

Lessening the Impact of Export Controls on the U.S. Aerospace Industry

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ABSTRACT: Maintaining a strong industrial and supplier base for the U.S. aerospace industry is, in itself, a significant national security issue. Enabling this sector to compete internationally will become increasingly important as government spending is constrained. The aerospace industry is confronted by restrictive satellite technology export policies, however. Modernizing the export control system will result in a healthier aerospace industrial base – allowing the nation to better focus on sensitive technologies and safeguard national security while creating high wage, high skill jobs. Promotion of satellite exports should rank among the most viable options to aid the economy, reinforcing U.S. preeminence in space and ensuring the U.S. aerospace industrial base remains second to none.

ISSUE: Balancing national security and economic interests during the Cold War was not complicated. Initially, the space domain was developed by the U.S. and the Soviet Union, which competed on terms of national security and space exploration. National security interests were at the fore, and initially commercial interests played only a minor role. With the collapse of the Soviet Empire, globalization and robust multibillion-dollar international commercial space markets emerged. With this new environment, striking a balance between national security and economic interests proved increasingly difficult. The regulatory framework-associated export control regime did not evolve to respond to the new paradigm.

BACKGROUND: The U.S. export control policies were developed and designed decades ago. The U.S. Department of State began to regulate munitions trade in 1935. Its regulators sought to ensure that strategic exports support both national security and foreign policy prerogatives. With the Space Age, its technologies were treated as munitions; as a result, State initially controlled their exports, and continued to do so throughout the Cold War. The Department of State regulated exports of technologies and services under the Arms Export Control Act, its International Traffic in Arms Regulation (ITAR), and the ITAR's United States Munitions List (USML).

In 1992, with the Cold War over, responsibility for the export of *some* “dual-use” commercial communication satellites (COMSATs) was transferred from State to the U.S. Department of Commerce. They were placed on the Commerce Control List (CCL), within the Export Administration Regulations (EAR), issued pursuant to the Export Administration Act (EAA). All COMSATs were placed on the CCL from 1996 to 1999. The presumption under the EAR was to approve proposed exports of commercial satellites, components, and related services. This presumption was aligned with Commerce's charter to promote U.S. economic interests at home and abroad.

A “dual-use” COMSAT can still be used for nonmilitary purposes such as imaging the Earth for commercial purposes; but it can also support military purposes such as imaging an adversary's military installations. In the mid-1990s, it is argued that some transfers of COMSAT and launch technologies improved the capabilities of the China's intercontinental ballistic missile systems. In that transfer, the chances of a successful Chinese launch of global commercial satellites were greatly improved, but significant U.S. national security interests were damaged in return. After the Cox Committee examined the failures, Congress passed the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (STNDAA for FY 1999), which transferred regulatory responsibility for COMSATs and related

components back to State. Once again designated as munitions, these items were strictly regulated. And they remain so today.

U.S. strategic export controls have been under fire for decades. Critics argue that in attempting to bolster national security by limiting the transfer of space technologies to adversaries and potential adversaries, the United States has unintentionally and paradoxically harmed its national security by undermining its aerospace industrial base and the international partnerships that are wanted to drive scientific and technological advancement. The U.S. export controls have been described as “broken,” “anachronistic,” “self-defeating,” “pernicious,” “toxic,” “regulation run amok,” “obsolete, arrogant, and counterproductive,” and a “byzantine amalgam” of bureaucracies.

The Government Accountability Office (GAO) has designated export controls as a “high-risk area” that “warrants a strategic re-examination of existing programs to identify needed changes and ensure the advancement of U.S. interests.” The Department of Defense’s (DoD) 2010 Defense Quadrennial Review Report indicated the present export control regime “poses a national security risk” for being overly complicated, excessively redundant, and attempting to protect too much. A 2009 National Research Council report, *Beyond Fortress America*, concludes that the U.S. export control system has not been updated to reflect post-Cold War conditions. Unfortunately, the current U.S. export control system is not optimized to protect sensitive technologies while maximizing the economic and national security benefits of international trade.

Export controls have had disturbing and insidious effects. The shift of COMSAT technologies from Commerce to State, intended to protect sensitive technologies and preserve U.S. preeminence, has contributed to a substantial decline of U.S. commercial satellite market share and fostered the competitiveness and capabilities of U.S. competitors abroad. The Aerospace Industries Association (AIA) understandably complains that “we have legislated away our nation’s dominance in space.” This is disturbing because technologies that underpin the domestic aerospace industrial base provided the capabilities and services that fueled the nation’s economy and ensured U.S. technological dominance for generations. Economic and technological leadership enabled the U.S. to prevail in the Cold War and set the stage for global leadership in the late 20th century.

Failure to revise and update export controls could result in a loss of critical industrial base suppliers and present an increasing risk to national security. International technology trade also helps aerospace and defense companies create jobs and fuel economic growth. The aerospace industry supports more than one million American jobs, and according to AIA estimates, fostered a \$51.2 billion aerospace trade surplus in 2010. Global trade also strengthens U.S. alliances and improves the U.S. security posture by providing allies and friendly nations with the capabilities they need to work jointly or unilaterally in support of shared security goals. However, export controls close off business opportunities with foreign customers and increase costs for U.S. industry and small businesses. This ultimately weakens the industrial base and its ability to support the nation’s security and economic interests. These challenges are particularly acute in the aerospace sector. Numerous studies have highlighted the negative impact of excessive export controls on the American aerospace industrial base.

If the U.S. continues on its current path, without implementing the right reforms, the nation risks the scenario of a weakened aerospace industrial base that is unable to fully meet U.S. national security needs or sustain our technological edge against foreign competitors.