Defense Trade Advisory Group Plenary Minutes
Tuesday, April 7, 2009
Loy Henderson Auditorium

DTAG Chair William Schneider began the meeting at 9:30. He welcomed everyone to the meeting and announced that Acting Assistant Secretary Frank Ruggiero will address the morning session. Mr. Schneider noted that at the time of the meeting there were not many officials from the new Administration in the arms transfer process and that it was good to hear Mr. Ruggiero's perspectives on where the Obama Administration could be showing interest. Mr. Schneider also noted that later in the day's Plenary discussions the DTAG membership would discuss priorities the DTAG would offer as suggestions to the new Administration team. He noted that while the DTAG, under tasking from the Bush Administration and in concert with DDTC had already looked at details on improving the process such as the ITAR definition changes that would be discussed during the Plenary, that the DTAG now could be looking at major changes that believes will make a positive difference for US industry and US allies and customer's abroad. Mr. Schneider then introduced Acting Assistant Secretary Frank Ruggiero.

Mr. Ruggiero thanked the DTAG Chair for an introduction and stated that he would provide updates on personnel in the new administration, policies that he had seen them interested in, and then open the discussion for questions. He said that Deputy Secretary James Steinberg is in place, that the nominee for Under Secretary for Arms Control and Nonproliferation would be Representative Ellen Tauscher (D-CA), but that there had been no one nominated for Assistant Secretary for the Bureau of Political Military Affairs at that time.

Mr. Ruggiero said understood that the Obama Administration was committed to ratifying the Defense Trade Treaties with the United Kingdom and Australia. He said the Department was currently working with the Senate to resolve enforcement aspects of the Treaty, which appeared to be their principal concern. Despite that concern, the Department will try to get early ratification.

On another issue Mr. Ruggiero said the Department had put forward to the National Security Council (NSC) early in the Administration the issue of dual nationals to resolve the varying policies on how to treat them. He noted that the Commerce Department treats them one way, DDTC in a different way and the Foreign Military Sales process in a completely different way. Mr. Ruggiero said State has sent a discussion paper to the NSC begin the process for policy review on the issue. He said the matter is a problem of great concern for our allies; that many governments had advised the Department that under their countries' civil rights laws it is illegal to treat dual nationals as the US does. He said that the Government is trying to get out of the present ad hoc approach by beginning an interagency discussion of the matter.

Mr. Ruggiero commented that on the matter of jurisdiction over commercial satellites, the State Department is monitoring the current Congressional discussion, but the Administration has taken no position on the subject. The Administration will follow any legislation that is proposed regarding commercial satellite issues.

On the topic of night vision he said the Department wants to have a more wholesome policy. He said the Government did not get to the point it wanted to in last year's review and would continue to work on the topic this year. He said the interagency is trying to develop jurisdictional lines between agencies. He said the problem is determining the Government really cares about given the different perspectives of the agencies, particularly those of State and Defense.

With respect to NSPD-56, he said the Department had seen significant progress over the last year and a half. The average turn around time for licenses is 14-15 days and a workload of 3500-3800 license actions in the queue at any time was holding steady. Mr. Ruggiero said he was very proud of the achievements that the Directorate had made. He noted that the Commodity Jurisdiction process is still missing pieces, but that was also being worked. He said that PM was still working with the NSC to come up with new interagency guidelines to manage the function, noting this action was a carry over problem from the previous Administration. He said there is an early effort now to come up with new guidelines and that State's own times have improved somewhat over the last year as they continue to focus attention on it, but that they have not made as much progress as they had on the licensing front.

Acting Assistant Secretary Ruggiero then took questions from the DTAG Membership:

There was a question about with recent activity on the Hill on removing commercial satellites from the USML; does that include research satellites as well?

Mr. Ruggiero stated that it was just commercial satellites. He said Congress is looking at this, but the Department is not and thus has not taken a position; however, State is monitoring congressional activity. He said State would prefer a policy that is applicable across the agencies.

There was a question on whether the cooperation on the Treaties had changed with the new Administration and new leadership.

Mr. Ruggiero stated that there was the same level of cooperation with the new team.

The DTAG Chair William Schneider asked whether State could detect any aspirations for reform of the management of the ITAR in the new Administration. Any aspirations to review the ITAR's procedures or make changes. Basically, an idea of the new Administration's aspirations for changes in this area.

Mr. Ruggiero stated that we do not have a sense for that right now because we don't have the key people in place; that may come with the new people. In the coming months he will have a sense.

There was a question about what the difficulties to get guidelines for the CJ process from last Administration.

Mr. Ruggiero stated that it was not wholly on the NSC, the interagency process just ran out of time, but this is an issue that is expected to be taken up early by the new Administration.

DTAG Chair William Schneider raised the issue of the commingling of ITAR and Defense Security Service (DSS) responsibilities, whereby DSS is enhancing its review of cleared companies by including ITAR compliance requirements. DSS is intensifying its responsibility to monitor compliance among cleared companies and facilities. Role of ITAR compliance is becoming a significant issue in the way the DSS manages its functions. This is an unusual evolution, in that ITAR compliance is a DoS responsibility. Many cleared firms are part of cleared facilities process. The question is how can State bring its expertise to this process. DSS has not had this as part of their duties previously.

DFO Robert S. Kovac stated that the work DSS is doing is an offshoot of the regulations published before the end of the last Administration on controlled unclassified information, which is not exclusively under USML control. DoD became more motivated to control flow and security of information after various attempts by foreign entities to obtain unclassified but controlled information. DSS is not doing State's role, they are enforcing their own rules on information that happened to be controlled by our law. DDTC has had discussions with DSS and provided some tips, but this is an internal DoD issue.

