

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

NOTE: Participants' remarks have been paraphrased.

Opening Remarks by Michael T. Dixon

(**Michael T. Dixon**, the Executive Secretary of the Defense Trade Advisory Group (DTAG), convened the plenary session at 9:07 a.m., by welcoming everyone.) It is my pleasure to introduce Assistant Secretary Dr. John Hillen. We want to emphasize effective participation from the DTAG members. DTAG has a slightly modified Charter and Terms of Reference. If you are not a member of DTAG, you may submit your ideas to the Chairman of one of the DTAG working groups.

Also want to introduce DTAG Chairman William Schneider, Jr., DTAG Vice-Chair Ramona Hazera, DTAG Chairman of Regulatory/Technical Working Group Mike Richey and from the government, Deputy Assistant Secretary Gregory Suchan and Managing Director Robert Maggi. The DTAG membership for the term of 2006-2008 is under review. Also, the issue of interaction outside the plenary between the DTAG members and the government employees is under review. The next DTAG plenary is scheduled for Thursday, September 21, 2006, in the Dean Acheson Auditorium, Department of State. This meeting is an open session and on the public record. The minutes of this meeting will be posted on the Directorate of Defense Trade Controls (DDTC) Web site, www.pmdtdc.state.gov.

Assistant Secretary Hillen: Opening Remarks on PM Bureau's Activities

(**A/S Hillen** addressed a few of the Bureau's priorities and held a discussion.) DTAG is able to recognize challenges and complexities of the regulatory regime. DTAG is a great resource for active problem solving. We are working on new venues and paths to solve problems. DTAG should be engaged in real-time problem solving with the ambition to stay ahead of regulatory changes in defense trade. Envision a less formal environment so more work is done. DTAG will be part of the solution. Also, we will be looking at different ways to get DTAG actively involved in defense trade issues.

The Bureau has ten strategic initiatives that have been presented to the Secretary of State. Two of the initiatives involve defense trade. One initiative is to increase defense co-operation with our closest allies. We treat our closest allies too guardedly. I have communicated to the Secretary that our allies should be treated better. With regard to International Traffic in Arms Regulations (ITAR) U.K.-Australia exemption, that initiative has floundered in Congress. There maybe a time in the future to revive the exemptions, but it should be recognized that they dealt with hardware, and the meaningful defense trade issue is sharing technology with the United Kingdom and Australia. We are seeking greater interoperability with our allies regarding Iraq and Afghanistan and we have asked the United Kingdom and Australia what are their major concerns. They have issues that range from deemed exports to the source code for Joint Strike Fighter. We will be trying to address their issues. Greg Suchan will be leading the initiative with the United Kingdom and Australia.

Second, we need to stay ahead of the complexities of defense trade licensing. One-third of the value of authorized exports are defense services, which are different from hardware exports. Also, we are doing more with less people. There is a resource battle. We have prioritized licensing cases involving our British and Australian allies. Also, we have accelerated the export licensing regarding Iraq and Afghanistan. Turk Maggi is in charge of the initiative of staying ahead of the complexity of licensing issues.

The Bureau is engaged in coalition building and working with the “Coalition of the Willing” involving 63 countries. We are committed to enhancing their military capabilities. This involves going beyond the United Kingdom and Australia to our other Coalition partners. We will be creating new allies. We are also rebuilding our relationship with the Hill and forming a relationship with the appropriators as well as authorizers.

There has been a shift of tectonic plates in our relationship with India. India is a billion-person democracy. Every part of the U.S. government is forming a new relationship with India. India is a global power and partner with the U.S. in geostrategic matters. We are framing our political-military relationship with India. India is the next big export market for defense trade, and the U.S. wants to win the Indian multi-role combat aircraft competition. We must think creatively and aggressively.

Our India policy is not directed against China. The U.S.’s policy toward China recognizes that China is a strong and prosperous nation. There is a lack of

transparency regarding China's military capabilities and military budget. China presents a complex challenge in planning for a cooperative relationship.

With regard to Venezuela, we are reviewing our policy options. President Hugo Chavez is rebuilding his military to challenge the United States. We must not aid Chavez in his plans but be responsible and protect U.S. interests.

Remarks by DTAG Chairman William Schneider

We thank Dr. Hillen's help in resolving the legal matter involving DTAG members meeting with employees of the Directorate of Defense Trade Controls. DTAG has been reviewing policy and the regulations regarding arms transfers. Licensing increasingly involves defense services. Challenges include software developed outside of the military sector. This issue needs to be examined. With the resource limitations, there is a need to re-engineer the process to manage the workload responsibly and maximize effectiveness.

Discussion

There was a statement on inconsistencies in the ITAR, and on a list of 100 recommended changes to the ITAR that has been around for several years.

