

107TH CONGRESS
1ST SESSION

H. R. 1707

To provide that the Secretary of Commerce has jurisdiction over exports of commercial satellites and related items, to provide certain procedures for exports of commercial satellites and related items, and for other purpose.

IN THE HOUSE OF REPRESENTATIVES

MAY 3, 2001

Mr. BERMAN (for himself and Mr. ROHRABACHER) introduced the following bill; which was referred to the Committee on International Relations, and in addition to the Committee on Armed Services, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the Committee concerned

A BILL

To provide that the Secretary of Commerce has jurisdiction over exports of commercial satellites and related items, to provide certain procedures for exports of commercial satellites and related items, and for other purpose.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Satellite Trade and
5 Security Act of 2001”.

1 **SEC. 2. EXPORT CONTROLS ON SATELLITES AND RELATED**
2 **ITEMS.**

3 Notwithstanding any other provision of law, all sat-
4 ellites and related items that were on the Commerce Con-
5 trol List of dual-use items in the Export Administration
6 Regulations (15 C.F.R. part 730 et seq.) on October 16,
7 1998, and any other dual-use communications satellites
8 and related items shall, subject to sections 3, 4, and 5,
9 be controlled under the Export Administration Act of
10 1979 (in effect or as continued in effect under the Inter-
11 national Emergency Economic Powers Act) or by the Sec-
12 retary of Commerce under any successor Act to the Export
13 Administration Act of 1979.

14 **SEC. 3. EXPORT LICENSE PROCEDURES.**

15 (a) REFERRAL TO OTHER DEPARTMENTS AND
16 AGENCIES.—The Secretary of Commerce (in this Act re-
17 ferred to as the “Secretary”) shall refer to the Secretary
18 of Defense, the Secretary of State, and the heads of other
19 departments and agencies that the Secretary considers ap-
20 propriate, all applications for licenses to export satellites
21 and related items.

22 (b) REQUIRED CONSULTATIONS WITH INTEL-
23 LIGENCE COMMUNITY.—The Secretary, the Secretary of
24 Defense and the Secretary of State, as appropriate, shall
25 consult with the Director of Central Intelligence during
26 the review of any application for a license involving the

1 overseas launch of a commercial satellite of United States
2 origin.

3 (c) TIME PERIOD FOR REFERRALS.—Within 30 days
4 after the Secretary refers an export license application
5 under this section, each department or agency to which
6 an export license application has been referred shall pro-
7 vide the Secretary with a recommendation to either ap-
8 prove or deny the license application. A department or
9 agency that fails to provide a recommendation within that
10 30-day period shall be deemed to have no objection to the
11 decision of the Secretary on the license application.

12 (d) INTERAGENCY DISPUTE RESOLUTION PROC-
13 ESS.—If there is no agreement among the Secretary, the
14 Secretary of Defense, and the Secretary of State to issue
15 or deny a license to which this section applies, then the
16 Secretary shall refer the license application to an inter-
17 agency dispute resolution process established by the Presi-
18 dent. The dispute resolution process shall be completed
19 within a period of 60 days. A license pursuant to the appli-
20 cation shall not be issued or denied until the Secretary,
21 the Secretary of Defense, and the Secretary of State agree
22 to issue or deny the license, or until the President makes
23 a determination to issue or deny the license.

1 **SEC. 4. NATIONAL SECURITY CONTROLS ON SATELLITE EX-**
2 **PORTS TO CERTAIN DESTINATIONS.**

3 Notwithstanding any other provision of law, the fol-
4 lowing shall apply to all licenses to export satellites or re-
5 lated items for launch in, or by nationals of, any country
6 that is not a member of the North Atlantic Treaty Organi-
7 zation or a major non-NATO ally of the United States:

8 (1) MANDATORY TECHNOLOGY CONTROL
9 PLANS.—All export licenses shall require a tech-
10 nology transfer control plan approved by the Sec-
11 retary of Defense and an encryption technology
12 transfer control plan approved by the Director of the
13 National Security Agency. The technology transfer
14 control plan shall be prepared by the Department of
15 Defense and the licensee, and shall set forth security
16 arrangements for the launch of the satellite, both be-
17 fore and during launch operations.

18 (2) MANDATORY MONITORING AND REIMBURSE-
19 MENT.—

20 (A) MONITORING OF PROPOSED FOREIGN
21 LAUNCH OF SATELLITES.—In any case in which
22 a license is approved for the export of a satellite
23 or related items for launch in a foreign country,
24 the Secretary of Defense shall monitor all as-
25 pects of the launch in order to ensure that no
26 unauthorized transfer of technology occurs, in-

1 including technical assistance and technical data.
2 The number of persons providing security for
3 the launch of the satellite shall be sufficient to
4 maintain 24-hour, 7-day per week security of
5 the satellite or related items and related launch
6 vehicle and other sensitive technology.

