Designated Federal Official, Deputy Assistant Secretary Kenneth Handelman declared the 2013 Winter Plenary open.

DTAG Vice Chairman Bill Wade called the Plenary to order. He advised the gathering that DTAG Chairman Sam Sevier had undergone back surgery in Washington State on the previous day, January 15, and that he would therefore preside over this Plenary. He then asked DDTC Chief of Staff Lisa Aguirre to address Plenary administrative points for the conduct of the meeting.

Ms. Aguirre covered both security and housekeeping points, plus Plenary requirements for the public such as, no recording devices.

Mr. Wade also advised the gathering that DTAG Task Coordinator Kim Depew was unable to attend because of a family emergency and had to be in Idaho. He introduced DTAG member Debbie Shaffer who would join him on the podium setting in for Ms. Depew and assist him in conducting the Plenary.

Mr. Wade asked the individual DTAG members introduced themselves by name, but also asked that their business/company affiliation information be withheld as the membership was selected by DDTC for their personal industry backgrounds, not for their company affiliations. He advised the attendees that there are usually three DTAG presentations, but today there will be four. If the presentations flow well and DTAG elects, that the proceedings might run through lunch. He said any such decision would depend on how the question/answer portion flowed.

Mr. Wade then introduced Deputy Assistant Secretary (DAS) of State Kenneth Handelman for his remarks on this his first DTAG Plenary in his new position as the boss of the State Department's Directorate of Defense Trade Controls.

DAS Handelman Comments:
I'm a long time civil servant and have loved every minute of it. I expect my new role as DAS for DDTC to be a highlight of my career. I have some short comments, not a speech, covering several important points: first, a couple of "thank you's," second, some comments on some news, specifically the conventional arms policy signed by President Obama yesterday. I feel this will be of interest to this group.

First, to the DTAG members thanks to all of you. I have been in public service for about 25 years; I get a check from the Government for my work but you do not. What DTAG does is really important, time is money and you are devoting your time to the DTAG on your own dime: it is greatly appreciated. Second, thank you to Bill Wade for stepping up for Sam Sevier; we all hope for his speedy recovery. Also, a thank you to Beth McCormick, Director Defense Technology Security Administration, my predecessor, who played a big role in setting the agenda and tasks for this Plenary. The issues are very current and important; I think Beth is in the audience and I wanted to say thank you for setting the stage for today.

I also want to offer special thanks to Assistant Secretary (A/S) of Commerce Kevin Wolf, who is attending the Plenary. I don't know how many times an Assistant Secretary of another Department has attended a DTAG Plenary, but I thank you for coming over. When the book is written on Export Control Reform (ECR) there are a small number of people who will be viewed as primarily responsible for dragging it across the goal line. Former Secretary of Defense Robert Gates and A/S Kevin Wolf will be among the two most central players in that regard. A/S Wolf is a self-proclaimed ITAR geek. He has in almost military-type form, provided essential leadership to the Commerce Department throughout the ECR effort – thank you Kevin for providing such great leadership in such a key effort. Finally, I would also like to thank Lisa Aguirre, Tanya Philips and the rest of the team at DDTC. They are not miracle workers but they did pull off a few miracles to get everything needed to put this plenary together. Many thanks.

Let me turn briefly to the Conventional Arms Transfer (CAT) Policy, Presidential Policy Directive number 27, signed yesterday. The document released yesterday provides the first such update to the US CAT policy since 1995. I consider this a big deal as this policy is the backdrop for everything State Department does in terms of defense trade decision-making and regulation, affecting our economy and US defense industrial competitiveness. Defense trade is only one of the tools in the US foreign policy tool kit, but it is a strong one given our defense relations with allies and other nations with common goals for regional security and human rights. The CAT policy update reaffirms the importance of two major policy positions: the restraint we exercise with respect to arms transfer decisions, and the centrality of human rights in our foreign policy and its application to defense trade. The CAT policy update in conjunction with the Administration's Export Control Reform initiative have the effect of revalidating the priority we put on technology security – the proposition that our most sensitive equipment and industrial technology will be traded with those allies and friends that will treat them with the same care as we do.

For me, the release of this update reminded me of my prior career at the Pentagon and the amount of energy the US military puts into advance planning for various contingencies. It is often said that no general or admiral ever leads his or her forces based on one of these "canned" contingency plans. That observation misses a key point about the plans process: it's actually never about "the plan," but rather "the planning." The thought process and testing of assumptions is what's so valuable in contingency planning, and the situation is similar in the revalidated CAT policy. This update is not revolutionary, but it does represent a methodical re-examination, and re-validation, of our approach to conventional arms transfers. You will see the Government has holistically looked at what it means to be in the defense trade business, and the decision points we make in this business. I encourage you to check the State Department website for this update. Thank you. And back to Vice Chair Bill Wade.

Mr. Wade: Introduced Assistant Secretary Kevin Wolf, Bureau of Industry and Security, Export Administration:

Assistant Secretary Wolf: Thank you for inviting me to speak. I understand that it is unusual to have someone from the Department of Commerce, or from any other department, speak at a DTAG Plenary since it is the State Department's FACA-compliant advisory group. However, Commerce's Bureau of Industry and Security (BIS) has worked closely with DDTC over the past several years on the Administration's Export Control Reform Initiative, especially in the areas of creating a "bright line" between the USML and the CCL and establishing the new CCL 600 series to control military items that no longer warrant control on the USML. Our offices are separate agencies working under different regulations with sometimes different objectives. They, however, both serve the Administration's objective of controlling the export, re-export, and transfer of certain commodities, software, technology, and services to protect and enhance our national and economic security. Going forward, the Commerce Department will be playing more of a role in controlling military items that are less sensitive or more widely available, but nonetheless warrant control because of their military characteristics. Thus, hearing the DTAG's presentations on potential unintended consequences of the reform effort is of significant interest to BIS. So, for that primary reason, I thank you for the invitation. A key aspect of the reform effort is that we identify those parts of it that, when implemented, may not work as smoothly as planned. So, hearing from you on how it is actually working will allow our offices to make the tweaks necessary to accomplish our objectives. I take in all ideas. I, for example, hold a weekly conference call and answer all e-mails sent to BIS about the reform effort and the regulations. My staff and I work through the questions to try to find consistent themes and problems. We then address them, either through an answer or sometimes to a change to our regulations or guidance. So, I look forward to hearing from you today.

