

**U.S. DEPARTMENT OF STATE  
DEFENSE TRADE ADVISORY GROUP  
Minutes of the September 21, 2006, Plenary Session  
Harry S. Truman Building  
Washington, DC**

NOTE: Participants' remarks have been paraphrased.

**Opening Remarks by Managing Director and DTAG Executive Secretary,  
Robert W. Maggi**

**Mr. Maggi** convened the plenary session at 9:07 a.m. by welcoming everyone, including DTAG members for 2006-2008 term. Assistant Secretary Dr. John Hillen presented outgoing DTAG Vice-Chair Ramona Hazera with a certificate recognizing her service as Vice-Chair since 1993. Giovanna Cinelli was introduced as the new DTAG Vice-Chair. Mr. Maggi thanked everyone for invigorating the DTAG, which is now very active.

**Opening Remarks on PM Bureau's Activities by Assistant Secretary for  
Political Military Affairs, Dr. John Hillen**

**A/S Hillen** addressed the Bureau's priorities and provided policy updates on counter-insurgency strategy, Persian Gulf security strategy, and Lebanon. Secretary Rice has launched a "transformational diplomacy" initiative, and he (Hillen) has just come from a meeting of the Defense Policy Board, which had emphasized the importance of greater cooperation between the Departments of State and Defense. We are also working closely with the four Congressional oversight committees. Dr. Hillen also described his recent trip to India, where defense trade issues formed an important part of the agenda.

Dr. Hillen spoke about the Bureau's top ten strategic initiatives. One initiative is the changing dynamics of defense trade licensing, compliance, and enforcement. Another goal is to increase defense cooperation with our closest allies. In implementing these initiatives, he wants to reframe the DTAG into a smaller group that is dedicated to solving problems so industry will be part of the solution.

**Remarks by DTAG Chairman William Schneider**

DTAG wants to be a contributor to the arms transfer policy process in modernizing policies in this dynamic period when technology is changing in fundamental ways. One emerging arms transfer policy issue is the UAV (unmanned aerial vehicle). He is hopeful that the DTAG will help the Department with immediate problems from the industry perspective. Chairman Schneider acknowledged the work of out-going Vice-Chair Ramona Hazera and acknowledged new Vice-Chair, Giovanna Cinelli.

**Remarks on DDTC's Activities and Updates by Deputy Assistant Secretary for Defense Trade Gregory Suchan**

The Department of State's main foreign policy objective is victory in the global war on terrorism, and DDTC supports that objective with expedited processing of applications for Operation Enduring Freedom and Operations Iraqi Freedom. DDTC has also expedited processing for export requests for the United Kingdom and Australia. There is an arms embargo which resulted in licenses and other written approvals being revoked for Venezuela. Lebanon is subject to UN Security Council Resolution 1701 (2006), an arms embargo except for the Government of Lebanon and the United Nations Interim Force in Lebanon (UNIFIL). The policy regarding Haiti has been modified and is reflected in a Federal Register publication. There is a denial policy for Haiti except, on a case-by-case basis, for supplies of arms and related materials or technical training and assistance intended solely for the support of or use by security units that operate under the command of the Government of Haiti or the United Nations-authorized mission, and personal protective clothing for use by personnel from the United Nations. With regard to Thailand, the U.S. is closely following developments. There is an informal pause on applications for Thailand as our policy is reviewed through the inter-agency process and the White House.

**Remarks by Managing Director for Defense Trade Controls, Robert W. Maggi**

We are balancing International Traffic in Arms Regulations (ITAR) requirements against 65,000 cases and resources. We are close to full manning, including all the military detailees, and are committed to providing enhanced training to new licensing officers. We are getting out of the paper business and into automation through implementation of Defense Trade Application System (DTAS), DDTC's new database. The Electronic Licensing Entry System (ELLIE)

and the Remote On-Line Bulletin Board (ROBB), the legacy electronic system, will be turned off. DDTC is working on commodity jurisdiction (CJ) cases and addressing difficult and contentious cases.

### **Questions from the Audience**

DDTC addressed the questions about backlog and processing times for Technical Assistant Agreements (TAAs) and Manufacturing Licensing Agreements (MLAs). In response to concerns regarding inconsistencies in agreements approvals, DDTC responded that it is working on standards and welcome any comments on how it can be more consistent. The capability for D-Trade to be able to handle the large volume of data typically associated with agreements was also raised.

