Defense Trade Advisory Group (DTAG) Plenary Meeting Minutes
February 1, 2018
Meeting held at 1777 F Street, NW, Washington, DC 20006

Agenda:
- Welcome and introduction
- One-Form Electronic Filing Working Group 1
- Defense Services Definition Working Group 2
- Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group 4
- Manufacturing Definition Working Group 3
- Wrap-up

Introductory Remarks by Mr. Bill Wade, DTAG Chair

Mr. Bill Wade, DTAG Chair brought the meeting to order at 1:02 pm, welcomed the public. Mr. Wade was joined on the podium by Ms. Andrea Fekkes Dynes, DTAG Vice Chair, and Ms. FranMarie Mulla, DTAG Recorder. The DTAG members introduced themselves and identified the Working Groups they support.

Due to the number of taskings for this DTAG plenary, time for questions may be limited. The audience is encouraged to provide questions not addressed during this session to Ms. Mulla, DTAG Recorder, at fmulla@moog.com.

Mr. Wade addressed the fact that the DTAG encompasses a diverse group of members across Industry and showed the DTAG Charter on Power Point. Logistics: housekeeping; phones on vibrate, restrooms, water, Q&A, and hold questions until the end of each presentation. Public comments are to be submitted in writing. Questions, if in support of the tasking, are accepted.

Mr. Wade introduced Mr. Mike Miller, Acting Deputy Assistant Secretary (A/DAS) of Defense Trade Controls who provided remarks to the DTAG membership and audience.

Remarks by Mr. Mike Miller, Acting Deputy Assistant Secretary of State for Defense Trade

A/DAS Miller expressed appreciation of the work completed by the DTAG and then provided a brief summary of his impressive career of 20 years as a civil servant.

His appointment as Acting DAS came in early January 2018. Prior to his appointment as Acting DAS, Defense Trade Controls, his career included overseas assignments in Africa, working with industry, and Foreign Military Sales. A/DAS Miller expressed his appreciation for the opportunity to participate in the DTAG Plenary session and hopes to keep the important work and collaboration ongoing.

A/DAS Miller noted this DTAG Charter term expires in May 2018. DDTC is currently accepting applications for the next term.

A/DAS Miller noted that Mr. Tony Dearth, Chief of Staff (Acting), is the current Designated Federal Official for the DTAG. The tentative target for the next Plenary is May 10, 2018.

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One-Form Electronic Filing Working Group 1 Presentation

Mr. Wade introduced the One-Form Electronic Filing Working Group chaired by Ms. Ashley Farhat and Ms. Kim Pritula. A copy of the slide presentation can be found on the DDTC webpage (under the DTAG tab).

The Working Group tasking summary:

1. Would industry benefit from a *single interagency form* where the data elements needed by DDTC, BIS, and OFAC are collected using a single system user interface or single machine- to-machine data interface?

2. Would *expanding the current license based batch filing* (to include registration filings and updates, notifications, CJ, etc.) positively impact industry, and if so, how does industry want DDTC to prioritize this expansion?

3. Would *modifying user access/authentication process* from current Identrust Certifications to other modern access/authentication procedures positively impact industry, and if so, what are your specific modification recommendations?

Key items:

- This was a small Working Group (WG) which was supported greatly by DDTC's Chief Information Officer, Ms. Karen Wrege

- First tasking – Will there be an impact of implementing the DDTC one-form and then turn around to implement the interagency one-form?

- Second tasking – Is there an interest from industry in batch filing? There are software providers out there who expressed interest in doing batch filings

- Third tasking – Do we like Identrust as the authentication vehicle; are there other options?

- Different organizations have different ideas on these topics. The WG collected the concerns of Industry through the use of a Survey to obtain hard data

- The best method to get this data was to survey the DTAG membership which is a cross section of the defense industry consisting of consultants, small companies, large companies, associations, universities etc. The survey was sent to respective Compliance and IT departments within companies represented on the DTAG

WG1 Presentation:

- Ms. Pritula – Introduction of tasking. Tasking had to be updated due to concerns with financial questions that required approval from OMB. Intent is to introduce financial data analysis at the next Plenary in May, but subject to OMB approval and timing.

