

Defense Trade Advisory Group Plenary Minutes

Wednesday, October 20, 2010

DTAG Chairman George "Sam" Sevier opened the meeting at 1:30 PM and introduced Assistant Secretary Andrew Shapiro, who although had a conflicting commitment at the Pentagon, was only able to stay for a short while.

Presentation by Assistant Secretary for Political Military Affairs Andrew Shapiro

Assistant Secretary Shapiro thanked the DTAG members for their critical role in assisting with export control reform. He said it was an exciting time and that the Administration was truly committed to the Export Control Reform (ECR) process. He commented that the State Department relied on the DTAG's advice and counsel in attempting to foresee any unintended consequences. All parties agree that the current export system can be improved but at the same time to ensure that there are no more (new) problems.

Assistant Secretary Shapiro appreciated the DTAG member participation and recognized Chairman Sam Sevier and Vice Chair Joyce Remington. He acknowledged foreign partner representatives and observers from the embassies of Canada, Sweden, Switzerland and the Netherlands and urged interaction with the DTAG members, sharing their expertise and experiences.

At the DTAG Plenary in July 2010, the focus was an overview of the export control reform plan, as briefed by himself and Mr. Brian Nilsson and progress was truly being made. For example, as of the first week in September, all Commodity Jurisdictions (CJ) were submitted electronically. Assistant Secretary Shapiro reminded the DTAG that electronic submission of CJs was the subject of a DTAG Working Group a few years ago and efforts from the group were used during development of the form that was finalized with OMB. Already benefits were being realized. Response time had decreased from 196 days in 2006 to 41 days today, even though the CJ caseload increased from 412 to 817 annually. Government agencies were working in an electronic collaborative workspace using standard software. CJs are distributed electronically to all reviewers. This was the first step for any manufacturer in obtaining not just an answer, but the right answer in a timely manner.

Congress voted to implement the Defense Trade Treaties with the UK and Australia which was a great victory for the US and its closest key allies. The treaties were negotiated under the last Administration but this Administration worked to ratify them, working with Congress for 18 months to obtain ratification. The DTAG had been consulted on the first draft of the implementing regulations. When the regulations are finalized, they will be published as a proposed rule and the Assistant Secretary encouraged public comment.

At the July Plenary, three proposed ITAR changes were discussed and the State Department expects to publish those changes by the end of 2010. These addressed how to protect the best technologies, share security challenges, and how to prevent adversaries from obtaining these technologies.

Assistant Secretary Shapiro recalled that when he first addressed the DTAG a year ago, the emphasis was on obtaining the right balance of sharing technology with our allies and protecting that technology from falling in the wrong hands. A critical element of Export Control Reform (ECR) is drawing a bright line between USML and CCL and to tier the items for control at different levels based on specific criteria. If Congress passes the legislation, the result will be a single export control list. The emphasis is on objective criteria—precise numbers of micros, speed, and accuracy. An intergovernmental committee tried to draft these criteria for USML Cat VII and found the work challenging. The Assistant Secretary was eager to see how the DTAG had applied the guidelines used by the intergovernmental agency to the USML categories reviewed by the DTAG working groups, and wanted to know if the government's guidelines had helped or hindered the process

Assistant Secretary Shapiro thanked the DTAG members for their attendance and interest, and said he was optimistic that the collaborative process would continue.

Mr. Robert S. Kovac, Managing Director, Directorate of Defense Trade Controls

Mr. Sevier invited DDTC Managing Director Robert S. Kovac to make opening remarks.

Mr. Kovac thanked the DTAG members for attending the Plenary and for their efforts on reviewing the three categories in an abbreviated time frame. He noted the implementation of the U.S.-U.K. and U.S.-Australia Defense Trade Cooperation Treaties would take a minimum of six months before the treaty provisions could be employed. The implementing regulations would be a little different than the ones the DTAG had previously reviewed. The Administration had attempted to create a positive list, which had resulted in a 43 page supplement to the original materials reviewed by the DTAG. This would have been prohibitively expensive to publish in the Federal Register. DDTC had gone back to the Canadian model in order to prevent the creation of a third list to implement the treaties. The issues of how to create the "community" and "operational programs and activities" specified in the treaties were still under review, along with related issues such as changes to the AES data base that would enable parties to claim the treaty exemptions when shipping items. In addition, changes to Australian law were needed, and the U.K. needed to publish a new OGEL to cover the treaty activities. An additional exchange of letters on the treaties between the governments is ready to proceed.