DTAG Chair William Schneider advised that the people doing inspections are calling attention to ITAR compliance. He noted that a significant amount of unclassified but controlled information happens to be ITAR controlled, and observed that the total shape of this potential problem hadn't developed yet, but may cause an industry issues over time.

Chairman Schneider moved the program to the Definitions Working Group's presentations, but took note of the death of DTAG member Mr. Joe Mariani on the Sunday before the Plenary and asked DTAG Recorder Terry Otis to provide comments.

Mr. Otis announced the sad passing of DTAG member Mr. Joe Mariani from cancer on April 5th. Mr. Mariani had been a long-time member of the DTAG and represented Rockwell Collins at industry associations including ALESA, NDIA and AIA. Mr. Mariani would be very much missed by his colleagues and friends.

Ms. Joyce Remington (Working Group Chair) stated that she had the opportunity to chair the ITAR Definitions Working Group. The review process had followed the

methodology proposed at the October 21, 2008 DTAG Plenary to improve the definitions used in the ITAR and to seek better clarity regarding certain terms. Terms reviewed and revised included some existing Part 120 definitions; terms referenced elsewhere in the ITAR; as well as terms used in proviso and limitation language which are not currently defined in Part 120.

Ms. Remington provided a short summary of what how the presentations were going to be made to the DTAG Membership and then began the walk through the proposed terminology changes. She noted that the DTAG members had been provided the Working Group's draft recommendations for review and comment. She said that countless hours have been spent on definitions. She said she believed that this effort would lead to the DTAG's next tasking which would be to tackle U.S. Munitions List (USML) items. The definitions work would be the groundwork for a clear understanding of many of the terms which were under discussion for review/revision within Part 120 (which contains the ITAR definitions).
See attached presentation for introduction slides.

Acting Assistant Secretary Ruggiero thanked the group for their efforts to review and excused himself from the meeting to attend other duties.

Ms. Remington introduced the four DTAG Working Group Subcommittee Chairs Messrs. Tom White, Dennis Burnett, Dale Rill and Ms. Christine McGinn, plus DTAG Vice Chair Sam Sevier, who worked closely with the Subcommittees during the effort.

Military Purpose

Mr. Dennis Burnett led the discussion with the definition of military purpose. He explained that his team looked at USML use of military application versus military purpose. He noted that the terms are used interchangeably, in multiple areas and without being defined. The teams proposed to consolidate those two terms and define the resultant term as military purpose. He said their effort was a bit of a philosophical journey which caused them to look at legislative history and considered what is an implement of war, what is war, how do disciplines like intelligence gathering, etc, fit into the definition.

Chairman Schneider asked how that engages the language found in parts of the ITAR in trying to distinguish between an ITAR and Non-ITAR item. He said regular application of purpose suggests that an article is not an ITAR item.

Mr. Burnett said the examples illustrate what we're after. He used the famous AIA fuel line example, asserting that it would be considered a commercial item modified for a military use, because the modification did not change fundamental nature it. It doesn't have a uniquely military function because the modification doesn't amend the nature of the article to allow it to have use of force.

Chairman Schneider said COTS items are along the same line. COTS equipment is ruggedized mechanically. He noted that the modifications, if parallel to some military specification, that would be sufficient to capture it under ITAR. He said the underlying function would not be captured by this new definition.

Mr. Burnett stated that was correct. Significant modifications that would change the nature of the item would be put under ITAR control.

DDTC Director of Policy Charles Shotwell asked why intelligence directly linked to applying military force, is that so narrowly defined. What is the purpose of that?

Mr. Burnett said this point could perhaps be thought through better. He said they may not have though through all the ramifications. The case of military intelligence could be reviewed.

Ms. Remington stated that any comment that should be considered later would be put in the notes column by recorder Victoria Harrington.

There was a comment on when you read the start of the definition – "defending against military force"; how does that not capture the concrete barriers to provide security for buildings. Which are military grade and are used for military force? How does this definition not capture those barriers when they are placed in that configuration?

Mr. Burnett stated that it is the essence of what is military and what is not military.

DFO Kovac pointed out that this ITAR definition is used in conjunction with other factors, such as an item that is specifically enumerated in an ITAR category, adding that some items that are specifically designed for military use are not captured under ITAR categories. He said reviewing ITAR definitions was a precondition for reviewing the United States Munitions List (USML).

Ms. Remington suggested in the interest of time to move on to the next definition. Any additional comments after your reading can be made while in the process of finalizing.

Normal Commercial Use

Mr. Burnett transitioned to "normal commercial use" you can see in the definition it is straight forward.

Ms. Remington mentioned that normal commercial use has been moved up on powerpoint, it is buried in the back of the paper package.

Policy on Designating Defense Articles

Ms. Christine McGinn began the discussion on Section 120.3, policy on designating articles. She noted that her subcommittee came up with two proposed definitions which

took into consideration the definition of military purpose. They also looked at the uses of the undefined terms "specifically" and "specially" and that despite they were used interchangeably in the ITARE, the subcommittee decided to use "specially" in Section 120. The subcommittee also suggested a new paragraph on standard parts and components which are not presently covered in the ITAR.

Ms. Remington clarified the two proposed definitions. One is for if the "military purpose" definition is adopted and the other if it is not.

DFO Robert S. Kovac made the comment that this goes beyond definition, this is policy. That probably would be the way it would be treated.

Vice-Chair Sevier stated that was part of the guidance we put out on the tasks. He noted that the DTAG is not in the policy business, that the DTAG's tasking was to provide definitions from a perspective of how industry used the various terms.
Joyce Remington said this was a precondition to tackling USML Review

Commodity Jurisdictions

Ms. McGinn discussed section 120.4 on commodity jurisdictions and said there were only slight modifications. Her subcommittee suggested clarifications to some of the language in the section. They also suggested an exception be added for Category XV.