Now, a quick report on the status of the effort. The new aircraft and aircraft engine rules became effective on October 15th. The changes to USML categories VI, VII, XIII, and XX, and the corresponding changes to the Commerce controls, became effective on January 6th. On January 2nd, State and Commerce published the final changes to USML categories IV, V, IX, and X, and the corresponding ECCNs. They will become effective on July 1st. There were not many substantive changes to categories IV and V, by the way. Most of the changes to those categories were for the sake of clarity or consistency with the MTCR. The final drafts of the changes to

USML Categories XV and XI are still in the interagency review and clearance process. XV is first in the queue. When we finish the clearance process, State will, as with all other draft final rules, send them to the Hill to begin the informal and then formal congressional notification process. We then will move to finishing and then publishing proposed changes to USML categories XII and XIV. It is largely the same group of people shepherding the drafting of each of the rules, so we couldn't do them at the same time. Also, category XIV required involvement of many other parts of the US Government with equities in controls on biologics and toxins. I don't have an exact timeline for any of these revisions, other than that these are our four priority efforts now. Once we get the category revisions out, we will be turning to many non-list-based reforms to the ITAR and the EAR, such as updating the recordkeeping requirements, and also the definitions of technology, public domain, and fundamental research. Each was written before the Internet was commonly used and thus need to be updated. There will be a significant of coordination between BIS and DDTC on these issues. We have a lot to get done in 2014 and the only we will be able to get all done is if we get advice from our technical advisory committees such as the DTAG.

In closing, I really want to emphasize that we do want to hear from you. If the new way of thinking is making something less efficient than before and our national and economic security objectives can be achieved by a change, then we want to hear about it so that we can address it. If there is a different way of describing something so that it is more clear, then we want to hear about it. In this way, we can achieve one of the other primary goals of the reform effort, which is to make the regulations more reliable and predictable so that U.S. companies can be reliable and predictable - and compliant -- exporters. Thank you.

Mr. Wade explained that, to better manage the length of the four task topics, the order of presentation would be different than that in Acting Assistant Secretary Tom Kelly's tasking letter. He then introduced the first presentation which was Topic 3 and introduced the Team leaders Ms. Joy Robins and Mr. William (Bill) Schneider. Vice Chair Wade also explained to the audience the DTAG requirement for a vote by the DTAG members at the end of each presentation to accept or reject the findings of the team, and that vote would be recorded in the minutes of the Plenary.

First Presentation Topic 3: **Provide a proposal for an effective export control system for non-lethal, non-Category I UAVs that would facilitate their use in non-military roles.**

Mr. Schneider thanked the audience for attending the Plenary, noting that topic 3 was one of the most unusual reviews that DTAG has taken in that it covered technology issues, public policy, and foreign availability of the materials and subsystems. He said he thought the audience would like the materials and would see the environment had changed over the last six months and he thanked the team for their participation.

In discussing Slide 3 he noted that the team's review and discussion concentrated on Assistant Secretary Kelly's task, but in review of the subject their effort expanded into areas of unmanned ground and underwater vehicles, MTCR Category I issues, Optionally Piloted Vehicles, and civil and safety concern areas.

On Slides 4 & 5 the team framed industry's problems in the non-lethal, non-Category I (MTCR) market where exports controls negatively impact US industry's competitiveness in the growing international market. They noted that civil end use and technological development (non-military) is growing faster than the military-intelligence market, especially in international markets. They cited several instances where the authorization review process, even for MTCR Category II piece parts, was based on a strict national security mind-set and was "hamstringing" the contractor's ability to meet customer requirements in both capability and time (license times have become longer than customer response requirements, e.g. RFI/ RFP). They noted that foreign availability is significant and growing and that alone is diminishing US supportability and R&D in the field; not because of a lack of capability, but because of a lack of markets (self-imposed). A market denied to US industry, whether by intent or delay, is a market created for a competitor; someone will fill the requirement and their capability will increase.

Mr. Schneider, reviewing Slide 5, gave the air campaign in Libya as an example of restrictions on US export policy for UAVs that had a significant impact on NATO operations in Libya. The lack of access to comparable capabilities to US UAV-based C^4ISR significantly degraded alliance interoperability. As US C^4ISR operations are becoming increasingly dependent on UAV-based platforms, policies that restrict allied access to US UAVs undermines other security goals such as capacity-building among allies, burden-sharing, and the ability of the alliance to deploy interoperable military forces.

Mr. Schneider mentioned that the creativity of private sector is showing itself well. Chart 6 showed some applications of UAVs including some far-fetched but plausible commercial uses like Amazon's proposed use to delivery packages to homes or remote areas. He populated the world map on charts 7-13 while pointing out that there are many countries and international alliances actively engaged in UAV manufacturing to illustrate the team's finding that UAV manufacturing is truly global.

Security protocols on the computer would not allow playback of an embedded video, but it was described as a clip showing an Israeli Heron TP as an example of state-of-the-art.

Mr. Schneider commented that much material the team covered showed that there is extensive international participation in the development, production and support of unmanned systems. When the MTCR (1987) was negotiated in the mid-1980s, there was evidence of some nations seeking to employ long-range cruise missiles for the delivery of weapons of mass destruction. In the intervening quarter-century, the technology of unmanned systems has changed in fundamental ways.

Mr. Schneider added that much material the team covered showed that there is extensive international participation in the development, production and support of unmanned systems. When the MTCR (1987) was negotiated in the mid-1980s, there was evidence of some nations seeking to employ long-range cruise missiles for the delivery of weapons of mass destruction. In the intervening quarter-century, the technology of unmanned systems has changed in fundamental ways. The Federal Aviation Administration has been directed by statute to develop processes that will permit unmanned systems to operate in civil air space. In December the FAA selected six test sites for UAV development work in the US. Market forecasts now expect upwards of 30,000 unmanned aerial systems to be used in the civil sector. In Denmark, legislation there has established a test range in Central Denmark for the use of a test facility for the civil use of unmanned aerial vehicles.

