U.S. Department of State
Defense Trade Advisory Group
Minutes of the October 21, 2008 Plenary Session
Harry S. Truman Building
Washington, DC

Public meeting began at 0930 with introductory comments by DTAG Chair William Schneider. Schneider welcomed the DTAG members and advised that the DTAG meeting would include reports from the DTAG Working Groups. Mr. Schneider regretted that Assistant Secretary Kimmit was called away and introduced Principal Deputy Assistant Secretary Frank Ruggiero. Mr. Ruggiero reviewed the big picture defense trade policies and where DDTC stands at the end of the Administration. He highlighted the following points:

- Negotiation of Defense Trade Treaties with the UK and Australia. DDTC worked throughout the year to answer questions for the Senate; however the Senate has not ratified either one of the treaties. The Secretary of State will send a letter to Biden and Lugar urging them to discuss the treaties in the next session.
- NSPD 56 was issued January 22, 2008 which included a licensing timeframe, a limit on the number of days the licensing process can take, which has been surpassed. Key statistics demonstrate the achievements made. State agreed to fix the time frames for licensing in order to increase transparency and predictability. Companies can now expect to receive a license approval within a certain time frame.
- OEF and OIF cases are adjudicated 80% faster. There has been a 66% decrease in the licensing backlog. Processing times for all licenses are 55% faster. Last year the average licensing processing time was 38 days, this is now down to 17 days. 51% of cases are done in less than 10 days.
- The NSPD allows for licenses to be processed within 60 days. Very few licenses make it to the 60 day mark. Those cases at the 60 day mark address key national security technology issues or require congressional notifications.
- The Return Without Action (RWA) rate has decreased by 52%.
- All these achievements have been made while seeing a 5% increase in cases. This year DDTC has received approximately 88,000 licenses.

PDAS Ruggiero also discussed the change in registration fees. With a 5-8% annual increase in licenses, DDTC would eventually stop being able to make and maintain the improvements seen in the processing times. The fee structure could just as easily support a decrease in volume of licensing with decreased fees. The goal of self-financing is to link the revenue structure to the licensing volume. Mr. Ruggiero thanks the DTAG for its comments on self-financing, some of which were incorporated into the final rule.

PDAS Ruggiero mentioned that the DTAG is now working on ITAR definitions and a USML Review as requested by Assistant Secretary Kimmitt. The big question is whether we are controlling the right things. Congress will playa very active role in the USML Review. We want to hear what industry thinks and what a USML Review should look like.

DTAG Chair William Schneider opened the floor to questions for Mr. Ruggiero.

There was a comment about DDTC charging back fees. The goal is to bring companies into the system. Small manufacturers do not know they are supposed to register. When they do come into register, DDTC charges them back fees. This discourages manufacturers from registering because the charges are more than they make in a year and will put them out of business.

PDAS Ruggiero stated that manufacturers are required to register under the AECA. DDTC only goes back one year. If ten or less licenses or no exports, a company would pay the flat fee of $2250. RWAs, CJs, and GCs were not counted as licenses against the fee structure. Companies will have a compliance problem if they do not register. Companies need to be registered, this is required by the law.

Do these small gun shops have to pay for all past years of lapsed registration or no registration even if they did not export? They should only be required to register if they export.

David Trimble (Office Director of DDTC Compliance) wanted to clarify the lapsed fee issue. He explained that it has been the same policy for years, that is, to pay for lapsed years. Lapsed fees are not really linked to the recent fee change.

It was mentioned that the two issues are not really linked, but the problem is compounded by the recent increase in fees.

PDAS Ruggiero explained that the objective is not to raise more money for DDTC. The objective is to hire more officers with increases in licensing volume. You are trying to link two issues that are not related.

There was another comment about how difficult it will be to encourage compliance when DDTC continues to charge a back fee. They know about ATF but really don't know about State registration. DDTC should consider offering amnesty to companies who come in to register and not charge them additional fees for not being registered in the past. This way more money will come in because people will not be afraid to register.

There was a question about whether the Department envisions undertaking any additional reforms before the Administration changes.

PDAS Ruggiero stated that there are currently no additional plans. We are starting to discuss what initiatives to pursue next year.

There was a question on whether the new registration fees were based on approved licenses or all submissions.

PDAS Ruggiero explained that registration fee calculation does not include denials or RWAs.

DTAG Chair Schneider stated that this is a helpful thing. Ten years ago the time to process a license was significantly higher. The cumulative impact has been impressive. Thanked Mr. Ruggiero for addressing the DTAG members and Mr. Ruggiero departed.

DDTC Managing Director Kovac said the following briefing will be posted on the website and will become part of the minutes and that the two DTAG papers had already been posted. Although his presentation slides were labeled "sensitive but unclassified," this was an automatic State Department format label that could be ignored in the case of this presentation. There are three subjects to be discussed. We have already started discussing registration fees. The DTAG comments were helpful, but did no offer a plan that would generate the fees necessary to operate DDTC. The definition of a small business is so obscure and there is no objective criterion to establish an exemption for small businesses. The non-profit fee structure suggested by DTAG was accepted by State but only if truly non-profit without subsidiaries that were for profit.