One question dealt with foreign availability and whether that is factored into the Department of State's licensing process. In the real world, unilateral restraint rarely works. Even though foreign availability is not a formal consideration in the arms transfer process, who else has something to offer is considered in the matter of regional security, foreign policy and U.S. national security concerns.

A statement was made that Commerce changed its policy toward Libya. PM at this time has not changed its arms transfer policy toward Libya, due to regional issues beyond terrorism.

Questions about the adjudication process of a CJ and the issue of publishing the final decision on a CJ case on the DDTC Web site were addressed. One sensitive issue is the confidentiality of the information contained in a CJ submission. Another concern is providing false guidance to other exporters, especially when DDTC does not see two CJ questions that are exactly the same. DDTC does not want the reader to misunderstand what is adjudicated.

Retention of DDTC human resources was raised. DDTC has higher grade levels for its personnel and has been allowed hiring exceptions. Thus, DDTC has been allowed to hire above its FTE limit (hiring exceptions) in recognition of the time need to fill vacancies and in anticipation that there will always be vacancies waiting to be filled. DDTC is balancing its resources and its requirements so there is the right number of people and a float factor.

When asked about forming new coalitions, Dr. Hillen welcomed industry consultation on nation building in the face of growing IR aggression.

In response to a question on what drives changes to arms transfer policy, it was stated that several high level initiatives are considered, including the QDR and Security Assistance reform.

**Remarks by ITAR Clarification Working Group Co-Chairman Charles Graves**

(The working group members are Charles Graves, Marc Binder, Ramona Hazera, Victoria Ralston, and Joel Johnson.)

The ITAR Clarification Working Group met twice with DDTC during the period (1) to agree on final revisions to the template for use henceforth by the parties in the ITAR clarification process, and (2) to receive DDTC comments on the first two candidate clauses for put forward for clarification at the April 21, 2006 DTAG Plenary meeting, as follows:

(Candidate Clause No. 1) Section 124.13 states, in pertinent part: "...the Office of Defense Trade Controls may authorize by means of a license (DSP-5) the export of unclassified technical data to foreign persons for offshore procurement of defense articles, provided that: (a) The contract or purchase order for offshore procurement limits delivery of the defense articles to be produced only to the person in the United States or to any agency of the U.S. Government; and..." ***This provision needs to be clarified as to whether evidence of offshore purchase must accompany the DSP-5 application to export the build-to-print drawing.***

The Co-chair reported that DDTC had placed the answer to this question on its Web site, and DDTC further commented that clarifying the ITAR does not always necessarily have to result in a change to the regulation.

(Candidate Clause No. 2) Section 123.22(b)(3)(ii) states, in pertinent part: "Manufacturing License and Technical Assistance Agreements. Prior to the initial export of any technical data and defense services authorized in an agreement the U.S. agreement holder must electronically inform DDTC that exports have begun..." ***Section 123.22(b)(3)(ii) needs to be clarified: Does the exporter notify DDTC before or after the export?***

The Co-chair reported that DDTC will clarify this requirement, and DDTC commented when the "Export Declaration of Defense Technical Data or Services" (Form DS-4071) is instituted, this particular clause will be amended.

DTAG members were encouraged to continue to submit candidate clauses for clarification to the Working Group; volunteers were also sought to join the Working Group since it is, at present, composed of only five members.

**Remarks by Brokering Working Group Chairman Charles Jameson**

(The working group is comprised of David Ashby, Ginger Carney, Giovanna Cinelli, Mona Hazera, Chuck Jameson, Joel Johnson, Peter Jordan, John Liebman, Joe Mariani, Ed O'Connor, Terry Otis, Mike Richey, and Ken Williamson.)

Working group is concerned about unintended consequences of applying 22 CFR 129 entitled "Registration and Licensing of Brokers" and discussed their series of meetings with DDTC. The working group learned DDTC is planning to publish a change to this regulation to improve clarity and mitigate the unintended consequences. DDTC mentioned that they are currently drafting a regulation change to 22 CFR 129.

**Remarks by Commodity Jurisdiction Working Group Chair Giovanna Cinelli**

(The commodity jurisdiction working group members are: Giovanna Cinelli, Debi Davis, Beth Ann Johnson, Joel L. Johnson, W. Brad Lewis, John R. Liebman, Daniel B. Poneman, Victoria E. Ralston, James Reed, and Catherine Thornberry.)

