Defense Trade Advisory Group (DTAG) Plenary Meeting Minutes
September 8, 2017
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
- Manufacturing Definition Working Group 3
- Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group 4
- 10-Year Standard for Agreement Expiration Date Working Group 5
- Wrap-up

Introductory Remarks by Bill Wade, DTAG Chair

Bill Wade, DTAG Chair brought the meeting to order at 1:02 pm, welcomed the public. Mr. Wade was joined on the podium by Andrea Fekkes Dynes, DTAG Vice Chair, and Sandra Cross, DTAG Recorder. The DTAG members introduced themselves and identified the Working Groups they supported. The DTAG Charter changed in 2016 to accommodate the Working Group model and the taskings received.

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 Sandra Cross, DTAG Recorder at Sandra.cross@hii-co.com.

Bill Wade introduced Deputy Assistant Secretary (DAS) Brian Nilsson, State Department, Defense Trade Controls Directorate of Defense Trade Controls (DDTC) and Designated Federal Official for the DTAG, who provided remarks to the DTAG membership and audience.

Remarks by Brian Nilsson, Deputy Assistant Secretary, Defense Trade Controls

DAS Nilsson expressed appreciation of the work completed by the DTAG. Due to Hurricane Irma, a few members were unable to attend the Plenary. DAS Nilsson apologized for having the Plenary on a Friday afternoon. The next DTAG Plenary meeting will be December 7, 2017 which will be on a Thursday.

DAS Nilsson provided an update on the DDTC. This past year, DDTC was able to deal with a surge of activity and were largely successful. The last four USML categories (apart from Categories I-III) were updated and finished. In January of this year, DDTC was able to take a step back to assess current standing. With the new Administration, a streamlining effort began through various executive orders such as EO 13771 dated January 30, 2017, which requires that any new regulation published requires the removal of two current regulations (DDTC has a foreign policy exemption from this requirement) as well as a second executive order EO 13777 dated February 24, 2017, which requires the designation of a regulatory reform task force point person. DDTC is supporting this effort even though they are exempt. The Department's Working Group is chaired by the Deputy Secretary and several ideas have surfaced out of this effort.

DDTC is subject to current White House guidance that any new regulations to be published must be approved by a presidential appointee or their designee; for DDTC this is either the Secretary or Deputy Secretary of State. As an example, DDTC's publication last week of the Category XI(b) extension required the signature of the Secretary of State.

DAS Nilsson explained that any broad interpretive guidance is also caught by the guidance document and requires this higher level approval process. In this regard, there may be several advisory opinions and general correspondence caught. However, some pending cases are company specific, and DDTC is working on getting these released as they do not have broad applications industry-wide. Industry should be aware that some pending advisory opinions and general correspondence requests may need Secretary approval.

DAS Nilsson provided general statistics. There were roughly 42,000 licenses processed last year. It is projected to be around 39,000 for this year. USML Category XII going into effect at the end of 2016 is a reason for the drop in cases. However, there has been an up-tick in Category XIV and XVIII cases. The language in Category XIV(b) previously led to misunderstanding and rewriting it has provided better guidance to industry.

In the Commodity Jurisdiction (CJ) world, DDTC expects roughly 700 CJs this year. 744 CJ requests were received last year. The peak submissions for CJs occurred in 2012. Generally, these numbers are moving in the right direction as better guidance is provided to industry, leading to fewer companies coming in for reviews. The ones received as of late are harder cases.

The number of Voluntary Disclosures received this year is on path to reach about 825. This number is down from the peak in 2012 which had over 2,000 submissions. Like the CJs, the current submissions are harder and more complicated cases. The internal disclosures triage working group at DDTC has pulled together recommendations for DAS Nilsson, some of which are based on prior recommendations from the DTAG.

There are a number of different rules currently in process, one is a notice of inquiry requesting public comments on changes recommended for USML Categories V, X, and XI. We are seeing problems in these Categories so have interagency agreement to prioritize them next for review. §126.4 has been drafted and remains high on the list to publish and is currently pending in departmental clearances with one bureau outstanding. The rule will then go to OMB for review and clearance for publication.

DAS Nilsson also identified that they have drafted a new exemption to allow for the temporary export of hardware to be returned back to the original foreign manufacturer for repair and maintenance. This was something the DTAG recommended (*see November 28, 2012 Plenary OEM presentation*).

DAS Nilsson was excited to inform the audience there is movement for Categories I, II and III. These categories have been complicated for the last five years. Today's complications include BIS being subject to EO 13771, and therefore moving things from the USML to the EAR is

difficult but they will get there eventually. It was estimated that Categories I, II and III will equate to 30% of DDTC's licensing volume.

