Mr. Bill Wade, DTAG Chair, called the meeting to order at 1:02 p.m. and opened the meeting by thanking everyone for their attendance. Mr. Wade reviewed the DTAG charter and explained that the DTAG members serve at the pleasure of the State Department and do not represent a specific company or employer. Deputy Assistant Secretary Brian Nilsson is the DTAG sponsor and representative to the State Department. This Plenary's sessions focused on four tasks provided to the DTAG by the State Department in its June 30, 2015 letter, which are:

- Export Control Reform
- Cyber Products
- Trade Compliance Process (a review of the current Voluntary Disclosures process)
- DTAG Structure and Operations

Housekeeping notes: Mr. Wade asked attendees to hold questions to the end of each presentation, please use the microphones if you have questions, and no recording devices nor photographs.

Mr. Wade next introduced DTAG Vice Chair – Ms. Andrea Dynes, Recorder – Ms. Joy Robins, and Task Manager – Ms. Debbie Shaffer. Each DTAG member then stood and introduced himself/herself to the attendees.

Mr. Wade acknowledged some of the U.S. Government (USG) attendees which included Mr. Kevin Wolf, Assistant Secretary of Commerce, Export Administration; Mr. John Sonderman, Office of Export Enforcement, Commerce Department; and other attendees from the Departments of State and Defense (some of whom joined the meeting later).

Following is a summary of opening remarks from Mr. Brian Nilsson, Deputy Assistant Secretary, Defense Trade Controls, U.S. Department of State:

Mr. Nilsson noted that today's Plenary falls within his third week on the job, but he is familiar with many of the attendees and others with whom he has worked for quite a while. Mr. Nilsson acknowledged that the DTAG had not been engaged to hold a Plenary Session in a long time and added that he was glad we are having this DTAG session now. Mr. Nilsson next made brief comments on the four topics reviewed by the DTAG for this Plenary Session.

First, on the topic of export control reform, Mr. Nilsson reported that there has been very robust engagement between the USG and industry in connection with publishing proposed regulations and rewriting the regulations after public comments and input. In addition, Mr. Nilsson reported that State/DDTC is focusing on ways to be more efficient. He noted that DDTC is very dependent on antiquated systems and is drowning in paper. Having seen what other agencies have done, DDTC has brought in a team of IT experts to help them address these systems and make it easier for everyone involved. Next, Mr. Nilsson briefly described the ongoing efforts to revise various US Munition List (USML) categories (e.g., Category XII has been a really difficult category and getting public input has been key for proposed rewrites). He informed that the USG plans to issue a second proposed rule for Category XII, as was done previously with the revisions to USML Category XI based on the extensive public comments on the first proposed rule. In terms of upcoming changes, Mr. Nilsson reported that USML Category XII is next, followed by Categories XIV and XVIII. Mr. Nilsson thanked everyone for public comments provided on recommended changes to Categories VIII and XIX and indicated that DDTC is working on that now. Public comments on recommended changes to Categories VI, VII, XIII, and XX are

due in early December and he encouraged the public to provide comments. That leaves USML Categories I, II, and III for last but the USG needs to first get through the hurdles of Category XII while also working on harmonization. In sum, Mr. Nilsson noted that the topics being addressed by the DTAG at this Plenary session are very timely. The current ECR effort involves some of the most comprehensive changes since the Kennedy administration (or as Mr. Wolf would likely say, since the Jefferson administration); and such efforts will continue for some time.

Second, with respect to cyber products, Mr. Nilsson noted that the proposed Category XI rules in 2012 & 2013 addressed cyber controls in XI(b) but the USG decided to hold off implementing changes specific to cyber controls in the final Category XI rule, particularly while Mr. Wolf and the Commerce team were reviewing the cyber products issue in connection with the new Wassenaar Arrangement controls and trying to address how to implement those controls. Mr. Nilsson expressed his interest in hearing from the DTAG on this topic.

Third, Mr. Nilsson noted that DDTC has been reviewing its internal processes and "compliance" is among the topics that DDTC has had on the implementation plan as part of ECR. In particular, DDTC is examining how to harmonize trade compliance and disclosures. The DTAG review will be its first foray in this area.

Mr. Nilsson finished his opening remarks expressing how interested he is in hearing how DDTC can better utilize the input and resources of the DTAG. He expressed his interest on utilizing the DTAG and in a more active manner. Mr. Nilsson then thanked the team for helping make this session happen and he turned it back to the DTAG Chair who introduced the first working group presenters.

Working group 1, Export Control Reform:

Ms. Krista Larson and Mr. Dave Irvine introduced themselves and reviewed the tasking and agenda. The tasking included four elements: what is the DTAG view of the split of the dual use and 600 series items going to Commerce, has greater flexibility been achieved, have there been unintended consequences, and what are DTAG recommendations. Ms. Larson introduced the group and indicated that there was great input from all the members. The team started with a benchmark (Chart 5) which reviewed the January 2014 DTAG findings and recommendations on ECR; this working group picked up where the prior DTAG working group left off. The group identified temporary destabilization from ECR implementation, challenges related to personnel resources and implementing system changes required by industry and USG to address these changes, issues with managing authorizations, difficulty using STA, difficulties when comingling ITAR and EAR items for shipments, and increased industry apprehension resulting from changes in USG enforcement methods and punitive results of disclosures.