- WG Chairs stated there were challenges with the wording and understanding of the survey and a revised version will be issued – the revised version hopefully will include a cost analysis segment.

- Ms. Pritula presented the survey results for first tasking and requested that the U.S. Government consider providing support and training during the implementation to the Interagency One Form. BIS was identified as a possible good resource for training.

- Ms. Farhat presented the survey results for the second and third taskings and suggested that the U.S. Government consider the following comments associated with the one-interagency form:

  o Government agencies agree on the elements and definitions of the elements listed on the proposed one-interagency form.

  o Proposes that the implementation of the interagency form and Department of Defense Trade one form do not occur simultaneously.

  o The implementation of the forms occurs in coordination (e.g. elements, reviews, etc.).

  o A clear execution plan occurs in coordination with industry, user manuals be developed with input from industry users to ensure software providers have a clear plan and direction – allow industry to test the new system/process.

  o Requests respectfully that there be a long lead time without a shutdown of the old forms' process to ensure a smooth transition.

- Ms. Farhat stated that the survey results presented will be a summary and that details will be provided to the DTAG via the White Paper upon the WG's completion of the tasking.

- Ms. Farhat added to the comment related to challenges with the survey, noting that "manual submission" wording on one of the survey questions caused confusion and may have skewed survey responses and subsequent results.

- This tasking will report further at the next plenary.

- Comments:

  o Mr. Dearth: Alternate Designated Official, thanked this WG for taking on this difficult subject matter (IT) – this is a preliminary effort.

  o Mr. Dearth stated that a White Paper associated with this WG will not be complete until after the next Plenary where it will examine further questions and survey results.

  o Mr. Dearth announced that GSA decided to "sunset" the ACES SHA-256 Digital Certifications at the end of June 2018. Two years will be provided for a transition period. DDTC is reviewing approved options for authentication.

  o Mr. Dearth is very interested in hearing the DTAG's recommendation for replacement options at the next DTAG Plenary.

WG1 Q&A:

- Mr. Josh Fitzhugh – Clifford Chance, audience member, suggested to the DTAG that, when thinking about authentication, please be mindful of companies outside the United States; particularly, with regards to access to Commerce/BIS licensing system. He

asked how will the system account for foreign company access?

- o Mr. Ed Pritchard, IT Program Manager, DDTC – attending for Ms. Wrege (Chief Information Officer) – acknowledged Mr. Fitzhugh's comment and responded that DDTC is looking into the different authentication processes; including how to address Mr. Fitzhugh's concern.

- Mr. John Lindsay Poland and another gentleman (later identified as a father of a kidnapping victim) from the audience commented on the batch filing process and stated that the system does not take into account end use controls; specifically with end use in Mexico. Mr. Poland stated that both gentlemen traveled across the country to Washington, DC to make a statement about illegal firearms making their way to Mexico, which reach unauthorized groups, whom amongst other activities kidnap innocent Mexican civilians. The gentlemen addressed A/DAS Miller and asked that the Department review its end-use program on firearms in Mexico.

- Mr. Wade respectfully addressed the gentlemen and audience and stated that the question and answer segment of the Plenary are intended to be related to the specific WG's presentations and that other statements should be submitted in writing to DDTC.

- Mr. Poland responded by stating that the Federal Register Notice indicates that statements "may be" submitted in writing however this was not requirement. Next, the gentleman accompanying Mr. Poland showed the audience a photo of his son, claiming that his son was a kidnaping victim of said unauthorized groups (mentioned above). Mr. Poland next presented to A/DAS Miller a white binder containing a statement and petition addressed to Secretary of State Tillerson that reportedly 7600 people signed, urging the U.S. State Department to suspend sales of firearms to Mexico until adequate end use controls are in place.

- The DTAG and A/DAS Miller accepted the white binder containing the statement and signed petitions addressed to Secretary of State Tillerson and a CD labeled "Where the Guns Go – U.S. Policy and Human Rights in Mexico."

- Mr. Bill Schmieder, DTAG Member, commented on the need for a harmonized form (with respect to electronic filings) with different agencies and raised the question of how each agency can be expected to meet their statutory mission and harmonization of requirements.