DDTC spent time with interagency reviews on the public comments in response to the notice of inquiry on USML Categories VI, VII and XIII. Category XIII in particular needed a lot of work. The assigned technical working group has not finished their work yet, but, when they do, the proposed rules can be written. All of these Categories are on trajectory to be completed by the end of the year. Next year, DDTC will turn to defense services. They will get inputs today from the DTAG on this subject. Also, they will look to deal with U.S. persons abroad and definitions.

DDTC is participating with other departments and agencies on an Unmanned Aerial Vehicle (UAV) export policy review utilizing the policy issued in 2015. This is the first export control policy review occurring under this Administration. They are working with interagency partners on what the controls might look like under revisions in the Missile Technology Control Regime (MTCR) Annex; specifically, whether certain UAVs should be moved out of MTCR Category I and moved to Category II. There have been roundtable discussions with industry on this subject. A white paper will be provided to the MTCR. The MTCR needs consensus to make a change. They will be meeting in October. A team will be going to the MTCR to discuss the white paper and potential changes.

Dialogue regarding the UK treaty has occurred at the Secretary level with the UK Government to facilitate defense trade between U.S. and UK as the treaty has not been well used. The Australia treaty has been used more than the UK treaty. The UK has provided suggestions to make changes to the treaty to facilitate more usage. A task force between DOD and DOS was created to facilitate communications to make improvements. A tiger team finished off a 60 day review in June with their UK counterparts which yielded a robust list of things to improve. Michael Laychak, Deputy Director, Defense Technology Security Administration and DAS Nilsson spent time in the UK on this subject. Post Export Control Reform, DDTC has seen a drop in submissions to DDTC for end use in the UK with an expectation of a 90% drop off in licenses once the firearm categories are revised.

Work is in progress regarding requirements in the National Defense Authorization Act (NDAA). The UK and Australia were added to the national industrial base. The NDAA requires that the Secretary of Defense submit a report by January 2018 on possible changes, including recommended changes to the treaties to make them more useful.

The National Trade Council is in the process of coordinating a review of U.S. export policy on suppressors and silencers. Currently approvals are provided to only governments, militaries and police.

Internally, DDTC is looking at better ways to conduct their business. They are considering large scale changes that may help industry to comply with the regulations more easily and for DDTC to achieve their work. The White House has solicited ideas. DDTC worked with DTSA, RSAT, BIS and others to brainstorm to collectively offer suggestions. One such idea is a wholesale rewrite of the ITAR; the idea being that all the changes made over the last 8 years were made to specific entries in the ITAR and not to the regulations as a whole. Generally, regulations are

rewritten every 15 years. The ITAR has not seen rewriting since 1984, and the EAR's last major change occurred in 1996. Internal working groups are tasked with identifying changes. One change in particular is to move like items to be all in one place (for example, moving definitions to one place). They are also looking to create more decision-logic tree application of the regulations. Another working group is reviewing agreements. In the initial regulation change no policy changes are expected, just a reordering of the ITAR. They will be looking back at previously issued advisory opinions and GCs to determine guidance provided individually to companies that should otherwise be captured in the ITAR. The definitions section will include a new definition of manufacturing which is why it was tasked to the DTAG. This section will also include a new defense services definition. Agreements officers have been going through the guidelines and identified what actually needs to be in the guidelines versus what would best be in the regulations. Overall, the question on whether there is a need for agreements guidelines is being assessed and these changes will be incorporated into the ITAR. A section by section analysis of what the ITAR should say is underway. There will still be Export Control Reform (ECR) rules changes that need to happen but they won't be called ECR anymore. The ITAR is expected to be shortened, at least initially, and is intended to be easier for small companies and academia to understand the requirements. If phase 3 of ECR is implemented, the revised ITAR structure will be more similar to the BIS structure of the EAR and will lend itself to combining the agencies' regulations. There will be a public process to allow for feedback.

DECCS has had a lot of input from industry. It is expected to simplify things and be streamlined. DECCS will be deployed into the U.S. Government cloud. It will act as the single platform to process licenses and replace all the legacy systems. These legacy systems are in varying states of repair and need to be replaced. It is taking more work to maintain the legacy systems even while preparing to transition off those systems, resulting in delays of about 6 months. The first target date was June, but now the trajectory is for completion in December.