Suchan: A final rule change was published (in today's (4/21/06) *Federal Register*) amending archaic references in the ITAR. We will be working on other amendments to the ITAR. One of the four DTAG working groups is entitled "ITAR Clarifications."

There was a question on how can industry help regarding resource issues.

Hillen: We need more people and plan to fight for more resources. This process requires working within the administration. Hope to expand DTAG's efforts.

There was a question about transparency and oversight over the use of private military and security contractors that the U.S. government has been employing, both in Iraq and elsewhere. Agreements are more complex than export license applications.

Suchan: Operation Enduring Freedom (OEF) and Operation Iraqi Freedom (OIF) license requests are issued more quickly and as soon as possible. Last year,

768 cases of this type were issued in an average of seven days or less because they are part of the war effort. The private security contractor issue has been discussed at great length with the companies, combatant commands, and our embassy.

There was a question about understanding who is a broker since licenses are being returned without action because of questions whether brokering is involved.

Suchan: There is a DTAG working group analyzing this issue.

There was a statement made about the licensing process and other country laws not allowing questions about citizenship.

Suchan: We are aware that countries such as Australia do not allow questions about citizenship. Commerce controls also take nationality into account, although Commerce handles the issue differently. Dual nationals could have divided loyalties, and we have responsibilities to our country that must be protected.

There was a question about the relationship between the U.S. and Vietnam.

Hillen: We are trying to establish more robust relations with Vietnam within the constraints of human rights concerns, including freedom of religion. We are going to develop some start up enterprises with Vietnam involving the humanitarian effort of demining in the area of political-military relations.

There was a question about the European Union's embargo against China.

Hillen: The United States has worked hard to keep the European Union from lifting its arms embargo against China, which is not a tight embargo. The U.S. presence in the Pacific region contributes to security in that region and it is not in our interest to advance China's military. The current Presidency country of the EU (Austria) and the next Presidency country (Finland) do not seem to be interested in pressing the issue of lifting the embargo.

We are repositioning military resources to surround security problems elsewhere than in Europe. We have real security partners in the European Union that will put people and resources on the ground for more than one security issue. We have more influence with European defense companies in halting exports than with the governments.

There was a statement made to keep up the good work involving interoperability.

Hillen: We need to hear and understand globalized defense industry issues from the DTAG. DDTC plays a role in the Committee on Foreign Investment in the United States (CFIUS) in analyzing national security and foreign policy concerns. DTAG can consider bigger policy goals and formulate ways to accommodate but not compromise national security concerns with foreign investment in the United States.

There was a question about India and satellites.

Suchan: The United States is in the process of negotiating a technology safeguards agreement with India regarding satellites.

(**Executive Secretary Dixon** introduces session on updates by the Directorate of Defense Trade Controls consisting of recent events and current topics of interest.)

Greg Suchan: Remarks on DDTC's Activities and Updates

(**Mr. Suchan**, the Deputy Assistant Secretary of the Bureau of Political-Military Affairs.) Dr. Hillen mentioned the workload has significantly increased and last year was up to 65,000 license applications. For the past three years, there have been annual increases of 8% in license applications with no additional personnel. We have civil servant vacancies that soon will be filled. There are supposed to be eight military detailees to DDTC, and we actually have only four. One military position has been gapped for two years. We are reassigning civil servants to work on agreements, but this takes experienced personnel away from the licensing teams.

One part of addressing the lack of resources is D-Trade. A new reiteration of the DSP-5 license application has been introduced, along with the new D-Trade forms for temporary export and temporary import license applications. Figures show that the review time for an application submitted via D-Trade is one-half of the regular review time for the legacy paper system. In the not so distant future, D-Trade will be made mandatory. We can't afford to do anything else.

The Office of Defense Trade Controls Compliance (DTCC) is breaking new records with the number of visits to companies. Also, there were 61 criminal convictions of the Arms Export Control Act that involved DTCC. The largest civil fine collected recently was \$15 million.

The Office of Defense Trade Controls Policy is working with the Departments of Commerce and Defense and consulting Congress on controls on radiation hardened chips.

To address important licensing policy issues, such as those DTAG is working on, we have asked Peter Berry to become a special advisor to the Deputy Assistant Secretary of State for Defense Trade. The position of Director of the Office of Defense Trade Controls Licensing will be advertised; in the meantime, Sue Clark will be the Acting Director.

Remarks by Managing Director for Defense Trade Controls, Robert “Turk” Maggi

(Mr. Maggi addressed export control regulation issues.) Having served in Afghanistan I am able to attest to the excellence in the defense articles that have been exported to Afghanistan. D-Trade is developing along with Defense Trade Application System (DTAS), which is the database system for the directorate.

Twenty percent of all license applications are returned without action. When a case has to be handled twice it slows down the system. D-Trade submissions will not allow you to submit certain applications unless all the required elements are supplied. We are moving toward complete electronic licensing. By July 4, our goal is for all DSP-5s to be submitted electronically.

