

HSS Visiting Speaker Program – Governance and Regulation: U.S. to Lead or Lag in the 21st Century?

Co-Sponsored by the National Academy of Public Administration. July 24, 2009



The big regulatory issue from our members' perspective is that small companies struggle with the following concerns:

- export issues
- negatively impacts their competitiveness and access to markets
- ability to hire the best and brightest foreign workers
- subsequent inhibition of the research atmosphere which may require segregating foreign workers in the laboratory setting
- intellectual property issues (can't police it, can't afford training people to track and keep up with the cumbersome and detailed regulations)

Dr. Eugene G. Arthurs, Executive Director, SPIE

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Globalization has made the innovation web far more complex: differing needs of companies and countries, and international competition.

Looking at green technologies, which are going to be a major future thrust, the U.S. is not in the lead – and this is one aspect of innovation technology.

The point is not to argue if there is a need for innovation – our federal agencies need to see that if they don't align their regulations to the needs of companies then the future is grim.

Dr. Robin Gaster, Vice President for Research, Alliance for Science and Technology Research In America

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Innovation regulations can be thought of in terms of an ecology or complex webs of resources, technologies, and incentives. Innovation ecology is now more complicated and more important than ever.

Regulations are everywhere – there is no such thing as tension between red-tape and free markets, because free markets do not exist – all markets exist within the framework of regulations.

What matters is whether you can get regulations to consistently and symmetrically encourage the kind of outcomes you want.

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There are three nodes of innovation ecology:

- Research web - Researchers need to get credit for their work outside universities – currently, there is a bias that outside work is not considered. In addition, we need to look at government funding for universities and the rules for technology transfer, which affect how universities operate.
- Infrastructure web - As broadband is the new transportation nexus of information technology – the rules we have in place will have an impact on how it fits into the equation.
- Commercialization - Encourage entrepreneurial energy and incentivize their involvement.

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The U.S. administrative state was not set up to be efficient and the inefficiencies are even worse with respect to innovation. Innovation is a long-term goal or process and bureaucrats think in short-term; innovation is not a fire one must fight immediately.

In addition, innovation tends to originate from small firms which are less likely to know how to influence agencies versus large firms. Thus, innovation as a policy goal is going to be hit-or-miss and under-represented because of the nature of the administrative state.

Dr. Arti Rai, Duke University

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What can be done to rationalize the administrative state when it comes to innovation goals? We looked at using the OMB Office of Information and Regulatory Affairs (OIRA), which has much influence in coordinating other agencies' regulations, to examine the impacts on innovation. We found that OIRA lacks dynamic cost/benefit modeling and analyses for innovation.

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We propose a new “Office of Innovation Policy” which has OIRA-type influence to review regulations that impact innovation and to send back regulations for reworking if the regulations obstruct innovation or if innovation analyses could be improved.

Such an organization, by virtue of being White-House based, would have real power to make the necessary changes.

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The mission of the Global Regulatory Commission is to align trade, regulatory, and competition policy in support of opening competitive markets. This can be challenging if you see that the various and distinct keepers of trade policies, regulatory policies, and competitive policies across government are silo'd disciplines. Trade regulators try to discipline foreign governments, while the keepers of regulation and competitive policies are interested in tying the hands of industries.

Sean Heather, Executive Director, Global Regulatory Cooperation, U.S. Chamber of Commerce

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While the U.S. is exercising strong military powers, the E.U. is exercising regulatory powers and trying to regulate to the world. For example, E.U.-manufactured diesel engine standards and conformity assessment criteria are accepted in Russia, India, Brazil, and E.U. nations. This is a competitive advantage for E.U. engine manufacturers to the detriment of U.S. manufacturers.

The U.S. regulatory agencies were created before globalization so we need to think about how to use our regulatory agencies to promote U.S. commercial interests, which is something I do not see happening that I see all the time in the E.U.

Sean Heather, Executive Director, Global Regulatory Cooperation, U.S. Chamber of Commerce

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I am not mandating a “buy America” rule but we need to promote a pro-competitive regulation policy globally.

The U.S. has a strong administrative law system that other nations do not have.

Pro-competitive regulation entails: cost/benefit analysis, sound science, and stakeholder influence

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The purpose of export controls is to protect national security and prevent proliferation of nuclear weapons, chemical weapons, and missile technologies.

As an author of the deemed export rule in my tenure at the Commerce Department, I understand that there are interagency pressures to preclude technology transfer even in the event of innovation information.

Which begs the question of innovation for what? Innovations better our lifestyles, improve our economy – but innovations also help our domestic military as well as foreign militaries.

Do we consider whether it is appropriate for decisions on export controls should be left to the government – why not leave this decision with business people or academics?

But the details and nuances of regulations in these areas can be confusing.

An agency will say that they don't control public domain technology, and researchers at universities and companies can make an innovation or discovery public by posting it on the web and it is not controlled. But under ITAR, you may be using technologies entirely in the public domain, but as a company providing defense-related services, then your products and innovation are subject to the limitations of the regulation and must have agency permission.

Larry E. Christensen, Member, Miller & Chevalier

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It is unrealistic to expect that the ills of the export controls systems currently in place can be fixed by a meeting and saying innovation is a good thing. It isn't about freedom of speech or academic freedom – the complex issues need to be addressed by the policy community.

Having an appeals board within the administration/the White House where you could take classified or quasi-policy issues would be effective – currently only criminal cases can appeal to the courts.

Universities are implementing compliance programs, but they should also teach export controls – the business world would benefit from this early training.

There are also pending petitions for decontrolling items available in other countries – such as China – and how these petitions fare will indicate whether our country will succeed.

It is important to remember that export controls will always be with us - the challenge is to have both effective and disciplined export control systems.

Larry E. Christensen, Member, Miller & Chevalier