DAS Nilsson found that when he got to DDTC, ECR was not fully briefed out broadly within the Directorate. A lot of the internal work is DDTC looking inward and asking what would you do to make this system better? Additionally, they are training internally, 40 volunteers joined a working group to develop recommendations on strategic outreach, internal training, and knowledge management. The working group is now split into 3 teams and have provided DAS Nilsson recommendations. An outreach coordinator will be designated. Also to be established is a knowledge management steering committee to identify how best to use their resources. For example, collecting the most common questions going into the response team. These efforts will help DDTC to get out of a reactionary mode.

There is a current shortage of staffing resources at DDTC so the efforts already underway within the Directorate will help find efficiencies. DAS Nilsson identified with sadness the departure of Policy Director Ed Peartree whose last day was today as he is leaving to take a job within industry. Sarah Heidema is acting Director of Policy. Arthur Shulman continues to be acting Director of Compliance. Tony Dearth has been acting in the role of Chief of Staff. Terry Davis is acting Director for Licensing. The Department has submitted an outline plan for departmental reorganization to the White House. It is unclear how it will impact DDTC directly. The plan will need to go through OMB and Congress. Staffing is expected to remain the same through 2018. DDTC is looking at informal directorate restructuring by putting people into teams.

Questions posed to DAS Nilsson.

- William Schneider, DTAG member – Question regarding the Executive Order on the defense industrial base dealing with allies. *DAS Nilsson response*: State is not named in the Executive Order as a member of the interagency team looking at these issues but has engaged with DOD and White House to ensure different lines of effort are in sync. They are also asking for State Department to be included in the review.
- Kimberly Pritula, DTAG member – Question regarding whether the interim rule for USML Categories I, II and III is on track. *DAS Nilsson response*: The White House has determined that DDTC and BIS will be doing proposed rules instead of interim rules. The interagency was considering an interim final rule allowing for public comment during the 180 day delayed effective date period but will move to the proposed rule. This will still allow a public comment period. There will be a second final rule after considering the public comments and the Sec. 38(f) will be submitted to Congress at that time. Will ask as part of the proposed rule whether industry needs 180 days to properly transition. Transition of items from State to Commerce will be pushed to 2018.
- Kimberly Pritula, DTAG member - second question – Question regarding whether the Department of Commerce will be able to publish their rule on transitioning USML Categories I, II and III into the EAR in advance. *DAS Nilsson response*: This is still under consideration because Commerce is not exempt from the Executive Orders on regulation reduction. Commerce will potentially need to identify which 2 regulations they can eliminate in order to receive items currently in these Categories.
- Kimberly Pritula, DTAG member – follow-up question - Would it help if industry expressed interest in an interim final rule? *DAS Nilsson response*: Leave that to you in industry to decide.
- Jim Bartlett, DTAG member – Question regarding the time frame for wholesale rewrite of ITAR. *DAS Nilsson response*: It has not been socialized outside the Department yet.
- Jim Bartlett, DTAG member – follow-up - Offered that the DTAG could serve the same function as the RPTAC (the BIS Regulations and Procedures Technical Advisory Committee) and review changes in advance. *DAS Nilsson response*: DDTC is still unable to share the draft documents with the DTAG due to FACA limitations. Not as nimble as the use of the RPTAC. DDTC may benefit from this level of relationship, but unable to find a method to drop the document to the DTAG.
- Brandt Pasco, DTAG member – offered to provide support to DDTC for a week. *No USG response.*
- Jessica Blum, audience member, Accenture Federal Services – Question regarding IT guidance on the cloud and IT access controls. *Karen Wrege, DDTC Chief Information Officer response:* Putting ITAR data in the cloud is a policy matter and did not believe her question related to deploying DDTC's IT system. *DAS Nilsson response*: DDTC has worked on this already, specifically on what constitutes an export. DDTC did not include this in the final definitions rule as it needed more work. That is a regulatory matter that will go out for public comment. Probably not until 2019. This will not be touched in the definitions rewrite section/reorganization.

- Jenny Hahn, audience member, FD Associates – Comment regarding whether there has been any discussions on the cloud and the ITAR related to the release of handling data in line with the DFAR cybersecurity rule.

One-Form Electronic Filing Working Group 1 Presentation

Bill Wade introduced the One-Form Electronic Filing Working Group chaired by Ashley Farhat and 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? If so, how does a cost-benefit analysis support this recommendation?
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 and does a cost-benefit analysis support this recommendation?
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 and does a cost-benefit analysis support this recommendation?