There was a question on whether CJ determinations would be made public?

Ms. Remington said that Mr. Kovac and Mr. Ruggiero have spoken on this issue and I will let Mr. Kovac comment.

DFO Kovac said this was being discussed in conjunction with guidelines. He asked Ms. McGinn to please explain exemption for Category XV. What does that mean? Why is it specifically called out?

Mr. Tom White stated that was because of the Wassenaar List controls say that they are dual-use. They are not in Wassenaar military list.

Chairman Schneider commented that one of the trends that is very active in the DoD is exploitation of COTS technology for military applications. There is an increasing the fraction of articles used by DoD in performance of mission which are acquiring their underlying capability from COTS technology. The use of COTS items allows for more advanced capability during rapid development cycles. How might this trend interact with the commodity jurisdiction process when you are getting defense related subsystems almost entirely made up of commercial content?

Mr. Burnett said it works pretty well. One of the purposes of the proposed language was to allow that happen. Industry has great trouble trying to determine when they are ITAR

and not ITAR. We believe the proposed language helps industry makes those decisions better and clearer on their own.

Chairman Schneider stated that in DoD research there is a decisive issue about whether these COTS technologies are creating a military capability which is defined by how they are interfaced. It is the interfaces that determine its military characteristics rather than underlying hardware itself. Interfaces such as those used in the Future Combat System program which is a system of systems design. The direction this is headed in is very constructive, that will help manage a trend that will is moving faster.

Vice-Chair Sevier explained that in putting this together we had a lot of different people working this. On the software we will deal with the word COTS, because a lot of software deals with COTS. However, that does not say whether all COTS items are or are not controlled under the ITAR. We are trying to get an understanding of what the people on program/production side think when they see those words. The real issue is just because it's COTS doesn't put it in one category or the other.

There was a comment to follow up on COTS: Nowhere in ITAR is COTS used, if we keep COTS out of ITAR we will be much better off. Second Comment: As Chairman Schneider indicated COTS items are increasingly used in military equipment, keeping an understanding of COTS content in military products out of the ITAR is not wise in today's industrial world.

Defense Article

Ms. McGinn began discussion on the next definition, defense article. She stated that it includes any item and technical data for items on USML.

There was a question on whether there was an implication that if it's fabricated solely for research and information not published, that it would be controlled under the ITAR.

Ms. McGinn said that this would not necessarily be the case. If something is fabricated solely for research purpose that will be published, it would not be controlled under the ITAR.

There was a comment presented from a University that might want to change definition to say that "might ordinarily be published."

There was a question on whether fundamental research is out of the ITAR.

There was an answer provided that used a spacecraft instrument as an example. If a spacecraft instrument design for general research and the design is published, the item is considered to be used for fundamental research. If information held back, but it is still considered to be for research it is still controlled under the ITAR. Consider the 125.4(b)(1) exemption.

There was a question on what the definition of "published" is? Available to everyone on the internet and library, or through a publication to which someone must subscribe and pay a fee? Is there a modified version of "public domain"?

Defense Service

Ms. McGinn stated that modified public domain definition will be addressed later. The discussion on defense service began.

Chairman Schneider asked if this was parallel to the way in which the DoD uses defense service in FMS cases?

Ms. Remington stated that the Working Group did not do a side by side comparison.

Technical Data

Mr. Tom White began the discussion on technical data. Industry has had trouble with this term, attempts to rewrite have led to some interesting discussions. First attempt was to get rid of the word "required" with respect to the use of technical data. That ended in failure. Second attempt was to define it that failed as well. Basically, the subcommittee came back to nearly the same definition linked to defense article like current definition. Other key factors, we felt that it helps to say what it is not included to help to define something. Under what does constitute technical data made a clarification on software. Added a term – "operational systems measurement". Following the philosophy of 17c info in public domain should not be controlled.

Vice-Chair Sevier said one of things the Working Group used as a guiding principle was, what is controlled under the AECA, it's the products that come off the production line, plus the information used design, maintain, operate, employ or modify those products. Technical data has to be able to do one or more of those functions to be of relevant under the ITAR. Has to be useful to make a product, operate, modify, etc., military products to have that relevance. Block diagrams are not important to building and producing items, they are illustrative marketing information.

Mr. White provided another example. When companies develop databases to design things, they will do a lot of testing which costs money, they protect that investment as proprietary. The information is not ITAR controlled, but is what is called design reliable, which they don't want published, when you've spent a lot of money doing the testing. Want to limit who you share it with.

Vice-Chair Sevier added such data may become a competitive advantage during the bid and proposal phase of a competition, but unless it is used in the actual design or production of a product it isn't "technical data" under the ITAR.

A DTAG member mentioned a comment that had been provided to her. It would be helpful to exclude standard data interface.

Mr. White acknowledged the comment as an interesting point, but stated the interface between items can be extremely critical.

There was a question about whether "operationally" was meant to include calibration or telemetry data.

Messrs. Burnett and White explained that it would depend on circumstances and the function of the system.

Ms. Remington clarified that operational data is currently included in technical data definition.

Mr. White provided an example of a company that wants to buy something generally knows what it wants it to do and what are its requirements. That is not directly related to final design. Hopefully it will be designed better than your basic requirements. Generally, consider it the wish list when you want to go buy standard parts and components.

Vice-Chair Sevier added an example using an aircraft program. There is always a tradeoff when looking at requirements. Basic requirements don't really affect the final technical specs because you are looking for suppliers that meet a general range of requirements. The company's Subcontracts section will have procure parts and components to meet the design parts and materials lists generated by the engineering section. Subcontracts will then go to a number of vendors with their requirements lists to fill the materials requirements for the manufacturing section's work. There will be many standard items and raw material ordered to fill this requirement, the design and production engineering (technical data) will then be used to build the product.