The first part of the assignment was to review if/how the process was working for State Department internal review of 600 series license requests. The team did not have knowledge of how that was being handled within the various State offices and had no visibility on how those cases are staffed, so the team was unable to provide input on that topic. Ms. Larson discussed some top-level comments which included:

- The 600 series review and staffing is implemented inconsistently and unpredictably compared with the former process; examples were shared later in the presentation.

- Industry desires the ability to respond before RWAs are issued, particularly since there does not seem to be an appeal board or a similar process to allow industry response before USG action is taken.
- The singles have not yet occurred – single agency, single set of regulations, single software input system, and single enforcement mechanism.
- People involved in the process seem to be clinging to the old ways (examples provided later). There is a general consensus that ECR is being interpreted differently by different agencies across the USG. Industry has seen examples where DOD disagrees with revisions to the USML/CCL and has RWA'd 600 series requests claiming the item should have stayed on the USML despite being delineated on the CCL. This has the appearance that DOD is making policy determinations on export controls that are contrary to agreed-upon ECR changes.
- Both BIS and DDTC licenses are often required. The working group found that manufacturers of commercial platforms who incorporate ITAR items do notwant to license under (x).
- Classification throughout supply chain is difficult and it is hard to use the order of review, particularly since some smaller parts manufacturers have gone out of business, while it remains important for them to validate HTS for export and import purposes.

Ms. Larson continued to discuss the results of the munitions/dual-use split pipeline on chart 8, which the working group discussed long and hard and concluded that differing interpretations of key definitions were being used within the government resulting in inconsistencies as people arrived at different conclusions. Application of catch & release in the "specially designed" definition is a useful tool but it yields inconsistent results. As an example, 10 people applying this same tool came up with different answers, while the tool was intended to drive to the same conclusion or result. People appear to be using the tool differently, and in some cases incorrectly.

She provided statistics on the definition of "equipment" found in ITAR Part 121, and noted that there are 172 references to equipment and that will cause a problem, particularly when it creates confusion with so many uses and possibilities for dual controlled parts (e.g., same item controlled in more than one place). An example was provided for underwater acoustic countermeasures (USML Category XIa), which could also be controlled under Category XIc; industry is uncertain which USML category applies. There is also confusion on installation and integration being applied in Defense Services. Ms. Larson expressed that industry believes it is possible to install a 600 series item without providing ITAR technical data; however, the working group identified examples where no technical data would be provided and no TAA would be needed, but companies were getting RWAs on 600 series requests.

On chart 9, Ms. Larson summarized the results of the munitions/dual-use split pipeline and indicated that industry would like a method to escalate DOD-recommended RWAs on 600 series license applications before Commerce RWAs applications or before State RWAs applications for jurisdictional reasons. The team provided an example whereby a company had submitted a license for a 600 series item; DOD recommended RWAing the case, which Commerce did, and advised the company to use a reserved USML category. The company submitted a new application at State and it was RWA'd again since a "reserved" USML category is not a real category, they then submitted another license citing a USML category that was similar even though that category did not positively describe the item. That application was approved by DDTC with DOD concurrence, under the wrong

jurisdiction and inappropriate USML subcategory since it is was for an item clearly delineated as a 600 series item on the Commerce Control List. Meanwhile, the manufacturer provided the 600 series ECCN and indicated that they are obtaining licenses from Commerce.

Recommendations suggested from the working group to address the split pipeline situation were:

- Recommend the USG not allow subjective changes (like the example provided) and continue to enforce the jurisdictional changes currently written under the "positive list" that resulted from the reform efforts.
- DDTC can rectify these subjective changes by providing guidance and issuing binding rulings within AECA regulatory framework. The team thanked DDTC for publishing the transition rule – as an example of providing guidance.
- Since the pipeline is still a moving target and consistency is needed, the fear of doing something wrong has many companies over-complicating things – no one wants to be the first consent agreement under ECR. The team has seen that some companies feel more comfortable keeping goods under ITAR or putting all parts under one category like 9A610.x, just to be safe.
- If DDTC does not aggressively address the much needed clarifications and issue guidance, industry is at greater risk than four years ago.

The presentation was then turned over to Mr. Dave Irvine who began on chart 12 describing some of the positive outcomes of ECR, including:

- Companies and universities have improved flexibility through ECR, allowing closure of TAAs by obtaining BIS-748P licenses.
- Companies that are using STA have experienced significant benefit in expedited shipping.
- The GOV exception is beneficial to industry to support USG efforts overseas.
- A hybrid approach is a useful tool pending establishing a single licensing authority/system.
- Specially designed b2/ b3 criteria releases formerly controlled parts like screws, strings, etc.

