Defense Trade Advisory Group Plenary Minutes
Tuesday, May 3, 2011

DTAG Chairman George "Sam" Sevier called the meeting to order at 10:00 AM at the Dean Acheson Auditorium at the Department of State. Mr. Sevier welcomed Assistant Secretary Andrew Shapiro.

Presentation by Assistant Secretary for Political Military Affairs Andrew Shapiro
(Click on link to view text of Mr. Shapiro's speech)

Assistant Secretary Shapiro extended his thanks to the DTAG and other participants attending the meeting, with special thanks to embassy representatives from the foreign partners. He encouraged all participants to actively engage in the meeting dialog, offering their experience and insight on defense trade. Mr. Shapiro discussed the geopolitical environment and how in the past few months it had significantly changed. He said the global economic downturn was having an impact on defense spending worldwide and that the U.S. was not immune to budget deficits. Defense spending was down, but countries still wanted to buy the best and for that they rightly turn to U.S. defense systems.

Mr. Shapiro mentioned his trip to Aero India in Bangalore this past February to advocate for U.S. defense sales, and noted that the U.S. Government was disappointed that no U.S. firm was down-selected for this competition. Nevertheless, that did not detract from the security and defense relationship with India, which is expanding. The defense capabilities of our partners will remain a U.S. national security priority and expanding the capacity of our partners to provide for their own security continues to be a major U.S. priority.

Assistant Secretary Shapiro discussed the geopolitical shifts caused by the popular uprisings in the Middle East and suggested it was time to take a closer look at the Conventional Arms Transfer Policy to reflect the world of today. He said the U.S. remains committed to Gulf security, as evidenced by the signing of the largest defense trade deal in history with Saudi Arabia last year.

In summarizing the Export Control Reform efforts, Mr. Shapiro was pleased that it was moving forward to where plans and concepts were evolving into proposals and regulatory changes. Since the last DTAG Plenary in October 2010, a number of ITAR revisions have been initiated. DDTC has published in the Federal Register a

proposed rule on the revision of USML Category VII and another one on spare parts. The final rule on Third Country and Dual Nationals should be published soon. The Assistant Secretary noted that DTAG recommendations were incorporated into all of these rules.

Mr. Shapiro stressed that the DTAG is an invaluable tool for helping advance reform, most recently by addressing two difficult issues: how tiers will be implemented and how a Government Program License could be structured. After the DTAG presentations, Mr. Kovac will be presenting the current draft concept for defining the term "specially designed". Assistant Secretary Shapiro then took questions from the audience.

A public attendee asked about the status of export reforms on the Hill. Mr. Shapiro said that consultation continues. Much of what has to be done does not need legislation, but the State Department still consults with the Congress on many regulatory changes to solicit feedback. Creating a single export control agency would require specific legislation, but many other changes would not.

Dr. Jennifer Stewart, a Canadian Embassy official, commended the team on the tremendous progress made to date in export control reform. There have been huge improvements. While there is not yet a single licensing agency, the reforms have achieved a 99 percent improvement. Mr. Shapiro thanked Dr. Stewart, noting that she would be returning to Canada and thanking her for their good working relationship.

A Reuter's press representative asked why the "Indians had not selected a U.S. fighter aircraft in their competition and did he have any insight into the reason why"? In a follow-up question, she asked when will the Saudi arms sale announced last year be finalized. Mr. Shapiro said with regard to the Indian fighter sale, he and Ambassador Timothy Roemer stated that Boeing and Lockheed had the best planes. But India made its decision. He said the relationship between India was strong and broader than one equipment sale and noted that other sales are in their pipeline to continue to build our defense trade relationship. On Saudi Arabia, negotiations continue on the LOA and that takes time.

Mr. Sam Sevier, Chairman, Defense Trade Advisory Group

Mr. Sevier complimented the two DTAG working groups, that had worked very hard, meeting twice weekly for the past 6 weeks since they were tasked on the

topics for the Plenary meeting. The teleconferencing process had been carried to a high level, as demonstrated by the quality of the presentations.