Mr. Kovac said the export license status reporting system MARY was up and running. Companies had access to their license status and could provide this to their customers.

Electronic filing of agreements had begun on September 1, 2010 and electronic filing of CJs had begun on September 3, 2010.

Mr. Kovac reviewed the progress on export control reform, including the President's August press release and Secretary Gates' comments on the four singularities which are a single agency, IT system, regulations and enforcement function. He described the evolutionary process and efforts among the various U.S. Government agencies involved in the process which as one can imagine was akin to herding cats. The process would be completed only when the legislation was in place. The Administration was making changes as such changes made sense.

There had been progress on the other issues previously addressed by the DTAG, including the see-through rule, exemption on the export of replacement parts, and the "by or for" exemption, which should be published by the end of the year. It all came down to a re-write of the USML, and DDTC would have to see if they could make it work. Mr. Kovac wanted to put DDTC out of the CJ business and that would happen with drawing the clear bright line.

The inter agency export control reform group would brief the Congress the week of October 25.

The reform group had completed a draft of USML Cat VII and the process had not been easy. It will be published as a rule for comment. It was important, but difficult, to structure mechanisms for removing items from the USML. Mr. Kovac said the process kept him busy, and that he looked forward to hearing the DTAG's comments.

Mr. Sam Sevier, DTAG Chairman, and Ms. Joyce Remington, Vice Chair (see tasking letter)

DTAG Chairman Sevier formally called the meeting to order convened the DTAG Plenary session and introduced Vice Chair Joyce Remington and Recorder Terry Otis.

Mr. Sevier described the essence of the September 3, 2010 tasking letter that have been given to the DTAG by Assistant Secretary Shapiro, noting that the letter would be published as part of the record. The DTAG had been asked to revise the USML and CCL by creating a bright line of jurisdiction for items, to identify the items in a tiered system, and to structurally align these items into a single list. In order to accomplish this, the DTAG was charged with reviewing USML Categories VIII, XI and XII. The work was done by Working Groups and the resulting DTAG report would be published on the Department of State's DDTC website.

Vice Chair Joyce Remington added that DTAG members had selected the USML category in which they would participate. The Working Groups had been meeting since September 3. She commended Mr. William Wade for oversight of the Working Groups and facilitating Webinar meetings and teleconferences to enable collaborative meetings

among the Working Groups. She said that the Working Groups had been lead by a member outside the beltway and a member in the Washington area.

Mr. William Wade (see DTAG Overview presentation)

Mr. Wade thanked the Working Group members for their dedication and hard work on a challenging task carried out over a relatively short period of time. The DTAG was excited about export control reform and the opportunity to contribute to the process. He noted again that the effort was carried out by three Working Groups with representatives from inside and outside the beltway which created a more diverse DTAG membership tackling the task. He said that along with diversity came different approaches. Although many of the meetings were Webinar or teleconferences, last week most of the DTAG members met in a face-to-face session to finalize the reports.

Mr. Wade said the tasking was to review the CCL and USML to create a bright line between the two lists and place the items into a tiered system, in essence creating a "positive" list that identified controlled items. The Working Groups used a pyramid diagram, inserting the three tiered concept. Dual use items could go all the way to Tier 1, the most controlled list which includes weapons of mass destruction (WMD) or technologies related to WMD, and items available almost exclusively in the US providing a critical military or intelligence advantage. Tier 2 applies to items that are available almost exclusively from Regime Partners and Tier 3 applies to items not in Tier 1 or 2 that nevertheless provide a significant military or intelligence advantage. In developing the lists, the Working Groups would identify the items from the relevant USML Category and determine placement in Tiers 1, 2 or 3, and describe how the conclusions for placement were reached.