The commodity jurisdiction working group believes that the proposed electronic submission form under development is not tailored to the goal of 22 CFR 120.4. DTAG's draft recommendations are: not to limit CJ submissions to electronic filing, focus the CJ process on determining the jurisdiction of items subject to ITAR control, designate as optional those sections of the proposed form that do not relate directly to determining export jurisdiction (e.g., enforcement or compliance issues), include patent history and other intellectual property-related information, and request information on government funding. DDTC awaits the CJ working group's final recommendations and will be reviewing these specific proposals.

**Remarks by Dual-Citizenship Working Group Presenter Ramona Hazera**

(The working group is comprised of Chair Debi Davis, Ginger Carney, Mona Hazera, and Peter Jordan.)

DTAG proposed that foreign employees that are citizens of the country to which the technical data is licensed and are not a citizen of a country identified in 22 CFR 126.1 be approved by the Department of State without a separate authorization if they hold dual nationality. Also, inquiries about that foreign employee's citizenship may be restricted by local foreign country laws. Due to national security concerns, DDTC explained that the ITAR requires that all nationalities and country of birth must be provided in requesting approval to access ITAR-controlled technology. Consequently, the DTAG would like the ITAR to define "nationality." The working group will prepare an outline that will identify key issues regarding licensing foreign persons to include: requirements necessary so that industry and foreign parties understand up front the requirements for accessing U.S. technology; and defining "country of birth," "foreign national," "citizenship," and "dual nationals."

DDTC will continue the dialog on dual nationals with the DTAG. Country of birth is a factor in determining nationality. To address concerns of industry and our allies, DDTC will entertain broad authorizations for dual nationals and third-country nationals as part of the normal licensing process. On a case-by-case basis and depending on the sensitivity of the export, DDTC may authorize (without individual identifications or a requirement for non-disclosure agreements) access by more or less broad categories of dual/third-country nationals except for 126.1 nationals. DDTC would welcome DTAG input on what those groupings of nationalities might be. With regard to nationals of section 126.1 countries, DDTC will apply a "rule of reason" based on the facts of the case in determining whether a specific individual should be considered a 126.1 national.

**Closing Remarks:**

DTAG Chair Schneider thanked the working groups for their efforts. Executive Secretary Maggi thanked the DTAG for the work done this past year and stated that these last six months have been the most productive ever with DTAG. Mr. Maggi also solicited topics for additional DTAG Working Groups. The meeting adjourned at 11:54 a.m.

Defense Trade Advisory Group  
**Report of the ITAR Clarification Working Group**  
21 September 2006

A meeting was held with the designated federal official on 30 June 2006 to receive comments on the template for processing ITAR clarifications as proposed at the 21 April Plenary. As a result of this meeting, the template was modified in a way that provides for the tracking of the clarification through the following stages:

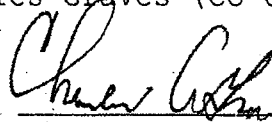
- Citation of clause and discussion of possible interpretations (by ITAR Clarification Working Group)
- Clarification of regulatory intent (by DDTC)
- Draft of language for ITAR revision consistent with regulatory intent (by ITAR Clarification Working Group)
- Final language for ITAR revision (by DDTC)

Another meeting was held with the designated federal official on 15 September 2006, yielding DDTC advice as follows:

- Para 123.22(b)(3)(ii) clarification will be made as part of the introduction of DS-4071.
- Para 124.13 clarification is forthcoming and will be posted on the DDTC website.
- Subsequent requests for ITAR clarifications will be managed using the template, with clarifications posted on the website, thus separating, where appropriate, the clarification process from the ITAR revision process, and thus expediting the delivery of benefit to the export community.

The Working Group is soliciting both **new members** and **additional candidate ITAR clauses** that would benefit from this clarification process.

Working Group: Ramona Hazera, Vicki Ralston, Joel Johnson, Marc Binder (Co-chair), Charles Graves (Co chair).



Charles A. Graves (for the members)

**BROKERING REGISTRATION  
AND LICENSING  
(22 CFR 129)**

**DTAG BROKERING WORKING GROUP  
September 21, 2006**

**WORKING GROUP MEMBERS**

David Ashby

Ginger Carney

Giovanna Cinelli (DTAG V/C)

Mona Hazera

Chuck Jameson (BWG Chair)

Joel Johnson

Peter Jordan

Joe Mariani

John Liebman

Ed O'Connor

Terry Otis

Mike Richey

Ken Williamson



## BROKERING ISSUE

- DTAG is concerned that significant unintended consequences could result from applying the ITAR's brokering provisions to industry's overseas consultants, commissioned sales representatives, etc., who are engaged in "routine business assistance" activities in support of registered U.S. companies. DTAG's position is that activities performed by an overseas consultant of a registered U.S. company who does not possess delegated authority to act on behalf of that company in negotiating or arranging contracts, purchases, sales or transfers of defense articles or defense services in return for a fee should fall outside the definition of "brokering activity."