Mr. Schneider described some recent changes in public policy shown on chart 15, including recent publication of the FAA UAV roadmap, which parallels efforts in Europe and DoD's recently released road map for all unmanned systems, not just air, but there is no corresponding roadmap for civil applications. The Federal Aviation Administration has been directed by statute to develop processes that will permit unmanned systems to operate in civil air space. In December the FAA selected six test sites for UAV development work in the US. Market forecasts now expect upwards of 30,000 unmanned aerial systems to be used in the civil sector. In Denmark, legislation there has established a test range in Central Denmark for the use of a test facility for the civil use of unmanned aerial vehicles. Ms. Robins pointed out that a number of nations are developing unmanned systems roadmaps and one of the recommendations of the DTAG is to make sure our governments are collaborating so that US policy initiatives and controls align with our global partners and help ensure that US industry does not get cut-out of those markets. Mr. Schneider looked at the aggregate trends of UAVs and noted that they are likely to have more broad-based civil end-uses, or OPVs, or cargo payloads tomorrow where there are sensor payloads today.

Ms. Robins reiterated that this task was interesting and challenging since it was assigned in July 13 before Export Control Reform had been implemented for the changes to Category VIII for military and commercial aircraft. She explained that during tasking timeframe, the evolution of the export regulations and the FAA roadmap initiative were occurring (past, current, future) which made this assignment very dynamic and difficult to nail down.

Ms. Robins described the current regulatory regime and licensing process shown on charts 17-18 and she indicated that it included both pre- and post-ECR information together since, as the team gathered relevant export licensing information, a lot of experiences and data points were pre-ECR so it was too soon to truly see what the effects of ECR will be in the UAV area. Ms. Robins described UAVs as being controlled in both the EAR and ITAR and that, under the ITAR, there is a lengthy review process which has increased recently for various reasons. She pointed out the team finding that the perceived threat that all UAVs are weapons of mass destruction has in the past resulted in conflicting and onerous provisos that are often unrelated to the license request and it takes a long time to process a reclama or resolve a conflict.

The team findings were shared by Ms. Robins on page 19 and she reinforced some statements and charts from earlier in the presentation including market demand and technological development in the civil sector which is rapidly overtaking military-specific development and end-use where even the DoD is soliciting commercial products through the RFP process in order to reduce cost and leverage civil development. She referred to the UAV manufacturers charts shown earlier which showed how UAVs are widely available around the world and it is foreign market access that is driving technological development. She expressed the overall team finding that US business is precluded from selling to the rest of the world what the rest of the world is selling already.

When Ms. Robins began reviewing the DTAG recommendations, she indicated that it was easy for the team to identify what was wrong, but more difficult to identify what will make it better. The team recommendations were reviewed on charts 20-24 and include clarification of the term "military" which is included in post-ECR Category VIIIa5 stating that unarmed military unmanned aerial vehicles are ITAR controlled. She explained that the ITAR does provide a definition of military aircraft, but it does not include or exclude "unmanned" in that definition and this can cause both industry and government to have inconsistencies or disagreements over what is ITAR vs. EAR. Chart 20 explained this recommendation in more detail.

The post-ECR export controls were shown on a flowchart on chart 21 and it showed how UAVs and associated technologies are controlled under both the ITAR and the EAR, including launch and recovery systems. However, she mentioned that some clarification in these areas may be needed as ECR is implemented since there was not enough post-ECR data available to the DTAG team during this tasking.

Licensing policy recommendations on chart 22 were described in more detail including recommendations that ITAR restrictions be reviewed since some capabilities that are currently considered to be military may have commercial applications. Examples described included infrared used for border patrol, communications relays used for broadband during disaster relief, and SAR (radar) for SAR (search & rescue). For the interagency review committee, it was stated that it is critical to change the opening perception that all UAVs are WMDs, particularly since any platform can be used as a weapons delivery mechanism and cited examples included manned aircraft attacks on the World Trade Center and a rental truck used in the Oklahoma bombing. More dialog with license applicants before issuing restrictive provisos or death by proviso were recommended as well as shortening the timeline for review by establishing a licensing review metric and sticking to it.

The DTAG also proposed expedited licensing for MTCR member countries for unarmed military aircraft that remained controlled under ITAR category VIII(a)(5). The proposed expedited licensing criteria were shown on chart 23 along with an additional recommendation to consider expedited processing for category VIII(a)(6) (armed UAVs) in the future.

Ms. Robins indicated that the future work recommendation to renegotiate the MTCR terms with member countries had been proposed before and may not be a preferred option, but modernization and reform are necessary since the MTCR was originally negotiated so many years ago, technological development has progressed, public policy continues to change, and the MTCR terms need to continue to meet the market reality as well as our non-proliferation objectives and principles. She explained that the DTAG recommends future DTAG

taskings to review expedited licensing expansion for MTCR members and to leverage precedents established for certain parts in manned aircraft such as 7A994 for QRS-11 or ring laser gyros regarding treatment of USML items that are incorporated into an otherwise commercial UAV so the UAV doesn't default to ITAR control as an unarmed military UAV under category VIII(a)(5).

Ms. Robins summarized the presentation using chart 25 by acknowledging that the team recognized this is not an easy area to control for export and import in a business enabling manner while simultaneously protecting our national security objectives. She cited shifts in public policy and changes in technology, and export controls and license processing hurdles diminish US industry competitiveness. The DTAG recommended changes and future engagement with industry to create a better and more efficient way to process UAV requests so that US firms can compete in this expanding market. She thanked everyone for their time and consideration and the floor was opened for questions.

[**Additional notes for each slide are included at the end of the presentation that will be posted on the DDTC website**]

Q&A:

A/S Wolf noted that Dr. Wes Cox, Defense Technology Security Administration (DTSA) Technology Directorate was also attending the Plenary. He said that in November 2011 that Dr. Cox/DTSA, DDTC Managing Director Robert S. Kovac and himself met to take their first cut at establishing the "bright line" for US Munitions List (USML) Category VIII (Aircraft and Associated Equipment) systems and parts/components. A/S Wolf said they were able to come up with a fairly understandable list that would stay on the USML and items that would move to the CCL for management by Commerce Department. He said, however, they could not figure how to make a positive description of what would and would not stay in Category VIII. The term 'military' to distinguish was used, but it broke with had been done with other areas of the bright line effort. In the preamble they explained they knew the term was too general and asked industry to help. No clear definition was arrived at and none of industry's comments were useful in creating a definition. Thus, they left military in as the discriminator as items that are clearly civil would fall from ITAR (he cited ECCNs to illustrate his point with respect to the CCL). He also asked that if any of the attendees had any examples of where are military items have strictly civil applications, to please inform his office. The goal of the Category VIII rewrite was to write those items out of USML. If there is there is something VIIIa5 that someone knows is used in civil market and meets the civil definition, please tell us. A/S Wolf also addressed the QRS-11 issue. He discussed the elimination of see-through rule in Category VIII, and added a plea that if that if they have inadvertently created another version of the see-through rule, to let them know.