Key items discussed:

- This was a small Working Group (WG) which was supported greatly by DDTC's Chief Information Officer, Karen Wrege. A great emphasis of the cost involved for industry for license submissions was a focus of the WG. There were three independent taskings and the WG will give 3 individual responses.
- 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?
- The WG will look further into these items. Different organizations have different ideas on how to protect their information. The WG will collect the concerns of industry.
- The WG approach requires that they obtain hard data. The best method to get this data is to survey the DTAG membership which is cross section of the defense industry consisting of consultants, small companies, large companies, associations, universities etc. The survey will go to them and their IT departments.
- Recommendations will be reported out in the December plenary and will include an overview of the survey results. Trade association members will be able to send to their association members but will not go to the public. Those that are consultants or attorneys will not send to their clients.

- The survey will ask basic demographic information; it is 38 questions right now. Some are free-form fields. They will be looking for cost estimates. The survey is under review by DDTC right now and it may change.
- The survey formation was developed without insight into what the interagency form looks like. The survey results will be difficult to quantify the cost impact of implementation without seeing the form.
- The initial results should give cost estimates to help guide DDTC in their effort as well as know which demographic grouping will be impacted the most.

Questions posed to the One-Form Electronic Filing Working Group

- Karen Wrege, DDTC Chief Information Officer – Expressed thanks for this WG efforts. Agrees it would be easier to give the DTAG a better sense of what the one-forms will look like. She will take this back to her colleagues at BIS to determine feasibility of sharing the forms in advance to DTAG members. On soliciting information from the public, they may be able to broaden the survey recipients. The more results and data they get the better. Cost/benefit analysis is really important for her to understand how it impacts industry. Better understand the magnitude of costs across industry. This data will help with DDTC roadmap. She has reviewed the questionnaire 4-5 times already. The legal folks at DDTC need to look at it as well as BIS and OFAC. Initial review shows it is a good questionnaire but needs more reviewers.
- Tony Dearth, DDTC acting Chief of Staff - The DTAG members are part of the FACA, if you seek comments beyond DTAG members to their IT department or down into their companies, you are soliciting comments from the public. Questionnaire itself will be subject to expressed FOIA requirements and will be releasable. The end result, the FACA records will need all the survey data. Enhanced FOIA requirements, anyone in the public can ask for copies of FACA public records. Mr. Dearth can facilitate a meeting with the FACA attorneys if DTAG requires it.

DTAG moved for a vote of approval, 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). This will be available after the December plenary.

Defense Services Definition Working Group 2 Presentation

Bill Wade introduced the Defense Services Definition Working Group chaired by 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:

- 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.

Key items discussed:

- Very large WG, as there was a lot of interest in this topic. There will probably not be a consensus on this subject.
- The WG referenced the proposed rule of June 2015 on the definition of defense services.
- Taking a different approach than crafting a definition and tossing it into DDTC. The WG approach takes into consideration U.S. Government and industry thoughts.
- The WG recognizes it may not build a perfect definition for everyone. Looking for an 80% solution that we all can live with.
- Work plan for the WG will identify the most important issues and what the DTAG has done in the past and then move to a refinement of the definition. The text of the definition will be presented at the December plenary.
- Big issues to tackle:
    1. Narrow the definition but need to figure out where to draw the line. Will tackle using controlled data vs using uncontrolled data specifically when an action is not involving ITAR controlled tech data. Using this as an indicator as to where to draw the line. This might be a gauge.
    2. They will consider commercial products that have military systems installed on them, or ITAR items that only touch EAR parts that are incorporated into a military system. Example, changing the tire on the F18. Landing gear and tire are EAR. Is that a defense service? What is considered a defense service when just involving EAR products and EAR technical data?
    3. Flip side of that with EAR end items with ITAR products incorporated. The WG is trying to find a rule that will address those situations with a combination of tech data classifications and hardware involved. Striving for a black and white answer.
    4. The WG wants to understand where the U.S. Government is coming from. What are their concerns for national security, U.S. industrial base? This will help guide the WG discussion.
    5. Employing U.S. individuals by non U.S. persons. At what point does this person's activities trigger a defense service and need to get a license/register? Answering this is of great interest to foreign companies. May not be able to solve this but need to recognize them.
    6. Military training is a general portion of the definition. Is it military training when giving directions to the French military officer on how to get to Dupont Circle; is it or isn't it considered a defense service?
    7. The WG will try to pull together previous interpretations from over the years and collect them.
    8. Non-military training issues are different, for instance from a research community context, they can provide training on the use of the defense article that is useful in their research. How the lines are to be drawn in this environment when the military is not involved but rather they are providing training on how to use the article for research purposes. When does that rise to the level of a defense service?
    9. Is there a clear line to draw with differing maintenance levels? What is the level of maintenance the government cares about from a national security perspective?
    10. Non-U.S. made items under §124.8(5) brings up a challenge if there is U.S. person involvement that is determined to be a defense service to a foreign person. This is being reviewed by the WG for recommendations to limit the scope of the

potential ITAR "taint" to the non-U.S. item. This is also a concern of many foreign companies at this time given the recent DTAG task to review a registration fee/requirement for U.S. persons working abroad.