The three tiers are: $2250 flat fee for manufacturers and non-profits. $2750 for 10 or less licenses. This was a good line to draw because all but 800 companies fall into this category. The third pays$2750 plus $250 per additional license. The Federal Register Notice announcing the registration fee changes was published on September 25th. Approximately 68-70% of companies fall into the first tier, 20-25% second tier, and only a small percentage are paying at the Tier 3 rate. One $502K letter was sent out but the company is large and certainly has the resources. The fee structure lends itself to self-adjusting resources so we don't need to change the regulations every year to adjust for up or down trends.

Why did we decide to do it this way? Registration is a function of the amount of license submissions. End up being a small per license cost for large companies and more expensive for small companies. We wanted the new registration fee structure to be flexible.

The UK and Australia Defense Trade Treaties were signed in 2007 and at the last plenary were shown to DTAG members and the public. From your comments these were redrafted. Since the last DTAG meeting we have been working with Congress and there have been a lot changes made to them. There were comments that the exemptions looked too omnibus and we have worked to rewrite them to address these concerns. We will ask Congress to look at the Treaties once they are in session again, then we will publish the Implementing Arrangements in the Federal Register and solicit questions and comments.

USML Category VIII regulations implementing Section 17(c) of the Export Administration AC (EAA): Changes were made in August 2008. DDTC is currently working with the Department of Commerce, as they amend their regulations to align with the ITAR change. We have received some questions and comments on Category VIII including: the definition of standard equipment seems to be too confusing. It is narrower than some might like. An additional question is when does something move from USML to DOC? We are in a transition period insofar as identifying what is military and what is commercial. If the part is USAF but a European company wants to put in on a commercial airplane that does not make it commercial. When in doubt, submit a CJ.

There was a question about whether any of the self-funding was to be set aside to update D-Trade.

Mr. Kovac explained that part of the money will be dedicated to D-Trade. It cost $5 million a year to keep it running with minimal upgrades. $6 million will be

spent on bringing over USExports We talked to companies and industry on how to do it in the future. Improvements and upgrades are costly. There is no money for a new program. In 2009 we are stuck with the existing system. In long-term we will be using USExports as a template. To start from scratch it would cost $30 million and take 5 years, we don't have that budgeted right now. The government certification process is extremely time and cost prohibitive. Approximately 20-25% of development cost is spent to get certified. We are reluctant to go through that process. See how far we can go with what we have.

There was a question about registration. The rule indicated that the DOS was providing the number of licenses and fee, what if there is a disagreement? Is there a mechanism to address discrepancies?

Mr. Kovac stated there is a mechanism to address a potential disagreement. If a company wants to know the basis of our numbers they can request the license numbers used to calculate the fee. We will address any questions that come up. If the company disagrees, they can request the license data used to calculate the fee and DDTC will talk to the company. A company should pay the lowest fee to ensure the registration does not lapse. So far we have only had 10 companies out of 289 that had questions about their fees and they thought it should have been higher.

There was another question regarding registration. Companies are to hear from the DOS before renewing their registration. What if the DOS does not get the letter out in time and a company's registration lapses, will this make their licenses invalid?

Patricia Slygh stated that the last letters went out yesterday for companies whose registration expires December 31st. The letters are sent out before 60 days.

There was a comment that no system is perfect. Will there be a grandfather clause to keep licenses valid if registration lapses?

Mr. Kovac answered that DDTC has implemented safeguards to ensure that this would not happen. We understand your concern, but the onus is still on the registrant to come to DOS if they have not heard from us. It is the registrant's responsibility to ensure its registration does not lapse. There should be no assumption that this has become a billing process.

DTAG Chair Schneider said the DTAG must vote to send the Working Papers to State. Discussion and changes made should be finalized as the meeting today rather than waiting till the next Plenary. At the end of the presentations, the DTAG would vote.

Tom White, Chairman of the USML Review Working Group, presented a review of the "DTAG USML Working Group – White Paper" and identified the working group members. The assumption is that we are starting with a clean sheet of paper rewriting the USML. Please feel free to ask questions. Our first objective was to develop a set of rules to go about it, a simple roadmap. The key word is REQUIRED. Various methodologies were analyzed such as the EAR and Technology Note model which is a good way to control specific products based on reason for control. We also looked at to removing dual use items and establishing a clear list of SME.

Problems with the USML – there are too many generic descriptors that did not capture the product. For example UAVs are a critical item but where are they on the USML? There is an emphasis on design-intent, but the important thing should be whether it is really significant? Is it really inherently military? We should focus on controlling things that need to be controlled.

For some items it is difficult to know whose jurisdiction it falls under, USML or EAR? Have to reference the EAR to find out that an item is on the USML. An example of this problem is body armor. The USML should include some parameters to address overlaps.

We should be controlling those items that give a power projection such as fighter jets, rockets, bombs, missiles, etc. In the new USML structure, the first entry should be the most lethal such as a C130J gunship. The next entry not lethal but important, such as a C130 cargo plane. The following entry includes systems that provide military capability to the aforementioned type platforms such as AESA radar, fire control systems and EW. Another separate category could be MTCR.

There was a question about whether the group is proposing that all parts and components be removed from the USML. What about communications such as secure communication?

Tom White said the Working Group was not necessarily proposing that all parts and components be removed. Items such as secure communication would remain on the USML.

