Mr. Robert S. Kovac, State Department Designated Federal Officer (DFO), opened the 2012 Fall/Winter Defense Trade Advisory Group Plenary at 1300.

Mr. Sam Sevier, Defense Trade Advisory Group (DTAG) chairman, called the meeting to order. Mr. Sevier introduced Assistant Secretary of State for Political-Military Affairs Andrew Shapiro and complimented him on the changes to the composition of DTAG over the past 3½ years. Under his guidance and emphasis on DTAG reviews aimed at avoiding "unintended consequences" of proposed regulation, along with the strong support of Mr. Kovac, Managing Director, Directorate of Defense Trade Controls, the composition of the DTAG has transitioned from a group of International Traffic in Arms Regulations (ITAR) licensing specialists almost exclusively from inside the Washington, DC, beltway area to a diversified team of industry, academic and policy export practitioners that now includes more than half its members from outside the DC area. The diversity and membership background of the group has expanded to more than just policy/regulation wording. When Mr. Sevier joined five years ago the DTAG had only one member west of Denver, Ginger Carney, and she was originally from Washington, DC prior to moving to Oregon. The geographic diversity, as well as the member skills (in terms of varying products, company size, business specialty, etc.), represents an improvement in the quality of policy review that is being provided by the DTAG in recent years.

Remarks by Mr. Andrew Shapiro, Assistant Secretary of State for Political - Military Affairs
(Note: The remarks may be viewed in full at the Bureau of Political-Military Affairs website, direct link here.)

Mr. Shapiro thanked Mr. Sevier, vice chairman Bill Wade, and the DTAG as a group for all their efforts. He concurred with Mr. Sevier that by fishing in deeper pools, advertising, and selecting a broader group of members was beneficial to all.

Mr. Shapiro closed by again stressing his appreciation to Chairman Sam Sevier, Vice Chairman Bill Wade and all DTAG members for their dedication to reforming defense trade.

Mr. Sevier opened the floor for questions.

Question: DTAG member opened by stating appreciation for Mr. Shapiro's rundown of DoS accomplishments, which were many, and the enhanced

collaboration between DoS and DoD. How did the Secretary consider Section 1207 authority to operate in forward areas?
(Note: National Defense Authorization Act (NDAA), Section 1207, provided DoD authority to transfer to DoS defense articles, services, and training and security assistance to be used in foreign countries.)

Answer: Mr. Shapiro responded that Section 1207 had expired and the global contingency fund had been proposed to meet emerging challenges that need more than a stove pipe approach. He advised that what were needed were broader funding streams with multi-agencies using a comprehensive approach. The first country has been designated, and the first cooperative project will be the proof of concept for this effort.

Question: DTAG member said that at the Commerce/BIS update in July, Mr. Shapiro was going to send a notice to the Congress on USML and CCL. Nothing has yet been notified. Could a timeframe be provided?

Answer: Mr. Shapiro said the notifications are still in negotiation and he was hesitant in providing a precise date. But after the process was done, the final rules would be issued.

Question: A public attendee asked with regards to the pre-notification process described earlier in the Secretary's remarks, did it apply to ECCN/USML in Export Control Reform (ECR)?

Answer: Mr. Shapiro said pre-notification applies to DCS and FMS and will be done in consultation with the congressional committees. It was made clear that moving one item at a time from the USML to the CCL would not be a viable method. The plan is to give the Congress the full notification at one time. Previously, it could take a year to move an item from the USML to the CCL but this time it should not take as long. It will not be an unbounded period of time.

Question: A public attendee inquired on the status of the National Defense Authorization Act (NDAA) and satellite jurisdiction and what progress was being made on new legislation to return to the President the authority to manage satellites.

Answer: Mr. Shapiro said he would refrain from answering that question since discussions with the Congress on productive legislation, including the NDAA, were currently in process and he did not want to jeopardize those discussions.

Question: A public attendee said Middle East countries, like Libya, are demanding technology and arms, and how would that be handled? And would it have an impact on future growth?