Mr. Schneider: In response to A/S Wolf's comments, Mr. Schneider said that the team discussed that very problem regarding characterizing the equipment as military vs. civil or commercial. He cited examples such as night vision equipment having parallels in civil and military application which makes it difficult to identify a discriminator for military equipment, particularly when it is a part of system of systems such as system interfaces with CSF equipment where civil equipment is generally not networked. The working group looked at equipment with specific military nomenclature as a differentiator between ITAR and EAR, but even then, some military equipment can also have significant civil or commercial application, so perusing a line inquiry of identifying those with military nomenclature may not be the right place to draw the line.

Public Attendee commented that they have found the term "military" in the new regulations in aircraft and they have some products that were developed for UAV applications; however, they are not sure if the term military applies to them. He asked what the proper vehicle is to ask for clarification. He cited examples of interfaces for military customer developed avionics with sensor interfaces where the sensor could be military or civil and asked how to determine whether that was ITAR or EAR.

A/S Wolf replied that military UAV only applies to the end item. For parts and components, Category VIII(h) would apply and if they are not in category VIII, then by definition those items have moved to the CCL. The way we wrote mission systems is it applies.

DAS Handelman said that the most authoritative way for making a jurisdiction determination is through the Commodity Jurisdiction (CJ) process. His broader point was this is going to be a busy year for all of us in this particular industrial sector. He then commented that this was a good presentation and a topic near and dear to his heart. He participated in the DoD (at the end of interagency) discussion of these topics and is in violent agreement with what the presenters said. He noted that as A/S Wolf said, what we heard from industry, to paraphrase "was not all that much" and we are going to be learning a lot of lessons as we implement Category VIII. He noted that we are still trying to capture comments and issue updates from ECR issuance in October and even as the DTAG has been thinking about the issue, there has been a lot of thinking on the issue in the government. He reiterated that the message has been received and as A/S Kevin Wolf said, we need to hear from you - Category VIII changes require feedback. At this point there is nothing galactically smart to say because we are still in a land of discovery. The CJ is the best route, our doors are open; this is a partnership.

A/S Wolf: Asked the presenters to please go to about slide 20 on potential ways to identify military items. He commented that on this topic, we requested definitions for military and were following this kind of thinking (he referred to chart 20) and were mulling it over but we didn't settle on one particular solution. He acknowledged that the government did not identify a bright line and asked for industry suggestions on how to better define military - please provide feedback.

Public Attendee asked when these materials will be available.

Mr. Wade replied in a week or two from the time plenary session over. It will be published on DDTC website www.pmddtc.state.gov. He asked for additional questions and there were none. He then thanked the UAV team, noting that their task was one of the more complex topics that we have been involved in since he was on DTAG. He pointed out that this team ended up having two teleconference meetings a week to complete their work. When DAS Handelman mentioned this is a labor of love, given that the DTAG members all have their own jobs, meeting twice a week is a test of dedication.
He said that following Robert's rules of Order and the requirements of the Federal Advisory Commission Act the DTAG is organized under he accepted a DTAG member motion and second to accept the report of team 3. The motion passed and he declared a 15 minute break.

Mr. Wade: Everyone be seated. This next group was tasked to look at the unintended consequences of Export Control Reform (ECR). Both DAS Handelman and A/S Wolf are very interested in what industry believes those are. We had a good group pulled together to work this task and typically we try to look for one chair inside beltway and one outside. We also like to get together the day prior to the Plenary, spend lots of time going through charts. There were lots of questions and comments from the group and we look forward to the presentation.

Second Presentation Topic 1: **Identify potential negative impacts and unintended consequences of the Export Control Reform Initiative on industry and provide recommendations on how to overcome/minimize such impacts.**

Mr. Wade: This task was to look for unintended consequences of the way the Export Control Reform Initiative is being rolled out over an extended period of time with the first two Categories VIII and the newly delineated XIX coming in the first group this past Fall with others to follow over the next year or so. DAS Handelman and A/S Wolf are keenly interested in any impacts that may be seen from the industry side as the two primary control documents USML and the CCL move parts and systems between each other over time. To meet this, and the other A/S Kelly taskings, we pulled together from the DTAG membership Working Group teams based as well as

we could, given the members work backgrounds and industry affiliations and put everyone to work. In the typical Sam Sevier, Bill Wade and Kim Depew process we work hard to have one team co-chair from inside the beltway and one outside; this has worked well for us over the last several years and it again worked well here. One final management item that has also worked out very well for us is an all-day presentation dry run the day before the Plenary here in the DC area where we go through all of the presentation charts.

Mr. Spence Leslie and Mr. Alfred Furrs are the Co-chairs for this presentation on the industry look for potential unexpected outcomes of the ERC and its implementation.

Mr. Leslie: One of the unexpected hazards of travel I forgot my jacket. He thanked DTAG working group members and others for the edits their White Paper and presentation. Mr. Leslie noted that they were able to take advantage of information from many sources and the use of outside experts as authorized by DAS McCormick.

Mr. Leslie opened the discussion by sharing with the attendees the specific task assignment of the working group. He informed the attendees, referencing Slide # 3, the task was to "Identify potential negative impacts and unintended consequences of the Export Control Reform (ECR) Initiatives on industry and provide recommendation on how to overcome/minimize such impacts." He noted the working group's task was provided in the July 25, 2013, Department of State tasking letter tasking.

Mr. Leslie, in speaking to Slide # 4, informed the attendees that the full body of the working group felt it was important to voice industry's support of the ECR initiative to overhauling the nation's export control system and recognize that fundamental reform of the current system is necessary to enhance national security by focusing resources on the threats that matter most, increasing interoperability with our allies, and strengthening the U.S. defense industrial base by reducing incentives for foreign manufacturers to design out and avoid using U.S. parts and components. Mr. Leslie also applauded the efforts of the State and Commerce Departments up to now and expressed share industry's shared interest and continued collaboration in shaping the regulatory changes under ECR.

