

**U.S. DEPARTMENT OF STATE
DEFENSE TRADE ADVISORY GROUP
Minutes of the September 20, 2007, Plenary Session
Harry S. Truman Building
Washington, DC**

NOTE: Participants' remarks have been paraphrased.

Opening Remarks by Acting Director of the Office of Defense Trade Controls Management, Patricia Slygh

Mrs. Slygh convened the plenary session at 9:14 a.m. by welcoming everyone. She mentioned that the Department is accepting applications for membership in the Defense Trade Advisory Group (DTAG) until September 24, 2007 (72 Fed. Reg. 50437, August 31, 2007). Current DTAG members who would like to be reappointed need to submit a current resume by September 24, 2007.

Introductions by Acting Deputy Assistant Secretary, Frank Ruggiero

Acting DAS Ruggiero introduced the speakers seated on the stage, including Acting Assistant Secretary for Political Military Affairs Stephen D. Mull, DTAG Chairman William Schneider, and DTAG Vice Chair Giovanna Cinelli.

Welcome by DTAG Chairman, William Schneider

Chairman Schneider welcomed everyone to the Fall plenary session. He presented Mike Richey with a Department of State plaque recognizing his remarkable knowledge of the International Traffic in Arms Regulations and service to the DTAG as Mike stepped down as Chairman of the DTAG Regulatory Working Group.

Opening Remarks on PM Bureau's Activities by Acting Assistant Secretary for Political Military Affairs, Stephen Mull

Acting A/S Mull mentioned that the White House had forwarded the nomination of Brigadier General (Ret.) Mark Kimmitt to the Senate for confirmation as the Assistant Secretary for the Bureau of Political Military Affairs. The Senate held a hearing, but full confirmation has not been completed.

Frank Ruggiero is the Acting Deputy Assistant Secretary following Greg Sučhan's retirement. Robert (Turk) Maggi, the former Managing Director, is in Afghanistan. In the near future, the Directorate of Defense Trade Controls (DDTC) is expecting to have a new managing director.

The Bureau continues to work on a security assistance package for Israel which is critical in the United State's policy with the Middle East region. The ten-year package had expired and the Bureau just negotiated another ten-year package for \$30 billion in Foreign Military Financing (FMF) beginning in 2009. This package increased assistance.

In the next few weeks, the Bureau will be working on the security assistance relationship with Egypt. The Bureau expects to continue the \$13 billion package over the next ten years.

The biggest long term security challenge is the nuclearizing of Iran. An Iranian official recently made remarks that it would bomb Israel if threatened. Iran is an immediate threat to its neighbors.

The Bureau is engaged in a Gulf security dialog involving a six-part initiative with the Gulf Cooperation Council (GCC), which consists of six countries (United Arab Emirates, Bahrain, Saudi Arabia, Oman, Qatar, and Kuwait). The initiative is for a cooperative military exercise to work on regional security and obtain GCC support for Iraq. The pursuit of regional stability includes discussions on counter proliferation, terrorism cooperation, and energy security. An essential component of regional security and stability is the stabilization of Prime Minister al-Maliki's government in Iraq with the help of Sunni allies. The United States is an ally and will remain in the region, committed to the region's defense.

The General Accountability Office has identified defense trade controls as a vulnerable area and has made recommendations to protect U.S. interests. Acting Assistant Secretary Mull testified on this issue in July before the House Foreign Affairs Committee. There is one group that believes the defense trade controls should be slimmed down and another group which believes the controls are not strict enough. The Department must enforce the law, while at the same time quickly and efficiently enable our allies to be equipped with what they need. Acting Assistant Secretary Mull indicated that Mr. Ruggiero would explain the business practices that have been adopted to achieve this goal.

President Bush's decision to negotiate treaties with United Kingdom and Australia is consistent with their status as the two key U.S. allies. To implement the Treaties, the Bureau will be working closely with the Senate. Implementation of the treaties will reduce DDTC's workload. Also, DDTC is working on exceptions for dual nationals that will permit employees of foreign companies who are nationals from NATO or European Union countries, Japan, Australia, and New Zealand to be considered authorized under an approved license or Technical Assistant Agreement (TAA).