11. The WG considered several different types of structure for the defense services definition. How in-depth should the scope be in the regulations? Should all the policy deviations be dealt with inside the definition? This would lead to a long definition. Or potentially utilize a catch and release design coupled with exemptions to release companies for non-prohibited destinations (i.e. §126.1).
12. The WG will also address licensing of defense services under a DSP-5 vice a TAA and look at the potential recommendation of a defense service exemption.
13. §126.1 countries pose the most significant national security risks. Unfortunately many policy debates get framed through the §126.1 country lens and overly impact the majority of export activity. The WG is looking into making a distinction to separate out §126.1 countries and from all the rest of the countries. This will take the §126.1 'ceiling' away from the definition.

Questions posed to the Defense Services Definition Working Group.

- Rob Hart, DDTC – Provided commentary. On the second point regarding EAR parts incorporated in a USML product. Take into consideration a fighter jet, how many defense services engaged with dealing with the fighter jet? Is there a way to deal with changing a tire in a separate way? Doesn't want to get too far into tying the definition to providing technical data. How to handle the definition if the data is in their head, what is the origin of the data in their head? DDTC would have thought this was harder for industry to deal with. In favor, generally, for a catch and release method and the §126.1 considerations. *Peter Lichtenbaum response:* The WG plans to propose taking out the provision of technical data from defense services. Are you using technical data when doing the activity and not conveying the data? Will be discussed further in the WG. *Bryon Angvall response:* They'll look at situations like if one is using a manual on the table that is ITAR controlled. There is a general issue when you start talking about what's in your head; it gets harder to distinguish. Particularly if you are not teaching anyone, you are just doing a function. Then what's the national security interest there? There will need to be a balance of usability and practicality.
- Joyce Remington, BAE Systems – Question regarding the ITAR tainting activities and asked whether the WG is looking at licensing as they look at the definition? *Peter Lichtenbaum response:* Probably leave licensing for another day. Not within the scope of what DTAG has been asked to do. *Bryon Angvall response:* The WG may consider how this is framed within the regulations and consider how it will impact other parts of the ITAR but not make recommended changes.
- Joyce Remington, BAE Systems – second question – Will the WG take into consideration the definition of U.S. person, for example a U.S. person born to British parents while vacationing in Texas? *Peter Lichtenbaum response:* Don't believe this WG will be addressing this.
- Rob Hart, DDTC – Comment - for the purposes of the WG effort, bring forth those items that impact the project and forward to DDTC.

DTAG moved for a vote of approval, the vote passed unanimously.

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). This will be available after the December plenary.

Manufacturing Definition Working Group 3 Presentation

Bill Wade introduced the Manufacturing Definition Working Group 3 chaired by 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.

Key items discussed:

- The ITAR uses manufacturing or some like-deviation just under 200 instances. What context is the WG to look at? One global definition may not work as it impacts ITAR sections differently. The way the WG understood the task, was to focus on who needs to register as a manufacturer with DDTC. As this is an interim report, DDTC can adjust the direction of the WG.
- AECA references manufacturer. Some companies' activities may not be at the same level of interest to DDTC.
- Assumptions made by the WG:
    1. What is the definition of defense services? This does not include the production of unclassified technical data. Therefore only looking at tangible hardware defense articles and not incorporating technical data in this discussion and pitch to DDTC. Will not be addressed here.
- What is the intent of the registration? Primarily provide U.S. Government with information in the areas they have concern. Every manufacturer is potentially an exporter whether they know it or not. May have deemed exports or an international supply chain.
- Registration has negative impacts, it does not scale. If engaged in export activity a company must register. If many companies registering, may inundate DDTC with processing low level interest companies.
- It is unlikely that you have a manufacturing company that isn't also involved in exporting or importing.
- Approach taken by the WG is to have a catch and release method to apply manufacturer and the requirement to register:
    1. Who is it that is making a substantial change to a defense article and then who is released from the registration requirement? Release those that don't make a substantial change to defense articles analogous to the Customs definition of substantial transformation. The manufacturer is that which transforms something into a defense article.

2. Another option is to release companies from registering if they have X# of dollars of sales in defense articles per year.
3. Look at assembly type activity that is not deemed significant enough to require registration.
4. Manufacturing of simple components could also be a release option to explore.