## DTAG MEETING WITH DDTC APRIL 25, 2005

- Purpose:
  - To gain understanding of DDTC's regulatory objectives, and
  - Begin a constructive dialog aimed at achieving those objectives while minimizing potential unintended consequences to legitimate U.S. defense export initiatives.

## 25 APR 05 MEETING (CONT'D)

- Discussed:
  - Intent of ITAR Part 129
  - Definition of “brokering activities”
  - Criteria for classifying an entity as a “broker”
  - Authorizations required for brokering activities (prior approval and prior notification)
  - Processes for adjudication, registration and authorization

## 25 APR 05 MEETING (CONT'D)

- Result:
  - DTAG provided for DDTC’s consideration a list of activities commonly performed by overseas consultants, ranging from “routine business assistance” activities to those that clearly are brokering.
  - DDTC agreed to consider the list and continue dialogue with DTAG.

## DTAG MEETING WITH DDTC AUGUST 3, 2006

- DDTC announced intention to implement regulatory change to Part 129.
- Discussed:
  - DTAG paper defining brokering/non-brokering activities;
  - DDTC's plans to implement regulatory change and share draft changes with DTAG;
  - Prospective areas of change.
  - Revision options aimed at mitigating unintended consequences.

## DTAG MEETING WITH DDTC SEPTEMBER 1, 2006

- Discussed:
  - DDTC reaction to DTAG paper defining non-brokering/brokering activities;
  - DDTC's objectives to improve clarity of definitions, and processes;
  - DDTC's strategies to mitigate any unintended consequences of the new regulations;
  - DDTC's intention to continue dialogue with DTAG on this issue;

## FUTURE EVENTS

- Continue dialogue with DDTC to mitigate-- through policy, procedure, definition and practices -- any unintended consequences that may result from the new regulations.

DEFENSE TRADE ADVISORY GROUP  
PLENARY SESSION

September 21, 2006

9:00 to 12:00

CJ Working Group Report

CJ WORKING GROUP

**MEMBER**

Giovanna M. Cinelli, Chair (Slated to  
resign as Working Group Chair)  
Debi Davis  
Beth Ann Johnson  
Joel L. Johnson  
W. Brad Lewis  
John R. Liebman  
Suzanne Palmer  
Daniel B. Poneman  
Victoria E. Ralston  
James W. Reed, Esquire  
Catherine E. Thornberry

**COMPANY**

Patton Boggs  
Goodrich Company  
Northrop Grumman Corporation  
Teal Group Corporation  
Trade Compliance Associates LLC  
McKenna Long & Aldridge LLP  
Export Compliance Solutions  
The Scowcroft Group  
The Export Advisor  
Rhoads Reed  
Export Procedures Co.

## SCOPE

- \* Working Group reviewed, discussed and outlined issues
- \* Presented initial summary of activities and observations to State at April 21, 2006 DTAG Plenary meeting
- \* Examined:
  - ✦ Electronic CJ submission
  - ✦ Potential § 120.3 modifications

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## OBSERVATIONS

- \* **Met on September 8, 2006 with State designated officials to advise of status of Working Group comments/observations**
- \* **Electronic CJ submission**
  - ✦ General views:
    - ◆ Form is not tailored to either § 120.4 or to goal of jurisdictional determinations
    - ◆ Form and process do not provide sufficient flexibility to address a variety of scenarios where a CJ may be sought
      - “anonymous” submissions
      - “on behalf of” submissions
      - “unrelated” third party submissions

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## OBSERVATIONS

### \* Electronic CJ submission

#### ◆ General Views:

- ◆ Form is too narrowly focused on hardware and does not adequately address jurisdictional issues related to technical data or defense services (e.g., ten-year sales history)
- ◆ Form and notice seriously underestimate the amount of time it would take to complete and provide the requested materials (e.g., burden is 2 hours)
- ◆ Form and process appear to overly involve compliance and enforcement (including licensing history)
- ◆ Required fields do not all appear to relate *directly* to §§ 120.3 or 120.4
- ◆ Publication of CJ decisions is optional, rather than mandatory

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## PRELIMINARY RECOMMENDATIONS