Acting Assistant Secretary Mull expressed his appreciation for the efforts and service of the Working Groups and as members of DTAG.

Remarks on DDTC's Activities by Acting Deputy Assistant Secretary for Defense Trade, Frank Ruggiero

Acting DAS Ruggiero stated that there are three priorities for the Directorate. The first is to negotiate the treaties. Second is policy reform by considering the recommendations of the Coalition for Security and Competitiveness. The third priority is licensing and its attendant processes. The United Kingdom and Australian Treaties will need to be officially notified by the White House to the Senate.

With regard to licensing, and taking into consideration national security and foreign policy issues, DDTC is trying to adjudicate the case within 45 days of receipt. Any case that has been pending for more than 45 days will be subject to a case management review process for each such individual case. Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF) cases are reviewed at the Deputy Assistant Secretary level when the case exceeds seven days. Currently no cases exceed ten days. Once a week the Deputy Assistant Secretary meets with the licensing officers and division chiefs on each case that has been pending for 90 days or more. In early summer 2007, the backlog exceeded 7,200 cases. Currently, the backlog is approximately 5,800 cases. DDTC continues to reduce the backlog.

Process improvements include immediately staffing TAAs to the Department of Defense (DoD). This has reduced the backlog down to almost zero. Another process reform is to engage the House Foreign Affairs Committee regarding dual nationals and third country nationals and develop an exception for individuals who are nationals from NATO or EU countries, Japan, Australia, and

New Zealand to be considered authorized under an approved license or TAA with no requirement for Non-Disclosure Agreements.

(Chairman Schneider asked about the timelines for the treaties.)

Ruggiero: We are aiming for ratification by the end of this year. Currently, we are negotiating implementing arrangements with each country.

Remarks by ITAR Updates Working Group Co-Chairman, Charles Graves

The International Traffic in Arms Regulations (ITAR) Updates Working Group most recently forwarded to DDTC for consideration another clause, 22 CFR 125.4(b)(9), an exemption from licensing for the export of technical data under certain specified conditions. The Working Group reached consensus and a working paper was submitted to the DTAG leadership. DTAG leadership forwarded that clause to DDTC.

Also, the DTAG leadership has forwarded a clause regarding the definition of “public domain” (22 CFR 120.11) to DDTC for consideration. The Working Group has selected 22 CFR 126.4 (Shipments by or for United States Government agencies) and 22 CFR 123.3 (Temporary import licenses) to analyze next.

Remarks by Director of the Office of Defense Trade Controls Compliance, David Trimble

DDTC is still looking over the candidate ITAR clauses. Some points deal with broader regulatory issues. There will be further discussions on the new updates clauses. Currently, senior management’s time is spent on the treaties.

Remarks by Commodity Jurisdiction Working Group Chair, Giovanna Cinelli

The commodity jurisdiction process has been an on-going issue with the Working Group. DDTC is still reviewing the commodity jurisdiction electronic form. The Working Group will provide additional input related to the instructions accompanying the form and will consult with DDTC regarding possible revisions to ITAR section 120.3. The Working Group would like to thank DDTC for posting frequently asked questions on the website dealing with the commodity jurisdiction process but would ask that the questions and answers be expanded to increase utility to industry and the government.

Remarks by Director of the Office of Defense Trade Controls Policy Ann Ganzer

DDTC is improving the processing times for commodity jurisdiction determinations. The median processing time is approximately 71 days but the goal is 60 days. DDTC will continue to publish on the Web site any additional frequently asked questions about the commodity jurisdiction process proposed by the Working Group.

Remarks by Peter Jordan for Dual-Nationals Working Group

Peter Jordan said he is the spokesperson since Chair Debi Davis was unable to attend this meeting. The Working Group has identified numerous issues regarding dual nationals and nationals of a third country. The two main categories of issues are the lack of definition of “dual national” under the ITAR and “third country foreign nationals” and “dual citizen employees” used in the document entitled “Guidelines for Preparing Agreements.” For some foreign licensees, providing certain information on their work force presents potential legal problems. In April 2006, the Working Group proposed recommendations and met with DDTC. More work was required on the part of the working group to refine the recommendations by taking into account national security and foreign policy considerations. DDTC has developed certain parameters for agreements dealing with Canada and Australia. The Working Group is available to review the issue of dual national policy regarding the United Kingdom and Australia treaties.