Answer: Mr. Shapiro said the authority for arms sales and transfers is fundamentally a foreign policy decision and that is why sales are managed by State. They must consider the sale of arms as a diplomatic act and consider what is sold or released from a technology perspective and any impact on regional arms sales. These decisions must strike a balance with our partners to have the ability to work with us and to defend them. He added that what is transferred will not be a means to allow the proliferation of weapons or to destabilize the region.

Question: A public attendee asked about the continued relevance of the Javits report to the Congress.

Answer: Mr. Shapiro responded that they still use Javits to report to the Hill; it is still required by law. It provides the Congress with an advance notice of potential sales. They have tried to refine it and make it less burdensome and more useful. It is a classified document.

Question: A public attendee said that at this late date, the companies had not yet received a request from DoS for the industry input for the Javits report. Industry was hoping the request would not come over the holidays.

Answer: Mr. Shapiro said he would consult with DDTC.

Answer: Ms. Patricia Slygh, DDTC, Office of the Managing Director, expounded upon Mr. Shapiro's comments by explaining that the Javits report can become a "wish list" of industry desired sales, and that it included much of the same information year after year. She further advised that reporting was a huge burden on the public with more than 60 hours per respondent. DDTC was working to make the reporting requirements more meaningful.

Answer: Mr. Shapiro said DDTC is trying to make more relevant the data compiled for Javits. It fits in with all the modernization efforts in export reform.

Question: A public attendee said in the context of ECR, there are dramatic changes. What initiatives was DoS taking towards outreach and education for small to medium sized companies without representatives in DC?

Answer: Mr. Shapiro said a number of his colleagues had been briefing around the country. If there were areas that needed to be addressed, please let them know. There are also other tools for following the changes and opportunities for public comment when Federal Register Notices are published.

Mr. Sevier thanked Mr. Shapiro for his remarks and Q&A session ended. Mr. Shapiro left the conference for another appointment.

Mr. Sevier stated that Mr. Bill Wade, the Vice Chair, and Ms. Kim DePew would be running the meeting. He introduced Ms. BJ Demery as the DTAG Recorder for the meeting.

Mr. Wade made several housekeeping announcements including no recording devices allowed, to use the roving microphone for questions, and to save the questions until the end of each presentation. He put forth an agenda stating that the three working groups would present in the following order:

- ITAR Update Priorities Working Group
- OEM Working Group
- Review of the Draft Brokering Rule Working Group

ITAR Update Priorities Working Group, November 28, 2012:
(NOTE: Following is a summary of the presentation. The full briefing can be viewed at the DDTC web site, on the DTAG webpage.)

The Working Group (WG) was co-chaired by Ms. Ginger Carney and Mr. Sal Manno. Mr. Manno said the WG consisted of 22 members, offering a great depth of knowledge and diversity of companies, both within and outside the beltway.

Mr. Manno stated the tasking was to evaluate 15 items identified by DDTC and recommend the priority order in which they should be accomplished, and to provide the rationale for the order, taking into consideration the U.S. Government (USG) actions required to implement the new or revised regulatory change, as well as the current USG status of each task. Additionally, the team was to factor in the U.S. Office of Management and Budget (OMB) limitation that only permitted one proposed rulemaking action be addressed at a time. The DTAG could recommend tasks not already listed, with explanation and rationale for these new entries. Mr. Manno went on to explain the tasking list and methodology used in ranking the priorities, and that seven tasks were reviewed in depth versus the full 15, although

they did prioritize all 15. The rationale behind the decision to only perform a deeper dive on the first seven was that considering the pace at which world events, policy revisions, and other factors can affect USG priorities, as well as its human resource constraints, it was recommended that the tasks' priority ranking be re-evaluated in one year's time to ensure they are still relevant objectives.