Mr. Leslie highlighted and summarized the working group's approach to reshape the tasking into high-level discussion points to generate specific sub-topics, statements of facts or conclusions, and recommendations. The key high-level discussion points the working group focused its efforts on encompassed four main points. This approach proved helpful to the working group in narrowing the scope of the task. As a result, the task powered down the task into four key discussion points, which encompassed examining what recalibrating requirements will industry need to adapt to under the rapid changing of jurisdictional controls and technology classification; identifying perceptive views of the salient long and short term changes industry will encounter in response to the plethora of regulatory changes, maintain a conscious decision not to overly discuss regulatory changes that are final, and to address the major paradigm shift industry will need to respond too under the new and revised regulations.

Mr. Leslie informed attendees that whether industry was prepared or unprepared, the regulatory changes resulting from ECR had a direct correlation and as disruptive to existing business processes parallel to a constant storm. The storm of ECR may appear to be rougher for others depending on how one navigates through the steady flow of regulatory information and change.

Mr. Leslie displayed slide # 8 to the attendees and stated the working group, in its review of regulatory changes directly related to ECR. Since August 2009, there have been a number of significant ECR-related federal register notices published. Notwithstanding, the period the working group convened its initial working group meeting in July 2013, to the time it concluded its pre-plenary meeting January 15, 2014, many of

the implementing rules relating to the ECR took shape. Slides 8 through 10 show a snap-shot of significant ECR events.

Mr. Furrs took the over the slide presentation and echoed DAS Handelman statement that we are in discovery mode and we are learning as we go thought this paradigm shift driven by the Export Control Reform initiative. It has been like hitting a moving target over the last 6 months. We tried very hard to get out of the weeds, especially at the transaction level. We, as a working group, elected to take an 80K foot level approach, one we felt would resonate across the US industry base and apply to small, medium and large companies. In the remainder of the slide presentation we will highlight some of the outcomes that may be unintended, or at least not recognized by the implementers. In a second piece of my presentation I will cover the concern of how the many USG compliance organizations, which are approximately twenty (20) such organizations chartered under various pieces of legislation and other actions that law enforcement entities (e.g., DHS/ICE) is required to coordinate the actions of under Presidential direction as part of the ECR) play in working with industry while the ever changing oversight and regulation responsibilities shifts as changed ITAR categories roll out of the Federal Register Notice process. Whether real, or perceived, there is apprehension that there will be many unintended errors as industry scrambles to adjust their export practices and handling procedures with each new release. If DoS, DoC and the large regulatory compliance network neglects to work out a collaborative understanding of how to work with industry on ECR initiatives the export system will experience the exact opposite outcome from what the President sought under this effort.

Mr. Furrs continued by speaking to Slide # 13 by noting industry's general apprehension with the regulators response to compliance errors or missteps under ECR. In looking back on significant consent agreements issued by the Department of State, most have resulted into the realm of a company's inability to manage the export authorization(s) they have been entrusted to manage. Conversely, significant export compliance/enforcement actions and/or penalties issued by the Department of Commerce have involved cases in the realm of proliferation to 121.6 countries. However, the reality is the type of non-compliance matters issues pre-ECR have been more akin to a paperwork compliance matter versus a criminal enforcement. Notwithstanding, DDTC-Compliance has and continues to utilize Compliance Specialist and Analyst wherein the Office of Export Enforcement, under DoC uses Criminal Investigators to review voluntary disclosures and non-compliance submissions by industry. The real takeaway during the transition is that there will be mistakes as industry responds to the jurisdictional challenges. As such, industry not looking for empathy/sympathy, but will continue to encourage open dialogue between DoS, DoC, and industry as we move through ECR.

Mr. Furrs provided the attendees with a descriptive visual in support of Slide # 14, of steel chain with iron links and there one link of the chain that it is a twisted paperclip to highlight the working group's judgment that industry's compliance posture has been temporarily destabilized by there has been close to 90 ECR federal register notices issued in a short period time and industry's ability to absorb, analyze, react, and integrate business processes against the regulatory changes. Mr. Furrs reference the last bullet of his slide and paraphrased A/S Wolf and DAS Handelman previous statements wherein industry would like to continue open dialogue with the USG regulators and be able to respond to proposed and final rules, when we believe a change that may not work.

Mr. Furrs stated that the working group through its deliberation believed the implementation of ECR to date has had a tangible cost (direct and indirect) on industry. Industry has and must continue to invest a significant amount time, money, and company resources to evaluate the operational costs of transitioned items and implementation of ECR. Consequently, substantial company costs negate lower unit cost and competitive edge. Industry's cost should be viewed in two distinct areas; one being direct cost; such as costs tied to functional disciplines for example, supply chains; procurement; engineering; and programs to learn and comply with the regulatory changes, and indirect cost tied to administering and establishing workflows and processes to support the regulatory change; potentially hiring additional staff to work through the regulatory changes; diverting existing staff to work through the changes in production and information technology processes; employing consultants or other sources of expertise to help with the regulatory compliance changes; and/or collecting and storing

information the regulatory change requires to report or maintain. That said, Mr. Furrs recommended USG regulators remain sensible to the effects of regulatory changes and industry's global competitiveness. To include, USG regulators must be open and agile to industry comments and simplification as industry implements changes.

Mr. Furrs: The working group elected to capture concern number 5 in a more generic term, managing existing authorizations; however, there was a need to present examples of such to provide additional insight and subsequent discussion. The first area involves the management of existing agreements and discerning the appropriate licensing pathway for post transitioned activities. The once seemingly single path for managing licenses in furtherance of, grandfathering, varying expiration dates; to include the ability to obtain authorizations under DoC or the utilization of exemptions and/or exceptions, under the existing authorization creates a management challenge for even the most astute international trade professional.

Mr. Furrs: Another area industry believed need a closer examination is in the area on minor amendments to existing agreements containing transitioned and non-transitioned items. While processing concluded minor amendments to agreement may not seem like an overly demanding task, depending on the nature of the business and number of agreements containing transitioned and non-transitioned items, the associated administrative process, for example preparation of, distribution for signature, and concluding the minor amendments, not to mention obtaining the foreign signatories, could present an undesirable exercise for a company. Even the issue of furnishing services under the agreement becomes more problematic to discern when the agreement covers activity controlled under the ITAR and transitioned activity seeming under the EAR.