Mr. Wade pointed out that the DTAG had been given only six weeks for the difficult task of providing drafts of new USML Categories VIII, XI and XII. The resulting presentations were not a final product, but what had been accomplished would be turned over the U.S. Government. The Working Groups had highlighted the need to identify discriminating factors for each end item and major subsystems to differentiate between the rolls of the State and Commerce Departments and within each tier. The DTAG recommended that a discriminating factor or military attribute should be considered as the primary attribute for determining whether an item is considered a "defense article" or a "dual-use" item under a new three-tiered control system. Performance capability should be a major contributing factor for determining the appropriate tier for control.

The DTAG acknowledged the degree of difficulty with respect to identifying the discriminating factors and assigning values, and offered to assist U.S. Government interagency working groups in this endeavor.

Whatever the efforts going forward, the U.S. Government and industry needed to collaborate on the effort. After each USML Category presentation, the DTAG would vote on accepting the presentation as a final document to be turned over to the U.S. Government.

Mr. Bryon Angvall and Mr. Dale Rill, USML Category VIII Working Group Co-Chairs (See Category VIII presentation)

Mr. Angvall thanked the Working Group members and his co-chair, Mr. Rill, for the effort put forth. He said that the Working Group had prepared a presentation describing their deliberations and conclusions and a separate document with a new USML Category VIII. He said that one of the conclusions of the Working Group was the separation of the platform from weapon systems. A C-40 is a 737 but the plane becomes military by installing military systems but it is still fundamentally a commercial plane. He commented that when selling such a plane, a \$60M plane with a \$10K military radio would make it military and subject to Congressional notification. And that servicing such a plane would be military versus commercial. He pointed out other examples from the presentation related to inert fuel tanks and night vision equipment and impact on commercial platforms. Another example was ballistic protection on commercial aircraft doors required for anti-terrorism. He also noted that it was important that services to commercial aircraft not be caught up in USML controls.

He also discussed removing items from the USML control upon reaching a certain age, technology phase out, or retirement from US military use. He suggested that cargo, transport and utility aircraft had the greatest opportunity for change when viewing the aircraft platform versus the military systems and suggested reducing control on such aircraft to the commercial equivalent while the military systems remain on the USML. Trainers in many instances did not have systems or weapons and should be considered commercial. It was difficult to create a category for UAVs as it is based on mission and he suggested that the Tier align with the mission. He then introduced Mr. Peter Jordan, a Working Group member, who would discuss engines.

Mr. Jordan said that with engines and propulsion systems, military and commercial, the key was to identify discriminating functions unique to military functions. There exists an overwhelming commonality with commercial and military engines. For example, engine control systems would have unique functions such as high altitude or afterburner, and those would be the systems controlled under the USML.

Mr. Dale Rill mentioned that the three Working Groups reviewed the USML and applied the same three tiered tasking. Identifying and describing the discriminators and performance parameter helps define attributes unique to commercial or military systems and for tier selection. Engines would remain under the new system and would not be removed; however, engines would fall into a different tier based on discriminators.

Mr. Angvall continued with the parts and components and technologies and the committee had suggested Tier 2. Low observable technology at the high performance level would be Tier 1. He said there were challenges on placing items Tiers and the bright lines had to be flushed out further.

At that point, the floor was opened for questions.

A public attendee asked about the structures for low observables and was it subjective or objective?

Mr. Angvall responded that the Working Group had tried to define structural techniques that were unique to low observable such as technologies for signature reduction, but had not arrived at any objective descriptions. However, key technology components, some materials, and design capability need to be controlled.

A public attendee asked about the ability to see functionality at the end item level and at the component level. Would a part follow the component, for example, a part that pushed an engine afterburner component?

Mr. Jordan commented that the Working Group had considered how far down the chain one would have to go to identify a part not contributing to the core functionality, and consequently, the related technology, materials, etc. The real challenges of creating a positive list were that some pieces did not contribute to core functionality and those concepts still had to be defined.