There was a question on whether any thought had been put into the adding the term destruction.

Mr. White said it had not been considered. Destruction is pretty straight forward with exception of Category XIV.

Public Domain

Ms. McGinn began the discussion on public domain. She said their recommendation was to add a separate category for <u>fundamental research</u> citing that all types of lawfully published information falls into the category. She said the proposed change would insures that proprietary information does not qualify as fundamental research. The subcommittee's intent was to clarify the difference between basic and fundamental research.

There was a question about if the information is published illegally, what is the liability and on whom?

Ms. McGinn said the group had debated where the burden of proof lies. The subcommittee came to the conclusion that the burden of proof would be on the person who placed it there, but the real answer would probably be determined in court. A DTAG member added that this definition allows DDTC to penalize people who put information out there unlawfully. If you are relying on something that is out there and published, you would not be punished unless you knew about the unlawful publication.

There was a comment from a member of the public that it appears that technical data is being held to the same standard as classified data. Not sure you want to keep technical data classified in effect, it is all over the media, it is being published, but we don't know how it was originally introduced. Classified data remains classified if published and it is unlawful (official position is neither confirm nor deny).

There was a comment by a DTAG member, that there could be something in the public domain because of copyright domain, not sure that lawful adds anything to this definition. In terms generally accessible to public, does that include something which you have to pay a fee for a publication?

Ms. McGinn said yes and the next addition is fundamental research.

Fundamental Research

The discussion of the proposed included a view that one way to consider the definitions for basic and applied research was by looking at the definitions used by DoD and NRC. A second comment suggested that paragraph B might be too restrictive and asked that the group consider removing *security* right before *review procedures*.

US Person

Ms. McGinn presented the suggested change to 120.15 U.S. person definition which was adding U.S. citizen.

Manufacturing License Agreement

Mr. Dale Rill explained the proposed manufacturing license agreement definition. It includes any related manufacturing know-how with some level of technical assistance being provided. The lack of a definition for *manufacturing know-how* was noted and Mr. Rill said that they would have to propose a definition for it. He also said they recommend removing the word *contemplates* from the present ITAR language for the sake of clarification. Additionally, he stated that the proposed language would allow the ability to obtain a TAA that permits the assembly of an item, without the transfer of manufacturing know-how.

Vice-Chair Sevier, using the term *engineering liaison*, said it is the same thing that a company does between engineering/design and production or modification in the aircraft

business. Very few companies have engineering packages that go directly out to the production floor or modification hanger where there is no assistance in interpreting the drawings. All have engineering liaison for the actual work on their production and modification lines. This is a standard business practice.

Build-to-Print

Mr. White began the discussion on Build-to-Print, there are currently three different definitions in the present ITAR. They are basically tailored to exemption they are in: the Canadian exemption, Offshore Procurement and general exemptions/definition in 125.4. The subcommittee's recommendation is to move one definition up to Section 120.xx and reference in the other sections. He noted that the recommended build-to-print definition would be applicable to all categories and not just applicable to exemptions. He said the problem with current definitions is that they use terminology such as "a hands off approach" and "must have instead of nice to have" which are nearly meaningless. The basic assumption with build-to-print is that the foreign entity knows how to build the item and doesn't need a <u>defense service</u> from the US prime to build it. Mr. White added the qualification that clarifications of requirements (to include "engineering liaison" functions) to the foreign entity are not a defense service.

Design Methodology

Mr. White started discussion on design methodology noting that the term is in the NATO and Canadian exemptions and that the subcommittee is suggesting moving it forward in the ITAR to Section 120.xx, with slight rewording which helps clearly relate it to the concept of a defense article.

There was a question about how important it is to emphasize a comprehensive set. There are engineering rules that are not a comprehensive set. Apply Shrunk & White's rule 13, might pare that down with the same meaning.

Mr. White said <u>engineering analysis</u> has a similar problem which needs to be solved by taking the term from the exemption and moving forward to Section 129.xx. He provided the clarification is that engineering analysis is more a service, doing something, analyzing something. It is ok to analyze something that you can provide the results of that in accordance with the ITAR. However, when there are provisos are attached saying "no engineering analysis" it means the exporting contractor can not provide the analysis itself, regardless if it benefits its final product.

DFO Kovac questioned how Mr. White's final sentence related to the proposed definition of engineering analysis, since the engineering analysis itself can be exported in accordance with the ITAR. He stated that he was not sure this is in right place or the right phrasing to be particularly useful in the long run.

Mr. White said the subcommittee would take another look at it.

Vice-Chair Sevier stated that one of the problems industry faces in dealing with many provisos is that they will seem to negate standard business/industry practices. A better understanding of normal business practices such as the process of "final test and acceptance" for vendor subsystems, "engineering analysis" of component and material failure rates, etc., by the individuals involved in the release review process may be a better way to address the problem. Standard business/industry practices should not be a proviso item.

DFO Robert S. Kovac suggested adding that this does not preclude the release of analysis. A better phrasing may be that the results of engineering analysis are not in and of themselves engineering analysis. Providing a report of their analysis is not the same as doing a report at the foreign entities request (a defense service).

Mr. White said this definition is a little awkward because of the way it is written in the Canadian exemption.

Maintenance

Mr. Rill moved on to the definition of maintenance. He said that based on feedback his subcommittee had received there were definitely questions on the various terms used to describe it in the ITAR and being used in license provisos. The subcommittee looked at various DoD and the Services used and selectively developed the proposed language for the ITAR in this report. As with other definitions, the purpose was to establish a definition for ITAR use in Section 120.xx and then reference it in the other sections of the Regulation.

Manufacturing know-how

Mr. Rill said that in this case the subcommittee was giving a proposed definition for a term that was used several times in the ITAR, but had no present definition. They did this by pull together how the term was used in the various parts of the Regulation.