Ms. Carney discussed the seven selected priorities and explained that for the most part, the seven would benefit the USG by providing clarity of definition, likely resulting in fewer ITAR violations and voluntary disclosures; were expected to lead to fewer licensable activities; and would further allow the USG to make significant progress on its goal of interoperability with foreign partners. For industry, the benefits were similar: fewer licensable activities; fewer ITAR violations/voluntary disclosures; transparency; clarity of the regulation and implementation of same; and finally, improved ability to sell abroad. Ms. Carney also said that priorities already underway with USG were marked by an asterisk, and that of the top seven, six of the seven were already in some stage of activity.

The top seven, with accompanying rationale, were:

1. *Brokering
2. *Revised definition of defense services
3. *New definitions for levels of maintenance
4. *Revised definition of public domain
5. *New exemption for replacement parts
6. Revised definition of technical data
7. *License exemption for certain defense articles incorporated into commercial end-items

And 8 through 15 were:

8. Updated "by or for" the USG exemption
9. Revise exemptions referring to transshipments
10. Elimination of foreign party signature requirements on TAAs.
11. Clarification of records maintenance requirement
12. Revise temporary import license requirements to apply only to those items on the USML
13. Development of a single form for use by all agencies for the export application
14. U.S. Government program license
15. *Australia Defense Trade Cooperation Treaty implementation regulations

Ms. Carney said the WG also offered several new recommendations, which were:

1. Harmonize the updated definitions as they relate to each other in the ITAR and EAR.
2. Review, as a new entry, electronic transmission of technical data and cloud storage. The IT world moves very quickly and the ITAR does not address these issues. The DTAG can provide real-world examples and recommendations.
3. Consolidate the reporting requirements into a guidebook since reporting requirements currently are interspersed throughout the ITAR.
4. Dual Nationals/Third County Nationals – provide more clarity, such as the roles and responsibilities of U.S. and non-U.S. persons involved in satisfying the requirements.
5. Publish redacted versions of broad-reaching Advisory Opinions when such opinions may impact definitions or existing interpretations.
6. Include ITAR citations in the USG Guidance and a topical index to such Guidance, for example, the DDTC Agreement Guidelines.

Ms. Carney summarized that the top seven were addressed in greater detail since those priorities would take months to complete and recommended another reassessment in 6-12 months of the current and perhaps new priorities. The diversity of the group provided a strong and valid input. The DTAG offered their services and expertise on any of the existing or future tasking prioritizations related to DDTC activities.

Question: A public attendee asked if the full 15 priorities could be shown again on the screen and asked if "turbo licenses" were part of the 15.

Answer: Ms. Carney and Ms. DePew clarified that a single form was on the list but that was different than the "turbo tax" license type form.

Question: A public attendee thanked the co-chairs for their work and commented on the Australian Treaty being last at No. 15 and asked if the DTAG would be willing to look at it sooner. He also invited comments from the audience at large.

Answer: Ms. Carney said that in her world, she would not use it very much. The UK treaty was rolled out and the Australian process would be similarly rolled out. It will be a good tool once implementation is achieved but there are many issues that need to be worked out with regards to U.S. industry implementation.

Answer: Mr. Sevier commented that the DTAG worked on the treaty issues in 2008 and reviewed the DoD carve outs at that time. The implementation process

and how Australia and the U.S. will view the advantages will determine its widespread use, like the Canadian exemptions and how those are used. It is a mixed blessing but a step toward closer cooperation with our closest military allies, nonetheless.

Answer: Beth Mersch, a DTAG member and a member of the Priority Working Group, said that when they assigned priority rankings the Australian Government had not yet passed legislation authorizing the treaty, and this was a key reason for the low ranking. With legislation having passed, the rankings could very well be different.

Question: A public attendee asked about the one size fits all, one system and one form?

Answer: Ms. Carney said they focused on the top seven and did not go into the details of the other priorities.

Answer: Ms. DePew said the things that rose to the top were those that helped answer basic questions, such as, whether a license was even needed, and whether an exemption was already available or not. Those were the items of greatest concern.

Question: A public attendee asked if the working group had considered low hanging fruit, for example, elimination of foreign party signatures on TAA. That would be easy.