Remarks by DTAG Chairman, William Schneider

With regard to dual-nationals, one should be mindful of foreign direct investors in U.S. companies. Also, the Defense Science Board has observed a change in the labor force in such areas as electronics and cryptography. DTAG could be constructive in anticipating dual national challenges that will emerge.

Ruggiero: Countries raise a concern as to what is considered one’s nationality. Former Deputy Assistant Secretary Greg Suchan negotiated with the Canadian government how certain nationals will be handled with the Canadian Department of National Defence. Globalization of the work force is going on in the area of defense trade. The European Union has certain work rules for Europeans. Reform is being pursued in those areas, and the issue was also raised

in Acting Assistant Secretary Mull's testimony before the House Foreign Affairs Committee in July 2007.

(Chairman Schneider asked about the nationality issue in connection with a new ITAR exemption concerning the new treaties.)

Ruggiero: Explicit guidance will be in the ITAR as DDTC recognizes that lack of guidance could cause exporters not to use the new exemption.

**Remarks by Acting Director of the Office of Defense Trade Controls
Licensing, Terry Davis**

Licensing of third party/dual nationals has been a long discussed topic among industry, foreign governments and has been addressed by the DTAG. At issue is the responsibility of DDTC under the Arms Export Control Act (AECA) to license all countries of ultimate destination and in particular preclude release of ITAR controlled technical data to proscribed countries. This includes nationals of those countries. In determining nationality, DDTC includes country of birth as a consideration because standards for obtaining citizenship are not universal and in many cases does not preclude maintaining loyalties to the country of birth which could be proscribed. Recently, DDTC implemented measures for licensing of third party/dual nationals for Canada and Australia which make security clearances the basis for authorizing further release of the technical data. DDTC is in the process of implementing a broader arrangement for nationals of NATO, the European Union, Australia, New Zealand, and Japan which will be subject of a regulatory change and *Federal Register* notice. This change must be briefed to congressional staff before DDTC moves forward.

Remarks by Brokering Working Group Chairman, Charles Jameson

International sales contribute to the health of the U.S. defense industry, and assist in achieving U.S. national security and foreign policy objectives. Consultants play a vital role in helping U.S. companies win international competitions involving duly licensed defense articles and defense services. It is important, therefore, that the new brokering regulations be crafted in a manner designed to minimize any unintended consequences that could severely impact U.S. companies' legitimate defense trade initiatives. Such consequences may include refusal of consultants to register with DDTC as brokers, resulting in termination of consultant agreements and loss of near-term ability to compete effectively, customer dissatisfaction, legal consequences, and damage to U.S.

companies' reputations and prospects for future business. The process involved in vetting replacement consultants can require several months, while business interests languish. DTAG recommends that the new Part 129 regulations provide a clear definition of "broker" and the activities that constitute "brokering." Also, DTAG recommends that DDTC (a) provide detailed guidance concerning the processes for broker registration, prior approval (licensing) and reporting, (b) expeditiously process brokers' requests for registration and prior approval, (c) waive the prior approval requirement for registered brokers supporting duly licensed U.S. company initiatives, (d) provide U.S. companies the ability to verify with DDTC a prospective broker's registration status, and (e) furnish U.S. companies the information necessary to enable them to verify congruity between their license provisos and limitations, their brokers' prior approval provisos and limitations, and the activities specified in their brokers' contractual statements of work. Finally, DTAG requests that DDTC provide for a public comment period prior to publication of the new brokering regulations and a six-month grace period prior to implementation (to accommodate registration and licensing requirements).

**Remarks by Director of the Office of Defense Trade Controls Compliance,
David Trimble**

While large companies may be doing more to screen their brokers and may not see the need for regulation, the brokering regulation pertains to large and small defense companies and there is not a great deal of publicly available information available on some of these brokering companies and not all companies are thoroughly vetting these brokers. The government may have more information. A recent case of a broker for a large U.S. defense company illustrates this point. He was a consultant in Asia but was also acting as an agent for the Peoples Republic of China. In Latin America, one broker working for a U.S. company had multiple felonies.

