

Defense Trade Advisory Group (DTAG)

White Paper

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DTAG's Structure, Operations & Process Working Group:

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Purpose / Task:

DTAG Operations Question: Can DTAG function more quickly, with more informal interaction between DTAG officials and DTAG members, fewer formal responses, and more meetings (i.e., more like the BIS TACs)? Should DDTC, BIS, and DoD work together to establish a new "Interagency Defense Trade Advisory Group" (ID-TAG)?

- Answer: Yes
- DTAG would analyze the possibility of creating bodies similar to the BIS Technical Advisory Committees (TACs) within the current DTAG structure. The DTAG TACs would interface with existing BIS TACs, and also create the new ID-TAG. Achieving these goals could be accomplished in stages, thereby, realizing some of the benefits very quickly.
- The new interagency advisory group would be designated the Interagency *Defense* Trade Advisory Group (ID-TAG) rather than the Interagency Trade Advisory Group (*I-TAG*), because the group's interest would not include non-defense articles under BIS jurisdiction.

Statutes and Regulations:

1. Federal Advisory Committee Act (FACA), 5 U.S.C. App., creates standards for establishing, operating, and terminating advisory committees. FACA is administered by the Committee Management Secretariat of the U.S. General Services Administration. Excerpts:
 - a. Sec. 2(b)(2) - New advisory committees should be established only when they are determined to be essential and their number should be kept to the minimum necessary;

- b. Sec. 3.(2) - The term "advisory committee" means any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is -
 - (A) established by statute or reorganization plan, or
 - (B) established or utilized by the President, or
 - (C) established or utilized by one or more agencies, in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes
 - (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and
 - (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.
- c. Sec. 8 - Each agency head shall establish uniform administrative guidelines and management controls for advisory committees established by that agency, which shall be consistent with directives of the Administrator under section 7 and section 10. Each agency shall maintain systematic information on the nature, functions, and operations of each advisory committee within its jurisdiction.
- d. Sec. 9
 - (a) No advisory committee shall be established unless such establishment is –
 - (1) specifically authorized by statute or by the President; or
 - (2) determined as a matter of formal record, by the head of the agency involved after consultation with the Administrator, with timely notice published in the Federal Register, to be in the public interest in connection with the performance of duties imposed on that agency by law.
 - (b) Unless otherwise specifically provided by statute or Presidential directive, advisory committees shall be utilized solely for advisory functions. Determinations of action to be taken and policy to be expressed with respect to matters upon which an advisory committee reports or makes recommendations shall be made solely by the President or an officer of the Federal Government.
 - (c) No advisory committee shall meet or take any action until an advisory committee charter has been filed with
 - (1) the Administrator, in the case of Presidential advisory committees, or
 - (2) with the head of the agency to whom any advisory committee reports and with the standing committees of the Senate and of the House of Representatives having legislative jurisdiction of such agency. Such charter shall contain the following information:
 - (A) the committee's official designation;
 - (B) the committee's objectives and the scope of its activity;
 - (C) the period of time necessary for the committee to carry out its purposes;
 - (D) the agency or official to whom the committee reports;
 - (E) the agency responsible for providing the necessary support for

the committee;

(F) a description of the duties for which the committee is responsible, and, if such duties are not solely advisory, a specification of the authority for such functions;

(G) the estimated annual operating costs in dollars and man-years for such committee;

(H) the estimated number and frequency of committee meetings;

(I) the committee's termination date, if less than two years from the date of the committee's establishment; and

(J) the date the charter is filed.

A copy of any such charter shall also be furnished to the Library of Congress.

e. Executive Order. 12838 Termination and Limitation of Federal Advisory Committees-

Sec. 3. Effective immediately, executive departments and agencies shall not create or sponsor a new advisory committee subject to FACA unless the committee is required by statute or the agency head

(a) finds that compelling considerations necessitate creation of such a committee, and

(b) receives the approval of the Director of the Office of Management and Budget. Such approval shall be granted only sparingly and only if compelled by considerations of national security, health or safety, or similar national interests.

These requirements shall apply in addition to the notice and other approval requirements of FACA.

2. GSA issued Federal Advisory Committee Management; Final Rule, 66 Fed. Reg. 37728-37750 (July 19, 2001). Of note:

a. Sec. 102-3.25 defines "advisory committee" as "any committee, board, commission, council, conference, panel, task force, or other similar up which is established by statute or established or utilized by the President or by an agency official, for the purpose of obtaining advice or recommendations for the President or on issues or policies within the scope of an agency official's responsibilities."

b. Sec. 102-3.25 defines "discretionary advisory committee" as "any advisory committee that is established under the authority of an agency head or authorized by statute."

c. Sec. 102-3.25 defines "subcommittee" as "a group, generally not subject to the [FACA], that reports to an advisory committee and not directly to a Federal Officer or agency, whether or not its members are drawn in whole or in part from the parent advisory committee."

d. Sec. 102-3.30(a) – "A discretionary advisory committee may be established only when it is essential to the conduct of agency business and when the information

to be obtained is not already available through another advisory committee or source within the Federal Government.” Reasons may include:

- i. Deliberations will result in creation or elimination of regulations, policies or guidelines affecting agency business;
 - ii. Committee will make recommendations resulting in significant improvements in service or reductions in cost; or
 - iii. Committee will provide an important additional perspective.
 - e. Sec. 102-3.35(b) – The creation and operation of subcommittees must be approved by the agency establishing the parent advisory committee.
 - f. Sect. 102-3.50 – Sources of authority for establishing advisory committees include statutory authorization or general agency authority in title 5 of the U.S.C or other statutes.
 - g. Sec. 102-360 – Steps for establishing a discretionary advisory committee:
 - i. Consult with the [GSA] Secretariat (explain need, demonstrate lack of duplication of resources, and describe plan to attain fairly balanced membership.)
 - ii. Upon completion of Secretariat’s review, agency publishes notice in Federal Register.
 - iii. File charter with agency head, Senate and House committees, Library of Congress, the Secretariat
3. The Defense Trade Advisory Group (DTAG) is established as an advisory body pursuant to the FACA, and general authority of the Secretary and Department of State per 22 U.S.C. 2656 (“Management of foreign affairs”) See DTAG Terms of Reference and Charter
 - a. DTAG Terms of Reference state that objectives of the DTAG are to advise the Department’s Bureau of Political-Military Affairs (no mention of other agencies).
 - b. DTAG Terms of Reference establish two DTAG Working Groups: Policy Working Group and Regulatory/Technical Working Group.
 - c. “The Chair of the Working Group” may establish or disband informal subgroups or task forces as he/she deems appropriate.
 - d. DTAG Charter states that DTAG will advise “the Department”.
 - e. DTAG Charter permits DDTC to establish Working Groups and Task Forces to assist the DTAG to carry out its work and report to the DTAG (not to USG officials).
4. Bureau of Industry and Security (BIS), The Regulations and Procedures Technical Advisory Committee (RPTAC), is established as an advisory body pursuant to the FACA and Export Administration Act (EAA) Sec.5(h)(1) (addresses process for Technical Advisory Committees and states that TACs shall consist of representatives of industry and government, including DoC, DoD and DoS).
 - a. RPTAC Charter also states that objectives are to advise and assist the Secretary of Commerce and other federal agencies and officials referred to in Section 5(h)(2) of the Act.

- b. RPTAC Charter permits “the committee” to establish such subcommittees from among its members as may be necessary; must be approved by the AS for Export Administration.

Review and Assessment

The DTAG Structure, Operations & Process Working Group (SOP-WG) reviewed the above regulations governing the establishment, operation, and termination of advisory committees, and concluded that the way DTAG functions, the interaction between DTAG and Commerce TACs, and the establishment of the ID-TAG is within the authority of DDTC and the other responsible agencies under the current FACA regulations. The SOP-WG also considered how greater Government and industry interaction would improve the progress of ECR, and concluded that an ID-TAG would help achieve long-term solutions as well as short-term, immediate-benefit projects.

Value of ID-TAG

With the advent of Export Control Reform (ECR), “military” items and their control are now distributed between both the EAR and ITAR. It is critical to have an unambiguous spectrum of control, avoiding both overlap and gaps. Ambiguity and/or gaps are often uncovered at the transaction level by industry as they deal with Jurisdiction and Classification or authorization interpretation activities. The TAC structure provides a way for industry to review proposals for unintended consequences while still at the concept stage (solicited review and comments), and also to bring up issues (unsolicited) that may be facing industry. In both cases, the ID-TAG can be a resource to provide information and suggested approaches to support data driven solutions.

Specific DTAG SOP-WG Recommendations

1. We recommend that issues that are faced by industry, academia, and the USG be worked until resolved. Rather than ending work on a topic after a single plenary presentation, DDTC should establish a standing working groups (which could be called Technical Advisory Working Groups, or TAWGs) on specific topics as needed to continue work with relevant stakeholders until agreeing on a go-forward plan for resolution. The TAWCs and ID-TAG would present regular progress reports at quarterly plenaries. DTAG members could recommend to DDTC that TAWGs be established as DTAG members identify issues needing a resolution.
2. We recommend that non-DTAG topic-experts be included in the ID-TAG TAWGs. This is allowed per current statutes so long as the TAWGs report out to the DTAG and then, in

turn, the DTAG reports out to the USG. This would also allow members of the the BIS TACs to participate. DTAG members are allowed to participate on BIS TAC working groups today. This cross-participation would create a de facto I-DTAG in the short term, so that export regulation complexities that span across the ITAR and EAR can be resolved. Depending on the issue, the TAWGs could report findings to the DTAG and/or TACs, which would then be communicated to DDTC and/or BIS.

3. We recommend that DDTC use the DTAG membership to provide input on topics that do not require creating a TAWG or a formal plenary, where the DTAG membership provide information directly to the DDTC quickly on an add-needed basis. Such recommendations would be published as required.
4. Longer term, we recommend that a joint advisory committee (I-DTAG) be created by the DOS, DOC, and other agencies (perhaps including enforcement representatives), so that working groups could be established and report to the I-DTAG, who would then advise the multiple agencies. The need and timing would be based on the progress toward creating a single export list and agency.

Conclusion

The DTAG SOP-WG believes the creation of the new I-DTAG will promote government interagency and industry participation, and will be in the best interest of US export regulatory initiatives. The I-DTAG will also be a cohesive vehicle for improved policy and regulatory review.

DTAG endorses the task consideration.