- Ms. Pritula responded that the DTAG WG focused on the tasking presented by DDTC, which captured industry viewpoints on the impact of a one-form filing, but did not involve engagement with all potentially impacted agencies.

- Mr. Dearth noted that this DTAG tasking is directed more at DDTC but, if related to the tasking topic, the DTAG can include additional comments in the formal report from DTAG to DDTC.

- Ms. Lorraine Wall, Sr. Licensing Officer, Elbit Systems of America, asked if the WG's survey (questionnaire) used to solicit input from the entire DTAG would be sent out for public comment.

- Ms. Farhat explained that the WG's survey was not available for public comment;

rather, it was only for the DTAG's internal use.

- Mr. Wade and Ms. Dynes added: If the public has any particular comments or recommendations for the WG in general, they can submit comments to Ms. Mulla, DTAG Recorder at fmulla@moog.com.

DTAG moved for a vote of approval of the presentation; the vote passed unanimously.

The One-Form Electronic Filing Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the DTAG tab) at a later date.

Defense Services Definition Working Group 2 Presentation

Mr. Wade introduced the Defense Services Definition Working Group chaired by Messrs. Bryon Angvall and Peter Lichtenbaum. A copy of the slide presentation can be found on the DDTC webpage (under the DTAG tab)

The Working Group tasking summary:

1. DDTC requests DTAG identify key areas of concern with the proposed definition in 80 Fed. Reg. 31525 (Jun. 3, 2015). Please include any aspects of the proposed definition that would constitute positive change, and make recommendations as appropriate.

WG2 Presentation:

Many individuals from different companies participated in this working group. Mr. Lichtenbaum stated that revision definition of "defense services" is of high interest to Industry. Mr. Lichtenbaum expressed gratitude to DDTC for their support throughout the group's research of the tasking.

- Mr. Angvall provided the Introduction, an overview of the Tasking, and the Guiding Principles.

- Mr. Lichtenbaum took over with providing the Positive Aspects of the 2015 Proposal, key concerns with the 2015 Proposal, and the current DTAG Proposal structured as a "Catch and Release" process. Mr. Lichtenbaum stated that the tasking groups proposed definition was similar in supporting a "catch and release" definition.

- Mr. Angvall explained why the "integration" vs. "installation" ITAR definitions become critical to the "defense service" definition.

- Review of Various Definitions –

  o DTAG could use a definition for "combat operations" – possibly a future tasking. There is a military dictionary of terms published by the DoD as a possible resource (refer to: DoD Dictionary of Military and Associated Terms, last published February 2017).

- Key points on Catch –

  o Catch and Release relies on the actual use of technical data (call out word: identifiable).

- Key points on Release –

  o Definition of Public Domain could impact what is done with regards to defense services.

- Potential follow-on tasking's – combat operations definition, services related to 600 series, etc.

- Mr. Dearth commented that "Reference Slides" for this Group can be included in the formal submission. Mr. Wade conveyed that the slides are included.

Comment:

- Mr. Dearth – thanked this Group – DDTC has gone through 3 rules for this definition and this Working Group has given them something to chew on

WG2 Q&A:

- Mr. Fitzhugh – Clifford Chance, audience member, noted that developing an appropriate definition of a "defense service" has been a long road. He asked whether any consideration has been given to the perspective of defining a defense service as anything having to do with military activities and then to include a number of exemptions, such as for NATO countries? Also, maybe attention should be given to the licensing and registration side instead of trying to tackle this complex definition (e.g., 126.1 countries)

  o Mr. Angvall and Mr. Lichtenbaum agreed that the definition is complex and it does need to be addressed from all angles, which the group has attempted to review.

  o Mr. Lichtenbaum also noted that under the AECA there can be problems in developing "country-wide" exceptions, unless otherwise addressed statutorily.

- Ms. Mary Beran, Associate Director, Office of Research Integrity Assurance, Georgia Institute of Technology, audience member commented on a statement made during the presentation that "no defense services exist for 600 series or EAR items" and asked whether that statement is correct?

  o Mr. Lichtenbaum explained that the Commerce Department/EAR does not regulate defense services and that, under the ITAR, there needs to be a defense article involved in order for defense services to be provided.

  o Mr. Angvall added that the involvement of Public Domain technology alone does not mean there are no defense services if it relates to a defense article. One should ask whether the information relates to a defense article.