The new regulation will make it easier to manage the authorization process when consultants are involved by piggybacking on the company's marketing approval. Currently, the draft regulation is being shared with DoD and internally within the Department of State on the specific issue of what items will be in the "carve out" list and always require authorization. The special challenge in the drafting of these regulations is how to address a sales representative representing the U.S. registered party where the export will otherwise be subject to U.S. export laws. The draft regulation will be published with a public comment period. The regulation will lessen the burden on the sales representatives.

(There was a question about the definition of broker.)

Trimble: The terms for “broker” and “brokering activities” will be combined and, in the process, clarified. The term “agent” has been eliminated since some companies were trying to interpret this term in a narrow legal sense outside of the context of the law and regulations. Also, DDTC will elaborate on when “freight forwarders” are not considered brokers.

(There was a question how to know if a person is registered with DDTC and if that information is on a Web site.)

Trimble: That information is not on a Web site because of privacy concerns regarding the registration records. By longstanding practice this information is considered proprietary and not disclosed. Companies have differing views on the sensitivity of this information and we respect that. If a company wishes, they may choose to give another company or person a copy of the Department of State registration letter and if they choose they may also wish to black out the actual registration number.

(There was a question on the timeline for the brokering regulation.)

Trimble: By the end of October 2007, DDTC intends to obtain all the clearances on the new regulation.

Remarks by Acting DAS Ruggiero

DTAG was requested to prepare a paper on the impact to industry of Section 17c of Export Administration Act in light of the commodity jurisdiction determination according to the ITAR. DTAG agreed to prepare such a paper.

Discussion

(There was a question about U.S. Munitions List (USML) items on commercial airplanes and whether the entire plane is covered by the USML. Also, the QRS-11 issue was mentioned.)

Ganzer: DDTC does not use “end use” to determine if an item is covered by the USML. In working with Congress on the QRS-11, Congress insisted that “end use” be the criteria in the determination whether an item is covered by the

USML. The Hill insisted on “end use” to be taken into account for a determination, not the Administration.

Remarks by DTAG Chairman Schneider

This is a time of evolving technologies. Items with a civil application may have a USML item used in it and be considered a defense article. The sales market now has a global character. Research and development are being done on a world-wide basis. Unmanned aerial systems are in vogue in defense application; however, current application of unmanned aerial vehicles presents policy issues.

Questions and Comments from the Audience

There was a question about the next D-Trade roll-out. DDTC responded that we are very close to that date. However, we must make sure the upgrade is able to handle “batch” interface and, although only six companies use “batch,” that has been the basis for the current delays. For some companies “batch” processing is 100% of their business. Shortly, a notice about the next D-Trade roll-out will be placed on the Web site (www.pmdtcc.state.gov). Batch processing and the new amendments have been tested with a group from industry.

Another issue for discussion was meeting the requirements of a seven-day RFP by obtaining a financing vehicle for a delivery order award with a 30-day implementation after the award. What is a problem is the rapid implementation of the contract award and adhering to the requirement of the ITAR. DDTC responded that in some cases, 22 CFR 126.4 might apply.

Closing Remarks

(Chairman William Schneider adjourned the meeting at 11:37 a.m.)



DTAG

Report of the ITAR Updates Working Group 20 September 2007

- Working Group began consideration of *ITAR Para 125.4(b)(9)* (exemption from licensing for export of technical data under certain specified conditions) in April
- Consensus of Working Group members was reached in early May
- Comments were submitted to DTAG leadership as *Fourth ITAR Clause for Update Consideration*

DTAG ITAR Updates Working Grp Presentation 20 Sep 07 Slide 1



DTAG

Report of the ITAR Updates Working Group 20 September 2007

Status as of 20 September:

- DTAG leadership advises that *Fourth Clause for Update Consideration* has been forwarded to DDTC
- DTAG leadership also advises that *Third Clause for Update Consideration (ITAR Para 120.11)* has been forwarded to DDTC