Mr. Irvine then discussed some negative aspects resulting from ECR (chart 13) which include: inconsistency in interpretation, an obstacle to industry; classifications remain time consuming as complexity increases, the rules are more complex; USG tools and agencies reach different conclusions; and industry requires more resources, specifically engineering resources. An example provided by one company noted that missile system and launcher modification kits were under six USML categories previously; this has expanded to 52 unique USML/ECCNs. This level of expansion is expected to increase with Category XII. Industry will need to create more complicated licenses to address licensing scenarios when, before ECR, they could handle it under a few DDTC authorizations. There were some concerns with STA over consignee statements and foreign parties not wanting to sign. There is a need for continuing review of product classification because technology improves quickly. Documentation for "deemed" export licensing is more extensive in EAR than was under ITAR.

On chart 15, Mr. Irvine provided some final thoughts on the flexibility for exporters under ECR. The working group believes industry is getting marginal benefit as a result of ECR. Availability of exceptions for 600 series are beneficial; however, inconsistency of interpretation from USG

reviewers negates the benefits. Unintended consequences (chart 16) include: differing export classifications on the same item and an increase in Customs seizures for items recently transitioned. For this point, he provided an example when a product was seized and was still there after three months. When a US exporter helps a foreign government in maintaining older equipment, the original manufacturer is hard to locate or may be out of business which makes it difficult to obtain historical design details of older parts, information required for processing license submissions. This adversely impacts business pursuit. An example provided was a CJ request that was submitted because the supplier and end-user did not agree on jurisdiction; although the part is not positively on the USML but is on the CCL, the CJ remains with DDTC eight months after submission and it is unclear why a CJ for a positively listed item would take so long to process. Another unintended consequence is items exported under FMS stay under ITAR even if the item has moved to CCL. There is a perception that provisos are being used to set policy. The group identified a recent proviso that established interpretive guidance of a defense service with details in the proviso that are contrary to and inconsistent with industry understanding and DDTC definition. For example, equipment is authorized under STA but a license application was submitted because of the consignee statement requirement, the license application was routed to DOD and TSC and they recommended RWA because it is in violation of a promulgated LO/CLO EXCOM memorandum (a classified memo). This appears to be in conflict with what ECR was intended to provide to industry. When this occurs, the DTAG believe DDTC and BIS should involve industry prior to issuing a RWA.

On charts 18-19, the working group provided areas of improvement and consideration including:

- Publish interim binding rules until regulations can be updated.
- Since technology evolves quicker than regulation updates, the USML is a constantly changing list so the USG will need to continuously change the positive list and further establish a bright line.
- Mr. Irvine also referred to a previous DTAG recommendation from 2009 on 126.4 to create an exemption for parts and components.
- The working group suggested that during transition, it is beneficial to industry for USG licensing officers to contact industry with questions before issuing RWAs, with an understanding that licensing officers want to move quickly; however, clarifications or additional details could be provided to aid in these cases.
- Establish a single system to submit voluntary disclosures that impact multiple agencies.
- Increase usage of STA exception by providing written guidance that amplifies that foreign governments should not have to sign consignee end-user statement. Mr. Irvine provided an example where one company had a RWA on a license because the STA exception could have been used and was not. The group understands that this type of situation is currently being addressed by the USG.

The presenters thanked the attendees for their time and consideration. End of presentation

Q&A –

Mr. Nilsson provided some comments: First, he thanked the team for the presentation and stated that it was very helpful and consistent with comments from other forum and TACs and DTAG comments and suggestions regarding training, outreach, and better coordination will be reviewed by the USG. The USG

has had discussions with RSAT about inconsistency on DCS and FMS; RSAT and DDTC are working toward better partnering for handling two different control lanes. Mr. Nilsson indicated that the issue of inconsistent provisos is being reviewed and the USG is working toward better ways to coordination among licensing officers in different departments. Regarding workload balancing, in the past DDTC did not staff everything to DOD for many items now moved to Commerce jurisdiction so DOD is now seeing these applications for the first time; once DOD gets more used to items being staffed to them for review from Commerce, DTSA may implement a "do not staff" workflow instead of staffing. Mr. Nilsson explained that items for review are coming from more than one system portal and now that items come from another portal (ISN), organizations are seeing cases that were not previously staffed for review. Therefore, implementing a "do not staff" process by Commerce's interagency partners can help the USG focus more on cases that need higher walls for export control. He acknowledged that DTSA is currently reviewing many more cases than previously so DDTC is working with DTSA to help them balance workload so that less sensitive items will move more easily through the review process.

Regarding the requirement for a consignee to sign a piece of paper for STA, Mr. Nilsson commented that electronic systems have historically required some customers to sign and acknowledge conditions of approval, but DDTC is working with Assistant Secretary of Commerce Kevin Wolf to codify requirements. A DTAG member commented that on other license exceptions, governments may not have to sign the BIS-711, and asked how can STA requirements be along similar lines where governments do not have to sign. Mr. Nilsson commented that the USG has had a conversation with one close ally already and, once the process requirements were explained, they were more willing to sign the consignee documentation. He then mentioned that DDTC continues to provide more interagency training, including training at the division chief level, focused on what the USG should be doing, and finding a way to look at the cases to resolve issues has been very helpful.