DTAG moved for a vote of approval on the presentation; the vote passed with one opposed.

The Defense Services Definition Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the DTAG tab) at a later date.

Next, Working Group 4 presented before WG3 (due to timing and complexity of this subject matter)

Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group 4 Presentation

Mr. Wade introduced the Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group 4 chaired by Mr. Jeff Merrell and Ms. Candace Goforth. A copy of the slide presentation can be found on the DDTC webpage (under the DTAG tab).

The Working Group tasking summary:

1. DDTC requests DTAG examine the challenges of compliance with the current rules on releases of technical data to foreign dual-nationals and identify alternative options which sufficiently facilitate risk assessment and risk mitigation.

WG4 Presentation:

- Ms. Goforth provided the introduction, including an explanation of the tasking, derivative topics identified, and the full scope of topics examined

    o Ms. Goforth provided an overview of the first three topics examined, as identified in the presentation

    o Topic 1: Ms. Goforth explained the research conducted by the WG in analyzing the use of the terms "citizenship," "nationality" and "permanent residence" under the ITAR and noted the challenges presented to industry when analyzing and dealing with the word "nationality", particularly with companies' Human Resources departments; thus, the WG proposes using the term "Foreign Person" consistently throughout the ITAR where appropriate, instead of using the terms "national" or "nationality."

    o In addition, WG4 proposes clarifying changes to the ITAR definitions of U.S. Persons and Foreign Person to include references to "citizen" for clarity and consistency with the AECA.

    o Topic 2: The WG also examined the use of the terms "dual national" and "third country national." As a result of its review, the WG believes that the term "Foreign Person" should be used in the ITAR rather than those terms as it adequately addresses these terms. The White Paper will include an illustration on how the ITAR can replace such terms, where appropriate, and how the exemption at ITAR §126.18 should be revised.

    o Topic 3: The WG also examined challenges experienced by industry when analyzing the requirements under ITAR §126.1. The WG noted that §126.18(c)(2) authorizes non-U.S. companies to utilize certain vetting procedures to evaluate potential access by its employees but focuses on §126.1(d)(1) countries. There is no mention or guidance related to §126.1(d)(2) which also implements a policy of denial with respect to certain countries.

- Mr. Merrell next presented Topic 4

- o Mr. Merrell elaborated on the need for better guidance and clarification for foreign companies to assist their understanding of the ITAR. Understanding is key. With respect to evaluating their workforce in connection with ITAR compliance, many of the approaches previously used were considered inherently discriminatory and illegal in certain countries.

- o Since 2016, the ITAR has focused on citizenship and permanent residency, rather than place of birth, which has helped the situation. However, providing guidance on "how" to meet the current ITAR requirements would be extremely helpful for non-U.S. companies.

- o Mr. Merrell next explained some of the challenges that continue to exist for non-U.S. companies in their efforts to comply with the ITAR, including limits on being able to collect, use and/or retain personal information, the ability to share such personal information outside their country (*e.g.*, per EU and local regulations), and understanding what documentation is appropriate to confirm an individual's citizenship or permanent residency, and ITAR differences in the treatment of "regular" versus temporary employees.

- o Key recommendation: consider means to reduce confusion, streamlined version of ITAR 126.18(c)(2), which does not require a Government to Government Agreement, consider the usefulness of vetting individuals based on ties to 126.1 countries rather than citizenship or nationality, and the usefulness of companies ability to control access through an individual Technology Control Plan.

- Ms. Goforth next presented Topic 5

  - o Topic 5 – U.S. Person versus Foreign Person Requirements and Recommendations.

  - o Ms. Goforth explained the current ITAR differences in how U.S. and non-U.S. companies are able to evaluate and manage ITAR compliance with respect to their employees.

  - o Under the ITAR, a U.S. company must obtain a DSP-5 export license to employ a Foreign Person.

  - o A non-U.S. company is authorized to use ITAR 126.18 to re-export technical data to a Foreign Person, which seems to place more trust in a non-U.S. company than in a U.S. company.

