

## Pressure is building to overhaul Cold War-era regulations on ‘deemed exports’

# Trap for the unwary

BY ALAN M. FIELD

**A** retired professor at the University of Tennessee was arrested this spring for violating U.S. export control laws, along with an executive at the U.S. company that contracted him to do research. Their alleged crime: The professor had hired a Chinese national as his research assistant for a project that had both commercial and military applications.

The two Americans were accused of violating regulations on “deemed exports,” the release of technology or source code that has both military and civilian applications to a foreign national within the United States. The Americans, who could wind up in prison, argue that they were unaware of the regulations.

So are most people. The logic behind these little-known regulations, which date to the Export Administration Act of 1979, is that foreign nationals who partner with U.S. companies might transfer that information to their home countries, which could then use it to undermine U.S. national security.

The Tennessee professor and the company that hired him should have applied for an export license from the Commerce Department’s Bureau of Industry and Security.

Criminal and civil penalties for export control violations have increased during the last half year, yet a growing number of critics say that regulations covering deemed exports, forged during the Cold War, need to be overhauled to fit changing times. They say the regulations are too broadly defined, often covering products no longer exclusively made-in-the-U.S., and that they are counterproductive for U.S. companies that need to partner with researchers from foreign countries.



An independent Deemed Export Advisory Committee, comprising senior executives, government officials, business groups and universities, put it this way: "Leadership in science and technology today is a globally shared and highly interdependent perishable asset. Individual U.S. firms, along with their international competitors, are building global research enterprises (together)."

Gone are the days when U.S. companies dominated the world of advanced technologies and could carefully control the outflow of information that could be used for either commercial or military purposes, the committee wrote. To survive in global markets, U.S. companies need to import and share information, rather than just stockpile it.

"The current regulations are denying highly qualified individuals from fully participating in research or technology developments that are important to our national security," said John Engler, president of the National Association of Manufacturers and a member of the committee. Engler said the regulations "place American manufacturers and the nation at a competitive disadvantage with our trading partners by making it difficult to leverage the knowledge of foreign national students, researchers or technical workers" to capitalize on breakthroughs made in the U.S.

The committee recommended that the current process for licensing of deemed exports be replaced by a simplified process that somehow manages to enhance national security as well as strengthen America's economic competitiveness. More concretely, the committee also recommended that the BIS's educational

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outreach program be extended "to make sure that all parties who are potentially subject to licensing within the deemed export rules are familiar with those rules."

Rather than attempt to control such a vast array of sensitive technologies, the committee also recommended that policymakers focus carefully on identifying "those elements of technical knowledge that could have the greatest consequences" for national security. They called for a periodic review of the list of products currently under control, to make sure that the list is not too broad, and that it reflects the recent advances in technology.

Meanwhile, how can companies

**John Engler** minimize their risks? Frederic Van Arnam, a partner at Barnes Richardson & Colson law firm, said companies need controls in place concerning who is entitled to have access to information about products that could be subject to export licenses.

"If you hire people in these categories, or you are exposing them to technology that is subject to export controls, you need to understand how the deemed export law works," he said. Many big companies have their own export control programs in place, and are well aware of regulations covering deemed exports. But smaller, less sophisticated companies often do not. The problem, Van Arnam said, is that "the penalties are the same if you are a mega-company or are a small company." ♦

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