Assistant Secretary of Commerce Kevin Wolf was invited to provide comments and ask questions. He commented that this was a great presentation and thanked the DTAG for inviting him to the meeting. Mr. Wolf explained that the objective of ECR is to make it better and some points made by the DTAG have already been addressed, but have not yet been published. He commented that on slide 3, under ECR, paragraph (x) does not work to incorporate an item into a commercial platform. Based on comments, BIS was under the impression that nothing in 600 series items would be used in commercial platforms and, if that is the case, he recommended that industry let the USG know about it since that was not the intent of 600 series control.

With regard to foreign users and supply chain, Mr. Wolf indicated that the USG is trying to get non-US companies comfortable making their own interpretation and BIS is doing extensive outreach to help improve this situation. He explained that during the early days of export control reform, the definition of "equipment" was difficult so the USG focused on other terms like part, component, system, end item, technology, software, hardware, and did not define "equipment" upfront. In retrospect, he indicated that the definition does need to be tighter and the USG is still working on it.

On RWAs from DOD, there were many situations where DOD disagrees with a 600 series item classification and recommends RWAing a case, so Mr. Wolf mentioned that if that happens, please send an email to Mr. Kevin Wolf and Mr. Brian Nilsson directly so they can work with Defense on the matter. He went on to explain that the USG deliberately drafted the language for "specially designed" such that

industry does not have to know heritage of design and historic design details; therefore, if that is still a problem, please let the USG know.

Mr. Wolf referred to chart 11 and a comment made about 600 series items triggering Congressional Notification. He noted that ECR should be working the opposite way since 600 series values should not be included in the overall value calculated that trigger such notifications. In addition, he mentioned that the USG intends to publish a FAQ (at the time of the Plenary this was under review by USG counsel) which will include a note on the STA exception indicating that foreign governments do not need to sign documentation; this is not a change, it is an interpretation.

Regarding inconsistent interpretations by the USG, Mr. Wolf commented that the interagency has gotten significantly better on consistent interpretations than six years ago; but, if industry sees inconsistencies, let the USG know the details. He offered that BIS addresses these types of issues during the Commerce weekly calls which include the BIS staff personnel, and industry can get more consistent answers from the collective team.

The idea of an interagency advisory committee is a great institutional suggestion and Mr. Wolf commented that he looks forward to hearing more details about that suggestion and how to resolve problems. He encouraged attendees to contact him, Mr. Laychak (DTSA), or Mr. Nilsson (DDTC) on this matter.

Mr. Wolf stated that the biggest issue on "equipment" is inconsistent interpretation of "production equipment" within DOD. This is an iterative process and Commerce is working much more objectively with DOD to clarify items, such as whether a piece of equipment can provide technical data, which is creating interpretation difficulty; the USG is proposing revisions to USML Category VIII(h) which should be published in a couple of weeks.

Two DTAG members provided examples of a commercial aircraft, stripped clean, outfitted with an ISR suite of systems, and flown OCONUS to a foreign end-user. In this example, the US company needed to send a US person overseas to make a repair to a wiring harness, which has nothing to do with mission systems. In that situation, it is not a Defense Service so that is not a situation where (x) applies. Mr. Wolf commented that if this is normal commercial use, a 600 series item can be put into an aircraft and industry would not use (x) since b/c are not being used with a Defense Article.

Mr. Nilsson and Mr. Wolf had no further questions or comments. Mr. Wade called for questions from the DTAG members and other attendees. There were no further questions. Mr. Wade solicited a motion to accept the findings of the DTAG Working Group Presentation. The motion was moved (Ms. Debbie Shaffer), seconded (Ms. Giovanna Cinelli) – all in favor – YES (none opposed nor abstained). Motion approved.

Working Group 2 – Cyber Products

Mr. Larry Fink and Ms. Rebecca Conover introduced themselves as Co-Chairs for Cyber Working Group. Mr. Fink acknowledged that it was a terrific working group with a nice cross-section of members from aerospace, universities, and commercial industry, and the DTAG members stood. He described the DTAG tasking (charts 3- 4) which included how the working group defined cyber technology, types of export controls appropriate for each cyber category, impact of cyber products particularly on big data analytics, general themes and findings, and DTAG recommendations. Since this was a big task to

address, the team established a methodology (chart 5) which included: review of historical handling, trends and controls in the past, and a categorized listing of all products and capabilities. The working group identified three cyber product categories: collection, security, and big data analytics. The team also researched other rules, most recently a Commerce proposed Wassenaar rule, and other existing regulations.