There was a comment that the only multilateral control referenced is the Missile Technology Control Regime. There are a lot of items that need to be controlled per the Wassenaar Arrangement. Are you considering other multilateral controls?

Tom White acknowledged those were important points to be further addressed. He also offered the Chemical Weapons Convention and other regimes.

There was a comment about returning to the parts and components issue raised early. Communication systems are a good example. An item could be part of a common technical system. We still need a deeper review because could be both commercial and militarily.

Tom White stated that a perfect list cannot be written. There are communication systems, for example the Link-16, which is strictly for military use that would stay on the USML. Not proposing to protect all equipment.

We are recommending protecting a few key pieces of equipment. Right now the USML is too ambiguous. For example, a mandrel for manufacture of stealth components and some chemical weapons production are not clearly covered. Some parts and components continue to be controlled but not if dual use; wiring harnesses should be dual use and not USML even if used on USML systems for example. Hydraulic systems are globally produced so why not limit it to 3500 PSI and above on the USML.

The group also proposes that the last item in each category should be an explanatory note. This would state the obvious, so companies do not have to keep asking the same questions. DDTC receives 400 CJs a year, at least some of these could be shared. We should share the knowledge/outcomes of CJ determinations.

There was a question of whether the intent was to exclude design intent.

Tom White said 120.3 still covers design criteria. The emphasis should not be on the original design intent; rather it should be on the intent now. What are the items that we really need to control for national security? The L100 engine was designed 50 years ago – why is it still controlled. Was designed for military but what about it still needs to be controlled?

There was a question about whether one of the goals is to review the burden of CJs that DDTC is not concerned about. What will make self-classification easier for

smaller companies or universities? Design Intent and Military Capability are ambiguous terms, how can you revise these to make self-classification easier?

Tom White stated that the Working Group had thought about this point. Joyce will be addressing definitions. What is inherently military in nature that defines a military requirement? A car generator with different housing can fit an airplane but no other changes made – is that inherently a military requirement? All fasteners should be commercial because it is a matter of size, length – not satisfying a military requirement.

There was a question about going back to a 1990s definition of intent.

Tom White explained that the Working Group was proposing going back to that interpretation, not the specific definition.

There was a comment about changing Section 120.3 to go back to an inherently military nature.

Tom White explained that the selection criteria looked at other regimes out there, such as the Wassenaar. What is the rest of the world controlling or not controlling? We don't need to control air conditioners or raw materials. Want to control items that are essential to the war-fighter. If you look at the USML over the years, SME has jumped around; we need a conscious effort to determine what SME is. For example, a hand grenade is considered SME but the design of the next generation of USML is not considered SME. The "USML Roadmap" would include State, DOD and DTAG.

DTAG Chair Schneider stated this was an excellent report. Tom mentioned UAVs, looking forward. The Defense Science Board looked at capabilities and enabling technologies for the next 25 years. Some constructive way on how these things can be addressed.

Tom White said this was a good point. Drones and UAVs are a good example of a new technology that is critical and not being addressed. We have to think about the future. Benefits to the U.S. are in respect to jobs. Suppliers don't want to buy because of the process. Items that are mundane don't have to burden companies with licensing.

Assembled Commercial Off The Shelf (COTS) parts may copy the military capability. How could that be handled?

We considered that concept with open architecture and integration and that will also be defined.

There was a question about how rewriting the USML will affect or change treaties, such as the MTCR and Wassenaar.

Tom White: Good question. Any good exercise to review USML will give us an opportunity to address renegotiating other commitments and treaties.

Mr. Schneider asked the DTAG member for a motion to approval and vote on the "DTAG USML Working Group – White Paper" so that the document could be formally presented to State, in accordance with the DTAG charter. Dennis Burnett made the Motion that the Working Paper be approved by the DTAG members and formally submitted to State. The Motion was seconded by Jahna Hartwig. And all DTAG members present at the meeting voted in favor of the motion.

DTAG Chair Schneider: The DTAG approved the report by a vote. We will be transmitting the report to the DOS once completed.

ITAR Definitions Working Group Presentation – Joyce Remington

Joyce Remington provided an overview of the newly created Working Group and the DTAG members that worked on the "Proposed Methodology for Part 120 Review/Rewrite". We have looked at Part 120 of the ITAR as well as definitions in other parts of the ITAR per Assistant Secretary Kimmitt's request. The group held virtual meetings and submitted a methodology paper to the DOS. This was not an easy task. The "Proposed Methodology for Part 120 Review/Rewrite" was forwarded to the DOS but no definitions have been sent yet. We will vote on the "Proposed Methodology for Part 120 Review/Rewrite" later. Current terms lack clarity and are full of ambiguity and all would benefit for clarifying, and adding, terms. Examples given in the Charts include CJ, technical data, US person, foreign person, public domain that must be updated. The changes in doing business, such as electronic transmission of data, are not addressed and need to be addressed. New terms are proposed for inclusion such as citizenship, country of birth or origin, employee and broker. We are looking for terms that should be included, please let us know if you have any candidate definitions.

There was a question whether the DTAG will look at the existing terms and use resources such as the SIA Handbooks.

Joyce Remington: The Working Group will look at SIA and other publications including government definitions.