The Trade Registration Enforcement and Compliance System (T-RECS) is the case file data management system for the Office of Defense Trade Controls Compliance. T-RECS will include the registration and disclosure data and will be used to verify eligibility of all parties to an authorization. Paper records will be converted to electronic records. DDTC is under-manned. DTAS, full manning, training, and standardization are part of the solution.

The DDTC registration database lists approximately 4,500 businesses. Our focus is on zero defect. Compliance is life and good business by ensuring that the export of defense articles and defense services are in good hands. Compliance efforts will not be relaxed.

Remarks by DTAG Vice -Chair Ramona Hazera

DTAG has been very industrious, with four working groups examining the issues of brokering, dual nationals, ITAR clarification, and commodity jurisdiction. Also, DTAG was involved in two special projects. One project was commenting on a proposed final rule implementing the “Export Declaration of Defense Technical Data or Services” (Form 4071). The second project was reviewing a revision to Category XV of the U.S. Munitions List pertaining to a proposed change on radiation-hardened microcircuits.

In December 2005, the DTAG leadership met with Dr. Hillen on a number of issues. One issue was membership replenishment, and the selection of members for 2006-2008 is currently under review. Another issue is clarifying the “rules of engagement” between Department of State officials and DTAG members to foster greater industry participation and interaction. The synergy with the Department of Commerce’s Technical Advisory Committees on Commodity Classifications was discussed.

Dixon: We have 46 current DTAG members; 41 have indicated an interest in staying on for this next term; we have 33 new candidates.

Hazera: For 2006, there are numerous DTAG opportunities. Possibly, modest legislative reform by standardizing the threshold for the Javits report with the threshold of congressional notifications and consideration for Congress to accept congressional notifications before receipt of the Javits report. Country policy issues involving China, India, and Pakistan are another opportunity for the DTAG. Support coalition building by finding out what foreign governments truly need to carry out their coalition activities in an environment of standardization, interoperability, and timeliness. Globalization issues involving citizenship, which is not only impacting defense trade but putting U.S. Government regulations at odds with foreign government national policies, including anti-discrimination laws. Regulatory and procedural revisions aimed at reducing the number of “returned without action” (RWA) cases and developing a “lessons learned” project from those cases RWA’d.

Remarks by Regulatory/Technical Working Group Chairman Mike Richey

I want to thank the chairs of the four working groups for their hard work: Charles Jameson of the Brokering Working Group, Giovanna Cinelli of the Commodity Jurisdiction Working Group, Debi Davis of the Dual National

Working Group, and co-chairs Charles Graves and Marc Binder of the ITAR Clarification Working Group.

Remarks by Brokering Working Group Chairman Charles Jameson

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

The assistance of foreign consultants and international sales representatives can be an essential element in winning international defense business competitions. Requiring such people to register with the U.S. State Department as brokers could not only result in substantial damage to U.S. companies' ability to compete successfully for new international programs, but also could disrupt ongoing programs, cause customer dissatisfaction, invite legal consequences, and damage U.S. companies' reputations and prospects for future business.

On April 25, 2005, a few representatives of the DTAG's brokering working group met with DDTC officials. Regulatory objectives were discussed. It was suggested to develop a list of specific activities in order to determine whether an individual should be considered a "broker."

The Brokering Working Group has provided to DDTC a list defining activities commonly performed by U.S. companies' internal sales representatives, identifying those that should be considered as "brokering" and those that should be considered as "routine business assistance." This list is for use by DDTC and U.S. industry in categorizing an entity (U.S. or foreign) as a "broker." The Brokering Working Group suggests that international sales representatives (U.S. or foreign) working in support of arms transfers duly authorized by the U.S. Government (as opposed to illicit arms transfers) should be considered exempt from registration and licensing as brokers.

Mr. Trimble (Director, Office of Defense Trade Controls Compliance):

To clarify, the Department has not changed the regulations on brokering, but we have over the past two years looked more closely at all export authorizations for evidence of unauthorized brokering activity. The regulations are still the regulations, and if anyone has questions in this area they should use the advisory opinion process to address their questions. Having said that, we have been discussing with the DTAG ways to improve the regulations and getting feedback

on specific concerns, for example the best way to regulate sales representatives when their activities fall under the brokering definition.

Jameson: The dialogue between the Brokering Working Group and DDTC regarding brokering has been placed on hold due to restrictions imposed by the Federal Advisory Committee Act.

Trimble: The dialogue with DTAG has focused on how to regulate brokers and the best way to do that. Again, we have not changed our interpretation; we are focusing more on licensing to see what brokering activity is there that we have not previously identified. We are working smarter.