Mr. Sevier said the main thing to remember is "license required" means a "positive review and authorization" by the U.S. Government (USG) of a proposed export from the U.S. or by a U.S. person of a U.S. origin item, documentation, information or industrial technology as required under the Arms Export Control Act (AECA).

The first topic of the tasking was the Government Program License (GPL) with the concept guided "by and for" in the execution of USG acquisition and development programs through the production phase. The defining element was the requirement that the acquisition be managed by a USG program office. The DTAG *GPL working group* also investigated the potential extension of the GPL coverage into the foreign sales (FMS and/or DCS) and life cycle support phases of a USG program. Another defining element of this GPL concept is that will not be just for Department of Defense (DoD) programs, which can be the primary beneficiary, but for all USG acquisition programs with a program management office which wishes to use the GPL in the management of its program to deal with programs in which materials, components, subsystems, industrial processes and data, and end-items fall under the purview of the AECA and the International Traffic in Arms Regulations (ITAR). The DTAG GPL working group will provide examples of the time and process savings for different types of programs in their presentation.

The second topic the DTAG was assigned was to use the Interagency's tiering criteria for Tiers 2 & 3 (it is presumed that all Tier 1 items would require a USG "license" for export) and explore the possible implementing policy guidance against 1) the configuration/capabilities of defense articles/services given present DoD (not necessarily public) security policies; 2) provision of verification of export authority to U.S. Customs authorities; 3) end-use assurances (when required); and 4) provision of export information to meet USG domestic and international reporting obligations. In completing their task the DTAG *"Tiers" working group* used the work of the Interagency review of Category VII of the U.S. Munitions List (USML) – Tanks and Military Vehicles as their starting point.

The Chair participated fully in the deliberations of both DTAG working groups, and found the effort on Tiering was the most challenging, finding one definitional area and two process areas of concern. The process area dealt with the Interagency's definition which moved Foreign Policy to Tier 2/Tier 3 considerations, and which fed directly into one of the process area concerns.

The first process area is "How do you tier lethality?" It appears the Interagency used a DoD perspective of "can the U.S. easily defeat/counter an exported system/capability" which lead to a concept of system/capability age as a criteria. Which leads to a myopic perspective of systems/capabilities in such a category would not need a license (i.e., a positive USG review and authorization) for export. Thus, a squadron of F-5 fighter aircraft to one of the countries in central Africa could go without USG review/knowledge, which completely skirts the Foreign Policy consideration.

The second process area was a concern from the Chair's participation in both the DTAG GPL and Tiers working groups. It dealt with the concept of "positive factors" which came from the attempt to draw a "bright line" between the USML and the Department of Commerce's Commodity Control List (CCL) for Commodity Jurisdiction purposes. However, when such factors are applied to the "technology transfer review" process they tend to move from a license review initiation criteria to an upper limit release factor. In such cases, the "positive factors" (or standards) become obsolete given the capability changes in components, materials, manufacturing, etc. over time. Although using "positive factors" in initially drawing the "bright line" between items on the CCL and the USML would be quite useful, keeping those values relevant/current over a period of time would be very challenging when generational changes in component designs are now being reached in months instead of years. The result would be evaluating tomorrow's equipment and components/materials/industrial technology with yesterday's standards, for which many such items might no longer even be available in the world-wide supply/support chain.

In closing Mr. Sevier noted that part of the licensing process is to gather reporting information. The need to assimilate such information is key to both U.S. internal programs as well as the support of other regimes.

Bill Wade, DTAG Working Group Coordinator

Mr. Wade said he was speaking for the DTAG members at large in stating that it was a privilege to be working on Export Control Reform (ECR). Reform was an iterative process involving a significant level of effort on behalf of the volunteers, who have met twice weekly for the past five to six weeks. As the presentations contained much information, Mr. Wade asked the audience to hold questions until the end of each presentation. Mr. Wade then introduced the Co-Chairs of the Licensing Process Working Group, Ms. Kim DePew and Mr. Dale Rill.