Answer: Ms. Carney said they had considered that and six of the seven were already being processed at OMB. Essentially these are "low hanging fruit." Elimination of the foreign signature was not that simple, and there were some in industry who did not want to eliminate it.

Mr. Kovac made closing comments, thanking the WG for the tremendous amount of work, and stated that these results validated why they gave the WG that work, as it was not the priority ranking he would have anticipated. The Interagency Policy Committee is meeting on November 29 and these priorities will be included for discussion as the importance is to get the lists right. Commerce and State are working in lock step. Commerce publishes a regulation, and then State publishes a regulation. As State and Commerce move into other areas such as the definitions, the work will be coordinated. The single form and IT system are things that cannot be done with existing dual use licensing authorities. For legal reasons,

controlling data for subsequent trials and prosecutions, they cannot go to a single system. USXports is the system behind the green door that will review and adjudicate. To build a new portal would be a significant new effort that would require an allocation of $40 to $50 million to build the system. The Congress is not likely to allocate funds at this time. DoC and DoS are paying DoD to get the USXports system up and running and that is part of a three step process. The decisions are made in the interagency meetings, followed by the Principals Committee to determine priorities. Decisions are made at highest levels, with some decisions going to the Secretary, and even the Presidential, level. Last but not least, Mr. Kovac assured his Australian colleagues that given that their legislation had passed, that priority would not remain at No. 15 for his office.

DTAG Vice Chairman Bill Wade called for a motion to submit "ITAR Update Priorities, November 28, 2012" recommendations to DDTC. The motion was seconded and passed unanimously by a show of hands.

OEM Working Group, November 28, 2012
(NOTE: Following is a summary of the presentation. The full briefing can be viewed at the DDTC web site, on the DTAG webpage.)

The Working Group (WG) was co-chaired by Ms. Sandra Cross and Mr. Lawrence Fink. Mr. Fink said the WG benefitted from a wide range of experience from the 16 members. The variety created a rich discussion with many points of view. Their task was to review the ITAR sections relative to the return and repair of defense articles and to make recommendations on regulations that would ensure that foreign defense articles are properly accounted for when being returned to the foreign original equipment manufacturer (OEM) for repair/replacement. No exemption exists today to cover this activity and with today's global supply chain, the goal was to create a new exemption, or modify an existing exemption, that would allow for a one-for-one export of defense articles to a foreign OEM for repair or replacement and import of repaired or replaced item back into the U.S. The WG reviewed relevant sections of the ITAR and EAR and felt that Section 123 was the section on which to focus.

Ms. Cross discussed the realities of the global supply chain and that rarely does an entity manufacture an entire defense article from start to finish. There is collaboration among various global suppliers. Economic changes are pushing companies out of business, so the OEM may no longer exist when repairs are needed. Part obsolescence is also a concern.

Ms. Cross stated that the proposal creates a new exemption in Part 123 versus modifying an existing subsection. The exemption is exclusively for unclassified hardware, includes recipients beyond the OEMs, restricted to a one-to-one replacement and must be returned to the U.S. within four years. It does not pertain to technical data, allows for temporary exports and re-exports to companies who have previously been approved in conjunction with separate authorizations like TAAs, and excludes Part 126.1 destinations and denied parties. The requirements include CPB filing and recordkeeping. The WG felt the additional re-exports would not pose a significant risk for technology transfer since those companies already manufacture the parts.

Mr. Fink said that the members applied actual varying experiences used in developing the exemption. The DSP-73 temporary export license was used as a model and limiting the export to the OEM was too narrow and did not represent the realities of the global supply chain. The exemption would be too limiting if confined only to the OEMs. The various risks were considered and felt to be reasonable in this type of transaction and with the wording of the exemption.

Mr. Fink continued that the parts and components may no longer be available or are obsolete, but that a new part, such as a chip with larger memory, may be substituted. No technical data would be provided as the manufacturer will have already built the part. There is little to no risk if a greater capability was provided by the foreign manufacturer. If more data was needed on the U.S. product, a license would be needed as that would be outside the scope of this exemption.