7 (B) CONTENTS OF MONITORING.—The
8 monitoring under subparagraph (A) shall cover,
9 but not be limited to—

10 (i) technical discussions and activities,
11 including the design, development, oper-
12 ation, maintenance, modification, and re-
13 pair of satellites, satellite components, mis-
14 siles, launch facilities, launch vehicles and
15 other related equipment;

16 (ii) satellite processing and launch ac-
17 tivities, including launch preparation, sat-
18 ellite transportation, integration of the sat-
19 ellite with the launch vehicle, testing and
20 checkout prior to launch, satellite launch,
21 and return of equipment to the United
22 States;

23 (iii) activities related to launch fail-
24 ure, delay, or cancellation, including post-
25 launch failure investigations; and

1 (iv) all other aspects of the launch.

2 (C) REIMBURSEMENT.—The Secretary of
3 Defense shall require the licensee to agree to
4 reimburse the Department of Defense for all
5 costs associated with the provision of security
6 for the launch vehicle or related items. All reim-
7 bursements received under this paragraph shall
8 be credited to current appropriations available
9 for the payment of the costs incurred in pro-
10 viding such services.

11 (3) MANDATORY STATE DEPARTMENT EXPORT
12 LICENSES FOR POST-CRASH INVESTIGATIONS.—In
13 the event of the failure of a launch from a foreign
14 country of a satellite of United States origin—

15 (A) the activities of United States persons
16 or entities in connection with any subsequent
17 investigation of the failure are subject to the
18 controls established under section 38 of the
19 Arms Export Control Act, including require-
20 ments for licenses issued by the Secretary of
21 State for participation in that investigation;

22 (B) officials of the Department of Defense
23 shall monitor all activities associated with the
24 investigation to insure against unauthorized
25 transfer of technical data or services; and

1 (C) the Secretary of Defense shall estab-
2 lish and implement a technology transfer con-
3 trol plan for the conduct of the investigation to
4 prevent the transfer of information that could
5 be used by the foreign country to improve its
6 missile or space launch capabilities.

7 (4) MANDATORY NOTIFICATION AND CERTIFI-
8 CATION.—All technology transfer control plans for
9 satellites or related items shall require any United
10 States person involved in the export of a satellite of
11 United States origin or related items to notify the
12 Department of Defense in advance of all meetings
13 and interactions with any foreign person or entity
14 providing launch services and require the United
15 States person to certify after the launch that it has
16 complied with this notification requirement.

17 (5) MANDATORY INTELLIGENCE COMMUNITY
18 REVIEW.—The Secretary of Commerce shall provide
19 to the Director of Central Intelligence copies of all
20 export license applications and technical assistance
21 agreements submitted for approval in connection
22 with launches of satellites in foreign countries to
23 verify the legitimacy of the stated end-user or end-
24 users.

1 (6) MANDATORY SHARING OF APPROVED LI-
2 CENSES AND AGREEMENTS.—The Secretary of Com-
3 merce shall provide copies of all approved export li-
4 censes and technical assistance agreements associ-
5 ated with launches of satellites in foreign countries
6 to the Secretary of State, the Secretary of Defense,
7 the Secretary of Energy, and the Director of Central
8 Intelligence.

9 (7) MANDATORY NOTIFICATION TO CONGRESS
10 ON LICENSES.—Upon issuing a license for the export
11 of a satellite or related items for launch in a foreign
12 country, the Secretary of Commerce shall so notify
13 Congress.

14 (8) MANDATORY REPORTING ON MONITORING
15 ACTIVITIES.—The Secretary of Defense shall provide
16 to Congress an annual report on the monitoring of
17 all launches in foreign countries of satellites of
18 United States origin.

19 (9) SAFEGUARDS PROGRAM.—The Secretary of
20 Defense shall continue its program to recruit, train
21 and maintain a staff dedicated to monitoring
22 launches in foreign countries of satellites and related
23 items of United States origin.

24 **SEC. 5. DEFINITIONS.**

25 In this Act:

1 (1) MAJOR NON-NATO ALLY OF THE UNITED
2 STATES.—The term “major non-NATO ally of the
3 United States” means a country designated as a
4 major non-NATO ally for purposes of the Foreign
5 Assistance Act of 1961.

6 (2) RELATED ITEMS.—The term “related
7 items” means the satellite fuel, ground support
8 equipment, test equipment, payload adapter or inter-
9 face hardware, replacement parts, and nonembedded
10 solid propellant orbit transfer engines described in
11 the report submitted to Congress by the Department
12 of State on February 6, 1998, pursuant to section
13 38(f) of the Arms Export Control Act (22 U.S.C.
14 2778(f)).