There was a question about how there are definitions scattered throughout the ITAR, is it proposed that they be consolidated in Part 120?

Joyce Remington: One can make a huge mistake if they rely solely on Part 120. There are cross-references to other parts of the ITAR.

DTAG Chair Schneider commented that the process must anticipate new concepts such as "system of systems" because today, the ITAR focus on specific systems and needs to be forward looking. Joyce commented that CTOS used in making USML items such as an IED includes a cell phone yet cell phones not in the ITAR but that the capability offered by the cell phone is used for lethal military purposes. New challenges include asymmetric warfare, robotics, etc. And the question of intent.

Tom White mentioned that design, methodology and other terms already exist in the Canadian exemptions and perhaps all the definitions should be included in one section or in an annex."

Joyce Remington agreed that all should be in one section for reference purposes and apply to the entire ITAR whereas currently at times a definition appears to be limited to one section.

There was a question about whether the Working Group had considered a program like TurboTax or cross-referencing the sections electronically.

Joyce Remington said that a decision tree is a good tool. Bob Kovac wants a turbo tax type form and to the extent possible, would cross reference with these terms.

There was a question regarding definition of a Foreign person – Should terms such as these be on the list – or not? There could be a different definition in the EAR. There was another comment from that not only do other agencies have different definitions but some definitions are written in laws.

Joyce Remington responded that there indeed would need to be coordination with other agencies.

Once again, Mr. Schneider recommended a vote so that the DTAG could formally submit the White Paper to State. A motion was introduced by Terry Otis that the "Proposed Methodology for Part 120 Review/Rewrite" be approved b the DTAG member and formally submitted to State. The Motion was seconded by Sam Armstrong. And all DTAG members present at the meeting voted in favor of the motion.

DTAG Chair Schneider: This concludes the reports. We are in a bit of a hiatus in terms of government initiatives. The election will be soon and we will possibly get new priorities and renewed direction. The next plenary will most likely be in March 2009, to provide an interval to get the next Administration's leadership in place. The Working Groups' reports will be posted on the website.

Terry Otis (DTAG Recorder): The last time when people provided input there were propriety disclosures on the information, please do not include these restrictions.

DTAG Chair Schneider: Must be permissible to be made public.

DFO Kovac adjourned the meeting at 11:25 a.m.

_William Schneider, Jr._____   _24 November 08_
William Schneider, Jr.   Date
Chairman, Defense Trade Advisory Group

_____   _10 Dec 08_
Robert S. Kovac   Date
Designated Federal Officer, Defense Trade Advisory Group

ATTACHMENTS:

DEPARTMENT OF STATE

[Public Notice 6345]

Defense Trade Advisory Group; Notice of Meeting October 21, 2008

SUMMARY: The Defense Trade Advisory Group (DTAG) will meet on October
21, 2008 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. 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 Executive
Secretariat by COB Tuesday, October 14, 2008. 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 October 21 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 Secretariat contact person, Allie Frantz, via e-mail at
FrantzA@state.gov. DTAG members planning to attend the plenary session
should notify the DTAG Secretariat 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 October 21, 2008 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 Executive Secretariat contact person, Allie Frantz, 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.
   October 21, 2008 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, followed by Opening Remarks from Department of State Official(s). 9:45-10 Update on the three topics addressed at the June 19, 2008 open plenary; Self-Financing Options for the Directorate of Defense Trade Controls (including the DTAG Working Group's presentation of their report), the UK-US Defense Trade Cooperation Treaty Implementing Regulations, and the new USML Category VIII regulations

implementing Section 17(c) of the Export Administration Act. 10-11:15 DTAG Working Group on the U.S. Munitions List (USML) Review presentation. 11:30-12:45 DTAG Working Group on ITAR Definitions presentation. 12:45-1 Closing Remarks.

(b) Availability of Materials for the Meetings

The agenda and materials pertaining to the topics for discussion will be posted on the Directorate of Defense Trade Controls' Web site at http://frwebgate.access.gpo.gov/cgi-bin/leaving.cgi?from=leavingFR.html&log=linklog&to=http://pmddtc.state.gov/index.htm no later than October 17, 2008.

(c) 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 October 14, 2008 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 email 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.

(d) 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: September 4, 2008.
Robert S. Kovac,

Designated Federal Official, Defense Trade Advisory Group, Department of State.

[FR Doc. E8-20912 Filed 9-8-08; 8:45 am]

BILLING CODE 4710-25-P

Defense Trade Advisory Group (DTAG)
U.S. Department of State – October 21, 2008
Loy Henderson Conference Room, Harry S. Truman Building

I.   **0930**: Call to Order by DTAG Chairman and Opening Remarks from Department of State Official(s)

II.   **0945**: Update on the three topics addressed at the June 19, 2008 open plenary; Self-Financing Options for the Directorate of Defense Trade Controls, the UK-US Defense Trade Cooperation Treaty Implementing Regulations, and the new USML Category VIII regulations implementing Section 17(c) of the Export Administration Act

III.   **1000**: DTAG Working Group on the U.S. Munitions List Review presentation

IV.   **1115 – 1130** Break

V.   **1130**: DTAG Working Group on ITAR Definitions presentation

VI.   **1245**: Closing Remarks

Proposed Methodology for Part 120 Review/Rewrite

Objective: DTAG to propose a methodology to address terms and definitions within, and related to, the ITAR. Determining what terms need to be defined and/or revised in order to remove ambiguity and promote consistency with the ITAR while also ensuring the intent of the AECA is met.