Mr. Fink said in considering possible unintended consequences, it could trigger foreign export control law requirements. The notion of an upgraded capability for DoD whereby the parts could find their way into a DoD program without a DoD review could be an issue, but the Working Group considered it outside the scope as it was not a technology transfer issue.

Ms. Cross said the exemption was basically structured into a "who, what and when" scenario. Section (a) (1) is the "who" so the OEM could transfer within their supply base for repair to include assembly plants and repair centers previously approved. Section (a) (2) is the "what" and Ms. Cross noted that the term "defense article" was used but it would be limited to the hardware even though the definition includes technical data. Section (a) (3) is the "when" and is limited to four years, which is consistent with the DSP-73 which offers four years. The (b) section with "Requirements" and (c) section with "Procedures" are

connected to other part of the ITAR in language structure, Automated Export System (AES) usage and documentation for consistency purposes.

Ms. Cross closed with a recommendation for a third tier of potential end users further down the road that would reflect how the supply chain actually works. It would allow for foreign manufactures and other entities other than the OEM to be included if they were located in the EU, NATO member or Australia, Israel, Japan, New Zealand or South Korea.

The floor was opened for questions.

Question: A public attendee said several ITAR exemptions restrict significant military equipment (SME) and Missile Technology Control Regime (MTCR) articles and did they consider that with the new exemption?

Answer: Ms. Cross said yes, they had considered it. It was a temporary export to the OEM and no new information would be transferred because they made it or it had already been licensed by DDTC under other authorizations. There would be low risk of diversion so the WG did not believe it was necessary to restrict those categories.

Answer: Mr. Fink continued that they ran examples as if it was a DSP-73 license, thinking about the process in reverse. The OEM, or entity, had the technology or approval so there was no further need for restrictions.

Question: A public attendee asked if the group had considered that a DSP-73 returned items to the foreign OEM, and not all parts are always manufactured abroad and parts of the item could be of U.S. origin. For the permanent import of an item, not all the suppliers are known, including those parts that may be of U.S. origin, so that would present different compliance scenarios. Had the WG considered distinguishing between foreign OEM and those foreign manufactured items that are of U.S. origin under a manufacturing agreement? In an agreement to manufacture, all suppliers are vetted and reviewed but in this instance, that would not be the case for certain suppliers that could have access to the U.S. parts and components.

Answer: Mr. Fink said they weighed the technology risk considering that the OEM manufactured the item. In the global supply chain, a manufacturer may no longer be available so there may be a need to reach out to look to other manufacturers. Ms. Cross said in the WG discussion, an item would be

permanently imported and there would be no need for a license because it is in the U.S. There is still no technology transfer. The WG did discuss splitting it out but did not see any distinctions so kept it together.

Answer: Ms. DePew added if the item was already licensed once, whether U.S. or foreign origin, we could not take back our technology.

Answer: Mr. Fink said to consider the trade show exemption on the DSP-73, licensed once and thereafter approved for export.

Answer: Mr. Sevier said he raised the most resistance to the concept of allowing upgrades under this proposed exemption. He considered it a major problem given the initial reason for considering the proposed exemption – for return and repair issues. Using an exemption under this law (Arms Export Control Act (AECA)) for re-export and upgrades which changed the functionality of the foreign OEM system, was out of line with it primary purpose. It is not about repairing a part or replacing a series of parts lost because of vanishing vendors. Take the DIRCM as an example. Its structural parts are manufactured in the United Kingdom yet the internal components are U.S. origin, and an "upgrade" of such a system using an export exemption to accomplish it could cause concerns that are not being addressed. The original technology was not U.S., it belonged to the overseas OEM, and that is where the team started with this exemption. He felt that this part lost the distinction between upgrades and repairs. It would be using a law, AECA that was aimed at managing the export of U.S. technology, not the import of someone else's technology, so using the exemption under this law does not seem to apply.