15 (3) UNITED STATES PERSON.—The term
16 “United States person” means any United States
17 resident or national (other than an individual resi-
18 dent outside the United States and employed by
19 other than a United States person), any domestic
20 concern (including any permanent domestic estab-
21 lishment of any foreign concern), and any foreign
22 subsidiary or affiliate (including any permanent for-
23 eign establishment) of any domestic concern which is
24 controlled in fact by such domestic concern, as de-
25 termined under regulations of the President.

1 **SEC. 6. CONFORMING AMENDMENTS.**

2 (a) 1999 NDAA.—(1) Section 1513(a) of the Strom
3 Thurmond National Defense Authorization Act for Fiscal
4 Year 1999 (22 U.S.C. 2778 note) is repealed.

5 (2) Section 1513(c) of that Act is amended by strik-
6 ing “(1) Subsection (a)” and all that follows through
7 “(2)”.

8 (3) Section 1514 of that Act, and the item relating
9 to that section in the table of contents of that Act, are
10 repealed.

11 (b) 2000 NDAA.—(1) Section 1404 of the National
12 Defense Authorization Act for Fiscal Year 2000 (22
13 U.S.C. 2778 note) is amended—

14 (A) in the matter preceding paragraph (1), by
15 striking “1514 of the Strom Thurmond National
16 Defense Authorization Act for Fiscal Year 1999 (22
17 U.S.C. 2778 note)” and inserting “4 of the Satellite
18 Trade and Security Act of 2001”; and

19 (B) in paragraph (1), by striking “1514(a)(1)
20 of the Strom Thurmond National Defense Author-
21 ization Act for Fiscal Year 1999 (22 U.S.C. 2778
22 note)” and inserting “section 4(1) of the Satellite
23 Trade and Security Act of 2001”.

24 (2) Section 1409 of that Act (22 U.S.C. 2278 note)
25 is amended—

1 (A) in subsection (a)(7), in the matter pre-
2 ceding subparagraph (A), by striking
3 “1514(a)(2)(A) of the Strom Thurmond National
4 Defense Authorization Act for Fiscal Year 1999
5 (Public Law 105–261; 112 Stat. 2175; 22 U.S.C.
6 2778 note)” and inserting “4(2)(C) of the Satellite
7 Trade and Security Act of 2001”; and

8 (B) in subsection (b)(1), by striking
9 “1514(a)(8) of the Strom Thurmond National De-
10 fense Authorization Act for Fiscal Year 1999” and
11 inserting “4(8) of the Satellite Trade and Security
12 Act of 2001”.

13 (3) Section 1410 of that Act, and the item relating
14 to that section in the table of contents of that Act, are
15 repealed.

16 (4) Section 1411 of that Act is amended—

17 (A) by striking subsection (a); and

18 (B) by redesignating subsections (b) and (c) as
19 subsections (a) and (b), respectively.

20 (5) Section 1412(d) of that Act is amended by strik-
21 ing “Secretary of State” and inserting “Secretary of Com-
22 merce”.

23 (c) **ADDITIONAL CONFORMING AMENDMENTS.—**(1)
24 Section 1309 of the Admiral James W. Nance and Meg
25 Donovan Foreign Relations Authorization Act, Fiscal

1 Years 2000 and 2001 (as enacted by Public Law 106–
2 113; 113 Stat. 1501A–460) is amended—

3 (A) by amending the section heading to read as
4 follows:

5 **“SEC. 1309. OFFICE OF DEFENSE TRADE CONTROLS.”;**

6 (B) by striking subsections (a) and (c); and

7 (C) in subsection (b), by striking “(b) FINAN-
8 CIAL AND PERSONNEL RESOURCES.—”.

9 (2) The table of contents of that Act is amended by
10 striking the item relating to section 1309 and inserting
11 the following:

“Sec. 1309. Office of Defense Trade Controls.”.

12 **SEC. 7. EFFECTIVE DATE.**

13 (a) **IN GENERAL.**—This Act and the amendments
14 made by this Act shall take effect on the date of the enact-
15 ment of this Act, and shall apply to any export license
16 application made under the Arms Export Control Act be-
17 fore such date of enactment which is pending on such
18 date, and to any export license application made on or
19 after such date.

20 (b) **TRANSFER OF PENDING APPLICATIONS.**—Any
21 export license application made under the Arms Export
22 Control Act before the date of the enactment of this Act,
23 to which section 2 of this Act applies and which is pending

1 on such date of enactment, shall be transferred to the De-
2 partment of Commerce upon the enactment of this Act.

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