Ms. Kim DePew and Mr. Dale Rill, Co-Chairs, Licensing Process Working Group
(Link to Working Group presentation)

Mr. Rill thanked the Working Group members. The working group on the Licensing Process was asked to determine how to implement the licensing policy guidelines for Tiers 2 and 3 in the ITAR to include recommended regulatory language for the "authorizing mechanisms" and "license exceptions." The group considered this exercise as an extension of a prior tasking in reviewing the USML, which supported one of four major ECR initiatives, which also included a single IT system for information collection and central repository; a single licensing agency; and a future single enforcement agency.

The license exemption policy proposed by the DTAG had to address security policy, re-exports, eligibility, end-use assurances and reports to Congress and/or other organizations/regimes globally. The exemption for Tier 2 would be available to NATO plus countries, and the exemption for Tier 3 would be available for all countries except 22 CFR 126.1 countries or countries with other export restrictions. The term "exemption" versus "exception" was done purposefully by the Working Group since it considers the meaning for "exception" to be different from that intended by this exercise. The term "NATO+" was also intentional so that the Department of State could delineate what nations are intended to be included in that definition. The presentation did not display all associated risk, only that which had been identified to date. It was noted that items moving from the USML to the CCL could be as tightly controlled under the EAR or equally tiered with the same licensing policy.

The new ITAR license exemption was for eligible defense article systems, components, parts and assemblies, software, technical data and defense services controlled under Tiers 2 and 3. Tier 2 items would be eligible for export to NATO-plus foreign government end users only. However, it was recommended that a new party be added to the foreign government end user transaction cycle. Since many foreign government purchase orders are placed through third parties, the Working Group suggested modifying the proposed rule to allow use of third party purchase orders for goods destined for foreign governments, provided certain criteria were met. These third parties would be called "trusted agents". Limiting the exemption to U.S. and foreign governments end users only will not appreciably alleviate the licensing load, hence the proposed expansion to "trusted agents." An example was provided, citing Japanese Trading Companies as the interface between the Japanese Government and its suppliers. Tier 3 items would be eligible

for export to all countries except those prohibited under 22 CFR 126.1 or other export restricted countries or parties. Certain items would not be eligible; for example, Missile Technology Control Regime (MTCR) items or transactions requiring Congressional Notification.

After explaining the concept of the new exemption, the working group presented the proposed regulatory language which would appear in a new 22 CFR 126.16. Ms. DePew discussed recordkeeping requirements for the exemption as an essential part of the process. The recordkeeping had two segments: what the exporter must maintain and what the exporter must submit to the USG for reporting purposes. When the exporter uses the license exemption, they will be required to provide information to the USG for required reporting to meet Congressional and international obligations. A suggested list of reporting criteria was offered, but the challenge remained on how the exporter would provide the information to DDTC and upon export, to the Automated Export System (AES). The working group suggested the data be input directly into a single USG IT system, which would provide industry with a "tracking number" when uploading export shipment information.

Re-exports and retransfers would be covered under the new proposed exemption, following similar eligibility rules, but subject to certain limitations and requirements. The articles would be limited to Tier 2 and 3 defense articles, provided only to authorized end users and countries, along with a requirement for written notification to DDTC 30 days following the transaction. Draft regulatory language changes to 22 CFR 123.9 were suggested.

End-user and other assurances would continue to be required. The proposed exemption would be in addition to other existing exemptions, which would remain in place.

The working group listed possible risks they identified, but were unable to address. They did not have a positive list for all categories to validate their approach. They were not privy to all foreign policy or national security concerns as some are not published. There is a possible risk of exporting large quantities of Tier 3 items.

Finally, the working group listed items that would not change with the addition of the license exemption, as well as, the positive impact this exemption would have.

The floor was opened for questions.

A public attendee said that the proposed exemption was great in scope and reach. Re-export and retransfer language tracked Section 3 of the Arms Export Control Act. Was there a need for legislative change based on the new regulations?

Mr. Rill responded that he was not certain and that a legal review on how to apply it would be required.

Mr. Rill discussed one of the associated risks identified, which was the foreign policy and screening process on lists identifying questionable parties. That list was not published by State, and therefore that party could potentially qualify for the exemption. There was no information available to provide assurances for the exporter.

