

Legal Issues Related to Space Exploration (13)
Specific legal issues of space exploration and exploitation (2)

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IMPROVING EXPORT CONTROLS AFFECTING INTERNATIONAL COOPERATION ON SPACE
EXPLORATION ACTIVITIES

Abstract

Despite desires to save money, international cooperation successes are often secured only at a tremendous expense. Designing, manufacturing, and operating increasingly interoperable platforms, performing cooperative planning, and executing satellite operations are complicated by export control regimes that limit the release of sensitive technologies and operations. Oftentimes, important technologies and information needed to support space exploration activities are deemed non-releasable, even among close allies and partners. This is not just a U.S. phenomenon; many nations have their own laws and policies to clamp down on technology transfers.

Export and technology control rules are driving small suppliers out of the marketplace as they lack the economies of scale to respond to legal requirements. This damages exploration interests since small companies are usually the engine of innovation. International partners are also wary of legal rules and procedures. The requirement for regulatory assurances, and threats of criminal liability arising out of them, is thought to have cost billions of dollars in sales in the international space marketplace.

Academia and industry have long struggled with complex and bureaucratic export-control regimes, which in the U.S. are primarily divided among three agencies: the U.S. Commerce Department licenses export and re-export of “dual-use” commercial items and technologies having civilian and military applications under the Export Administration Act; the U.S. State Department regulates exports of technologies and services deemed to be military related under the Arms Export Control Act and its International Traffic in Arms Regulation (ITAR); and the U.S. Department of the Treasury’s Office of Foreign Assets Control administers and enforces economic and trade sanctions. Other nations employ unique regimes to restrict exports.

The exercise of controls by various agencies, with different agendas, imposes costs, and overlapping jurisdictions and bureaucratic agendas often creates confusion, even among agency administrators. The problems are further exacerbated by long license processing times. Significant paperwork may be necessary to gain approval of license applications. In addition, controlling sanctions can apply to specific companies as well as specific countries, and globally proliferating subsidiaries often make effective administration, and timely compliance, very difficult.

Export control reform will not be easily achieved, even if strong national policies encourage international cooperation. This paper will examine U.S. and other national export control regimes, including treaties and laws, regulations, policies and administrative practices. It will then examine alternative approaches to reconcile security/economics interests against desires to achieve cooperation, proposing a way ahead for future improvements.