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A Welcome New Look

THERE HAS LONG BEEN AN UNCOMFORTABLE RELATIONSHIP BETWEEN THE SCIENTIFIC COMMUNITY in the United States and the regulations of its government regarding exports. In the early 1980s, that conflict flared up in protests against restrictions on the publication of basic research findings and on the admission of foreign nationals to seminars or symposia in the United States. The issue is of increasing international concern, not only because it hampers useful transnational collaboration, but because restrictions have been applied to exports that might improve other nations' economic competitiveness with the United States, as well as to those with potential military applications.

The anxiety among scientists and academic administrators has returned, and once again its major source has been the application of certain regulations to basic research findings. ITAR (International Traffic in Arms Regulations) control the export of military data and defense services; EAR (Export Administration Regulations) are managed by the Department of Commerce and address security concerns regarding dual-use technologies. Both raise a similar problem: Regulations have been applied to scientific information as well as to technology, military devices, and supporting data.

Further difficulties arise because there is a subcategory under EAR called "deemed exports." An export is "deemed" to occur if a scientist in the United States has given information to a foreign national that would be considered an export had it actually been sent abroad. New worries arose when Commerce's Office of the Inspector General (OIG) issued a scary report in 2004. Ominously entitled *Deemed Export Controls May Not Stop the Transfer of Sensitive Technology to Foreign Nationals in the U.S.*, the proposal could have made U.S. universities responsible for obtaining licenses for thousands of visiting researchers and raised a significant bar to scientific exchanges. Furthermore, it said that the licensing of a foreign national to receive a deemed export should be based on their nation of origin rather than citizenship! Suppose your collaborator was born in Iran, left in 1972 while the Shah was still in charge, and has lived as a British citizen ever since. He's a security risk? Give us a break.

Well, an Advance Notice of Proposed Rulemaking was then issued by the Department of Commerce's Bureau of Industry and Security, setting forth the report and asking for public comment. A few weeks ago, Commerce addressed those comments, and in an almost wholesale rejection of the OIG's report, it withdrew the previous Notice. The outcome is that foreign nationals are to be identified by citizenship, not country of origin. It also maintains more limited licensing requirements and relieves academic institutions by reinforcing the exclusion of fundamental research from EAR.

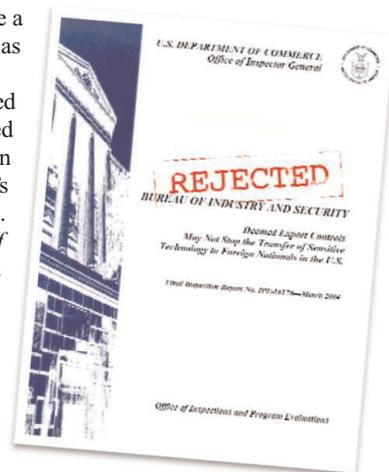
The news gets better. Last month, at a meeting at the Massachusetts Institute of Technology that was sponsored by the U.S. National Academies' Committee on a New Government-University Partnership for Science and Security, speakers from the government security community expressed skepticism about how well export regulations are working. And yet another Federal Register notice just issued by Commerce has announced that a new Advisory Committee will review and provide recommendations to Commerce on the deemed export policy.

It is clear that this change in position has resulted from the yearlong dialogue of thoughtful conversations between university presidents, scientists, and officials of the Department of Commerce. According to the participants, much of the credit for this move to step back and take a careful look at the problem belongs to David McCormick, the Under Secretary of Commerce for Industry and Security.

McCormick clearly deserves praise. The OIG created an unfair and unworkable definition of a foreign national. The EAR have had deeper problems, dating back to the first years of the Reagan administration. Now there is reason to hope that the "use" definition will continue to carve out an exemption for the results of basic research. After all, the result of that 1980s controversy was National Security Defense Directive 189, signed by President Reagan, which states that there will be no restrictions on fundamental research except for classification. That's still in effect, and these recent actions are consistent with it in ensuring that EAR won't resume their role as a barrier to international scientific cooperation. Hope springs eternal.

– Donald Kennedy

10.1126/science.1130850



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Science **312** (5780), 1573.
DOI: 10.1126/science.1130850

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