- Substantial transformation is used by Customs to determine country of origin. An item undergoes a fundamental change that is significant from what it started out with. Adapt that definition to the ITAR. Differentiate between minor production to substantial manufacturing. The end item must be a defense article. Start with a defense article and create another defense article or start with non-ITAR controlled hardware and produce a defense article. Not a manufacturer if making a 600 series part.
- Conceptual language as the catch (provided in slides) and then list several examples of releases.
- Figure out what it is that we want to do and then conduct analysis on this. Would need to establish a new definition.
- The WG will run scenarios against the final recommendation. Those scenarios will be from a different industry perspective.
- Examples of simple assembly include manufacturers dealing with minor assemblies like circuit boards. Get a bag of parts, put them into a machine and out comes a chip. Is this simple assembly? Custom tooling houses, all they do is make tools like custom jigs. Some jigs are subject to the ITAR and some are not.
- The mom and pop shops concerns.
- Hobbyists are those people who may, for example, build rockets for their own interest.
- Performing an action on a defense article but not using any technical data to take that action should be left out.
- Other areas to explore, maintenance and repair. The WG feels a manufacturer creates something new. Simply reassembling and fixing an item is not manufacturing. Is depot level manufacturing? That is a point of discussion. It is not clear.
- Inadvertent design, is there a possibility that folks could inadvertently manufacture defense articles?
- Consider serial production vs. one-off production. When is a manufacturer manufacturing particularly if building custom-made ITAR-controlled items even if you only make one of those.
- Need to address the manufacturing of classified data.
- Eliminate the need for annual registration renewal if the data doesn't change.

Questions posed to the Manufacturing Definition Working Group.

- Sarah Heidema, acting Director of Policy - Question regarding if the registration fee was the barrier. *Brandt Pasco response:* The costs really relate to putting in a compliance program into their company and not necessarily the fee to register. This is an enormous deterrent. With registration comes a long 'tail' of needing personnel assigned to address compliance such as an Empowered Official, as well as, inside or outside counsel, etc. These costs can easily reach into a few hundred thousand dollars a year, dwarfing the $2,250 registration cost.
- DAS Nilsson - Comments – Likes the catch and release approach but they are looking more broadly on this topic. Is there a single definition of manufacturing and how do you

break it down? *Brandt Pasco response:* Talked about this extensively in the WG. One of the issues stemmed from the creation of specially designed. Manufacturing is a sub component of production. At times they are used as synonyms in the regulation.

- Rob Hart, DDTC - Comment – What is the reason to exclude low sales volume manufacturers? *Brandt Pasco response:* This tasking grew out of a previous tasking. Not capturing small businesses for registration that were not using DDTC services. Was this necessarily something that needed to continue? Unclear what DDTC does with the information of companies that don't utilize the services of DDTC in any other way; doesn't get a license. Understanding that could help the WG identify who needs to be registered. Then what level of manufacturing activity becomes sensitive enough that DDTC wants to know about that activity. This definition will capture that threshold. Would like to get that detail from DDTC prior to the next plenary session.
- Jessica Blum, Accenture Federal Services – Question regarding manufacturing classified data and registration requirement. If it is classified data, then must you be registered? *Brandt Pasco response:* It is an ambiguity. Entities producing unclassified do not need to be registered. The regulations are not explicit on whether if you only produce classified data that you must be registered. There are other government agencies that have cognizance over classified data. *Arthur Shulman, acting Director of Compliance responded:* The (b)(2) registration exemption is limited to those who SOLELY produce unclassified technical data .
- Dan Cook, DDTC – Comment – When small companies that don't make a lot of things and don't register but are then acquired by another party, particularly if the party is foreign, then DDTC gets a 60-day notice to determine if there are any issues DDTC needs to be concerned with particularly if the acquirer is a §126.1 entity.
- Arthur Shulman, acting Director of Compliance – Comment - The requirement to register as a manufacturer is statutory, how is that reflected in the WG deliberations? *Brandt Pasco response:* The statute doesn't define defense articles and leaves that interpretation open to the agency as it sees appropriate; same with manufacturer or manufacturing.

DTAG moved for a vote of approval, 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). This will be available after the December plenary.

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

Bill Wade introduced the Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group 4 chaired by Jeff Merrell and 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.

