builder Astrium said building a communications satellite without any U.S. parts involves compromises and was not something his company would prefer to do.

"I think the market for ITAR-free products is a niche, and we see no reason why we should deliberately go out of our way to avoid U.S. components," said Colin Paynter, Astrium's head of strategy and chief of its operations in the United Kingdom. "We're not dogmatic. We're driven by the market."

A key reason for Astrium's decision not to push ITAR-free satellites is the company's belief that certain satellite components are best sourced from the United States, Paynter said. "From our point of view, there [would be] a trade-off in quality" if Astrium relied exclusively on non-U.S. suppliers for the components needed to construct a communications satellite, he said. "We have sold lots of satellites to commercial operators around the world, and we have had no problem with ITAR."

Nevertheless, Paynter said he senses that there is a growing feeling among the world's satellite customers that buying a satellite with U.S. components can be risky.

"Some companies may not invite American companies to bid because of concern they will be refused [export clearance]," Paynter said. "They may see unpredictability in ITAR, or worry that the [munitions] list will change during the time it takes to build a satellite."

The perception that dealing with the U.S. satellite export regime comes with a large dose of uncertainty has persuaded government officials in certain countries to invest in developing their own domestic space capabilities, a trend that could eventually erode the edge U.S. component suppliers currently enjoy, he said.

The idea that export requirements intended to prevent space technology from getting into the other nations' hands may essentially have had the opposite effect is likely to be the spark that gets Congress to remove satellites from the munitions list, industry officials said.

"If export-control reform is going to make its way through Congress at some point, it's not going to be on purely economic grounds, but on national security grounds," said Jeff Foust, a senior analyst at Futron Corp., which studies the satellite market worldwide. "As good-intentioned as it might have been to protect U.S. technology, [ITAR] has in fact encouraged other countries to develop their own technology."

Foust said he does not expect that a change in the export-control regime would result in a quick increase in the U.S. share of the global satellite-manufacturing market, which is hovering at just above 50 percent according to market research Futron conducted for SIA. But he said streamlining the licensing system could make a significant difference for smaller subcontractors.

"These companies [often] don't have in-house export-license expertise, so they may have decided not to sell outside the United States rather than try to deal with lawyers and get licensed as an arms dealer," Foust said.

Another factor is that the Pentagon is reducing its spending on satellites, according to industry officials. This is placing additional pressure on the commercial side of the business to sustain U.S. space companies and enable them to remain technological leaders, he said.

Moreover, many products lumped by the government into the munitions category simply because they are used aboard satellites are actually commodities readily available outside the United States from suppliers unfettered by ITAR, Slazer said.

"I don't think you're really protecting national security anymore," he said. By subjecting satellites to ITAR, Congress "inadvertently helped competitors grow...and killed [the U.S. satellite] industry's ability to compete."