### \* General:

- ◆ Do not limit CJ submissions to electronic filing
- ◆ Permit electronic CJs to be filed by representatives or individuals/entities not necessarily involved in production or manufacture
- ◆ Focus the CJ process on what it is statutorily intended to do – determine the jurisdiction of items properly subject to ITAR control
- ◆ Remove, or at a minimum, designate as optional, those sections of the current form that do not relate directly to the ability of the Government to properly assess export jurisdiction (e.g., fields 15, 16, 17 and 19 – each of which involves enforcement or compliance issues)

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## PRELIMINARY RECOMMENDATIONS

### \* General:

- ◆ Include currently missing elements, *e.g.*:
  - ◆ has or is the CJ submitter suspended, debarred or otherwise prohibited from obtaining export authorizations?
  - ◆ specific inclusion of patent history, applications or other intellectual property-related information
  - ◆ information on foreign government funding

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## PRELIMINARY RECOMMENDATIONS

### \* Potential § 120.3 Revisions

- ◆ Address inconsistencies within the policy for designating defense articles. Use § 120.3 as written: end-use is not dispositive
- ◆ Consider the insertion of defining terms or adjectives to better frame when modifications, changes or adaptations create defense articles

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# **DTAG Dual-Citizenship Task Force**

Follow on Activities

## **Actions of Working Group (WG)**

- DTAG Recommendation briefed at April 21 DTAG Plenary Session  
– (Summary of recommendation provided on Next Slide)
- Recommendation appeared to have been well received at Plenary
- DTAG Dual National Working Group subsequently met with DTC to conduct follow on discussion regarding DTAG recommendation
- This presentation will provide a summary of our activities to date, where we are and the next actions
- **Members: Debi Davis, Chair; Ginger Carney, Peter Jordan and Mona Hazera**

## **Guidance as Proposed by DTAG WG**

- With respect to each foreign licensee employee who will have access to US Technical Data and Defense Services under a TAA/MLA, the US applicant, directly or through their foreign licensees, are expected to ensure that all individuals to which access will be granted are
  - A citizen of the country to which the data is licensed; AND
  - Not a citizen of a country identified in 22 CFR 126.1 (e.g., Proscribed country).
- Such inquiries regarding an employee's citizenship shall be made, provided that such inquiry is permitted under applicable US laws and local laws of the foreign licensee..
- **EXAMPLE** - If the employee is a citizen of the TAA territory, the employee generally will not be deemed to be a "national of a third country."
- **There is one exception:**
  - If the employee is a citizen of a 126.1

## **Summary of DTAG WG meeting with DTC**

- DTAG Dual-Citizenship Working Group (WG) Meeting with State ex-officio Pete Berry on September 1, 2006.
- State Department indicated that they had reviewed the recommendation of the DTAG but determined that it did not meet the criteria for interpretation of the ITAR requirements
- State indicated that ITAR focuses on national security and hence must know the country of birth of individuals receiving access to the data
- DTC has determined that questions regarding "foreign nationals" must include country of birth regardless of the current citizenship of the individual
- DTAG WG voiced concerns about such an approach
  - A similar regulatory proposal by Commerce for Deemed Exports was tabled after significant public concern
  - Much like US laws, foreign laws restrict our ability to make such inquiries of individuals

## **Summary of DTAG WG meeting with DTC**

- State indicated that the proposed requirement would be that all nationalities and country of birth must be provided in requesting approval to access ITAR controlled technology
- DTAG WG stated that any such change to policy (requiring information regarding a persons country of birth) must be addressed through a regulatory change as in some countries it requires legal actions
- DTC will need to define "Nationality" in the ITAR to ensure that there is a standardized understanding
  - Revisions to Agreements Guidelines or notice on website does not adequately address this issue
  - For US industry to make such inquiries regarding the country of birth, a regulatory requirement is essential
  - Offer templates or formats as appropriate, such as standard NDAs
  - DTAG WG will fully engage and support these activities
- State acknowledged that a defined set of requirements was necessary for US industry to consistently comply with regulations

## **Moving Forward**

- **The WG will prepare an outline that would identify key issues regarding licensing foreign persons:**
  - **Will include items such as "country of birth" if that is to be a requirement.**
  - **Include all requirements necessary so that industry and foreign parties understand up front the requirements for accessing US technology**
  - **Defining foreign national, citizenship, dual nationals, and other terms consistent with the guidance now promulgated by State Department**
- **The WG asked to be included in the consultative process regarding ITAR revisions on citizenship and nationality**