Key items discussed:

- This is one of the smaller WGs. This WG had a few discussions with DDTC to discuss the WG topics and to get clarity on the release of data to dual nationals and from which perspective - from a U.S. person or from a foreign party to their employees.
- No final determination yet from the WG and will provide more at the December plenary.
- Difficult to talk about compliance without a further look at the words and the definitions applied to them. Many of the terms involved with dual nationals are not defined in the ITAR. When you say nationality people may think of different coverage. Some of the foreign laws define nationality differently as well.
- Difficult for a foreign company when they have an employee who can access EAR items but not ITAR items.
- If an individual has multiple citizenships or has denounced one of their citizenships. U.S. persons who have dual nationality and reside in the foreign country of their second citizenship.
- 5 preliminary issues
    1. Looking at the definitions – citizenship, nationality, permanent residence, Some countries don't use these terms or have different standards
    2. Dual nationals vs third country national references is new with the advent of §124.16
    3. Handling individuals from §126.1 countries
    4. Local privacy laws
    5. Transfers from a U.S. person to a foreign person under §126.18
- The WG looked at the AECA for a definition of foreign person which yielded that it is not a citizen or national.
- Nationality means one thing to certain people. Also, nationality is used a lot in the ITAR.
- New definitions of export and re-export uses the term citizenship not nationality.
- Are they the same word or really meaning two different things? Nationality is based on citizenship, if you are foreign person you may not agree with the applicability of this meaning.
- Majority of citizenship is not granted at time of birth. The WG will look into this aspect as they formulate their recommendations in December.
- Also some countries once you become a citizen of their country their prior citizenships are not recognized.
- The WG also looked at the §126.1 impact. Cyprus for example is captured under §126.1, but the restrictions are applicable to the government only and not its citizens. Will take this into consideration as well.
- Privacy and anti-discrimination issues will be considered. §124.16 was implemented to avoid asking the question of nationality and citizenship. This is an issue that has been going on for quite some time.
- U.S. persons vs foreign person employment requirements, what areas can the burden be alleviated?
- The WG added an Issue 6 to the tasking. The regulatory burden of the administrative regime where foreign person must comply. Most companies have some program where

they screen employees. A lot of companies don't use §126.18. They may have NDAs that could be factored into the subject.

- One other thing that came out of WG discussion with the usage of scenarios and export situations. In reality, most foreign companies employ people who are not citizens of their country. The WG will use these export situations to apply to the WG discussions and how to deal with dual nationals. For example, seconded employees or the flow down to sublicensees to know their dual national status. Other scenarios and situations will include M&A efforts, or dealing with foreign governments and U.S. branches of foreign companies. Then there are the non-sales specific situations of intellectual property and data being transferred to foreign courts. There is also the situation of retired military personnel living abroad. Dealing with employees of U.S. companies that have branch offices and are not registered as a foreign company (e.g., U.S. company with a foreign parent and using cloud computing).
- All of these will be used as situations to flesh out the concerns and help draw the line.
- Next steps will be to look at the undefined terms and may possibly come up with definitions for DDTC to consider, building on prior DTAG efforts and prior DDTC Federal Register Notices that included draft definitions.
- Will need to reassess §126.1(d) countries and impact.

Questions were posed to the Exports, Re-exports and Foreign Citizenship/Permanent Residence Working Group.

- Jim Bartlett, DTAG member – Question regarding secondment of personnel. – A U.S. person working for a foreign person that comes back to the U.S. to sit in on a technical meeting, how this person is treated varies within industry. Should this person need a license? And should this be part of the WG's efforts. *DDTC response:* Generally yes.

DTAG moved for a vote of approval, the vote passed unanimously.

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). This will be available after the December plenary.

10-Year Standard for Agreement Expiration Date Working Group 5 Presentation

Bill Wade introduced the 10-Year Standard for Agreement Expiration Date Working Group 5 chaired by Tom Donovan and Sandra Cross. 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's assessment, including a cost-benefit analysis, of DDTC standardizing the expiration date for all new agreements to a fixed 10 year period from the date of initial approval.
2. Provide analysis of specific time-limit requirements associated with agreements identified in §124.4, §124.5, and §124.6, which will also impact specific clauses under §124.12(b) and §124.14(f).

Key items discussed:

- Initially one tasking came from DDTC. The WG talked to DDTC and allowed us to branch out into the second tasking.
- First task ties to the duration of agreements and how we do it today. Where expiration of agreements is tied to a standard month. Do we align more like a DSP approval where we align the 10 years from the date of issue?
- Approach taken by the WG was to review the regulations AECA, ITAR and elsewhere to determine if the monthly alignment is correct and if the 10 years correct. We made one assumption that the rule would apply to amendments as well, that they'd be approved to the same 10 year standard.
- Regulatory review, the WG found that the 10 year duration is not tied to the AECA and not identified in ITAR. It is in the agreement guidelines and used in FRNs like those used in support of ECR (cannot exceed more than 2 years prior to amendment to implement ECR). The WG found no legal requirement for 10 years.
- Finding out when things occurred in history helped shape the WG discussion. In the early '90s the expiration date of agreements were tied to contracts. Looking into the future the 10 year period changed where the WG understood the expiration timeframe came from a filing requirement within DDTC and how they conducted paperwork control.
- Fast forwarding to changes in 2004, expiration dates moved to the monthly expiration tied to company name from the December expiration date.
- The current state of affairs made it hard to do a full analysis. The environment made getting details difficult. Several factors in the environment: The regulatory changes of automating agreements, the requirement to rebaseline agreements, ECR forcing amendments or rebaselining. The WG didn't find a lot of examples of agreements making it to the 10 year mark to make any significant observations. Low volume made cost/benefit difficult to determine as well.
- Those identified for cost/benefits were negligible.
- The WG reached out to DTAG members and asked what they preferred. Most identified that they have become accustomed to when their agreements expire. They are able to plan and allocate resources to the timing of when their agreements expire. They can schedule assessments. Became a culture within industry.
- The benefit of having an agreement standard at less than 10 yields little benefit. If an agreement ever reaches the 10 years, the only reason to amend is to extend duration, no other reason. This is seen as a burden to both industry and DDTC. From this, the WG pondered whether expiration dates were even necessary at all.
- Regulatory changes are most likely going to drive an amendment anyway. Industry requirements will also require an amendment.
- Most exemptions don't have an expense date. In reality data flow isn't tied to the expiration. There is a framework that could work without requiring an expiration.
- Industry is still responsible to maintain records; this doesn't go away.
- If DDTC decides to go to a default 10 year, the general comfort level of the DTAG is to keep the system the way it is.
- Regarding duration, there is no identified legal requirement to have an expiration date. No cost/benefit identified to maintain this. DDTC will probably see the agreement amended at some point in a 10 year period. Recommend that DDTC consider eliminated a duration tied to agreement.

- Part 2 of the expanded tasking the WG looked at other time limit requirements to include §§124.4, 124.5 and 124.6. The WG worked with DTC to determine how they look at these requirements.
- Review of the regulatory requirements, the WG could not identify a regulatory requirement in the AECA for these reporting requirements; therefore, this is not a statutory requirement but clearly captured in the ITAR.
- The current state, there are four additional notifications by industry to DDTC and in turn more records for DDTC to file and collect. When looking at these requirements, the WG asked to find out how many agreements happened over the last 3 years. There is at least one document required for each agreement.
- The volume of paper notifications generated by these 3 ITAR citations is estimated to be in the upwards of 5,000 documents. This is considered a resource drain on industry AND the U.S. Government. Recordkeeping requirements grow for both sides.
- Notification requirements have different suspense timeframes: 30 days, 60 days, annually. The disparity in timeframes makes things difficult to monitor and keep track of for industry. They may miss some of these filings. This results in costs on resources to deal with the administrative violations and disclosures. Again a burden to both industry and DDTC.
- The DTAG back in 2015 specifically identified recommendations for administrative disclosures and possibly moving some of the burdens out of the ITAR.
- Recommendation –
    1. Eliminate the §124.4(a) requirement of filing a signed agreement and annual notification, align these to initial notification of initial export §123.22 requirements. Also remove reporting on the decisions to not to conclude. When a license is issued and not used it doesn't need to be returned much the same for licenses.
    2. DTAG recommended a check box system in DECCS that if clicked I've now notified DDTC that I've started to use the agreement. The DTAG previously discussed this aspect in DECCS at the March 30, 2017 plenary (*see those slides for more details*).

Questions posed to the 10-Year Standard for Agreement Expiration Date Working Group.

- CDR Michael "Sparky" Braun, DDTC – Question regarding whether not depositing signed agreements with DDTC would impact the foreign signatories from being informed of the approval limitations. *Thomas Donovan response:* It is the same obligation on an agreement as with a license, the provisos of that authorization are to be complied with.
- Other items that might be considered in future DTAG taskings:
    - DSP-73s and expiration dates needed
    - "In furtherance of" licenses for agreements
    - Technical data licenses and the necessity of 4 years term

DTAG moved for a vote of approval, the vote passed unanimously.

The 10-Year Standard for Agreement Expiration Date Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the DTAG tab).

Wrap-Up and Concluding Remarks

Bill Wade led the **Wrap-Up** discussion. Next DTAG will be in December.

September 22 is the deadline for additional Q&A by the public. Such comments should be sent to DTAG Recorder, Sandra Cross at Sandra.cross@hii-co.com. [No additional questions were received.]

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

Plenary Meeting concluded at 4:36 pm.

Meeting minutes recorded by Sandra Cross.