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U.S. Space Commerce, Section 301, and Market Access to the Final Frontier

Frank J. Schweitzer*

In this article, the author explains how Section 301 of the Trade Act of 1974 can help ensure that U.S. space companies have equal opportunity and access to the emerging earth-to-space and space-to-space economies.

For over 50 years, but plied most frequently during the past decade, Section 301 of the Trade Act of 1974[1] has been employed to protect U.S. rights under trade agreements and to help dismantle trade barriers impeding U.S. commerce in markets around the globe. Markets today are also extraterrestrial. The emerging earth-to-space and space-to-space economies could generate trillions of dollars in the coming years. U.S. space companies now operate at the vanguard, but other spacefaring nations may resort to unreasonable acts, policies, or practices that discriminate or distort competition in favor of their domestic operators or nascent industries. Such measures may burden or restrict U.S. space commerce. Section 301 can help ensure that U.S. space companies have equal opportunity and access to the markets of the final frontier.

U.S. Commercial Space Activity

The 2015 Commercial Space Launch Competitiveness Act grants U.S. citizens rights to own, sell, and use space resources (defined to include water/minerals) as part of a policy objective of fostering conditions for the economic growth of the U.S. commercial space industry.[2] In 2025, the president issued an executive order to enhance U.S. space preeminence, "by enabling a competitive launch marketplace and substantially increasing commercial space launch cadence and novel space activities by 2030."[3]

According to the Space Foundation, the global space economy hit a record $613 billion in 2024, with the commercial sector comprising 78 percent.[4] Long the primary domain of governments,

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private companies now drive much space activity and innovation. Other recent studies note the number of objects launched into space during the period 2019 to 2023 alone quadrupled, with U.S.-based launches increasing sixfold during that span.[5] U.S. companies stand well positioned to thrive in emerging earth-to-space and space-to-space economies.

Space activity has entailed the launch and reentry of rockets and spacecraft (with and without crews), commercial satellite communications, and remote-sensing satellites. New commercial activity on the horizon could include in-space services to assemble, repair, or refuel satellites; services to remove orbital debris (such as the destruction or deorbiting of old satellites); space resource utilization, such as ice extraction on the moon or mineral extraction from asteroids; and in-space manufacturing of data centers, products for return to the earth, or parts to use in space.[6]

For commercial satellite activity, the Federal Communications Commission (FCC) is the agency responsible for implementing U.S. market-opening commitments in the Word Trade Organization (WTO) Basic Telecommunications Agreement (BTA). According to the FCC, it "adopted a presumption in favor of entry for satellite systems licensed by WTO Members to provide satellite services covered by the U.S. commitments under the WTO BTA."[7] The FCC "sought to afford greater opportunities for U.S. companies to enter previously closed foreign markets" for "global satellite services[.]" The FCC noted, however, that "[s]ince the Commission adopted its market-access framework nearly 30 years ago, the international regulatory landscape has changed" and even though the United States "continued to provide market access to foreign satellite operators, long-standing competitive restrictions by other countries have nevertheless persisted" and "more recently, notable new barriers abroad have emerged against U.S. companies."[8]

The International Legal Framework Governing Commercial Activities in Space Is Limited

The 1967 Outer Space Treaty is the centerpiece of international space law.[9] The treaty's core elements establish that space is free for exploration by all nations, that space cannot be claimed as national territory (whether by use, occupation, or other means), and that space must be used exclusively for peaceful purposes. The Outer Space Treaty also establishes that nation-states are liable for damage caused by their space objects and are responsible for national space activities, including those conducted by non-governmental entities and private companies.

The 2015 Commercial Space Launch Competitiveness Act explicitly disclaims any U.S. assertion of sovereignty over celestial bodies, distinguishing between owning extracted resources (permitted by the Act) and claiming ownership of the body itself (prohibited by the Outer Space Treaty). The law further mandates that federal agencies' authorization of commercial activities must be consistent with the international obligations of the United States.

The other core space governance treaties include the Rescue Agreement (which elaborates articles of the Outer Space Treaty relating to obligations concerning astronauts),[10] the Liability Convention (establishing liability for damage, as defined under the convention, caused by objects launched into space),[11] and the Registration Convention (relating to the registration and provision of details of space objects launched).[12] A fifth treaty, the Moon Agreement,[13] is less relevant given that it has not been adopted by the major spacefaring nations.