Comment: Mr. Kovac said the demo model used for marketing purposes needed a sustained period of time, to have the model sitting on the shelf to use again since no one knows when a sale may come up. But in this case, the lack of a sense of urgency in returning something for repair does not seem reasonable. He was not familiar with what has been done in industry for just-in-time, but did not believe that four years would be required for something to be repaired or tested.

Answer: Mr. Fink said the WG was trying to model the exemption on Subsection 123.4 which included a four year period. This was the reversed process. They are not tied to four years and the point was well taken.

Answer: Ms. Cross said they considered that the DoC TMP is on a one year cycle, and the WG said one year was not enough for the repair of a defense article. So they mirrored the current exemption and adapted it to four years for outgoing.

Comment: Mr. Kovac said a replacement part going to person who had previously been licensed was reasonable and that worked in two ways. No question would be raised if previously authorized to a party because they would have a prior license; and no issue on capabilities because the manufacturer already knows what it does because they exported it. As an analogy, take a laundry list and go beyond the OEM – and this is allowable within the four corners of the proposed regulation - and it would be an authorized use of return and repair exemption. It is easy to see where an item is manufactured, see where shipped to, but not so easy to know if the item is going to someone else to repair with an unknown address, maybe not even in same country, but "trust us" because they are the current suppliers. But how does one know? Except in the case of an MLA, one would not know. So how would he address a compliance problem if it was open to a long list of other entities, not just the OEM? He understood the desire of industry because it made things easier but he had a different mandate, and that was to ensure that what went out did not keep on going. The exemption as written created a high potential for diversion because it opened up a list of places that may or may not be traceable at the time of the export.

Answer: Ms. Cross said the thought process was along the lines of a box originally exported from Spain, being sent back to Spain as the OEM, and that was manageable. But if the box made in Spain incorporated a chip made in France, to fix the box, the OEM would need to send the part to its OEM in France. The part would be fixed or replaced by the OEM in France, and sent back to Spain. The box and components were sent to the entity that originally manufactured them or had a license to perform that effort. That was the intention of the proposed language.

Comment: Mr. Kovac understood the intention, but that is not how it read. The intention of the language may have been to allow the export to the OEM and tracing of an embedded part to wherever the place of origin was, but as he read it, there was no restriction on sending that defense article that came from Spain to any supplier. He did not see it as narrow as the WG may have intended. He could choose anyone on the list to ship to.

Answer: Ms. Cross said several examples were reviewed in the WG on purchasing foreign items that may import from a final assembly plant or

distribution facility and they are required to send the item back to them for repair, who in turn retransfer the item back to the OEM. The WG wanted to consider foreign contracting issues as well. They tried to accomplish many scenarios, including those beyond the OEM.

Comment: Mr. Kovac said additional work would be needed on the language. The exemption was not meant to preclude licensing, but to narrow the circumstances under which a license would not be required. Similar to the trade show exemption where one has a license and uses it, but at times it is difficult to assure compliance, so a license is sought, instead of making an exemption do everything. He appreciated the work done but the exemption needs more details and to consider that a license may be needed in some scenarios. He suggested that it may be useful to speak with Compliance to understand what concerns they would like addressed. The two principal items of concern are first, duration and second, where it goes. For all those who want to do it right, there are many who want to subvert it. He dislikes exceptions to exemptions that are exceptions.

DTAG Vice Chairman Bill Wade called for a motion to submit Working Group "OEM Working Group, November 28, 2012" recommendations to DDTC The motion was seconded and passed unanimously by a show of hands.

Mr. Wade called for a 15 minutes break, from 3:00 to 3:15 PM, at which time the Brokering Proposal would be presented. Mr. Wade reconvened the Plenary at 3:15 PM.

Review of the Draft Brokering Rule, November 28, 2012
NOTE: Following is a summary of the presentation. The full briefing can be viewed at the DDTC web site, on the DTAG webpage.)

The Working Group was co-chaired by Ms. Debbie Shaffer and Mr. Greg Hill.