Phase I – Assessment & Information Gathering

1. DTAG Definitions Working Group creates subcommittees

2. The DTAG subcommittees identify what terms need to be changed, identify the additional terms to be included in Part 120, as well as provide the details for the recommendations.
   - Review existing terms for consistency with the AECA
   - Focus on making the regulations less ambiguous and more useful for the exporters as well as the U.S. Government.
   - Review DDTC Guidance (website) and make sure that key requirements/terms are established in the official regulations
   - Canvas USG and industry (with the support of SIA) to determine what definitions are the most confusing.
   - Ensure terms elsewhere within the ITAR are addressed in Part 120 as well as consistent with those in Part 120.
   - Consider information from other resources such as SIA's handbook on Definitions, USG-issued provisos, charging letters/consent agreements, DOD Directives, etc. in effort to identify terms to be included in Part 120 and establishing definitions for terms in Part 120.

   The lead of each subcommittee could be identified at the next DTAG Plenary in order to obtain input from the export community.

Phase II – Review Phase I

1. Consolidate/Discuss Proposed New and/or Improved Definitions
   - Prioritize terms to be addressed and assign subcommittees
   - Apply basic rules of Administrative Procedures Act when determining appropriate definitions.
   - Consult with DOD to ensure consistent understanding of the terms (so that provisos issued by DOD in licenses will contain consistent requirements)
   - Consult other Federal statutes and regulations for purposes of consistency check.

2. DTAG Working Group subcommittees provide recommended changes, for their assigned section, in order to organize Part 120 in a logical manner.

- Develop approach for proposed changes
- Possibly separate and order the purpose, policies, definition and other subsections of Part 120 (parallel to other ITAR sections).
- Reference: The EAR was revamped over a decade ago to be more user-friendly. It might be worthwhile researching the expertise and experience gained through that effort, which resulted in clearer, shorter, logical (from a transaction standpoint), and overall more understandable export regulations.

All proposed definitions will be reviewed by the entire working group prior to submission to the DTAG Chair and Co-Chair.

USML Working Group – "White Paper"

<u>General Outline of the White Paper</u>

❖ Part I "Objective" – states the overall goal of the "White Paper"

❖ Part II "Basic Rules" – provides the overall assumption that items controlled on the USML are governed by ITAR 120.3 and that the USML provides additional clarification

❖ Part III "Basic Problems" – provides examples to illustrate the need for a comprehensive update of the USML

❖ Part IV "Generic Considerations" – general top level guidelines for formatting USML Categories and designating items as SME or non-SME

❖ Part V ""Criteria for USML Category Development" – provides criteria and guidelines that should be followed to support a comprehensive USML review.

<u>Part I – Objective</u>

Define the basic "rules" and general "principles" that can be used with minimal exceptions as a guide for a technical review of all ITAR Categories. The task is not to undertake a review of any one USML Category but rather to develop a simple roadmap that can be utilized to facilitate a comprehensive review of the overall USML, retaining items designed for or possessing a military utility and removing those with a commercial or inherently dual use capability, or those items supporting military equipment that possess no inherent military technology nor will yield insight into that military technology. In summary the USML should not control items based solely on the fact that they are used by the military but rather they are controlled because of their indigenous military applicability and tactical application.

An additional objective would be developing a consistent methodology for designating sub-item Categories as either Significant Military Equipment (SME) or non-SME. This should be based on a strict interpretation of the definition (ITAR 120.7) and sub-items identified as SME should not contain systems, subsystems within the same sub-item that do not warrant the SME special status designation.

<u>Part II –Basic Rules Governing Items To Be Controlled On The USML</u>

- An article to be controlled on the USML is defined in accordance with ITAR 120.3 and its related technical data in accordance with ITAR 120.10.

- ITAR Part 121 (i.e. USML) provides additional clarification and categorization with respect to the control of articles that satisfy the ITAR 120.3 definition. The USML Part 121 is to assist exporters in providing additional clarification with respect to items that are subject to ITAR jurisdiction as well as assisting in determining the proper licensing category and identifying between SME and non-SME.

Part III - Basic Problems With The Current USML

- Use of generic descriptors or poorly defined terms such as:
  - Category VII: "*military recovery vehicles*" – Limited to just tanks or all military vehicles including trucks?
  - Category VIII: "*drones*" – limited to just drones or does this include UAVs?
  - Category XII: "*military television sighting and viewing units*" – lacks definition, it is assumed this relates to Category IV items?
  - Category XIII: "*structural materials*" – lacks definition, as written it could include nearly all raw materials used in the manufacture of Defense Articles
  - Categories I thru XX: "*components, parts, accessories, attachments and associated equipment ...*" – lacks definition, results in misclassification of numerous items

- Multiple definitions for the term "Defense Articles" – in some instances it means both hardware and technical data and in other circumstances it is limited to just hardware.