Nationality, third country national, and dual national

Mr. Burnett raised the definitions of nationality, third country national, and dual national. He stated that most countries do not distinguish between nationality and citizenship, they treat them as synonymous. He said the given Acting Assistant Secretary Ruggiero's earlier comments on the subject that State has raised the issue with the NSC.

DFO Kovac explained that what was provided to the NSC was not a recommendation, it was a report. He said that the issue is covered by two statutes and that three Departments that handle exports under those two statutes differently. There may be good reasons for one department to look at this differently. The end result may be to certify three different systems, it may be only one system or two systems. What State provided the NSC was not a decision paper, it was a background paper that explains the law and the problems that industry incurs. To look at what is out there and the impact, do we need to relook at

this. It is going to have a bearing once that decision has been made, if they decide that we are going to revert to one definition, then not applicable. He suggested that DTAG not spend a great deal of time on it, the other process will address it. He observed that it may be helpful if different definitions are allowed.

Software

Vice-Chair Sevier began the discussion on the definition of software. Industry's process of developing software has changed significantly, but the bureaucratic understanding of industry's development methods and thus the "release" process has not. He used an example of partner software participation problems on the Joint Strike Fighter program as an example of the impact of the lack of understanding of the changes since of the late 1980s and early 1990s (the origin of the present language in the ITAR). He said that the basic for approach for modern large scale software development programs such as those used in the JSF, the Boeing P-8 (replacement aircraft for the US Navy of their aging Lockheed P-3 fleet) and commercial AEW programs (Wedgetail) developed for three of our allies are nearly the same now. They all use a significant amount of COTS software because of the increase in processing capability and cost. COTS software provides significant amount of capability, readily available via the internet, that is able to be put directly into a system's object code that covers many of the operating system instruction sets and other functional data.

There was a comment that then the only thing that falls under for ITAR, is paragraph b.

Vice-Chair Sevier explained that his concern about the subcommittee's recommendation is that it doesn't give any understanding about the present software processes used by industry. It falls back on the same use of terms that applied in the 1980s and 1990s and will be of no value in adjudicating software documentation release requests.

There was a response that if it isn't there that paragraphs a-h are for purposes of the ITAR. Commercial COTS compiler would be covered under the ITAR.

Vice-Chair Sevier stated that those items are involved in the process, but don't have to controlled as they are standard, open literature industrial "tools" that are used in different functions of developing the product. The COTS items don't need to be controlled, but as Chairman Schneider explained earlier, they are part of the process. We want the people that are doing the reviews to understand how this is being done and then determine what needs to be controlled.

There was a comment that this was trying to combine a definition and jurisdiction into one.

Vice-Chair Sevier said that he didn't not believe that it was a jurisdiction definition.

Iitems Not Related To The Subcommittee ITAR Definitions Tasking

Mr. Burnett began the discussion on foreign defense article or service, term moved from brokering to definitions.

DFO Kovac said a foreign defense article is any non-U.S. origin article or service that may become a component/subassembly of a US product and its technical data. He said he couldn't understand how that affects brokering.

Mr. Burnett replied that it doesn't affect brokering at all.

DFO Kovac questioned why it is necessary to differentiate between foreign defense articles and US defense articles.

Mr. Burnett said that the industry encounters this issue all the time. He asserted that companies make components, subassemblies and subsystems in Europe that are not subject to ITAR controls and that it would be useful to distinguish between the articles that are subject to ITAR and those that are not.

A DTAG member commented that articles are controlled as they have been.

Mr. Burnett said that it helps clarify the brokering.

A member of the public disagreed and said this definition increased the likelihood of confusion that previously did not exist. An article does not have to be made in the U.S. to be a military weapon or part of a weapon system. Whole issue is over jurisdiction. It currently is clear that a military weapon is covered by ITAR no matter where it is produced. It is only the jurisdictional aspect that is the confusing part.

DTAG members commented that the new definition gathered all of that application and usage in a single spot and that the term is also used in the AECA.

DFO Kovac commented that it may be introducing confusion into the process. What about defense service problem, no question that under U.S. law that a satellite is a defense article, is a Thales satellite that is advertised as ITAR-free, still an ITAR item?

Mr. Burnett explained that under the DTAG's proposed definition it would be considered a defense article.

Ms. Remington stated that the definition of defense service currently includes service on foreign articles, too.

Mr. Burnett stated that there was no intent to change the definition of what is a defense article the attempt was to try to define what a foreign defense article is.

Chairman Schneider called for a ten minute break and expressed appreciation for all of the DTAG's work.

The meeting reconvened at 12:10.

Chairman Schneider praised the work the group has done and noted that it shows the rich vein of work that remains to be done. He said the Department's improvements in the processing of licenses has attracted almost universal approval and polishing definitions will contribute to more effective compliance on the part of licensees and overall improvement of the regulatory process. He also observed that it may be the case that when the new Administration begins to focus on policy changes there may be more opportunities, but this is a valuable piece of work.

Ms. Remington explained that Mr. Kovac has suggested the DTAG discuss issues of priority to the industry. See attachments for charts on Future DTAG Actions.

The final piece of business, which was started to at the request of DFO Kovac, is a discussion on how the DTAG could define defense industry priorities, which were two parts of a single effort: 1) things that were useful changes to processes and 2) things that were game changers. The DTAG needed to identify some "game changers" like those that had occurred in the past with the Conventional Arms Transfer Policy and NSPD-19, for example. The DTAG should identify defense industry priorities on both detailed process changes and new Administration priority preferences. Environment in which arms transfer are being made are forcing some important changes which may need to be captured in how the industry is regulated. For now it may be useful for some of those who have offered ideas for new priorities to provide a brief description.