Ms. Clark (Acting Director, Office of Defense Trade Controls Licensing): Just as questionable parties on a license are reviewed, so also are persons who require brokering approval.

Remarks by Commodity Jurisdiction Working Group Chair Giovanna Cinelli

The commodity jurisdiction working group members are: William Clements, Dan Cook, Debi Davis, Beth Ann Johnson, Joel L. Johnson, W. Brad Lewis, John R. Liebman, Suzanne Palmer, Daniel B. Poneman, Victoria E. Ralston, James Reed, and Catherine Thornberry.

The commodity jurisdiction process is fundamental to licensing and compliance. State's position is that: "The Commodity Jurisdiction (§120.4) process is the only official mechanism by which questions regarding jurisdiction and categorization may be addressed." *In re Investigation of Boeing Commercial Airplanes*, Consent Agreement, ¶5, March 28, 2006. "Commodity Jurisdiction ("CJ") submissions and determinations are ... considered an [sic] 'export or temporary import document' under §§ 127.2(a) and (b)(13) of the Regulations." *In re Investigation of Goodrich Corporation and L-3 Communications Corporation*, Draft Charging Letter, Part 1, ¶5, p.2.

The CJ Working Group's objective was to review the CJ process, 22 CFR §120.3, and the electronic CJ form. One observation was that there are inconsistent submissions. Generally, CJs are not returned without action, but the Department will ask for more information, which is a delay factor. Other observations were inconsistent decisions, lengthy processing times, disconnect between "technological" standards and state-of-the-art, lack of transparency, and inadequate resource allocation. Then the scope of the CJ process was examined by

reviewing the electronic CJ submission and potential § 120.3 modifications. DTAG as a consensus has found the electronic CJ form is not tailored to either 22 CFR §120.4 or to the goal of jurisdictional determinations. Also, the electronic CJ form does not provide sufficient flexibility to address a variety of scenarios where a CJ may be sought by an “anonymous” source, “on behalf of,” or by an “unrelated” third party. The electronic CJ 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). Further, the estimated burden time is more than the two hours indicated on the form. With regard to the electronic submission of CJs, DTAG recommends that submissions of CJ should not be limited to submitting them electronically. Submitting a CJ electronically should not be mandatory but be optional. The focus of the CJ process should be what is statutorily intended to do – determine the jurisdiction of items properly subject to ITAR control. CJ working group proposed that § 120.3 be revised to address the inconsistency that end-use is not dispositive within the policy for designating defense articles.

Remarks by Dual-Citizenship Working Group Chair Debi Davis

The issue regarding dual-citizenship is that the term “national of a third country” is not defined. State established agreement guidelines in October 2003 on “nationals of third country” and dual nationality. Also, the guidelines make reference to “country of origin,” which has no bearing on the citizenships of an employee. In the United States, you can inquire if a person is a U.S. citizen, but you are not able to ask where they were born. Most countries have restrictions on the ability to inquire whether its citizens have other citizenships. In Australia, one cannot ask an Australian citizen about other citizenships. For some foreign countries, it is considered a racist question to ask where you were born when there is no waiver in that country. For 43 countries, only 14 countries take into account place of birth as a factor of citizenship.

Manufacture Licensing Agreements (MLA) and Technical Assistance Agreements (TAA) authorize a specific country territory. The authorization should cover citizens of that territory and carve out that no person is a citizen of any of the countries in 22 CFR 126.1 unless an exception is authorized for that country.

DTAG recommends that the proposed guidance for MLA/TAA cover citizens of the territory specified in the agreement and not cover a “national of a third country.” For example a TAA could be authorized for the United Kingdom, France, and Germany. The employees are a citizen of one of the countries and

may even be a dual national. A citizen outside the specified territory works in the United Kingdom but is an Australian national. Authorization would have to be obtained for the Australian national.

Remarks by ITAR Clarification Working Group Co-Chairman Charles Graves

The ITAR Clarification Working Group solicited ITAR clauses that would benefit from clarification from the DTAG general membership. The clauses received were screened for accuracy, duplication, and relevance. A template was developed for use in putting the “candidate clauses” forward to DDTC for clarification. Two examples were presented:

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?

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 Working Group plans to submit additional candidate clauses to DDTC as they are vetted and formatted, proposes “ITAR clarification” as an ongoing DTAG function and suggests DDTC post any resulting clarifications on its Web site.

Dixon: Thank you for the presentations and we owe you a response or interaction on certain topics. We want to fully engage DTAG in the workable concepts that have been put forth. Looking forward to having the full ability to meet with DTAG members to deliver the goals and strategy Dr. Hillen outlined.

Schneider: The next DTAG Plenary is scheduled for September 21, 2006. We plan to keep up the momentum of DTAG in presenting reports on relevant issues.

(The meeting was adjourned at 11:58 a.m.)