- Inconsistencies in the methodology used to designate items as SME such as:
  - Category IV – "grenades" and "blasting caps" are designated as SME but apparatus to support the control and handling of launch vehicles are not.
  - Category VIII – "cartridge activated devices" are designated as SME but next generation developmental aircraft and engines are not.

- The emphasis within each Category is to control hardware based on "design intent" rather than the inherent ability of the system, sub-system to satisfy a military requirement.

- General lack of discriminators to help exporters to distinguish between apparent overlaps in coverage between the USML and the Commerce EAR/CCL.
    - Unmanned air vehicles – Category VIII USML / Category 9 CCL
    - Coast Guard vessels such as ice-breakers – Category VI USML / Category 8 CCL
    - Body armor - Category X USML / Category 1 CCL
    - Closed and semi-closed (re-breathing) devices – Category XIII USML / Category 8 CCL

Part IV – Generic Considerations For Updating the USML

- Maintain as much as possible a consistent format across USML Categories such as:
    - Separate sub-items for the control of full up systems (end items) that are specifically designed developed, configured, adapted for the military for lethal purposes (e.g., missiles, F-16, F/A-18, C-130 configured as a gunship) from those that provide a non-lethal military capability (e.g., sounding rockets, military vehicles, C-130 cargo aircraft).
    - Separate sub-items for all major sub-systems that are specifically designed, developed, configured, adapted in such a fashion that they provide the capability that is required to achieve a specific military requirement (e.g., AESA radars, fighter engines, electronic warfare equipment).
    - Separate sub-items for systems and sub-systems that are subject to multi-lateral controls as to warrant additional review by the US Government (e.g., Missile Technology Control Regime, Chemical Weapons Convention).
    - A separate sub-item for the control of critical production equipment and tooling that is "required" in order to satisfy a military capability (e.g., mandrels/molds for the production of composite aircraft parts) where as such items that that are in normal commercial use (e.g., basic machine tools, alignment fixtures and handling devices) would not be controlled. An approach similar to that currently being utilized in Category XI(c).
    - A separate sub-item for the control of components, parts, accessories, attachments, and associated equipment specifically designed, or modified for controlled articles exclusive of those items which are based on widely available technology and which are not inherently military in nature and do not provide any unique military capability (e.g., aircraft primary structure would be controlled but fasteners, brackets, lights, standard seats would not). A definitive determination of what constitutes "adapted" and/or "configured" for military use is needed. For example, if a part or component is only altered physically

(as opposed to functionally) for purposes of integration into a defense article and provides no enhancement to the military end use, per se, it should not be considered to be military in nature.
   o The inclusion of a "Note" at the end of each Category that highlights those items which have been previously determined not to be subject to the USML via the Commodity Jurisdiction process or by some other means.

Part V – Criteria/General Principles To Follow When Conducting a Comprehensive Review

- Criteria/General Principles for conducting a comprehensive review of the individual USML Categories.
   o Control of all systems, sub-systems that provide a uniquely military capability.
   o Control of all systems, sub-subsystems that are controlled on a multi-lateral basis as munitions items (e.g., Wassenaar Arrangement, Missile Technology Control Regime, Nuclear Suppliers Group, CWC/BWC etc). Any exceptions should be based on a case-by-case review for unilateral control.
   o Systems, sub-systems including associated components, parts, accessories, attachments and associated equipment should not be controlled if they are based on acceptable standard industry practices with wide foreign availability such as electrical wiring harnesses, gaskets, electrical motors/generators, hydraulics, basic electronic cabinets, air conditioning units, heat exchangers etc. Use of technology parameters should be considered as applicable to distinguish between military and dual-use items (e.g., USML control of hydraulic equipment would be limited to only those systems designed for operation at 3500 psi and above).
   o USML controlled hardware which is embedded in end items subject to the control of the EAR/CCL would no longer be subject to the USML if removal from the EAR/CCL controlled item results in the destruction of the USML item *(e.g., QRS-11)*.
   o Control of "raw materials" which are consumed in the production and manufacture of a defense articles should not be controlled as defense articles unless they are "required" to achieve a specific military requirement such as low observable / counter low observable techniques, design and/or materials (e.g., stealth). For example the following would not fall under the jurisdiction of the ITAR/USML:
      ▪ Metals in the form of plates, extrusions, billets etc
      ▪ Non-metallic's in the form of sheets, rough castings, composite pre-pregs, uncured products etc.

- Chemicals such as adhesives, lubricants, sealants, fillers, paints, cleaning agents etc.
  - A side-by-side review of the USML and EAR/CCL needs to be conducted in order to identify any potential overlaps in coverage.
  - A comprehensive review of past Commodity Jurisdiction determinations needs to be conducted as a basis for developing explanatory notes at the end of each Category.

- Criteria to be considered when designating sub-items as SME on non-SME:
  - All sub-items that control lethal systems should be SME.
  - All sub-items that control major sub-systems that are "required" to achieve a specific military requirement should be SME.
  - Sub-items which are associated with multi-lateral control regimes should be a presumption of SME.
  - Sub-items which control critical production equipment and tooling should be a presumption of non-SME exclusive of any equipment and/or tooling that is classified.
  - Sub-items for the control of components, parts, accessories, attachments, and associated equipment should be a presumption of non-SME.