Mr. Furrs indicated the Foreign Military Sales activity has implications for any 600 series item. Industry's attempt to manage the jurisdictional shift of the same item depending on whether its associated with a FMS case or a direct sales opportunity creates jurisdictional overlap. The language captured under the noted EAR reference on the slide [#17] that items subject to the EAR that are sold, leased or loaned by the Department of Defense to a foreign country or international organization under the FMS Program of the AECA pursuant to a Letter of Offer and Acceptance (LOA) authorizing such transfers are not "subject to the EAR," but rather, are subject to the authority of the Arms Export Control Act. As a result, a company's ability to effectively manage the product classification process creates a conflicting approval for the same part/component. Guidance for 600-x series hardware, under an FMS case, required to establish industry and regulatory consistency.

Mr. Furrs said with respect to the general requirements associated with the use of License exception STA for 600 series items, additional prerequisites lessens the practical usefulness of the exception which is reserved for the U.S.' closet allies. For example, the non-U.S. party must have been previously approved on a license issued by the DoC or DoS; to include the consignee statement must address the ultimate end user restrictions for 600 series items and agree to permit a U.S. government end-use check with respect to the items. These added requirements, notwithstanding unclear regulatory guidance; on the end-user certification statement creates a disadvantage for one-off shipments versus for companies with larger supply chain activities.

Mr. Furrs stated in closing that the regulators; to include, industry is now in the initial implementing phase of ECR, which has spawned the reality of real fundamental change of the U.S. export regime. We all acknowledged that this level of change and continued change over the next couple of years_will not only bring administrative uncertainty among all the stakeholders, but will also bring implementing awkwardness in the short run. Nonetheless, industry believes in the long run the storm of change will subside and the fundamental benefits of ECR will be realized.

Q&A:

Public Attendee: I may be misunderstanding FMS activity, if something went out under FMS is it not under DoS control? How does ECR create additional burdens on FMS programs since under FMS the US Government is my customer and they sell/ship to the foreign customer?

Mr. Furrs: We discussed that point. This does create a product classification issue for industry. For some additional clarity, you have to go back to that scenario that if I am an exporter working under FMS case, and if you have .x components under that FMS case, it becomes a jurisdictional issues, wherein you cannot transfer the .x components under EAR if covered by FMS case. Let's say you were delivering that same .x component under direct sale opportunity, subsequently that item would clearly be under the jurisdiction of the EAR. The dilemma for industry is first, managing the dual-jurisdiction of the component, and secondly, non-ITAR components now under the regulatory requirement of the ITAR.

Mr. Wade: I was part of this discussion; originally there was a separate chart that provided more detail. The point being made is if something is FMS and falls under AECA, if some or all of the components transition to DoC, does the transition of these parts/components and the jurisdiction and support activity change? What happens with the follow-on activity, training those kinds of things, who has the jurisdiction? If all ITAR, follow-on support could be covered under TAA. Conflicting information in regulations, is that the case now, it is the case for the first one time transfer but what above the parts ordered 5-10 years later. The team viewed this as an unintended consequence.

Q: Public Attendee: I'm concerned about the added administrative burden on minor amendments. We anticipate 4-5 more forms to prepare which would be one additional person to accommodate this requirement. Our foreign parties are also receiving multiple requests. We regularly get push back and to do it for this purpose; we don't think we will get support.

Mr. Leslie: We will add your input to our findings.

Q: Public Attendee: Question on Slide 18 dealt with the understand how to use of the STA license exception.

Mr. Leslie: Thank you. The foreign end-users are supposed to be our most trusted allies, but we have included hurdles for them that make dealing with us more burdensome. Our task was to try to identify such issues and provide them in this report. We recommend that this be the subject of an education outreach by Commerce.

DAS Handelman: Two comments: US Government could do this two ways; pulling off a band-aid which is what we are doing now or it could be water torture over a long period of time. I understand the storm metaphor. I report to Under Secretaries, not boardrooms. I think this should viewed as an investment in your bottom line. These are my observations on compliance: in the brief period of time I have been in this community, I've noted that everyone take compliance very seriously. Within the compliance team at DDTC two things are noteworthy, One, they explained to me when I came on board that they would rather have a dialogue with an exporter about a potential disclosure because it shows the relationship with the company is so strong when the company can say here is our compliance program and here is where it failed. Two, I will tell you the compliance cases or issues that I have worked on in my brief time at DDTC are overwhelmingly where the exporter/individual was doing something nefarious. The presentation captures the world of uncertainty, but in the Department this sort of stuff is being captured within the zone of professional to professional discussion (of what happened) and how strong compliance programs can be. Further; I hear you about the pain the storm.

A/S Wolf: This is very helpful. Some of the things we have addressed. But please keep this up. These are big picture thoughts. This is part of the pain of our exercise. We asked the question, is this is a radical change and is the pain of the change worth the benefits of being able to export to close allies with fewer burdens. Short term pain versus long term gain; the feedback we got was yes. We are trying to keep going. In my Wednesday calls I stress that for large supplier conferences we will come out and support with speakers. We have noted that a lot

respect the ECR transition, but we anticipate mistakes. We understand that. It is ironic, I just came from a briefing on the hill in which a staffer was upset that BIS did not have strong enough enforcement, while industry is panicked that enforcement will be increased because mistakes will give us grounds. On the STAS form you said it correctly, foreign companies don't want to sign certifications because they would have to tell the US party who the end user is. The foreign party is already bound, the foreign Party says no, it is the exact same info that is provided to get a license. The foreign parties just tell US companies in that case just get a. license. The FMS explanation still puzzles me, we may need to take this off-line as we haven't changed - once FMS, always FMS. I understand the temporary destabilizing effect of the staggered role out of the changes; I got it. The first publication was in 2011, and only one is now final (XIII and XIX) is final.

Q. Public Attendee: For some transaction companies have to search more than one FRN to see what has changed in their product(s).

A/S Wolf: Complexity introduced by changing a system. Industry says it was a huge burden. It asks us to get to a more tailored system, which is eventually more complex. Once this new system settles in it will be more efficient. Most exports are for NATO parties and repeat parties, and the process will be easier. So then focus on outliers and fix them. If I am wrong blame DOS, if I am right it's me. If you think it is hard to read 86 FRNs, think how hard it is to write them.

Mr. Leslie: At the beginning, we were going to suggested slowing down the train, but we realized that would not be a good suggestion.

Mr. Wade: When the subject came up the greater DTAG "pushed the *No* button" and so the idea was dropped. The "No button" was like the "Easy button".