Mr. Robert S. Kovac, Managing Director, DDTC, said that the Tiers were explained in the State Department's public notice. Tier 1 was narrow in scope, limited to WMD, delivery vehicles, U.S. critical technologies only. Ms. DePew suggested that statutory change was needed for MTCR, or would need to be carved out. Mr. Kovac indicated that a statutory change may not be required for ITAR items. Mr. Rill said it would depend on the new USML category descriptions. Mr. Kovac said no Significant Military Equipment (SME) was included in the published list. He continued by asking the DTAG to consider if the due diligence ITAR requirements of today were sufficient. He said that an exporter will not need a license for Tier 2 and 3 items, and that industry would take the entire responsibility for the transaction. Ms. DePew said they did not flesh out the complete level of due diligence required and would need to look at that issue, but that many companies had thorough due diligence processes in place. Mr. Rill said they could look at how to implement the functions of the DSP-83 without USG involvement. Mr. Kovac also questioned why the Working Group had not addressed the current DoD Technology Security Policy review areas with respect to the Tier categories.

Ms. DePew indicated that the team had partially addressed this question. The working group had suggested that items could be specifically carved out of the exemption, moved to a higher tier if needed, or the exporter could be asked specific questions via the aforementioned IT system prior to export. Mr. Sevier said the Working Group was given the review categories which included LO/CLO, anti tamper and similar policy issues. However, as industry in general does not have access to the requirements in these areas, the Working Group felt that any definition on the intention of such review could only be done by the U.S. Government.

A public attendee asked if EU countries were included in addition to NATO plus countries. Mr. Kovac said the licensing policy for Tier 1, 2 and 3 was for close allies and regime partners, but that no final USG decision had been made. The current AECA, for purposes of the discussion, provides certain privileges to NATO plus five, but the final decision is still open.

Another public attendee thanked the DTAG for its hard work. He asked two questions, the first about why items in Tier 2 were limited to NATO government end users versus all users. He also had a process question about the license exemption in that when a notice was sent to DDTC, did the exporter have to wait for a response from DDTC? Mr. Rill said the tasking direction on NATO governments came from State. The DTAG had added the trusted agent, but that was as far as they exceeded their tasking. On the process question, the exporter would not have to wait; expectations are that it will be an automated process in that the exporter references an exemption number to be used with AES or DTrade and receives a transaction ID number, from whichever IT system is used to support the exemption. Ms. DePew commented that it was not a "Mother may I?" system, but rather that the exporter could immediately export using the exemption along with a system generated transaction ID number. The attendee asked the DTAG to consider other parties that might also need access for business purpose, such as freight forwarders and others.

An attendee said that the data elements entered into the IT system would help foreign governments as well in meeting Wassenaar and other reporting requirements. Governments generally do not have current data and this system would help in that regard.

Mr. Kovac said some items were eligible based on licensing policy. He had the list and the associated Tier, but should it to go a Tier exemption process? Because of requirements for MTCR, would it be better if the USG made it Tier 1? He said it was beginning to resemble the EAR list. Mr. Rill said he thought it should be a single list and MTCR in Tiers 1 and 2 and if necessary, take the lower MTCR items and move them up in the Tier. Ms. DePew liked a clear break or license with carve outs, as it might be easier to carve out MTCR as single block. Mr. Kovac said Section 71(c) of the AECA addressed what was needed for MTCR items and either proposal was okay. In the EAR, however, there was a mandatory licensing requirement for MTCR items.

A public attendee asked about private intermediate parties such as freight forwarders, brokers, logistics, repair shops, intermediate manufacturers, etc., that were not addressed in the exemption and were not "trusted agents." How would those private parties be covered? Mr. Rill said the DTAG tackled one concern and developed the "trusted agent" role. This question was a much broader issue and was a "parking lot" issue for future discussion. Mr. Rill continued that the role of foreign intermediate parties as integrators had a different role than that envisioned by the "trusted agent" role and the types of transactions described were not reviewed by the Working Group.

Ms. Joyce Remington, DTAG Vice Chair, thanked Ms. DePew, Mr. Rill and the DTAG Working Group members for their efforts. She formally asked the DTAG members to vote on submitting the presentation to the State Department. She received a motion and a second, asked for a show of hands in support of the proposal and a show of hands against the proposal. The vote was unanimous to submit the Licensing Process presentation to State Department.