Ms. Conover then explained cyber through the ages (chart 6), illustrating where cyber was used historically and how more prevalent it has become over time. Ms. Conover explained that cyber started with bigger things like airplanes and satellites so most of the world was not using cyber. Through time, 2010 and beyond, cyber developed quickly and is everywhere; it is in gaming, makes houses smart, detects floods, and is used in every part of our world (if not now, then maybe tomorrow). As the team tried to think about cyber in ITAR and EAR, they tried to think about where all these technologies and components exist today, how they are controlled, and how they are developed. The team realized that people use the word "cyber" a lot, but no one knows what cyber means. In order to define cyber (chart 7), Ms. Conover explained that the team considered, "what is a cyber-incident?" which is mentioned in the DFARS regarding reporting as "items and activities involving a computer network." While this gave the working group a hint on what may be characterized as cyber, it is quite broad. One term seen now is the "internet of things" which connects every device that exists to help people find the nearest coffee shop, locate kids after school, or order a taxi. When the working group considered what items are cyber, Ms. Conover shared that to address this, the working group assembled a list enumerating more cyber items than imaginable and bucketed the list into three categories: cyber security (both offensive and defensive), data collection (e.g., where is the nearest coffee shop?), and analytics (help us figure out all the data available and use it to connect the world). The working group did not want to go into encryption controls or cloud computing, so Ms. Conover suggested the attendees look at the prior DTAG Plenary presentations on those topics.

On chart 8, Mr. Fink described the working group themes and findings. In general, cyber technology is everywhere, it's omnipresent; it's in everything we do. Going back and forth to soccer and wondering where the nearest sandwich shop is, a device like a cell phone knows where an individual is and how to get to a specific location. Mr. Fink explained that the team realized there is little or no distinction (technically) between offensive and defensive cyber capability. Broad controls hinder development and R&D activities, the USG and intelligence agencies rely on open source developments by universities and research groups to develop cyber capabilities, and cyber security uses technology to test for vulnerabilities and prevent hacking. Mr. Fink cited an advertisement (chart 9) to make the point that the same technology and tools that hackers use are also used by industry to help find holes or vulnerabilities and seal them so they are not exploited. Mr. Fink noted that the team observed that cyber products use the same globally-developed, basic technology for military and commercial use which makes it very difficult to base controls on these globally available technologies. There is no difference between the military and commercial big data hardware and technology building blocks.

The working group combed through the worldwide web and found references to intelligence, but they were all referring to business intelligence which uses the same search engines and approaches as Intelligence with the big "I." Mr. Fink reiterated that cyber products, including data analytics, are available worldwide as he described chart 11 on big data analytics, which involves taking input from data sources and putting it in a format to digest, then sifting through the data to pull out what is relevant. At the back end of the analysis, there is a human element that uses the data in a report or

such. The team looked for a point at which something might be distinguished as military or commercial, and at the human element that could be a service.

Ms. Conover presented the team recommendations which included:

- Cyber products under the EAR are dual-use and should not move to ITAR. Ms. Conover explained that the team looked at uses, experiences at universities and companies, and they did not identify any items there that were not already controlled under ITAR which should be controlled.
- Changes to USML Category XIb are needed. At present, it is a "catch-all" control mechanism. The working group recommended removal of USML Category XIb since these items are already under Category XIII, XVII, or another category of the USML. Ms. Conover explained that removing Category XIb language would also remove the "catch all" controls since analytics items are more appropriately handled under other categories. As a result, a commercial item that needs modification for military end-use would be handled as a Defense Service and the "secret sauce" requiring stronger export control could be captured as part of the human part of the activity.
- The last recommendation described by Ms. Conover was use of end-use/user controls which would be a more appropriate export control method, particularly on cyber security. As a real-world example, Ms. Conover shared that some companies hold "hack fests" wherein hackers help expose product vulnerabilities; this is beneficial to industry and the USG. Technology controls would hinder legitimate end-use such as building a better product.

Ms. Conover summarized by sharing that the team enjoyed looking at this topic and believes that in order to stay at the forefront of technological advances, it is so important that export controls are not implemented out of fear and/or control the wrong items, such as items under development since control of one item will result in another country being three steps ahead of US industry. The team acknowledged that everyone wants to protect information, privacy, personnel info, Government secrets and, as Ms. Conover described, all of these objectives benefit from advances in technology; therefore, the working group agreed that strong controls on classified items or items that are positively enumerated on USML are necessary; however, stronger or more ITAR controls in the area of cyber would have a negative impact.

Presentation ended and the session was opened for Q&A.

Mr. Nilsson commented that the cyber working group presentation was very helpful. Mr. Wolf commented that focus on USML Category XIb is under review with Mr. Nilsson and DDTC.

Mr. Wade called for questions from the DTAG members and other attendees.

Mr. David Perera, POLITICO LLC, asked for confirmation that the working group recommended nothing new to be added to USML, including cyber security, and removal of USML Category XI(b).

Ms. Conover confirmed that those were the conclusions and recommendations from the DTAG working group.

There were no further questions.

Mr. Wade solicited a motion to accept the findings of the DTAG Working Group Presentation. The motion was moved (Ms. Kim DePew), seconded (Ms. Christine McGinn) – all in favor – YES (none opposed nor abstained). Motion approved.