Mr. Kovac asked if the Working Group, after the exercise, could see anything in the guidelines provided by DDTC to the DTAG that should be changed or improved upon for clarification purposes.

Mr. Angvall said the guidelines were okay and it was a good path. Some tweaks were needed but no glaring issues and had overall found the guidelines useful.

A public attendee asked if there should be a Tier 4, or designation of items that should be EAR 99.

Mr. Angvall said it depended on the final structure for Tier 3 and possibly a Tier 4 could be a catch all. It was up to the U.S. Government. Establishing a Tier 1 was simple but the distinctions between Tier 2 and tier 3 became fuzzy.

Mr. Kovac commented that when government agencies reviewed Category VII, they had defined T2 and T3 tanks but the DTAG Working Group had defined all jet fighters as T2. He inquired as to what had been the rationale behind that decision.

Mr. Angvall replied that it had started with the platform and the Working Group had assumed that the F-22 was T1 because no export of that platform had been permitted. By contrast, the F-35 had been designed for export so it was assumed that it was T2. The Working Group had differentiated between the platform and the systems on the platform. A T2 platform could have a T1 system on board. But very few aircraft would be in T1.

At 2:50 PM Mr. Sevier called for a 15 minute break.

At 3:05 PM Mr. Sevier reconvened the meeting.

Mr. Wade asked for a DTAG vote to accept or reject the USML Category VIII report and asked for a motion to accept. The motion was seconded and passed by a show of hands with all in favor and none against.

Mr. Sevier introduced Mr. Tom White and Ms. Kim DePew as the co-chairs for Category XI.

Mr. Tom White and Ms. Kim DePew, USML Category XI Working Group Co-Chairs (See Category XI presentations)

Mr. White noted that there were 12,000 licenses issued this year in CAT XI. The Working Group had attempted to address everything that was currently listed in CAT XI, but did not address experimental items. Creating a positive list was an incredible challenge. While the original approach had been to itemize all types of items covered in CAT XI, after receiving an 82 page list from one member the Working Group had decided to establish an overall framework first.

Ms. DePew added that the Working Group's strategy had been on how to pick items to be controlled rather than on establishing a full list of items. She noted the need to clarify where avionics were to be controlled; for example attitude, speed, and other normal aircraft instrumentation.

The Working Group noted that software was key to managing export control as this is where most of the sensitive technology resides. There was discussion on where to break out source code and object code.

Technology was described as an issue for the Working Group as a whole. An example was that technology required for operations might be less controlled than technology required for depot level maintenance. There was concern about how "technology" was described because it might lead to broader controls. The Working Group liked the CCL term "required" technology as it could be applied to control sensitive technologies but not applied to nuts and bolts. Technologies required to design capabilities were more sensitive.

DTAG Chairman Sevier commented that an example was the industrial capability to do an upgrade, not an individual component that was potentially sensitive. Technologies needed to be defined in terms of what was required to design, produce, repair, and use items.

The Working Group did not have time to address Defense Services and Manufacturing and Production Authorizations, which the group felt were more licensing terms than

items to be classified (actions as opposed to items). The group said it required more clarification of guidelines to tackle these categories.

In discussing terms, including “required,” “specially designed,” and “technology,” the Working Group noted the requirement to use such terms in a manner consistent with existing multilateral export control agreements. There was a need for more discussion of these terms.

Mr. Sevier opened the floor for questions, but there were no questions from the DTAG members or public attendees.

Mr. Kovac asked about tooling and materials and if the Working Group had identified tooling or materials that were solely military. Ms. DePew said regarding tools, they had insufficient review time. And on materials, the Working Group did not find anything solely military.

Ms. Remington called for a vote and made a motion to pass the report. It was seconded and passed by a show of hands with all in favor and none against.

Mr. Wade introduced Ms. Beth Mersch and Ms. Krista Larsen for Category XII.

Ms. Beth Mersch and Ms. Krista Larsen, USML Category XII Working Group Co-Chairs (See Category XII presentations)

Ms. Mersch thanked the Working Group members and commented that further technical expertise was required for additional review for some of the products and services, particularly fire control systems.