A/S Wolf: Speed is a good thing, however companies speak with two voices. Compliance said five years and a business wanted it yesterday. Small companies would have moved the most of their products to EAR. Large companies where there is a bit of a mix...somewhere between yesterday and 5 years. I have jokes about relative speed.

Mr. Wade: Noted that as chair for this Plenary that his initial concerns about ECR was around compliance. The DTAG supports ECR, and we do not want it to slow down even a little bit. However, it is tough for the organizations we represent in our individual company. We have compliance concerns as the USML Category changes role out at the speed of the FRN process. It will be very difficult for changes ongoing changes over a number years to be absorbed in a fully compliant way by companies (size) related to supply chain. Those suppliers who are not large and do not have the man-power to stay current on the changes and mistakes will be made. If the many Compliance organizations overseen by DHS/ICE, take a realistic enforcement approach they will drive this sector further from our shores. We are concern that we maintain a smooth running ship. If there are no other comments, we are ready to take a DTAG vote on this presentation. A vote by raise of hands to accept followed.

Mr. Wade called the Plenary back to order and introduces Ms. Beth Mersch and Mr. Greg Hill as the co-chairs of the next topic.

Presentation 3, State P-M topic #2: **Review the impacts on industry for exemptions authorized to support the Defense Trade Cooperation Treaties between the United States and the United Kingdom and Australia, respectively.**

Ms. Mersch: noted that this was the smallest of the working groups, but felt that because of the topic and the support that then DAS Beth McCormick gave the subject, it was really informative. She introduced the team members and their respective companies (See slide 2). She then went through the review process itself expanding

on each topic with special note of the matrix the team created that linked Exemption language to requirements (See DTAG Plenary Tasking 2, White Paper). She also acknowledged the special cooperation (expert witness) assistance the team received from US and foreign industry, UK DESI (now DEST), Australia DECO and the US State Department. She was especially appreciative of the time and participation that DAS McCormick spent with the team on this subject.

Mr. Hill: covered the Exemption review slides on the Business Case for the Exemptions and the Requirements for their use. When they looked at these exemptions they felt that there was a need to describe "what it is" and "why a company would/should use it." They noted that the Treaties required 17 documentation requirements for their exemptions versus seven for other non-treaty authorization.

Ms. Mersch: explained the purpose of the Government interviews was to validate transaction facts from the industry comments and better understand the differences in the Government(s) various requirements and differences in operating procedures. Examples: the UK did not have a central registration approach like the US, theirs was similar to the cleared facility process in the US. She said that they were gathering this information during the September through November time frame. She said that her understanding, from UK industry, is that the UK Government has now implemented an alternate approach to register all entity facilities versus an individual basis. One drawback to that approach was that a single change to the facts (e.g. management personnel change) could affect the entire package processing if facilities were registered using a consolidated approach. Also from UK industry feedback indicated the site survey process had been outsourced from the UK Government to a private contractor and delays were running approx. 150 days after application for the site survey to be conducted. A summary of the Governments in October found that the UK and Australia "Approved Communities" (companies) were very small – UK –four, Australia – one, but about 24 were in progress. Additionally, there had been only one US company to foreign company exemption transaction and that company only used it because of an urgent need and they did not have enough time to get a license request processed.

Mr. Hill: We discussed what appears to be a disconnect between the excluded technologies list and the US-UK cooperative programs. For example, Category XX, submarines are excluded under the treaty as are category XII infrared detectors (via note 2 regarding counter-low observable technology). Yet, both are being exchanged with both UK government and industry outside the treaty exemption. In the example of infrared technology, the US-UK cooperative program, the 3rd Generation FPA MOU, is even listed as an approved treaty cooperative program despite the technology itself being excluded from treaty exemption use.

Ms. Mersch: Feedback from UK companies seeking membership in the approved community indicated that typical business changes, such as a General Manager (GM) move within the company; GM person changed, so application/package had to be changed. There was no real process for change management on an on-going basis – suggest both UK and Australia incorporate such a process into their systems for processing and updating the approved community application and membership information without significant negative impact to the Approved Community Member. One of the apprehensions, gov't end-use may be one or two tiers up from them or down form them; if you are two and three tiers down in the supply chain, you may not know /prove the actual nexus to the end-use program. Management of FN treatment is not clear in the exemption and your ability to cite the exemptions, and DTC should consider guidance similar to 126.18 for use of the Treaties so the UK and Australian industry approved members can meet compliance obligations with regard to their workforce.

Mr. Hill: Use of an approved community freight forwarder broker is required but that is unique and not applicable for any other ITAR exemption.

Ms. Mersch: Validation of Approved Community Membership by use of the ACID code; the information is now only available behind DTRADE firewall; validating party must have a DTRADE certificate; What was the rational of moving behind DTRADE when a code was already required?

Mr. Hill: When we spoke with DAS McCormick regarding the marking, there should be some further review and creative guidance because these requirements are more than what is currently required under the ITAR for licensed or license exemption exports. They seem to be an overly burdensome and customer confusing requirement without value added. This also adds administrative cost and a requirement to justify the return on investment for industry participants.

Ms. Mersch: What the DTAG is also recommending is to look the excluded technology list and the authority in place and see if any further adjustments in addition to ECR, can be made without jeopardizing US security. Ms. Mersch mentioned a conversation with Dr. Wesley Cox of DTSA, who has been working to update the 126.1 Supplement 1 Treaty Exclusions to incorporate the Export Control Reform provisions, and noted Dr. Cox as one of the attendees at the Plenary.

Many of us on DTAG and in industry would like to use these treaties, but in every case industry has to make a business case of the benefits to the company based on cost and the risks of use them. We focused on those actions that the Department may be able to take unilaterally to enhance the utility of the Treaties, and encourage use of the exemptions.

Mr. Wade: Q&A time.

Public Attendee: Question about transferring into and out of the treaty; did you look into that when speaking with the parties?

Ms. Mersch: We did have some discussion with the UK companies and also DAS McCormick and her team. I think the general consensus was that if you have a program eligible under the initial phase, but that you would need a TAA or license later on in the activity. Best option would be to opt out of using the Treaty exemption because the license/agreement could include the retransfer without using two different administrative systems. Managing two compliance systems for the same program transactions adds cost and administrative burden. That framed our recommendation for this presentation.

