



Report to COMSTAC of the Competitiveness and Innovation Working Group

Presented to: COMSTAC
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Export Control Tasker

No discreet actions directing improved export control are specified in any of the recent SPDs. DoT is part of the interagency consultation process that reviews export issues, both from EAR (DoC) and Munitions List (DoS), so FAA/AST engagement could be relevant and helpful.

Export Control

General

OBSERVATION: Export controls have a dramatic impact on the international competitiveness and general health of the domestic commercial space transportation industry.

OBSERVATION: The COMSTAC applauds Space Policy Directive 2 and the National Space Council's focus on streamlining regulations generally and export licensing affecting commercial spaceflight activities specifically.

Establish a Regular and Mandatory Review Process

RECOMMENDATION: During any intergovernmental discussions related to SPD-2 or export control reform generally, the Department of Transportation should advocate for establishing a mandatory and regular review of the United States Munitions List and Commerce Control List. This review should focus on ensuring that technologies which are widely available in the international marketplace are controlled appropriately, that the lists are 'positive' (i.e., provide detailed descriptions), and that redundancies are eliminated.

Export Control

Limit the Number of Departments and Agencies that Review Licenses

OBSERVATION: Export licenses are currently reviewed by a large array of Government Agencies and Departments and by multiple offices within those Government Agencies and Departments. In many instances, one or more of the Government Agencies and Departments that are asked to review licenses lack relevant experience and expertise.

RECOMMENDATION: During intergovernmental discussions the Department of Transportation should advocate to the Department of State and the Department of Commerce to limit the number of other Government Agencies and Departments that are required to review export licenses to only those with a direct, relevant involvement in the proposed activity. Moreover, the Department of Transportation should advocate for streamlining the export licensing process to limit the number of offices required to review a license within a Department or Agency.

Export Control

Proper Staffing

OBSERVATION: Insufficient staffing of offices responsible for export control licensing is already resulting in delays that are harming American competitiveness and innovation.

RECOMMENDATION: During interagency discussions the Department of Transportation should advocate for the National Space Council, the Department of State, the Department of Commerce, and other relevant Departments and agencies to support the proper staffing of offices responsible for export licensing to ensure that licensing is done in a timely and effective manner.

Outer Space Treaty Article VI Tasker

“AST seeks COMSTAC feedback on industry’s ideal situation for ensuring their activities are in compliance with US treaty obligations”

How can the United States best meet its Article VI Outer Space Treaty obligations as it regulates the commercial space transportation industry? What does implementing ‘continuing supervision’ mean to the industry? How will Article VI compliance work in practice?

General

The United States, as a signatory to the Outer Space Treaty, is required to provide authorization and continuing supervision of space activities that launch from its territory. Continuing supervision is not defined by the Treaty or by the US Congress. Furthermore, clarifications are required to permanently assign continuing supervision responsibility for non-traditional commercial space activities.

This lack of clarity in regard to Article VI increases uncertainty and dampens investment opportunities for companies seeking to establish new businesses in outer space. Indeed, plans for new commercial activities in space (e.g. satellite servicing, resource utilization, tourism, manufacturing, etc.) are proliferating. AST seeks COMSTAC feedback on industry’s ideal situation for ensuring their activities are in compliance with US treaty obligations.

Outer Space Treaty Article VI

Observation: Non-traditional commercial space activities such as private sector space stations, lunar rovers, satellite servicing, and asteroid mining are quickly transitioning from concept to reality. Moreover, it is important for the U.S. aerospace sector and the American economy in general to succeed and lead in these activities.

Observation: Article VI of the Outer Space Treaty requires States Parties to bear international responsibility for the “authorization and continuing supervision” of activities conducted by non-governmental entities in outer space. Currently, no single federal agency or department has clear authority for fulfilling Article VI obligations for non-traditional commercial space activities.

Finding: Uncertainty in regard to Article VI will hinder investment in and the execution of domestic non-traditional commercial space activities, and could also lead to companies conducting ‘forum shopping’ among various agencies and departments or deciding to move their operations outside of the United States.

Outer Space Treaty Article VI

Recommendation: During interagency discussions and communications with policymakers, the FAA AST and the Department of Transportation should advocate for an expeditious and effective resolution of the Article VI issue. Specifically, the AST and DOT should support a means of meeting Article VI obligations in a predictable, transparent, and efficient fashion that encourages rather than hinders investment in and the development of non-traditional commercial space activities.

Recommendation: Within interagency discussions, particularly with the Department of State, and during communications with other policymakers, the FAA AST and the Department of Transportation should advocate for Article VI's "continuing supervision" provision to be fully satisfied by a proviso within an approval letter requiring the applicant to update the relevant federal agency or department if there is a substantive change to their proposed non-traditional commercial space activity that was described in the application.

Recommendation: Existing applications and licensing requests intended to address Article VI compliance received by the FAA AST or other departments or agencies should not be delayed due to the potential for procedural or administrative changes and should be reviewed and acted upon in an expeditious fashion.