Ms. Remington requested DTAG members to provide explanations for their recommended priorities. See attachments for the presentation slides. Return of foreign parts exemptions. Personal protective gear that we understand is being considered by the USG.

DFO Kovac said the issue of personal protective equipment should have been resolved by an exemption State proposed but is held up, along with other ITAR changes, until the new team comes into State.

A DTAG member commented that Commerce has more or less resolved that problem.

Ms. Remington mentioned another topic regarding the escalation of costs of materials and components. She suggested that DDTC consider increasing the exemption for spare parts and components from $500.00 to something more realistic.

Chair Schneider said that one of the problems the Department has had is that these figures have been put into law and they may not evolve with what is happening on the ground. He said that a more orderly process for revisiting these thresholds is needed. There may be other arbitrary levels that were imposed at the time when a figure was

reasonable but no longer reflect current practices. Other government agencies have standard economic adjustments. Perhaps there are some other analogs that could facilitate the management of these things.

Ms. Remington moved on to discuss the differences between law, regulations and practice with regard to ITAR section 123.16(b)(1). She noted that intelligence agency export authority that is not reflected in the ITAR

Mr. White added that this comes into effect for Afghanistan and other 126.1 countries.

Ms. Remington said the processing of licensing has become very greatly improved from this time last year. She also noted that the (Defense) Intelligence Agencies use of exemptions that are not explained in the DoD exemptions to the ITAR, nor is it explained who is the authorizing authority for those agencies. Many in industry feel that to use one of those exemptions is risky.

Mr. Gregory Bourn said that the exemption for parts and components is not specifically identified. He said that there needed to be an exemption to send back parts, if companies were just bringing in a part from the foreign affiliates for repair or other such reason.

Mr. Kovac asked for this recommendation to be differentiated from first point.

Mr. Bourn stated that first one is talking about something that is already licensed.

Mr. Otis said U.S. companies are handling re-import items on behalf of DoD, but Customs is treating these shipments differently and consequentially imposing import duties on the items being re-imported.

Mr. Peter Jordan used the example of a subsystem that is manufactured in Europe and imported back to U.S. breaks and has to go back to be repaired. Currently has to go back under a DSP-5.

Mr. Bourn said that his recommendation now sounds like they are the same point.

Chair Schneider noted that the last one does deal specifically with foreign affiliates.

DFO Kovac replied that it is still the same problem.

Ms. Remington moved on to the next recommendation, defining what "sent" means in 125.4(b)(9)? Industry may have taken sent too liberally.

Mr. Burnett explained that some prosecutors are being tough on people coming into the U.S. with laptops.

Ms. Remington said she would defer the next point to DTAG members, Jahna Hartwig and Debbie Shaffer. The feeling among universities is that the exemption for full time

employees to receive unclassified technical data is unhelpful and that it should be expanded to defense services.

Ms. Jahna Hartwig explained that FFRDCs are government owned facilities which are run by private entities. It would be helpful to have an FMS-like exemption.

Ms. Remington moved on to the last priority recommendation, removal of USML Cat 1 and Cat 3.

Mr. Lawrence Keane said this was self-explanatory, that these are sporting and hunting firearms, they are not used by military and police. He said he would like to see those items moved over to Commerce. He said such an move would free up DDTC resources, since high license volume in these Catagories.

Chairman Schneider asked how many licenses are done annually for these items.

DFO Kovac answered that approximately 8000-9000 licenses are done for Category I and III annually. He noted that they cannot be uncontrolled because of international agreements. DDTC is not going to have the ability to move these items off the ITAR without Congress saying to give them to Commerce. Absent the Commerce Department standing up and saying that they will take it, there is really no other way unless they are uncontrolled.

Mr. Rill asked whether components could be removed.

DFO Kovac explained that State, cannot remove components for the same reason.

Mr. Keane stated that firearms are already being smuggled into Mexico.

DFO Kovac replied that would not be the best way to address this. There are three types of exports: 1) exports which have no national security or foreign policy concerns, 2) exports which have national security or foreign policy concerns but are primarily for tracking and enforcement purposes, and 3) exports which are significant and warrant the controls under AECA. Unfortunately that is not the way the laws are set up, military or civilian designation is too simple. The laws are set up so civil and military don't meet; however, it is incorrect to always make the assumption that military and civil don't meet. There are a lot of civil things that can cause problems. On this particular issue, I do not foresee, absent that kind of interest to take control the items that the Administration would recommend that.

Chair Schneider said the circumstances related around putting this list together need to be considered. These policy issues can be addressed with the new Administration, just need to find the most appropriate bureaucratic setting.

There was a question about the whether there is a breakdown for the term automatic.

Mr. Keane explained that there is a well defined distinction between automatic and semi-automatic weapons.

Ms. Remington presented the next recommendation, a proposed waiver to AECA 38(f) for Category XV.

Mr. Rill said this makes a reference to 38(f) which requires the President to review the USML to remove categories. He recommended a waiver process to determine certain items within a set of strict parameters.

DFO Kovac said that the Administration cannot go to Congress and request that satellites, which are controlled by law, be deregulated.

Mr. Rill explained that it would not be the entire category, specific components established by a specific set of technical parameters.

DFO Kovac stated that the Administration cannot ask to waive the oversight that Congress has said has to be there by law.

Mr. Sam Armstrong noted that in Category XV there are some scientific satellites NASA puts up that have no national security issues associated with them. There are things like this that could be given a waiver. Exclude end item because of its use. Maybe not the same thing Dale was talking about but still equally important.

DFO Kovac explained that his role was to understand what is being asked to explain there are some impediments to some of these recommendations. There are a lot of people who recommend things, I don't know if any of those are viable or acceptable, they are all going to be provided in the report from the DTAG. The DTAG should not take his initial skepticism as a no. This was an opportunity for the DTAG to get their list out there as well.

