

Defense Trade Advisory Group (DTAG) Plenary Meeting Minutes
November 15, 2016
Meeting held at 1777 F Street, NW, Washington, DC 20006

Agenda:

- Welcome and introduction
- Regulatory Policy Working Group
- Licensing Working Group
- Compliance Working Group
- Information Technology Working Group
- 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 and introduced Andrea Fekkes Dynes, DTAG Vice Chair, and Sandra Cross, DTAG Recorder.

Bill Wade provided an overview of key aspects of the DTAG charter which is posted on the Directorate of Defense Trade Controls (DDTC) website.

Bill Wade introduced Brian Nilsson, State Department Deputy Assistant Secretary (DAS), Defense Trade Controls who provided remarks to the DTAG membership and audience. DAS Nilsson expressed his appreciation for the DTAG efforts on the current tasking to review past DTAG reports and prioritize what issues (past and new) continue to be relevant and need to be addressed in the future. DAS Nilsson noted the expanded DTAG membership (which increased from 45 to 52) and the establishment of new working groups (Regulatory/ Policy, Licensing, Compliance and IT) which are intended to work interactively with DDTC's parallel teams in the future.

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

DAS Nilsson advised on the current state of Export Control Reform (ECR) by outlining the status of several USML Categories updates and changes, specifically VIII, XII, XIV, XV, XVIII, and XIX.

Next, DAS Nilsson discussed the IT modernization efforts at DDTC and changes to its infrastructure. He reported that DDTC has twelve legacy IT systems that need replacement to be compliant with federal system requirements. He also outlined the changes to the Commodity Jurisdiction form and reminded that public comment is requested on several other forms (e.g., Registration Statement, voluntary disclosures, Advisory Opinion requests). DDTC is part of the International Trade Data System (ITDS) effort which will eventually discontinue all paper forms.

DAS Nilsson also provided an update on DDTC staffing and noted which personnel have been appointed to "acting" positions and which positions have an open requisition.

DAS Nilsson concluded his remarks by identifying those topics of interest and priorities under ECR.

- ITAR definitions (e.g., technical data, public domain, defense services);
- Government program license;
- License Exemptions (e.g., Section 126.4 and “replacement parts” exemptions);
- Brokering;
- Third party transfer process under FMS;
- Revamping the disclosure process;
- Focusing on improvements to licensing and agreements process; and
- Strategic outreach and training.

DAS Nilsson concluded his remarks by expressing his desire to revitalize the DTAG and find ways to work more proactively on issues (e.g., through working groups similar to the Department of Commerce Technical Advisory Committees or TACs), and need to continue to explore approaches that are consistent with legal authorizations.

Regulatory Policy Working Group Presentation

Bill Wade introduced the Regulatory Policy Working Group co-chaired by Greg Hill and Candace Goforth. A copy of the slide material can be found on the DDTC webpage (under the DTAG tab). Key items discussed:

- Review of previous DTAG reports (114 issues from 2003 to present);
- Identification of what issues have been completed;
- Identification of what issues remains unresolved and relevant (Key ITAR definitions – defense service, fundamental research, public domain, technical data and rules applicable to dual nationals and cloud computing);
- Identification of new issues that have emerged (9 issues, including how best to use the DTAG as an Advisory similar to the Commerce TACs);
- Methodology used to prioritize the issues;
- List of recommended priorities to be addressed (e.g., the 6 prior and 9 new issues);
- Potential creation of an I-TAG to work with Department of Commerce Industry Trade Advisory Committees (ITACs), as recommended in October 29, 2015 DTAG Plenary;
- More in-depth presentation on finalizing the definition of Defense Services. Definition remains overly broad and continues to have negative impact on industry post-ECR; and
- More in-depth presentation on regulatory interpretations of concern including Category XI(b) and (c), and systems versus software. These are examples of how interpretative differences can negatively impact both industry and the USG reviewers.

No questions were posed to the Regulatory Policy Working Group.

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

The Regulatory Policy Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the DTAG tab).

Licensing Working Group Presentation

Bill Wade introduced the Licensing Working Group co-chaired by Cindy Keefer and Bryon Angvall. A copy of the slide material can be found on the DDTC webpage (under the DTAG tab). Key items discussed:

- Past subjects previously reviewed by the DTAG that remain unresolved and relevant.
 - 126.4 license exemption - recommendation to make more clear and remove the ‘urgency’ requirement;
 - Program Licenses - recommendation to remove the limitation on countries, include enabling language in Memoranda of Understanding (MOUs) to cover projects, and potential for automation;
 - New license exemption for the temporary exports of hardware for servicing by the original foreign manufacturer (eliminate need for DSP-73s) similar to the EAR license exception “RPL”;
 - Spare parts exemption - for use in platforms previously approved for export (there are many parts still on the USML post-ECR).
- New Issues for consideration.
 - “Low-Hanging Fruit” or simple improvements focusing on:
 - Reduction in certain administrative requirements such as removal of the requirements to return DSP-5s, method to update licenses when party changes address, report on initial notification of data exports, and staffing of license requests “in furtherance of” Agreements (IFO licenses).
 - Proviso consultation with industry prior to issuing export authorization, in line with how Commerce/BIS processes licenses through SNAP-R.
 - Modification of FMS exemption 126.6 to remove the requirement to verify Letter of Offer and Acceptance and instead to rely upon the contract between the USG and the contractor, allow for the hand-carrying of hardware (rather than relying upon a pre-approved freight forwarder under a DSP-94), and, to clarify the applicability of the exemption to “pseudo FMS” cases.
 - Update the licensing requirements for USML Categories I, II, and III to allow industry to submit bulk licenses for commercial end-use rather than being purchase order based, allow caliber groupings, and expand eligible countries.
 - Improve licensing process flow and establish an escalation process for licensing issues particularly when there is a disagreement on the classification of an item.
 - Removal of requirements to obtain signatures on agreements (particularly by non-US governmental parties).

No questions were posed to the Licensing Working Group.

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

The Licensing Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the DTAG tab).

Remarks by Kevin Wolf, Assistant Secretary for Export Administration, Commerce

Bill Wade introduced Kevin Wolf, Assistant Secretary for Export Administration who offered a few words of thanks for DTAG efforts and his appreciation of all efforts and accomplishments in support of Export Control Reform during his term at Commerce to date.

Compliance Working Group Presentation

Bill Wade introduced the Compliance Working Group co-chaired by Giovanna Cinelli and Heather Sears. A copy of the slide material can be found on the DDTC webpage (under the DTAG tab). Key items discussed:

- Review of previous DTAG work (unresolved and still relevant) and identification of new topics related to compliance:
 - On-going work related to ECR, such as
 - DDTC internal process for handling and prioritizing voluntary disclosures;
 - electronic submission of voluntary disclosures, 126.1 notifications, Registration Statements and changes, and Advisory Opinion requests and rulings;
 - updates to ITAR definitions still pending;
 - development of Voluntary Disclosure guidance;
 - clarification of requirements applicable to cloud computing and exports of encrypted data; and
 - challenges relating to competing definitions and requirements by various USG agencies relating to “Controlled Unclassified Information”.
- Additional new issues identified and discussed included: updates to DDTC Compliance Guidelines, legal impediments to investigations and disclosures, and DOJ Guidelines on disclosures of export violations, proposed guidelines for DDTC’s Company Visit Program – Outreach (CVP-O), publication of aggravating and mitigating factors, and extraterritorial application of U.S. export control laws and regulations including the AECA and ITAR.
- Priorities suggested for DDTC consideration are (1) update the DDTC Compliance Guidelines; (2) publish mitigating factor guidelines; (3) request DTAG to prepare a draft White Paper on the legal impediments to investigations and disclosures; and (4) DDTC internal handling and prioritization of disclosures.

No questions were posed to the Compliance Working Group. One comment was provided by DTAG member Christine McGinn, who expressed the view that DTAG members would like to continue working with DDTC on the suggestions presented in the 2015 DTAG Plenary meeting regarding the handling and prioritization voluntary disclosures.

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

The Compliance Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the DTAG tab).

Information Technology Working Group Presentation

Bill Wade introduced the Information Technology Working Group co-chaired by Alexis Mitchell and Jeff Sammon. A copy of the slide material can be found on the DDTC webpage (under the DTAG tab). Key items discussed:

- Approach the IT Working Group undertook to evaluate IT issues, including
 - gathering relevant information from various USG and private sources and researching current USG IT systems;
 - review of past DTAG reports that remain unsolved and/or relevant, and found 23 separate discussion of IT and cyber recommendations, including past reports on recommendations for single electronic application, recommendation to publish CJ determinations; ability for system reports for user (for internal use); consideration of industry “business processes” in developing IT systems, DTRADE issues for non-US applicants; and
 - consideration and analysis of DDTC’s ongoing IT modernization effort (e.g., development of the Defense Export Control and Compliance System (DECCS)).
- For some IT topics, it is difficult for the DTAG to comment because it does not have access to the back end of the DECCS system to know.
- Recommendations and Priorities:
 - Continue to reach out to industry as the IT Modernization efforts continue;
 - Potential establishment of industry working groups beyond the DTAG;
 - Ability and time to develop interface applications with the new system;
 - New features such as search ability of previously issued licenses and aspects similar to those found in SNAP-R with two-way communications as well as status notifications;
 - Support the ITDS (temporary exports authorization) efforts; and
 - Continue to support the streamlining of CBP filings and eliminate non-essential requirements.

No questions were posed to the Information Technology Working Group.

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

The IT 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.

December 16 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.

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

DAS Nilsson provided closing comments to the meeting, stating that he will take the inputs from the DTAG Working Groups and follow-up with DTAG as soon as possible with new taskings and plans to set up coordination between the Working Groups.

Plenary Meeting concluded at 3:40 pm.

Meeting minutes recorded by Sandra Cross.