Mr. Sevier called for a break at 11:45AM.

The meeting reconvened at 12:00 noon and Mr. Wade introduced Mr. Bryon Angvall and Mr. Tom White to present the Government Program License (GPL) study.

Mr. Bryon Angvall and Mr. Tom White, Co-Chairs, Government Program License Working Group
(Link to Working Group presentation)

Mr. Angvall thanked the DTAG Working Group members for their diligence and support of the project. The working group's task had been to review the Government Program License (GPL) concept developed by DDTC and to provide insight on the practicality of implementing a GPL. In summary, a USG program office would submit a request for a GPL to DDTC; DDTC would process the request as any other license under the ITAR; with final approval posted to the PM/DDTC website behind the DTrade2 log in. The USG would hold and manage the license, while industry would apply to use the GPL by submitting implementing licenses to DDTC referencing "in furtherance of the GPL" and not requiring staffing.

The GPL is a cooperative effort between the USG and U.S. industry, but not the foreign parties. The USG sponsor "program office" with support of the U.S.

contractors on the program would be responsible for preparing the scope of the GPL, managing the statement of work, amending to add or delete parties, and modifying the SOW, identifying terms and conditions. The USG sponsor would have a much larger role and would need resources to carry out its responsibilities. The scope of the GPL could be separated into major elements by technology, e.g. sensors, weapons, or propulsion. Retransfer of data/hardware among the approved U.S. and foreign entities identified in the GPL would be authorized. Standardized provisos would make the process more manageable.

A number of issues must be addressed, to include convincing DOD and other U.S. Government program office/managers that it would be in their best interest to become a sponsor, since that would involve a significant level of effort on their part. Automated mechanisms must be developed to manage the program. It would also be necessary to assess if Federal Acquisition Regulations (FAR) or other regulations would be impacted.

Mr. Angvall next provided a general overview of how a GPL would work. The initial step involved the USG "program office" submitting a request for a GPL to State for approval. Next State would staff the GPL to all agency stakeholders for formal review/approval and subsequently notify Congress before posting on State's website. This posting would include the GPL case identifier, a summary of the overall scope and approved domestic and foreign participants. On a more restricted basis DDTC would provide a more detailed scope, with any applicable limitations for access by the USG applicant and approved parties. The GPL approved participants would subsequently submit implementing licenses "in furtherance of" the GPL referencing the GPL case identifier.

Although the GPL would be valid for the duration of the program, the individual implementing licenses issued "in furtherance of" the GPL must be renewed at least every four years under the DDTC plan since this would essentially be a license and not an agreement. The DTAG recommended that DDTC provide some additional flexibility and extend the duration out to at least six years.

Under the DDTC proposal the USG sponsoring program office would be responsible for maintaining the accuracy of the GPL including any amendments to the scope and approvals for additional domestic and foreign participants. The direct benefits of a GPL would be that it would be applicable to any USG program (e.g., DoD, NASA, DHS; etc.) and would eliminate a transactional based license approach; reduce the overall number of licenses and allow the USG sponsoring program office to have complete control over the program. It was also highlighted

that from a compliance perspective it would benefit industry in that each participant would be responsible for their own actions under the GPL – which was an issue under earlier program license initiatives. One of the primary concerns for the DTAG regarding the GPL proposal was the willingness of the USG "program office" to take on the responsibility for developing and maintaining the scope as well as timely tracking of additions/deletions of approved participants including second and third tier suppliers.

Ms. Debbie Shaffer, a Working Group member, provided an example of a Government Project License if applied to a NASA program started in 2004, showing that under the GPL licensing model, rather than the actual 40 export approvals to date, it would require only 21 approvals.

Mr. Tom White gave another example using the Joint Strike Fighter (JSF) and suggested than instead of 2000 plus approvals, just over 300 would be required.

The floor was opened for questions.

A public attendee asked what was the difference between the GPA in 22 CFR 126.14(a)(1) for JSF and this GPL proposal? Mr. Angvall said the principle difference was that the USG was the applicant, not the company, and therefore managing the license would be the USG program office's responsibility.