Ms. Remington said the next recommendation was a paperwork reduction request. What is the purpose of submitting a letter of initial notification of shipping? Next, is the identification of empowered officials in voluntary disclosures necessary? DTAG also recommends eliminating the 124.6 requirement, which requires written notification of any termination of a MLA or TAA. Is there a need to really provide this notification?

DFO Kovac emphasized the point that there is still a paper system, with agreements, that's what that refers to do. If it is no longer active, then DDTC can retire it. I have to maintain them if they are active and some of those agreement have a validity period of 20 years and unless DDTC knows it has been terminated, we have to keep it for that period of time.

Vice-Chair Sevier discussed the adverse impact of DoD AT&L anti-tamper and LO/CLO review on technology collaboration efforts with close U.S. allies. He recommended that the U.S. Government look at the impact of these reviews on the U.S. balance of trade. There is a need for a better balance in the control of U.S. technologies, to permit the U.S. to lead in the development of new technologies together with foreign partners.

DTAG Chair William Schneider stated that this aspect of the regulatory process is tightly managed in DoD and not many people can get involved. This is an area where DoD tries to protect its interest in technical security for important aspect of military capabilities. It is likely we will see movement on this if the US/UK and US/Australia treaties are ratified which will produce some tension. Some of these areas are subject to exemptions under the Treaties. New leadership of DoD may wish to start a review of this. It is timely to raise this, even if it is not a State issue. Are there any others that we did not already capture?

Ms. Hartwig suggested focusing on the principal of how we can inform these policies. She suggested a consistent theme of better balance and control, one way by being involved with foreign allies.

DFO Kovac observed that the balance has already been made. It was essential that the Department of Defense had the ability to look at the impact of exporting a specific defense technology or defense item and to conclude that "this cannot go anywhere." It will never be possible to get a system that balances all needs in a manner that everyone agrees with. DDTC is in the risk aversion business. Of 83,388 licenses, DDTC denied only .6%. At the same time, process improvement was needed to allow easier collaboration with key allies when DoD wants this to occur. DFO Kovac responded that the way to do this was to get DoD to make the necessary arrangements before the collaboration is initiated.

Ms. Hartwig said it would be helpful if there were process improvements that allowed more collaboration with entities when the DoD wants increased collaboration.

DFO Robert S. Kovac replied that DDTC's process is a good one, and timely, but can't control DoD on their release issues. The "releasability" needs to be negotiated up front and DDTC can't control that. When it arrives at DDTC, we get it out as quickly as we can to DoD, but if the details have not been worked out at that end, DDTC can't control that or the timing. Recommend that everything be nailed down with DoD before it is submitted to DDTC.
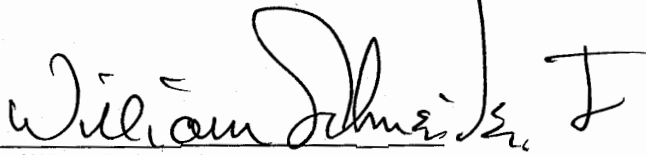
Mr. Lawrence Fink said there is already an exemption to provide technical data under a contract and wanted to know if DDTC would consider an analogous exemption for services.

DFO Kovac stated there already is an exemption for defense services. Current staffing limits the number of initiatives we can pursue to one at a time. Some improvements are adversely impacted by inability to put manpower on the projects.

Chair Schneider said that the DTAG would prioritize its list to identify the items that could have a constructive impact on how U.S. defense industry operates. He also expressed confidence that the new DoD AT&L leadership would engage with industry on these issues.

DTAG Recorder Terry Otis called for any public comments for the record or other input to be emailed to him at terry.otis@itt.com by Thursday, April 9, 2009, and cautioned that submissions could not have any proprietary information labels attached to the email messages.

The meeting was adjourned at 1:12

_____
William Schneider, Jr.
Chairman, Defense Trade Advisory Group

18 May 09
_____
Date

_____
Robert S. Kovac
Designated Federal Officer, Defense Trade Advisory Group

27 my 09
_____
Date

DTAG Open Plenary April 7, 2009 Attendance

1. Christine McGinn
2. Joyce Remington
3. Charles Graves
4. Dale Rill
5. Victoria Harrington
6. William Schneider
7. Terrell Otis
8. Maarten Sengers
9. Alexis Larkin
10. Gregory Bourn
11. Jahna Hartwig
12. Matt Schroeder
13. Kiley Thompson
14. Herb Riley
15. Lawrence Fink
16. Anna Magoulas
17. Victor Pan
18. Jennifer Maki
19. Spence Leslie
20. Janet Rishel
21. Bill Denk
22. Ken Montgomery
23. Bela Mariassy
24. Sharon Cornnor-Jackson
25. Bryon Angray
26. Larry Willoughby
27. Bill Wade
28. David Peyton
29. Peter Jordan
30. Rich Douglas
31. Mike Mitchell
32. Heather Schildge
33. Mike Coffee
34. Gerrit Hengstler
35. Catherine Robinson
36. Suzanne Rao
37. Bruce Graham
38. Cristina Kitner
39. Spence Armstrong

40. Sal Ceraolo
41. Thomas White
42. Dennis Burnett
43. Kay Morrell
44. Bjorn Uggla
45. Debbie Shaffer
46. Mike Cormaney
47. Greg Hill
48. Cathy Johnson
49. Jim Bartlett
50. Scott Feeney
51. PJ Hart
52. Johanna Reeves
53. Rebekah Stroman
54. Paula Geisz
55. Mary Fromyer
56. Taylor Halverston
57. Suzanne Palmer
58. George Sevier
59. Lisa Bencivenga
60. Norma Rein
61. Adelicia Cliffe
62. Lawrence Keane
63. Greg Suchan
64. Kandi Shejavali
65. Sam Gilston
66. Remy Nathan
67. Darren Riley
68. Luke Engan
69. Marc Binder
70. Bruce Cathell
71. Tomoko Da Luz
72. Nik Khanna
73. Alexandra Frantz
74. Mona Hazera
75. George Staples
76. Glennis Gross-Peyton
77. David McMillan
78. Monique Galloway
79. Barbara Eisenbeiss
80. William Newman
81. Alice Kottmyer