- Additional considerations when conducting a comprehensive review of the individual USML Categories
  - Parts and components supporting scientific and research endeavors, with no military end-use, should not be under USML control. This includes, but is not limited to, instrumentation that is part of a mission payload. This exclusion from USML control should not extend to the spacecraft or launch activities under Category XV.
  - When considering the inclusion of a "Note" at the end of each Category that highlights those items which have been previously determined not to be subject to the USML the review should also consider identifying non-lethal legacy systems that have been superseded by time and technology and no longer warrant the strict controls of the USML (e.g., radios, aircraft avionics, computers, etc designed >25 years ago).

DTAG Open Plenary – October 21, 2008 Attendance

1. James Bartlett
2. Lawrence Keane
3. Bela mariassy
4. Greg Bourn
5. William van Amerongen
6. Giovanna Cinelli
7. Greta Milligan
8. Catherine Robinson
9. Herb Riley
10. Matt Ekbereg
11. H.A. Jones
12. Terrell Otis
13. John M. Bryant
14. Sam Armstrong
15. Andrea Dynes
16. Janet Rishel
17. David King
18. Chung-yu Chow
19. Mike Mitchell
20. Mary Fromyer
21. Lisa Bencivenga
22. Bill Wade
23. Dennis Burnett
24. Nicoktta Kennedy
25. Bruce Cathell
26. Joyce Remington
27. Christine McGinn
28. Debbie Shaffer
29. Peter Jordan
30. George Rao
31. Pamela Weler
32. Tina Luther
33. Martha Cooper
34. Salvatore Ceraolo
35. Mike Cormaney
36. Ann Kovacs
37. Gregory Weimer
38. Marjorie Chorlins
39. Greg Suchan
40. Bing Xu
41. Sam Gilston
42. Lawrence Fink
43. Frank Swerda

44. Jahna Hartwig
45. Rene Lets
46. David Roth
47. Paula Geisz
48. Eric Lundell
49. Mal Zerden
50. Angela Countee-Brown
51. Malcolm Greene
52. Kalon Scott
53. Dave Quinn
54. Peter Kellar
55. Tony Dearth
56. Mona Hazera
57. Jim Carpenter
58. Rob Copley
59. Mary Sweeney
60. David DiPetro
61. David Trimble
62. Robert Kovac
63. Kevin Maloney
64. Candace Goforth
65. Patricia Slygh
66. Allie Frantz
67. Kevin Matthews
68. Jane Dalton
69. Mike Coffee
70. Frank Ruggiero
71. William Schneider
72. Thomas White
73. Charles Graves
74. Dale Rill

DTAG Updates

Robert S. Kovac
Managing Director
Directorate Defense Trade Controls

Issues

- Self Financing

- AS and UK DTCTs

- New USML Cat VIII

Defense Trade Treaties

- In 2007, President signed Defense Trade Cooperation Treaties with PMs of UK and AS
- The treaties permit most defense articles to move freely within the approved treaty communities to support joint operations, training, procurement and R&D.
- Although not ratified by the Senate this session, they will be a Department priority for the 111th Congress.
- DDTC made specific changes to the rules based on DTAG input; more have followed.
- Implementation rules will be published for public comment before going final.

New Registration Fee Structure

NSPD 56 directed significant improvements in the defense trade process requested by industry. It also required that the mandates be 75% "self-financed"

The new fee structure, that went though unprecedented interagency vetting and public and industry comment replaces the flat fee of $1750 with three tiers that reflect the workload generated per registrant

Tier 1: Registrants that do not submit licenses pay $2250

Tier 2: Registrants who export but submit less that 10 license per year pay $2750.

Tier 3: Registrants who export but submit more than 10 licenses per year pay $2750 + $250 per license submitted in the previous 12 months

New Registration Fee Structure

The new fee structure has three advantages:

- It is equitable

- Resources are "self adjusting," as workload changes, so do funds available

- Resources will be sufficient to meet the President's improvements

  The additional resources will be used to fully execute the broad ranging process improvements required by the NSPD.

Category VIII rewrite

- Published in the Federal Register 14 Aug 08
- Working with DoC now on complementary changes to Interpretation 9
- Issues commonly misunderstood:
  - What is "standard equipment?"
    - Manufactured in compliance with published industry specification or established/published government specification
    - Manufactured and tested to established but unpublished civil aviation industry (not "civil aviation company") specifications and standards
    - Part/Component not standard equipment if any performance, manufacturing or testing requirements beyond these specifications/standards

Category VIII rewrite

- Transitions
  - Self determination for non-SME, unless there is doubt
  - To determine whether 17(c) criteria are met, consider whether the same item is common to both civil and military applications without modification of the item's form, fit or function.
  - CJ required where part/component is SME (in Cat VIII or any other USML category), except for SME in Cat VIII and when integral to civil aircraft prior to August 14, 2008 unless there is doubt.
  - A part designed for a civil platform remains civil even if the same part (unmodified) is used on a military aircraft. A military part cannot become "civil" by its use solely on a foreign civil platform.