DTAG ITAR Updates Working Grp Presentation 20 Sep 07, Slide 2



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Report of the ITAR Updates Working Group 20 September 2007

Currently under consideration by the Working Group are possible updates to the following:

- *ITAR Para 126.4* (Shipments by or for United States Government agencies)
- *ITAR Para 123.3* (Temporary import licenses)

DTAG ITAR Updates Working Grp Presentation 20 Sep 07, Slide 3



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Report of the ITAR Updates Working Group 20 September 2007

Working Group Members as of 20 September:

- Andrea Dynes
- Gregory Hill
- Eric Hirschhorn
- Joel Johnson
- Joyce Remington
- Catherine Thornberry
- Marc Binder (co-chair)
- Charles Graves (co-chair)

DTAG ITAR Updates Working Grp Presentation 20 Sep 07 Slide 4

**September 20, 2007
Defense Trade Advisory Group
Plenary Meeting**

CJ Working Group Summary

Members

Giovanna Cinelli, Chair
Debi Davis
Mark Esper
Gregory Hill
Eric Hirschorn
Joel Johnson
Brad Lewis
Christine McGinn
Daniel Poneman
James Reed
Catherine Thornberry

Overview

- Continue dialogue with DDTC regarding CJ approach:
 - electronic form
 - instructions

Overview

- Continue, within the working group, to consider:
 - proposal of revisions to § 120.3
 - process regarding application of ITAR to pending CJ requests

Recent Efforts

- Preliminary review of posted CJ FAQs
- Preliminary questions posed to DDTC
- Working Group intends to canvass industry members to collect additional questions that would be helpful to include on DDTC website

Efforts To Be Considered As Possible Working Issues

- Jurisdictional determination consistencies
- Licensing implications of inconsistent CJ determinations

DTAG Dual-Nationals Working Group (DNWG) Task Force



September 20, 2007
DTAG Plenary

Dual National Working Group DNWG - Members



- Debi Davis – Chair
- Christine McGinn - IBM
- Dennis Burnett - EADS
- Ginger Carney - NCOIC
- Greg Hill – Northrop Grumman
- Ken Williamson – Lockheed Martin
- Peter Lichtenbaum – BAE
- Peter Jordan – United Technologies
- Brad Lewis – Trade Compliance Associates

Issue Identified by DNWG



- ITAR § 124.8(5)) a foreign licensee may not release Technical Data and Defense Services to "**national of a third country**," unless approved
- "**National of a third country**" is not defined within the ITAR
 - uses national, nationality, foreign national, dual national or citizen
 - Agreements Guidelines use the terms "citizen" and "national" interchangeably and make reference to "country of origin,"
 - Recent provisos require the replacement of the term "citizen/citizenship" with "national/nationality" and referenced "**country of origin**" as a separate concept from "nationality."
- Inquiring or sharing information on the "nationality" and/or "country of origin" of non-US employees is restricted under some national laws.
- DTAG is working to develop and communicate a consistent understanding of the definition and implementation guidance that will assist in ensuring compliance

DNWG Efforts to Date



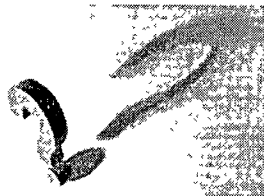
- Proposed recommendations in April 2006
- DTC indicated that the recommendations did not meet the needs of DTC
 - No specific revisions were proposed by DTC
- DNWG has continued to review issue and focused on Regulatory Changes and Implementing Guidance

Next Steps



- DNWG is scheduling meeting with DTC
 - Review previous recommendations and specific concerns so that we may better discuss alternatives
 - Seek suggested revisions/Comments from DTC
- DNWG to review current issues specific to, and/or identified as, the UK & Australian Treaties and/or Canadian exemptions
- Work with DTC to revise recommendations to effectively meet the needs of DTC while ensuring compliance
- Review proposed language for ITAR revisions
- DNWG to develop tools and guidelines to assist in the implementation of the new rules

QUESTIONS?