82. Michele Truitt
83. Kevin Maloney
84. Charles Shotwell
85. Robert Copley
86. Mary Sweeney
87. Malcolm Greene
88. Daniel Buzby
89. Glenn Smith
90. Frank Ruggiero
91. Robert Kovac
92. Patricia Slygh

Defense Trade Advisory Group (DTAG)
U.S. Department of State – April 7, 2009
Loy Henderson Conference Room, Harry S. Truman Building

I.   **0930**: Call to Order by DTAG Chairman

II.   **0945**: Opening Remarks from Department of State Official(s)

III.   **1015**: DTAG Working Group on ITAR Definitions presentation

IV.   **1145:** Break

V.   **1200**: Discussion of new priorities

VI.   **1245**: Closing Remarks

DEPARTMENT OF STATE

[Public Notice 6557]

Notice of Meeting

    Title: Defense Trade Advisory Group; Notice of Meeting April 7,
2009.
SUMMARY: The Defense Trade Advisory Group (DTAG) will meet on April 7,
2009 from 9:30 a.m. to 1 p.m. in the Loy Henderson Conference Room at
the U.S. Department of State, Harry S. Truman Building, Washington, DC.
The meeting will be open to the public. Entry and registration will
begin at 8:45 a.m. Please use the building entrance located at 23rd
Street, NW., Washington, DC between C & D Streets. The purpose of the
meeting will be to discuss current defense trade issues and topics for
further study.
    As access to the Department of State facilities is controlled,
persons wishing to attend the meeting must notify the DTAG contact
person by COB Tuesday, March 31, 2009. If notified after this date, the
DTAG Secretariat cannot guarantee that the Department's Bureau of
Diplomatic Security can complete the necessary processing required to
attend the April 7 plenary. Each non-member observer or DTAG member
needing building access that wishes to attend this plenary session
should provide: his/her name; company or organizational affiliation;
phone number; date of birth; and identifying data such as driver's
license number, U.S. Government ID, or U.S. Military ID, to the DTAG
contact person, Allie Frantz, via e-mail at FrantzA@state.gov. DTAG
members planning to attend the plenary session should notify the DTAG
contact person, Allie Frantz, at the e-mail provided above. A RSVP list
will be provided to Diplomatic Security and the Reception Desk at the
23rd Street Entrance. One of the following forms of valid photo
identification will be required for admission to the Department of
State building: U.S. driver's license, U.S. passport, U.S. Government
ID or other valid photo ID.

DATES: The DTAG meeting will be held on April 7, 2009 from 9:30 a.m. to
1 p.m. and is open to the public.

ADDRESSES: The meeting will be held in the Loy Henderson Conference
Room at the U.S. Department of State, Harry S. Truman Building,
Washington DC DTAG members and non-member observers are required to
pre-register due to security reasons.

FOR FURTHER INFORMATION CONTACT: Members of the public who need
additional information regarding these meetings or the DTAG should
contact the DTAG contact person, Allie Frantz,

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PM/DDTC, SA-1, 12th Floor, Directorate of Defense Trade Controls,
Bureau of Political-Military Affairs, U.S. Department of State,
Washington, DC 20522-0112; telephone (202) 736-9220; FAX (202) 261-
8199; or e-mail FrantzA@state.gov.

SUPPLEMENTARY INFORMATION:

(a) Background

The membership of this advisory committee consists of private
sector defense trade representatives who advise the Department on
policies, regulations, and technical issues affecting defense trade.
Individuals interested in defense trade issues are invited to attend
and will be able to participate in the discussion in accordance with
the Chair's instructions. Members of the public may, if they wish,
submit a brief statement to the committee in writing.
April 7, 2009 9:30 a.m. to 1 p.m. Meeting--Topics for discussion
and assigned time frames are as follows: 9:30-9:45 Call to order by
DTAG Chairman. 9:45-10:15 Opening Remarks from Department of State
Official(s). 10:15-11:45 DTAG Working Group on the ITAR Definitions
presentation. 11:45-12 Break. 12-12:45 Discussion of new administration
priorities. 12:45-1 Closing Remarks.

(b) Procedures for Providing Public Comments

The DTAG will accept written public comments as well as oral public
comments. Comments should be relevant to the topics for discussion.
Public participation at the open meeting will be based on recognition
by the chair and may not exceed 5 minutes per speaker. Written comments
should be sent to the DTAG Executive Secretariat contact person no
later than March 31, 2009 so that the comments may be made available to
the DTAG members for consideration.
Written comments should be supplied to the DTAG Executive
Secretariat contact person at the mailing address or e-mail provided
above, in Adobe Acrobat or Word format.

Note: The DTAG operates under the provisions of the Federal
Advisory Committee Act, as amended, and all public comments will be
made available for public inspection, and might be posted on DDTC's
Web site.

(c) Meeting Accommodations

Individuals requiring special accommodation to access the open
meeting referenced above should contact Ms. Frantz at least five
business days prior to the meeting so that appropriate arrangements can
be made.

Dated: March 17, 2009.
Robert S. Kovac,
Designated Federal Official, Defense Trade Advisory Group, Department
of State.
[FR Doc. E9-6423 Filed 3-23-09; 8:45 am]

BILLING CODE 4710-25-P