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Purpose:

Review two amendments to the NDAA – proposed House and Senate Bills, authority to move satellites and related components and technology from the USML to the CCL – provide comments on the differences between the two bills and potential impact to industry, academia and possibly to the USG

General Comments:

- The DTAG members support the return of the authority to the President to determine whether satellites and related components and technology are controlled under the USML or CCL
- The team created an excel spreadsheet to cross reference the language in the House and Senate Bills to compare and analyze potential impact to industry and academia, and to the USG with respect to direct or indirect effects.
- The DTAG review process and methodology included reviewing each relevant section of the proposed Bills to include the House Bill Subtitle E, Section 1241 – 1247 and Senate Bill 3211 Sections 1 – 6;
    - considered Section 1248 "Report to Congress" Risk Assessment of U.S. Space Export Control Policy as part of the analysis;
    - took note of the new definitions of "Specially Designed" as published in the Department of State and Department of Commerce proposed rules via Federal Register notice

Areas of Discussion:

- Impacts to industry
    - ***House version*** appears overly restrictive from Senate version, imposing numerous reports and actions, some of which appear to be duplicative to existing rules.

        - §1241(a) §1244(b), §1246(b) all contain inconsistent terminology that complicate the definition of "commercial satellite" (e.g. commercial satellite; space and space related technologies; satellite systems and subsystems; commercial spacecraft). Inconsistent terms are not appropriately defined in §1247
        - §1241(b) "unacceptable risk" should be defined.
        - §1241(c) explicitly lists countries in legislation rather than deferring to the authority of State, Commerce and Treasury. This is a concern for a number of reasons.
        - §1241(d), §1242(a), §1244(a)(b); §1245(b); §1246(b) The extensive reporting requirements raise multiple concerns with industry and academia.
        - §1243 The intent of "to the extent practicable" and "enumerating items" raises multiple concerns.
        - §1247 the definition does not specify that the "performance parameters" are contained in the ITAR Cat XV The definitional reliance on unspecified "performance parameters" is problematic.

    - ***Senate version***
        - Section 3 and 4 concerns related to explicitly listing countries in legislation rather than deferring to the authority of State, Commerce and Treasury
        - Sections 5 and 6 appear to uphold existing authorities of the President

- **<u>Other Issues</u>**
    - Inconsistent language throughout the House bill:
        - Commercial satellites vs commercial spacecraft; space and space related technologies; satellite systems and subsystems
        - Inclusion of "munitions" as part of the reporting instead of just commercial satellites, etc

- Under the House Bill it could be onerous on the agencies to report, and in some cases, by implication, on industry and academia. Concerns are with being able to account for:
  - Changes in end use applicability
  - Technology advancements/maturation
  - Worldwide Industrial Supply Chain

- **Overall assessment**
  - Concur with the proposal to move certain satellites and related components and technology to CCL
  - Need to clearly understand the intent of certain language used in the bills
  - House version appears more restrictive and burdensome to government and industry
  - Senate version upholds existing authorities of the President
  - NDAA §1248 report by DoS and DoD establishes a strong baseline that supports the implementation of transferring certain satellites and related components and technology to the CCL