Apart from the treaty-based international law, questions arise from the implications of space debris, such as non-functional satellites, leftover rocket bodies or stages from rocket launches, various fragmentation debris of all sizes, or mission-related objects that exist in space, and the potential applicability of customary international law that exists or may be developing.[14]

The WTO BTA covers certain commercial satellite activity. The WTO BTA was concluded under the framework established by the General Agreement on Trade in Service (GATS). Under Article II of the GATS, all WTO members must provide most-favored nation treatment to like services and service suppliers of all other WTO members, subject to any listed exemptions. Under the terms of the WTO BTA, the United States and nearly a third of all WTO members committed to open their markets to foreign competition in satellite services in certain respects.[15]

Section 301 of the Trade Act of 1974

Section 301 authorizes the Office of the United States Trade Representative (USTR) to investigate and take action to respond to certain foreign acts, policies, or practices that violate U.S. rights under a trade agreement or that burden U.S. commerce. Since the establishment of the WTO in 1995, the United States used Section 301 primarily in connection with WTO dispute settlement. Starting with the first Trump administration, Section 301 has increasingly been used to address foreign trade practices not necessarily implicating trade agreements and formal dispute settlement mechanisms.

Section 301 authorizes USTR (subject to the direction of the president) to address foreign government conduct that:

1. denies or is inconsistent with U.S. rights under a trade agreement,
2. constitutes "unjustifiable" action that "burdens or restricts" U.S. commerce, or
3. constitutes "unreasonable" or "discriminatory" action that "burdens or restricts" U.S. "commerce."

"Commerce" is defined under the statute to include, but is not limited to, services and investment.

A Section 301 investigation may be initiated by petition or self-initiated by USTR after consultations with relevant public and private stakeholders. USTR controls Section 301 proceedings from start to finish, subject to any direction of the president. USTR retains the discretion as to whether to undertake an investigation, whether Section 301 applies, and, if so, whether to retaliate and what form the retaliation should take. Section 301 investigations give targeted countries the option to settle the dispute with the United States or face retaliatory measures.

USTR must request consultations with the foreign government at the initiation of an investigation. Where a trade agreement is implicated, USTR must request formal dispute settlement proceedings under the governing trade agreement (e.g., WTO or otherwise). For investigations that do not involve an agreement, USTR has requested consultations with the foreign government in parallel with the investigation.

The actions authorized by Section 301 include the imposition of duties or other import restrictions, the withdraw or suspend trade agreement concessions, or the ability to enter into agreements with the foreign government to eliminate the conduct in question. Section 301 divides the potential remedial actions into "mandatory" and "discretionary" categories depending on the nature of the foreign conduct alleged. If USTR concludes there is a violation of a trade agreement or that an act, policy, or practice of a foreign government is "unjustifiable" and "burdens or restricts" U.S. commerce, action is mandatory.

The authority to impose tariffs or deny access to the U.S. market is powerful leverage. Upon the determination that retaliation is appropriate, the USTR may only impose sanctions affecting goods or services of the foreign country. These sanctions must be equivalent in value to the burden or restriction imposed by that country on U.S. commerce. Section 301 authorizes the USTR to take several types of actions. USTR's actions under Section 301 must be consistent with U.S. obligations under international agreements.

Mandatory Action Under Section 301[16]

If USTR determines that a foreign country act, policy, or practice "violates, or is inconsistent with" a "trade agreement," to which the United States is a party or is "unjustifiable and burdens or restricts U.S. commerce," then the USTR takes "mandatory" action, subject to any specific direction of the president, to enforce the American trade agreement rights or to obtain the elimination of the act, policy, or practice. For example, to the extent that WTO members are alleged to breach their obligations or market access commitments under the WTO BTA, the United States could pursue a Section 301 investigation in parallel with WTO dispute settlement.

Discretionary Action Under Section 301[17]

If USTR determines that the act, policy, or practice is "unreasonable or discriminatory and burdens or restricts United States commerce" and requires action by the United States, USTR has discretion to take all "appropriate and feasible action," subject to the specific direction, if any, of the president, to obtain "the elimination of the act, policy or practice." Congress vests the USTR with the discretion to determine whether action under Section 301 would be effective in addressing the petitioner's grievance. Section 301 defines an act, policy, or practice as "unreasonable" if the conduct or measure, while not necessarily in violation of, or inconsistent with, the international legal rights of the United States, is otherwise unfair and inequitable. Under Section 301, "acts, policies, and practices that are unreasonable include, but are not limited to" those which" deny fair and equitable "opportunities for the establishment of an enterprise" or "market opportunities. . . ."