Another attendee asked about foreign parties and ITAR transfer requirements. The attendee stated that the U.S.-U.K. Defense Trade Cooperation Treaty admitted parties within the Approved Community without licenses. Why not use the same mechanism for foreign parties on retransfers? Mr. Angvall explained that the GPL was intended to control the U.S. parties, not deal with foreign party retransfers. Foreign parties would continue to be subject to standard ITAR retransfer requirements with no additional agreements and/or NDA's required although some situations would require a DSP-83 be signed by the foreign party. The attendee asked if the foreign party would be advised by the U.S. companies if they could retransfer. Mr. Angvall replied he was not certain. This aspect of the proposed GPL needed more work.

Mr. White commented that only those parties involved in the GPL could review the GPL and its requirements on the State Department/DDTC website. Transfers within that group could be authorized. How foreign parties notified their actions must be worked out.

Mr. White also commented that the GPL would require a good sales job with the USG Program Office since they need to understand the benefits as the level of effort on their part would be high, especially in the beginning in setting it up.

Mr. Sevier said there could be a requirement in the USG Program Office's Request For Proposal for respondents to provide support to the contracting entity (i.e. USG program office) to help manage the program. The current Global Project Authorization approach has been hamstrung by requiring each individual contractor to get their own license. With the DDTC proposed GPL, the program managers would have more control over their program and the contactors, which is a significant potential benefit.

A public attendee asked about the level of control of the program office, and would that eliminate the requirement for a foreign government to sign technical assistance agreements? Mr. White said there would be no more signing of agreements and that instead, the terms and conditions would be in the implementing license issued to the contractor.

Another attendee asked what would a foreign person sign? Would they sign a DSP-83? Or the overall GPL? Mr. Angvall answered no with respect to signing the GPL, but the requirements for a DSP-83 were unchanged. The same attendee questioned when the GPL was amended, would Lockheed need to amend its agreement with the foreign party? Mr. White said that the program office had to work with the OEM to keep the GPL up to date. Amendments to the GPL would not require amendments to the implementing licenses. Mr. Sevier added that the provisos for electronic warfare would not apply to the engine supplier, for example, but that the entire GPL program requirements would be available on the DDTC website. He also said that the program security requirements and provisos could be passed down the subcontractor/vendor chain via contract language.

Ms. Joyce Remington, DTAG Vice Chair, thanked Mr. Angvall and Mr. White and the DTAG Working Group members for their efforts. She formally asked the DTAG members to vote on submitting the presentation to the State Department. She received a motion and a second, asked for a show of hands in support of the proposal and a show of hands against the proposal. The vote was unanimous to submit the presentation to the State Department.

Mr. Robert S. Kovac, Managing Director, Office of Defense Trade Controls, "Specially Designed"
(Link to presentation)

Mr. Kovac told the assembled group that he would like their input on a new definition for "specially designed" that was under development by an interagency working group. The use of the term would be the same, and applied equally, wherever it would appear. Review of the term "specially designed" had been in work since January of this year. The term appears in the CCL, international agreements such as Wassenaar, Australia Group, MTCR, CCL, USML and so forth. It is defined only in the MTCR. DDTC developed the definition with the intent that it would be universal and would apply in all instances. The term "specially designed" would be used to define an end item, and also parts and components that are "specially designed".

A "specially designed" item is an item that is enumerated on the USML or CCL and, as a result of "development," has properties peculiarly responsible for achieving or exceeding the controlled performance levels, characteristics, or functions of the referenced item identified in the USML.

A "specially designed" part or component is a part or component used in, or with, a specific item in the USML. For the purposes of this definition, an item is not considered "specially designed" in any category of the USML or CCL if it is separately enumerated in a USML subcategory or an ECCN that does not have "specially designed" as a control criterion.

The first part of the definition deals with items and the second part deals with parts and components of items. For example, some items are on military vehicles, but State does not want to control them because the identical item can also be used on a commercial pickup truck and therefore it was not specially designed. But if the item is modified to fit on the military vehicles, then it would be specially designed for use on the military vehicle. Transfer of any parts and components off the USML would require an AECA 38(f) notification.