BREAK

Working Group 3 - Trade Compliance Process

Ms. Cindy Keefer and Mr. Mike Cormaney introduced themselves as co-chairs for this working group and introduced the DTAG working group members.

Ms. Keefer described the task (chart 4), which included multiple elements, and explained that the working group focused primarily on the first element after receiving input from the State Department suggesting that the Department was primarily interested in how industry would distinguish "administrative" violations from other types of ITAR violations. To do this, the team established an approach of gathering information from DTAG members, companies, law firms, consultants, and non-profits & universities; researched other USG agencies and how they handle voluntary disclosure issues; and developed recommendations. Ms. Keefer discussed some underlying considerations (chart 6) and emphasized that, except for matters addressed in ITAR 126.1(e), disclosures of ITAR violations are voluntary.

Mr. Cormaney discussed the various options that the working group considered for identifying administrative violations. As an initial matter, the working group discussed whether the term "administrative" was appropriate, as it could imply "unimportant." The working group decided to use the term "administrative" since it was used in the tasker. Mr. Cormaney explained that any methodology to identify administrative violations had to be objective, straightforward (i.e., not overly complicated), flexible, and able to account for fact the industry is not in a position to know the national security ramifications of a violation. Options considered (chart 8) were discussed during the team calls, and each option was explored.

- Option 1 (chart 9) would identify "administrative" violations by asking whether the violation resulted in the loss or compromise of a Defense Article or Technical Data. This is based on the standard in the National Industrial Security Program (NISP) for identifying when security violations are reportable to the cognizant security agency. If the violation does not involve loss or compromise of a Defense Article (including Technical Data) or the performance/provision of a Defense Service, then it would constitute an administrative violation. An important benefit of this option is that it is a known concept to those familiar with NISPOM.
- Option 2 (chart 10) involves reviewing the ITAR and designating specific provisions that, if violated, would constitute administrative violations. This option is straightforward and objective, but lacks flexibility.
- Option 3 (chart 11) was to develop a risk matrix to assess the level of magnitude of a violation against the likelihood that it would occur, and assign a value to it. This option was not workable because it was very subjective and because making such decisions would often require an assessment of the seriousness of a violation – something that industry is not in a position to do.
- Option 4 (chart 12) would identify administrative violations by evaluating a series of aggravating or mitigating factors derived from enforcement guidelines, consent agreements, and other

agencies guidelines. This option also is very subjective and results in inconsistent interpretation on weighting.

After reviewing these options, the working group came up with a recommendation that tries to combine the best elements of each of the options. The working group identified three categories of violations (i.e., Category 1, Category 2 and Category 3). Chart 13 is a summary of the three categories and charts 14-17 provide more details on each category. Mr. Cormaney described the categories.

- Category 1 – These are violations that involve (a) an ITAR 126.1 country or national AND (b) a loss or compromise of Defense Articles or the performance of a defense service. This type of violation is the most serious and requires immediate disclosure. This is the current requirement under the ITAR, and the working group was not proposing any changes. Mr. Cormaney pointed out that DDTC can use its discretion to assess which of these types of violations are more serious and which should be treated as "administrative" by the agency. For example, export of Technical Data to an ITAR 126.1 country would be more serious than a temporary export of a Defense Article to Iraq and Afghanistan to support U.S. forces.
- Category 2 – These are violations that do not involve an ITAR 126.1 country or national, but that do involve either (a) loss or compromise of a Defense Article (including Technical Data) or (b) performance of a Defense Service. Disclosures of such violations are voluntary. If a company decides to disclose, it would be handled through the standard ITAR 127.12 disclosure process. It is possible, however, that sufficient mitigating factors could change a Category 2 violation to a Category 3 violation. For example, an export of a Defense Article to a NATO government where there are 27 precedent licenses for the same item, same end user for the same issue).
- Category 3 –These are violations that do not involve the loss or compromise of a Defense Article or provision of a Defense Service. As such, they are less likely to have national security consequences. For these situations, if a company decides that it wants to disclose the violation, the working group suggests alternatives to the standard ITAR 127.12 disclosure process. Mr. Cormaney noted that Category 3 situations may not always be black and white; aggravating factors can make a Category 3 violation more serious and perhaps raise it to a Category 2. Alternative methods to standard disclosures, discussed below, would still allow the agency to receive information on the violation and meet its requirements but not through the full disclosure process. The team cited as an example the import website guidance on appropriate corrective actions needed to address temporary import license violations.

The team explored different possibilities for alternatives to the standard ITAR 127.12 disclosure process, such as binning issues together, consolidating Category 3 violations into an annual or semi-annual report, providing notice of violations with description of corrective actions and describing the violation in the application for a license or other approval. The working group suggests that these alternatives be considered a privilege, and State could rescind this privilege if a company uses it too much or for the wrong reasons.