DAS Handelman: This analysis is particularly timely for me. I was in London in December for the Treaty Management Board meeting and I am going to Australia in two weeks. Susan Mason is my UK counterpart and we need to work on a meeting the minds. The Treaty is to meet a political objective. We are in violent agreement on the purpose and I am going to print your slides and take them with me. There is a clear recognition in UK Government circles, that unless there is a business case to use these treaties, business won't use them; plain and simple. Need to fix treaty implementation as it is highly unlikely that there would be any new legislation.

Dr. Cox/DTSA: DTSA is going to take a role in looking at the technology list. Thank you and it is timely input.

Additional notes for each slides included at the bottom of each slide in the submitted presentation.

Mr. Wade: Thank you. It is time to vote on the acceptance of this study topic presentation. The DTAG members voted to accept the report of Team 3.

Mr. Wade: Introduced Co-Chairs for the final presentation for the Plenary Krista Larsen and Andrea Dynes. I cannot emphasis how much work has been done over the past six months. Topic 4 deals with a new issue that is complicating handling of technical and general product data on an ever increasing scale.

Topic 4: **Survey of industry on how they reconcile potentially competing requirements placed upon them by the USG in terms of protection of controlled unclassified information, including export controlled data.**

Ms. Dynes: As this task was new to most of the team they asked Chairman Sevier if he could obtain clarification on the topic. DAS McCormick provided clarification as detailed on slide 5 of the presentation. Even with this information many of these terms were unfamiliar to the team so we ended up doing a lot of research on even what the tasking was. We were encouraged to use outside experts in the area of technology transfer review and control. DTSA provided a very thorough briefing and answered questions on the technology release review process in DoD. Additionally, we sought industry experts in this same functional specialty, which were especially helpful in providing an industry perspective on the processes and issues for industry. The understanding from these two points of view are reflected in full detail in our White Paper, which includes our research chart.

Ms. Dynes: Slide 8 provides a sample of the chart developed to collect information on how each agency terms relating to technology (CUI/CPI) and relevant legal authorities. We discussed the format of spread sheet and content of each column/row. In our review we found multiple Government agencies that were regulating technology considered to be CUI and using different terms, but we did not find an instance where an agency did not have some basis for regulatory authority for such actions. Rather such agencies were operating in tandem and, therefore, produced overlapping or duplicative controls with respect to DDTC compliance requirements.

Ms. Larsen: There is a lot of history around this situation where multiple US government agencies use different terms to describe controlled technical data (CUI/CPI) and impose competing requirements. History of CUI started after 9/11 and did not start with industry in mind. Thus, there was no reason to anticipate any impact on industry. However, there has been confusion despite efforts by Government to work to minimize it. The 2005 President Bush IRPTA Guidelines was the first time the Government recognized that they need industry as a partner. Slides 11-14 give a summary of the history of CUI policy. Slide 13 shows 117 ways the CUI Task Force identified how the US Government marks Sensitive, But Unclassified (SBU), i.e. CUI, and the source of confusion. These slides also show how long the USG has tried to address the issues of confusion by developing common terminology, etc. and its continued plans. Slides 14 through 18 cover where the CUI effort is going, industry examples of confusion, and DTAG observations.

Ms. Dynes: Introduced CPI (and its connection to CUI) and explained that a definition of CPI is now in the DSCA's Security Assistance Management Manual (SAMM). Slide 21 provides DoD's view of their role in the Export Control. The team's discussion with DDTC/DTSA, gave permission for use in the DTAG report. Slides 22 through 26 describe the DoD export review control process and structure, recent efforts to improve the process within DOD, and CPI background.

Ms.Larsen: Slide 27 -28 provides examples of industry confusion regarding CPI and DOD's export control review process. When we saw how much work has gone into this review we realized it was important. Our role is to help Government see how their actions and policies impact industry, with the idea of identifying unintended consequences so they can be fixed, mitigated or their costs calculated into the bigger picture. The remainder of the briefing presented industry examples and DTAG observations.

Additional notes for each slides included at the bottom of each slide in the submitted presentation.

Mr. Wade: Called for questions.

DAS Handelman: One can't make this stuff up. There is an on-going full and frank exchange of views between DoD and DTSA and where full authority for the ITAR is located. I would casually say that DTSA reports to NSC. You have cataloged some really good ones.

Mr. Wade: There were more examples.

DAS Handelman: I feel your pain, my action officers will run into this kind of problem. When it is unclear how the common structure doesn't come to a point, it's hard. Compliments to DTSA and former colleagues. The myriad of acronyms, they are labor intensive, it's a meat and potatoes approach. Get everyone in one room who has authority or who has a stake in the issue and start working. It's laborious and they are nibbling along at it.

Krista Larsen: Can we bring you examples?

DAS Handelman: Oh, please.

Mr. Wade: We do have examples. A motion to accept Presentation 4 was made seconded and voted to accept. We have to come conclusion of the DTAG plenary session. Thanks to Ken Handelman for guidance and insight and coordination. And thank you to Lisa Aguirre and her staff for all their support in logistics. Also, a special thank you to public attendees for taking the time to listen to our findings and recommendations. I'd like to hold the DTAG for a few minutes after the Plenary is closed. Please send public comments to Ms. BJ Demery, bdemery@bellhelicopter.textron.com .

<u>DAS Handelman</u> declared the Plenary closed.

Submitted to Puneet Talwar, Assistant Secretary of State for Political Military Affairs

Dated:

By the DTAG Executive Secretariat

Kenneth B. Handelman
Deputy Assistant Secretary
Designated Federal Official

George S. (Sam) Sevier
Chairman, 2012-2014
Defense Trade Advisory Group

Attachments:
1 - Bureau of Political Military Affairs Task Letter, dated 25 June 2013
2 – Working Group 1 Briefing Report and White Paper: Identify Potential Impacts and Unintended Consequences of the Export Control Reform Initiative on Industry and Provide Recommendations on How to Overcome/Minimize such Impacts.
3 – Working Group 2 Briefing Report and White Paper: Review of Use of Exemptions Authorized to Support the Defense Trade Cooperation Treaties between the United States and the United Kingdom and Australia, respectively.
4 – Working Group 3 Briefing Report: Provide a Proposal for an Effective Export Control System for Non-Lethal, Non-Category I UAVs That Would Facilitate Their Use in Non-Military Roles.
5 – Working Group 4 Briefing Report and White Paper: Survey of Industry on how they reconcile Potentially Competing Requirements Placed upon them by the USG in Terms of Protection of Controlled Unclassified Information, including Export Controlled Data.