For example, USTR's 2026 annual report on foreign trade barriers identifies certain existing and proposed measures of various nations[18] that include different registration regimes, fees, administrative requirements, or procedural hurdles for foreign satellite operators and technology companies.[19] Such measures may constitute nontariff barriers that could increase compliance costs, restrict market access, and impose additional administrative burdens on foreign satellite and technology companies seeking to establish or operate in these markets.

Remedies Under Section 301[20]

Section 301 offers a range of remedial measures. The USTR can:

1. suspend, withdraw, or prevent the application of benefits of trade agreement concessions to carry out a trade agreement with the foreign country involved;
2. impose duties or other import restrictions on the goods of, and notwithstanding any other provision of law, fees or restrictions on the services of, the foreign country for such time as the USTR deems appropriate;
3. enter into binding agreements that commit the foreign country to eliminate or phase out, the act, policy, or practice that burdens or restricts U.S. commerce, or provide the United States with compensatory trade benefits that are satisfactory to the USTR.

Outlook

The emerging earth-to-space and space-to-space economies will provide immense commercial opportunities. The launch and reentry of rockets and spacecraft, commercial satellite communications, remote-sensing satellites, space resource utilization, in-space manufacturing, and the in-space supply of services could generate trillions of dollars in the coming years. The colossal economic stakes may spur policies of space protectionism from existing and emerging spacefaring nations. Foreign nations may seek to unbalance the scales of competition in favor of their own domestic companies and operators. U.S. companies will remain at the vanguard if the commercial opportunities are equal. Section 301 provides uniquely effective leverage and can help U.S. companies to boldly go wherever markets exist.

Notes

* The author, counsel in the Washington, D.C., office of White & Case LLP, may be contacted at fschweitzer@whitecase.com.

1. Title III of the Trade Act of 1974, "Relief from Unfair Trade Practices," 19 U.S.C. §§2411-2420, is often collectively referred to as "Section 301."

2. U.S. Commercial Space Launch Competitiveness Act, Public Law 114-90, November 25, 2015.

3. Executive Order 14335, Enabling Competition in the Commercial Space Industry, August 13, 2025.

4. The Space Foundation, The Space Report 2025 Q2.

5. Council on Foreign Relations, Task Force Report No. 82, Securing Space A Plan for U.S. Action, 2025.

6. Belfer Center for Science and International Affairs, Harvard Kennedy School, Explainer: Novel Space Activities in the Executive Order on Enabling Competition in the Commercial Space Industry, September 15, 2025.

7. Federal Communications Commission, Public Notice: Space Bureau and Office of International Affairs Seek Comment on Satellite Market Access Reciprocity, DA 26-208, Released: March 2, 2026, at 1.

8. Federal Communications Commission, Public Notice: Space Bureau and Office of International Affairs Seek Comment on Satellite Market Access Reciprocity, DA 26-208, Released: March 2, 2026, at 2.

9. Treaty on Principles Governing the Activities of States in the Exploration and Use of Outer Space, including the Moon and Other Celestial Bodies, Washington/London/Moscow, done January 27, 1967; entered into force October 10, 1967; 18 UST 2410.

10. Agreement on the Rescue of Astronauts, the Return of Astronauts and the Return of Objects Launched into Outer Space, Washington/London/Moscow, done April 22, 1968; entered into force December 3, 1968; 19 UST 7570.

11. Convention on International Liability for Damage Caused by Space Objects, Washington/London/Moscow, done March 29, 1972; entered into force September 1, 1972; 24 UST 2389.

12. Convention on Registration of Objects Launched into Outer Space, New York, done January 14, 1975; entered into force September 15, 1976; 28 UST 695.

13. Agreement Governing the Activities of States on the Moon and Other Celestial Bodies, New York, done December 18, 1979; entered into force July

11, 1984; 18 ILM 1434. The Agreement has not been adopted by the major space powers.

14. See, e.g., Advanced Introduction to Space Law, Frans G. von der Dunk, Edward Elgar Publishing 2020, pages 37-39.

15. See, e.g., General Agreement on Trade in Services, United States of America, Schedule of Specific Commitments, GATS/SC/90, April 1994. General Agreement on Trade in Services, United States of America, Final List of Article II (MFN) Exemptions, GATS/EL/90, April 1994.

16. 19 U.S.C. §2411(a).

17. 19 U.S.C. §2411(b).

18. 2026 National Estimate Report of Foreign Trade Barriers, Office of the United States Trade Representative (2026 USTR NTE) at 49, 197, and 273.

19. 2026 National Estimate Report of Foreign Trade Barriers, Office of the United States Trade Representative (2026 USTR NTE) at 197.

20. 19 U.S.C. §§ 2411(c)(1)(A)-(D).