**DRAFT
BROKERING WORKING
GROUP REPORT**

DTAG Plenary Meeting
September 20, 2007

WORKING GROUP MEMBERS

David Ashby

Joe Mariani

Ginger Carney

Ed O'Connor

Charles Jameson (Chair)

Terry Otis

Joel Johnson

Ken Williamson

Peter Jordan

ISSUE AND STATUS

- New brokering regulations (ITAR 129) have been in development for the past 2 ½ years. During this period, DTAG has been engaged in dialog with DDTC aimed at:
 - Understanding State's objectives in revising Part 129,
 - Pointing out the potential unintended consequences of the revised regulations, and
 - Encouraging DDTC to adopt policies, processes and practices that will minimize the impact of the revised regulations on U.S. industry's legitimate export activities, while strengthening protection against entities and activities deemed harmful to U.S. national security and foreign policy interests.

ISSUE/STATUS (CONT'D)

- DTAG understands that new brokering regulations have been drafted by DDTC.
- DTAG has not yet been provided access to a working draft of the new regulations.
- DTAG wishes to take this opportunity to emphasize the vital role of consultants in winning international defense trade competitions, examine some potential unintended consequences of the new regulations and strategies for mitigating them.

THE ROLE OF CONSULTANTS (FEE-BASED OR COMMISSION)

- Required by some foreign governments.
- Assist U.S. companies in identifying and evaluating international business opportunities.
- Vary in scope of work, but in general provide advice and support in furtherance of business development, marketing, and sales-related activities involving duly licensed defense articles and defense services. May require access to technical data.

ROLE OF CONSULTANTS (CONT'D)

- Consultants have no authority to negotiate on behalf of U.S. companies, nor obligate them in any manner.
- Consultants are thoroughly vetted prior to engagement to ensure a good reputation and record of full compliance with applicable U.S. and local laws and regulations.
- Implicates both Part 129 and Part 130 of the ITAR.

UNINTENDED CONSEQUENCES

- Refusal of consultants to register with DDTC as brokers, leading to termination and vetting of replacements – a lengthy process– while business interests languish.
 - Termination of consultant agreements could result in loss of ability to compete effectively, disruption of ongoing programs, customer dissatisfaction, legal consequences, and damage to U.S. companies' reputations and prospects for future business.

CONSEQUENCES (CONT'D)

- Threat of legal action by terminated consultants.
- Need to negotiate monetary settlements with terminated consultants for work performed prior to termination in the event of subsequent program award.
- Threat that terminated consultant may “poison the well” with the customer.
- Time required for modification of existing export licenses/agreements to identify new consultants.

CONSEQUENCES (CONT'D)

- Potential disparities between provisos and limitations on consultant's prior approval (license) and the provisos and limitations on the U.S. company's export authorization.
- Consequences are compounded by both primes and subs (U.S. *and foreign?*) having to ensure their consultants are properly registered and licensed, and that all provisos and limitations relating to a particular initiative are in consonance.

STRATEGIES FOR MITIGATION

DTAG RECOMMENDS THAT DDTC:

- Issue explicit written guidance to ensure clarity of definitions, e.g., "broker", and detailed content and processes for registration, prior approval (license) and reporting.
- Expeditiously process brokers' requests for registration and prior approval.
- Waive prior approval (license) requirement for registered brokers supporting duly licensed U.S. company initiatives.

STRATEGIES (CONT'D)

- Ensure all communication with the broker is clear (sufficiently detailed), accurate and timely. Provide timely and effective responses to brokers' requests for information and guidance regarding clarification of requirements, registration status, etc.
- Advise brokers that provisos and limitations on prior approvals are not to be shared with any entity except the U.S. company they are assisting.

STRATEGIES (CONT'D)

- Provide U.S. companies the ability to:
 - Verify independently a broker's registration status with DDTC.
 - Ensure congruity between that company's license provisos and limitations, the broker's prior approval (license) provisos and limitations, and the activities specified in the broker's contractual statement of work.

STRATEGIES (CONT'D)

- Provide for a:
 - Formal public comment period prior to publication of the new ITAR Part 129 regulations, and
 - 6-month grace period prior to implementation (to accommodate vetting and contracting requirements).