Ms. Keefer cited chart 18, which was an excerpt from a spreadsheet that the working group prepared in which it classified most ITAR requirements as Category 1, 2 or 3. For Category 3 provisions, the working group also included suggestions for alternatives to the standard ITAR 127.12 disclosure process. The chart will be provided with the working group materials.

Ms. Keefer then discussed chart 19, which illustrated how this methodology would work using ITAR 124.4(a), which requires the submission of a copy of a signed agreement within 30 days of execution. The working group determined that this is a Category 3 violation since the violation does not involve the loss or compromise of any Defense Article or the performance of a Defense Service. As an alternative to submitting a standard disclosure, the working group suggested the possibility of simply uploading the signed agreement with a letter that explains why the deadline was missed and what corrective actions were taken. Ms. Keefer reiterated that the alternatives to disclosure suggested for Category 3 administrative violations would be considered a privilege and State could rescind it as needed. In other words, it would be a discretionary process so State has control over its use. Ms. Keefer discussed another example (chart 20) involving ITAR 123.3(a) and DSP-61 requirements.

In response to other elements of the tasker, the working group provided recommendations for process improvements such as: (a) electronic submission of disclosures (but not using a DSP-5 as a method of submission); (b) case officer assignment by company or by USML Category, which can prove helpful for compliance officers to better understand the company, its products and improve communications; and (c) assigning a lead agency for multiple agency disclosures and handling the case using one disclosure with copies to other agencies, as needed.

The differences in enforcement approaches between State and Commerce/OEE were described by Mr. Cormaney beginning on chart 22. In general, the perception is that State's enforcement is administrative compliance – i.e., focus is on fixing the problem so that it will not recur. The perception of Commerce/OEE is that the focus is on punishment (e.g., guns and badges). Each company has a different experience, but the overall view was that most preferred a system that is focused on fixing the problem and less on penalties and publicity.

Mr. Cormaney also noted that there is a widely held view in industry that Commerce's disclosure timeline is better as it allows a longer time period to conduct investigations (180 days vs. 60 days) and many thought that extra time was needed to do a thorough analysis. Lastly, the team looked at other disclosure programs. Mr. Cormaney described four elements from other programs that might be of benefit to State. The most important was an electronic submission process. The CFIUS process could work well, because it did not have a standard form but simply allows companies to upload documents to the agency in pdf format. This expedites the assignment of a case officer and facilitates communication and recordkeeping.

Ms. Keefer concluded the presentation by providing a summary of the recommendations.

The presentation was concluded and the session was opened for Q&A.

Mr. Nilsson commented that the recommendations sound great and that these were things that State can consider. He noted that many appeared "doable," particularly electronic submission, and noted that the case officers are drowning in paper.

Mr. Wade commented that this was a great presentation which was well received by the full DTAG team. He also noted that the spreadsheet would be a useful resource. Many of the team members spent a lot of time going through the ITAR to create the matrix, gathering data and forms from other agencies, and putting together the working group presentation. He emphasized that the presentations

are just a snapshot of the work and effort, and the white papers provided by each team will show more details of the methodology and research that is put in by each working group.

Mr. Greg Suchan, Commonwealth Consulting asked about the total number of requirements identified in the spreadsheet and the allocation of these requirements among Categories 1, 2 and 3. The co-chairs responded that they did not have an exact number, but there were 64 requirements identified in the spreadsheet, and roughly 20 were classified as Category 3.

There were no further questions from the DTAG members or attendees.

The Chair solicited a motion to accept the findings of the DTAG Working Group Presentation. The motion was moved (Ms. BJ Demery), seconded (Mr. Greg Creeser) – all in favor – YES (none opposed nor abstained). Motion approved.

Working Group 4 – DTAG Structure, Operations, and Process Working Group

Mr. Dale Rill introduced himself as the Co-Chair and Mr. Jeremy Huffman as the Co-Presenter for the DTAG Structure working group. This was the last session of the day and the primary task was to look at the DTAG charter. Mr. Rill thanked the team members for supporting this task and they each stood. The task (shown on chart 2) was to consider how the DTAG can function more like or interface with Technical Advisory Committees (TACs) advising the Department of Commerce. The team looked at the DTAG charter and current processes and procedures, purpose and scope of the DTAG, and compared that throughout the tasking to see how to achieve this as part of the USG process.

Mr. Rill put the presentation in context, explaining that since the DTAG has been looking at ECR, and as technologies are next generation and more complex like cyber which were not looked at previously, this is a good time to do this comparison of DTAG with TACs. Mr. Rill indicated that Mr. Huffman will cover what is permitted under the scope of the law by reviewing the legal foundation permitting federal advisory committees, then he will describe a possible new vision of an Interagency Trade Advisory Group (or I-TAG). Assistant Secretary Wolf had commented earlier that he agreed and is supportive of an interagency advisory group so State and Commerce can more effectively collaborate.

