



Australian Defence trade controls may affect pharmaceutical sector

Committee says more groundwork is needed to refine proposed legislation

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On 15 August 2012, the Senate Foreign Affairs, Defence and Trade Legislation Committee (Committee) published a preliminary report on its inquiry into the Defence Trade Controls Bill 2011 (Bill).

In doing so, the Committee acknowledged the Bill's potential 'adverse unintended consequences' for the pharmaceutical, biotechnology and nanotechnology industries and said it is 'firmly of the view that more groundwork is needed to refine the proposed legislation'.

The Bill

The Bill was introduced into the House of Representatives on 2 November 2011, passed on 21 November 2011 and introduced into the Senate on 22 November 2011.

The Bill is a companion to the Customs Amendment (Military End-Use) Bill 2011. Both Bills were referred to the Joint Committee on Foreign Affairs, Defence and Trade, and on 10 November 2011 pursuant to a Senate Selection of Bills Committee Report the Bill was referred to the Committee for inquiry.

The purpose of the Bill is to give effect to the Treaty between the Government of Australia and the Government of the United States of America concerning Defense Trade Cooperation (Treaty), which was signed by former Prime Minister Howard and former President Bush in 2007.

In addition to giving effect to the Treaty, the Bill also:

- Introduces controls on the supply of Defence and Strategic Goods List technology and services related to Defence Strategic Goods List (DSGL) technology and goods
- Creates a registration and permit regime for the brokering of DSGL goods, technology and related services
- Introduces a number of new criminal offences to enforce the new provisions.

Concern about 'adverse unintended consequences'

The Committee has taken evidence through submissions and public hearings.

The Committee's preliminary report expressly acknowledges concerns raised in submissions about the potential effect of the Bill's proposed export controls on the university and research sectors.

In addition, the preliminary report refers to the Department of Industry, Innovation, Science and Research and Tertiary Education's observation 'that the pharmaceutical, biotechnology and nanotechnology industries may also be affected by the strengthened export controls'.

The Department's submission agreed that there are '...potentially negative implications of the Bill, as originally drafted, on the Australian higher education sector, public good research and industry, in particular the pharmaceuticals, biotechnology and nanotechnology sectors, arising from a large change in the regulatory environment.'

Next steps

Defence has been undertaking further consultation with relevant industries to develop solutions to the issues identified.

However, the Committee's preliminary report notes that this is encouraging. However, the Committee says that 'for the sake of ensuring that there are no adverse unintended consequences, the committee believes that more time is needed for further consultation and consideration' and that '[u]nless Defence can provide assurances to the contrary, the committee believes that it would be folly to proceed with the Bill at this time while the resolution of important matters remains outstanding.'