  - o However, there is no parallel authorized approach for U.S. companies. The WG recommends that the ITAR be revised to provide U.S. companies with a companion exemption for use by U.S. Companies, where the same vetting procedures as foreign companies can be implemented.

- Next, Ms. Goforth presented the conclusions from the WG, which focused on:

  - o consistent use of the term "Foreign Person" throughout the ITAR (versus "national" or other "nationality" based terms).

  - o a recommendation that DDTC reassess the policy that a person is associated with all citizenships (even those which persons no longer hold).

- o clarifications to the definitions of U.S. Person and Foreign Person, and
- o a recommendation for a stand-alone exemption for U.S. company employment of Foreign Persons (similar to the 126.18 exemption available to non-U.S. companies).

WG4 Q&A:

- Mr. James Bartlett, DTAG Member – did not agree with all of the conclusions of this Working Group. His position is that the term Foreign Person should be changed to Non-U.S. Person throughout the ITAR. Mr. Bartlett stated that this approach would not present a problem under the AECA.

    - o Ms. Goforth commented that the Working Group did debate this idea long and hard and thinks it is definitely something to consider further

- Ms. Beran, Georgia Institute of Technology, audience member – commented on the 126.1 "affiliation" – encourage using another word other than affiliation – may lead to confusion.

DTAG moved for a vote of approval of the presentation; the vote passed with one opposed.

The Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the DTAG tab) at a later date.

Manufacturing Definition Working Group 3 Presentation

Mr. Wade introduced the Manufacturing Definition Working Group 3 chaired by Messrs. Ari Novis and Brandt Pasco. A copy of the slide presentation can be found on the DDTC webpage (under the DTAG tab).

The Working Group tasking summary:

1. Considering the possibility of revisions of Cat I-III and removal of most commercial firearms and related activities from the ITAR, DDTC requests DTAG to review and provide feedback to accurately and effectively define "manufacturing" (and distinguish from other related activities like assembly, integration, installment, various services) for remaining defense articles and services.

WG3 Presentation:

Mr. Novis and Mr. Pasco presented the following:

- The AECA and ITAR do not define "manufacture", and the EAR and Wassenaar only list it as a subset of "production." In July of 2016, DDTC provided guidance for firearms manufacturers, differentiating between "manufacturer" and "gunsmith." While the detailed policy guidance was specifically restricted to Categories I and II, the general guidance is illustrative to manufacturing as an overall process.

- The proposed concept is to define "manufacture" as a subset of the overall process of producing a defense article. "Manufacture" would be those processes that materially

change the item and are not readily reversible. The proposed definition identified "manufacture" as fabrication and permanent assembly (also defined), as they materially change the item. The term "production" would be defined as activities and processes including "manufacture," and all other processes necessary to create a finished defense article, such as testing, inspection, and quality assurance.

- Mr. Novis explained that the term "manufacture" in its various forms (*e.g.*, "manufacturing," "manufacturer," etc.) and the related term "production" occur numerous times in the ITAR in various contexts. In order to retain a workable scope, the Working Group concentrated on creating a definition specific to Part 122 (Registration) for the term "manufacturer." The WG presented modified text with a definition of "manufacturer" added as a note to subsections (a) and (b) of §122.1.

- The Working Group did review the ITAR for applicability of the proposed definitions, and will provide suggestions to update the ITAR in the White Paper. The details were determined to be beyond the scope of the presentation. As implementation of the definitions throughout the ITAR would require additional study and discussion with DDTC, it was recommended this be considered as a future Tasking.

WG3 Q&A:

- No Questions

DTAG moved for a vote of approval of the presentation; the vote passed unanimously.

The Manufacturing Definition Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the DTAG tab) at a later date.

Wrap-Up and Concluding Remarks

Mr. Wade led the **Wrap-Up** discussion.

Send questions / comments to both: fmulla@moog.com and DTAG@state.gov

March 1, 2018 is the deadline for additional Q&A by the public.

DDTC will publish the DTAG presentations, Plenary Meeting Minutes and White Papers on its website in short order.

Plenary Meeting concluded at 3:51pm.

Meeting minutes were recorded by Ms. Fran Mulla.