Mr. Kovac indicated that to initially determine jurisdiction, a CCATS is not staffed to the interagency so it does not qualify as having been defined under EAR 99. But if a Commodity Jurisdiction comes back with an EAR 99 designation that would be a valid definition because it has been through interagency review.

The proposed new definition is in interagency review cycle and will be published soon as a Federal Register Notice for comment.

A public attendee asked about exclusions and if State was not concerned about a screw that could be used interchangeably with military and commercial vehicles,

what if the military screw had to be ½ inch longer, would it then be captured under the USML? Mr. Kovac said it would not be captured, that a bolt was a bolt.

A DTAG member asked that since an item is not considered "specially designed" in any category of the USML or CCL if it is separately enumerated in a USML subcategory or an ECCN that does not have a specially designed as a control criterion, if gyros with a specific accuracy requirement were enumerated in the USML or CCL, would a gyro that did not achieve the accuracy threshold also be considered to be enumerated? Mr. Kovac answered "yes".

The same DTAG member continued with another question related to the exclusion which states that if items that are not so separately enumerated are, for purposes of this definition, also not considered "specially designed" in any category of the USML if they are: (1) a single, unassembled part used in multiple types of civil and military items, such as springs, wires, screws, rivets, and bolts". Is exclusion No. 1, intended to state that those types of parts are not considered "specially designed" rather than looking at individual parts on a case-by-case basis. Mr. Kovac answer was again "yes".

A DTAG member asked if a fuel pump was used on a truck, then used on a tank but had to be modified to fit the tank but no other changes made, would that be captured? Mr. Kovac said it would be captured on the control list under the definition as a part of component based on the modification.

A DTAG member asked if an item was in serial production, as described in No. 4 of the draft definition, and used as a part on the Eurofighter aircraft, would that be an exclusion? Mr. Kovac said the end item, with form/fit/function, was only part of the definition and the second part was that the item was enumerated on the list. If the item was used on an excluded item such as a Ford F150 which is in serial production it would not be on the list because it was designed for the F150, and hence not controlled. But if designed for the Eurofighter and no other commercial application, then it would be on the list and controlled.

A DTAG member commented that under Export Control Reform, the USML was being revised. If a fuel pump can be used in a tank and a truck, even if fuel pump was not called out other than as a part or component, the definition is designed as a catch all because the innocuous fuel pump was used in the tank. Mr. Kovac said there are international obligations to control tanks and their parts and components, and therefore it was not possible to eliminate the license requirement. Look at

Category VII where 13 parts are listed. The other parts not listed will be on the CCL.

A public attendee asked about magnets sized for satellite use. How would they be treated? Mr. Kovac responded that in Category XV, unless separately enumerated, a magnet as a category the USG does not care about becomes catch-all in second part of the definition. If not a separate entry on the second part (an item specifically excluded from control on the USML or the CCL), then the second part applies because it is specifically excluded from control on the USML or CCL.

A DTAG member commented that an initial concern with regard to the proposed definition of "specially designed" was that it would undermine the intent of changing the USML to a "positive list". It was noted that if the intent is to create a catch-all sub-category for "specially designed" parts and components in each USML category, we will have the worst of both worlds – a positive list that runs the risk of being quickly outdated and a catch-all category that encompasses even the most basic items, such as bolts and screws. Mr. Kovac stated that the intent is to use the definition to create EAR categories for those parts and components removed from the USML.

The discussion continued and the attendees overall felt that it was headed in the right direction, but indicated that they would like more time to review the document.

Mr. Terry Otis, DTAG Secretary, said that public comment for the record would be accepted no later than COB Friday, May 6. Comments should be emailed to Terry.Otis@itt.com. No proprietary comments would be accepted.

Mr. Sevier concluded the meeting at 1:30PM and Mr. Kovac adjourned the DTAG Plenary session.

Submitted to the Honorable Andrew J. Shapiro, Assistant Secretary of State for Political Military Affairs –

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Date

BY:

Robert S. Kovac
Designated Federal Officer

George (Sam) Sevier
Chairman, 2010-2012 Defense Trade Advisory Group