Defense Trade Advisory Group

ITAR DEFINITIONS WORKING GROUP REPORT

ITAR Definitions Working Group· Members

DTAG members on the ITAR Definitions working group include the following
- Joyce Remington, (Chair), BAE Systems
- Gregory Bourn, Selex Sensors and Airborne Systems
- Ginger Carney, Network Centric Operations Industry Consortium
- Michael Cormaney, Poliner & Luks LLP
- Andrea Dynes, General Dynamics
- Charles Graves, Day & Zimmermann
- Jahna Hartwig, John Hopkins University Applied Physics Laboratory
- Joe Mariani, Rockwell Collins
- Spence Leslie, Tyco Electronics
- Lisa Bencivenga, Lisa Bencivenga LLC
- Christine McGinn, Cobham
- Terry Otis, ITT
- Peter Jordan, United Technologies
- Janet Rishel, Bell Helicopter
- Catherine Robinson, National Association of Manufactures
- Dennis Burnett, EADS North America

ITAR Definitions Working Group Actions

- Virtual meetings held to discuss direction received from Assistant Secretary Kimmitt, which were supported by DTAG Vice-Chair, Sam Sevier
- White Paper drafted and provided to DDTC to support a methodology for the Part 120 Review and Rewrite
- Compilation of existing terms to be reviewed and edited, as well as new terms to be added to Part 120, provided to DTAG Vice Chair for endorsement by the DTAG, at large

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ITAR Definitions Working Group. Examples of Definitions and Terms for Review/Rewrite

- Examples of Existing Part 120 Terms for Review/Rewrite
  - 120 3 – Policy on Designating Defense Articles
  - 120 4 – Commodity Jurisdiction
  - 120 6 – Defense Article
  - 120 10 – Technical Data
  - 120 11 – Public Domain
  - 120 15 – U S Person
  - 120 16 – Foreign Person

ITAR Definitions Working Group Examples of New Part 120 Terms Under Consideration

- New Terms Proposed for Inclusion within Part 120
    - Software
    - Maintenance (e g basic operation and maintenance, intermediate level, and depot-level)
    - Accessories & Attachments
    - Research (e g Applied and Basic)
    - Deemed Export
    - Detailed Design
    - Details of Design, Development, Production or Manufacture
    - Citizenship
    - Country of Birth & Country of Origin
    - Employee
    - Broker & Brokering Activities

2

Objective

- Define the general rules and principles that can be used with minimal exceptions as a guide for a technical review and update of all USML Categories
- Identify a simple roadmap that can facilitate a comprehensive review for retaining control of only those items that are either "**required**" to achieve a military capability or satisfy a direct military requirement
- Remove those items which are used by the military but are inherently dual-use in nature
- Develop a methodology for designating items as either SME or non-SME

Basic Problems with the Current USML

- Generic Descriptors
- Multiple definitions for "Defense Articles"
- Inconsistencies in the designation of items as SME
- The emphasis is based on "design intent" rather than the inherent ability of the item to satisfy a specific unique military requirement
- Apparent overlap in coverage between the USML and the EAR/CCL

USML Format Considerations

- An entry for complete systems that provide lethal power projection
  - Fighter aircraft
  - Missiles, rockets
  - Bombs
- An entry for complete systems that provide non-lethal military capability
  - Tanker aircraft, cargo aircraft, supply vessels
- An entry(ies) for major sub-systems that provide military capability
  - Aircraft fighter engines
  - Radars, fire control systems
  - Electronic warfare equipment
- An entry for complete systems, sub-systems subject to multi-lateral controls
  - Missile Technology Control Regime

USML Format Considerations (cont'd)

- An entry for critical production equipment that is "**required**"
  - Mandrels/molds for production of stealth components
- An entry for parts, components, accessories etc
  - Exclusive of items based on widely available technology and not inherently military in nature
- The addition of an "Explanatory Note" at the end of each Category
  - Highlights those items that have been previously determined not to be subject to the USML
    - Fasteners, nuts, bolts, sealants,
    - Previously determined via the CJ process

Selection Criteria / USML

- Control only those items that provide a military capability
- Items not controlled multi-laterally as military items should be on an exception basis only
- Parts, components, accessories etc that are based on standard industry practices should not be controlled
  - Electrical / hydraulic / mechanical
  - Motors/generators
  - Heat exchangers, air conditioners
- Controls of raw materials which are not "required" to achieve a specific military requirement (e g , stealth) should not be controlled
  - Metals – plates, extrusions, billets
  - Non-metallic's – plastic sheets, composite pre-pregs
  - Basic chemicals – adhesives, lubricants, sealers, paints, fillers

Selection Criteria / SME

- SME items
  - Systems that provide a lethal capability
    - Fighter aircraft, tanks, missiles
    - Systems/Sub-systems that are required to satisfy a specific military requirement
    - Cargo aircraft, aerial refueling,
    - electronic warfare equipment
  - Systems/Sub-systems that are controlled under multi-lateral regimes
    - Missile Technology Control Regime
    - Chemical Weapons Convention
  - Sub-systems that are required to achieve a unique military capability
    - Stealth materials

USML Roadmap

- Phase I
  - DoS, DoD and DTAG establish a basis methodology and criteria for identifying items to be controlled
- Phase II
  - DoD develops working drafts for each USML Category
- Phase III
  - DoD conducts an initial inter-agency review of the working draft
- Phase IV
  - DoS, DoD and DTAG undertake a comprehensive review of each Category