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TWO SHIPS IN THE NIGHT: U.S. EXPORT REQUIREMENTS FOR COMMERCIAL ON-ORBIT
SERVICING – ANALYZING A CASE OF MECHANICAL DOCKING

Abstract

Export controls are a reoccurring consideration for commercial companies operating within the United State’s commercial space regime. In the United States, export of space-related commodities is controlled by the Department of State and the Department of Commerce, under the International Traffic in Arms Regulations (ITAR) and Export Administration Regulations (EAR), respectively. However, both the ITAR and EAR have positive carve-outs which resolve that a launch of a spacecraft or payload into space is not an “export.”

Developing on-orbit servicing (OOS) commercial capabilities will test how export law is interpreted and applied in outer space. This paper will consider the factual scenario of a U.S.-licensed servicing spacecraft which rendezvous and docks with a foreign-licensed satellite to perform station keeping operations, and analyze any U.S. export regulations that may apply. First, the paper will explore whether the international, mechanical docking and provision of station keeping services constitutes an export of a “defense article” or “defense service” under the ITAR, requiring a Department of State authorization. The paper will then turn to considering whether the facts satisfy any meaning of “export” under the EAR, requiring a Department of Commerce license. This paper will conclude with advice to operators seeking to conduct on-orbit international dockings, and potential areas of rulemaking or clarification for the Federal agencies.