Mr. Rill described the task order of review (chart 5) and, based on the DTAG structure today, the working group researched the possibility of creating an interagency trade advisory group, with representatives appointed by State and representatives appointed by Commerce, working collectively in one environment, taking into consideration ECR, and tackling some of the common trade issues. Since some categories have not yet been published, some are going through review or second round of review (like USML Category XII, which will get a second round of public comment), Mr. Rill commented that when ECR was discussed years ago, industry and USG realized that the entire USML would not be purged. Prior to ECR, technology, nuts and bolts had not been reviewed since the mid-1950s while they continued to be controlled. In light of the progress made, part of the USML was purged and items were moved to areas with less controls since they are no longer a real threat. To address these and other ECR scenarios, the working group needed to figure out what is permitted under the law today to see how to create an I-TAG to operate within boundaries currently authorized for the DTAG.

Mr. Huffman explained on charts 6-8 that the team looked at FACA and the implementing Management Final Rule, and for each advisory committee in each agency, there are governing documents similar to the DTAG charter. The EAA and EAR go into how Commerce uses TACs so the team looked at their charter to compare it to the DTAG charter, starting with FACA. Mr. Huffman described FACA as a high-level statute to explain to USG agencies how advisory committees are used and it shows that an advisory committee can be used by one or more agencies. An advisory committee can be formed in consultation with the GSA Committee Management Secretariat when a USG agency negotiates why a new committee is needed, what purpose and topics will be addressed, and how members will be chosen; once they reach agreement, they can publish a charter, using Federal Register notices. The advisory group can form subcommittees, which are not subject to FACA as long as they are reporting to the advisory committee and not to the USG directly (e.g., as long as there is a layer between the subcommittee and USG). TACs have made more use of subcommittees than the DTAG. The working group reviewed the DTAG terms of reference and charter (chart 9) and the DTAG's function is to advise the Department of State. Mr. Huffman noted that there is no mention of other agencies, but there is identification of two working groups – these are in the documents but not utilized in recent history. Under the existing charter, there is also permission for DDTC to create subcommittees to report to the DTAG but it does not seem like it is actively used based on working group knowledge. In comparison, Mr. Huffman discussed chart 10 which showed that the Department of Commerce has numerous TACs and their charter appears to have more flexibility than the existing DTAG charter. Commerce TACs can form a working group on a specific topic, solicit input from non-TAC members with subject matter expertise, and then report to the TAC which then reports to Commerce Department. The working group suggested that some parts of the TACs' charters make more sense if the DTAG charter had more flexible making the DTAG more responsive, to help interagency collaboration and communications, and advise and assist State Department.

Mr. Rill presented the working group recommendation outlining the path from DTAG to I-TAG beginning on chart 11. Individual TACs look at materials, sensing products, and provide a greater body of representation from both product and technology perspectives. There are a number of defense trade issues that are complex and require second and third reviews. The team recommended a path forward, on the existing DTAG charter or under a new charter, which can facilitate coordination among USG agencies, provide relevant industry and academia experience (such as in inertial navigation technologies under the current USML Category XII review), meet with stakeholders, and address concerns while going through the review process. This allows the DTAG, operating similar to a TAC, to provide more meaningful input and support sustainability of export control reform. Mr. Rill explained that the ECR initiative has facilitated review of USML items, some of which had not been reviewed for export controls since the 1950s, he then presented the I-TAG Interim Mechanism (chart 12), where, under the existing charter, the DTAG can create working groups and each group can assign non-DTAG members to work on common projects. TACs and the DTAG would not go away under the new vision which Mr. Rill reviewed on chart 13, but the working group was not sure which option would work best. Regardless, there are opportunities for there to be an interagency review board that includes industry and academia input. Currently, the DTAG brings other things to the table such as foreign availability and indigenous capabilities (compared with foreign partners and subsidiaries data); operating more like a TAC, there are expected benefits (shown on chart 14) which promote better opportunity for interagency action, provide more cohesive means for foreign review and policy reviews, and support a continuous review

process to sustain constant reviews with technology evolving incredibly fast. Mr. Rill summarized by stating that we may know what is here today while we do not know what will be there tomorrow.

End of the presentation

Mr. Nilsson commented that this group presented terrific ideas. He and Assistant Secretary Kevin Wolf will not always be in their current positions, so having a formalized organizational manner in which the two agencies can work together (e.g., as USG personnel change) is positive. Mr. Nilsson commented that he has participated in Commerce Department TAC activities and observed that they are more interactive and provide real-time input. That approach would be a good vehicle to help DDTC do more with the DTAG. He indicated that the State Department will take the DTAG suggestions back and consider them.

There were no further questions from the DTAG members or attendees.

Mr. Wade solicited a motion to accept the findings of the DTAG Working Group Presentation. The motion was moved (Mr. Ari Novis), seconded (Mr. Greg Hill) – all in favor – YES (none opposed nor abstained). Motion approved.

Mr. Wade, DTAG Chair, thanked the DTAG members, advised the attendees to send comments or follow-on questions to Joy Robins, DTAG Recorder, by Nov 13th, and expressed thanks to Deputy Assistant Secretary Brian Nilsson and the attendees.

The meeting was adjourned at 4:42 pm.