Ms. Larsen commented that Commodity Jurisdictions on Categories XI and XII had established precedents and those should be maintained to ensure not unintended consequences of a roll back as many items in CAT XII had already been moved to the CCL.

Ms. Mersch said that categorizing lasers required some additional rationalization based on precedents already established to ensure that there was no roll-back.

On Inertial Navigation Systems (INS), technical parameters needed to be agreed on between the U.S. Government and industry. The Working Group had not attempted to specify these parameters.

On night vision, the Working Group recommended that some level of Generation III Figure of Merit (FOM) should be released. The group did not want to see some FOM

level “set in stone” for the next 20 years. This category should be updated each year as the FOM level would move forward each year.

Under parts and components, the group noted in many cases accelerometers did not reach the T2 level, and that laser diodes or stacked arrays depended on power output, as none are uniquely military in nature. Yag laser rods that are on the USML were routinely approved if the end user was approved.

Mr. Sevier opened the floor for questions, but no questions were received from the DTAG members or the public attendees.

Mr. Sevier commented that the exercise had been the DTAG's first foray into a project of this nature. The control list was not the normal type of DTAG work as they usually worked on ITAR issues. This review went beyond that, as an independent review including new tiered systems that could include EAR items. It was new ground. He said all the reports would be put in a package and presented to the U.S. Government. He noted it had taken a lot of effort to produce the report. Mr. Sevier emphasized the DTAG's hope that it would continue to be involved in the process of achieving export control reform.

Ms. DePew said that the Working Group did not go beyond "A" due to time and technical expertise limitations but the team would like to continue working on the project.

Ms. Mersch concurred and said that for GPS, PPS can be delivered commercially, but GPS/SAASM was releasable via government-to-government and to selected allied countries.

Mr. Sevier also made a comment that some GPS functions approached the level of SAASM and that more time was needed to study.

Mr. Kovac asked about the Working Group's discussion on INS, IMU, gyros and accelerometers and did any of those four absolutely require USML control?

Ms. Mersch responded that they did not see the need for controls at the component level but that they needed more time to complete the review. This was a placeholder for future work.

Mr. Kovak asked about the objective criteria for focal plan arrays (FPAs) and were there still military FPAs?

Ms. Larsen replied that if the FPA performed at a specified figure of merit (FOM) level, some of those were widely available from foreign sources. However, some FPA capabilities should continue to be controlled.

Ms. Remington called for a vote and made a motion to pass the report. It was seconded and passed by a show of hands of all in favor with no objections.

A DTAG member asked Mr. Kovac if coordination was occurring with the Commerce TACS.

Mr. Kovac responded that coordination was ongoing with the TACs as part of the interagency review process.

Mr. Kovac made some additional comments at the close of the Plenary. He noted that the government interagency group's efforts to re-write Category VII demonstrated that the re-write was not an easy task. He recognized the significant amount of work that had been performed by the DTAG and said he was deeply appreciative of this effort. He would take the DTAG recommendations to the interagency working group.

Mr. Kovac said that the Federal Advisory Committee Act limited the government's ability to engage industry at the level of the internal re-write so the DTAG represented the best effort to obtain industry input. When the reports emerged, they would be published as proposals, which would be the next time that DTAG and industry would see them. Mr. Kovac urged that comments be submitted when the proposals were published in the Federal Register.

Mr. Kovac said he wanted to personally thank the DTAG members for ensuring that the materials provided for DTAG use only had remained in proper channels. DDTC had wanted to provide the DTAG with deliberative documents and as much information as possible to assist DTAG in preparing its reports. Mr. Kovac was extraordinarily grateful that the ability to provide documents constrained by confidentiality had been honored by the DTAG.

Mr. Sevier adjourned the DTAG Plenary session at 4:05 PM.

SUBMITTED TO THE HONORABLE ASSISTANT SECRETARY OF STATE
ANDREW J. SHAPIRO

DATED:

BY:

DTAG Executive Secretariat



Robert S. Kovac
Designated Federal Officer



George S. (Sam) Sevier
Chairman, 2010-2012 Defense Trade
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