Mr. Hill thanked the team members, a total of 19 including the co-chairs, for their time and brainpower. The task was to review and report on the potential impact on industry if the rule was adopted as a final rule. The WG assessed the latest draft rule, which incorporated the public comments made to the proposed rule published December 2011. The general assessment was that it was a significant improvement over the previous publication. The new regulation narrows persons and activities subject to registration/licensing requirements. It also addresses the

major concerns over extra-territoriality, a principal concern with the December 2011 proposed rule. Two concerns remain – determining when brokering begins and the potential for double licensing.

Mr. Hill complimented the simplicity and straightforwardness of the new rule, reminding all of the reporting and record keeping requirements still to be fulfilled. The key aspects of the rule are based on persons and activities, followed by registration and license or exemption thereto. The definitions offer great clarity, especially insofar as persons in the U.S. or abroad, and affiliates. This clears up the extra-territoriality concerns that had a huge outcry in the previously proposed rule.

Ms. Shaffer said the rule was really, really good. The WG did have a few concerns and recommended changes. One concern is the point at which brokering starts, currently lacking a clear line. One looks at the term "promote" and it can cover a broad range of activities. A person may introduce another person to a foreign government and they could be brokering. Trade associations and business councils could be captured as brokers as they are promoting business in an international environment. The WG did not see anything that would act as a release for those parties. Another issue was the potential for double licensing. There was an issue regarding whether a member of a company's board of directors, not directly employed, could be considered an "affiliate," but this could be remedied with a note provided by the WG. Another concern is that as written, when using a temporary import license or exemption, the parties associated with that would not be considered brokers. So, the proposed draft would regulate foreign persons temporarily importing to the U. S. as brokers whereas foreign persons permanently importing to the U. S. are not regulated as brokers. The WG felt that this was confusing. The WG also offered new language regarding regular employees and consistency throughout the draft on that point.

Ms. Shaffer said the WG really liked the new language and the recommended changes are minimal. DTAG member Dennis Burnett prepared a series of brokering Stoplight charts, which were presented at the meeting, that ran through several scenarios concluding whether the parties might be brokers, or not. The scenarios will be part of the attachments to these minutes.

Mr. Wade opened the floor for questions.

Question: A public attendee said a big concern was manufacturing in several countries. For example, Boeing manufacturing the F15 wing in Japan, and parts in

France, all the foreign manufacturers could be brokers. In this new proposed rule, did the WG see continued concerns on manufacturing of the defense articles in several countries and the need for registration and licensing?

Answer: Mr. Hill said his initial response was no. He could review the rule again, but as Ms. Shaffer pointed out, there are four elements in order to be captured under the activities. They must be on behalf of another, not manufacturing per se, but promotion or soliciting the manufacture of, and be owned and controlled by a U.S. person, which is not the case. Ms. Shaffer said it did not appear those activities would be considered brokering.

Question: A public attendee asked when the proposed rule would be published as a final rule. What is the potential impact on trade associations and will it affect state promoters of international trade?

Answer: Mr. Kovac stated this task was the number one priority. Working in an official capacity, the government exemption should cover the state governments; a revision might be required to make that clear. As to publication timeframe, they will take back the WG work product, test the scenarios, look at the law, go back through compliance and criminal cases and review against current prosecutions and what they would want to prosecute in the future. It is not yet ready to publish. Need to review the AECA, talk to the Compliance staff and the lawyers. There will be a few more tweaks to make certain it does what it was intended to do with no unintended consequences.

Question: A DTAG member asked if it would be published as a proposed or final rule.

Answer: Mr. Kovac said under the Administrative Procedures Act, they will make decision in consultation with OMB. If significant changes are proposed, it may not go as a final. But this effort has been ongoing so long that his preference was go to final, if legally possible.

Question: A public attendee said in the distinction between marketing and brokering, do DDTC and the DTAG have any interest in defining the differences between these two?

Answer: Mr. Hill said marketing is many things, which could include certain early promoting activities, and he is not sure that would be brokering. To him, marketing is targeted at one person. With regards to promoting, one could

consider promoting some type of marketing. Could this be looked at in more depth, absolutely yes.

Answer: Ms. Shaffer said to return to the four boxes as they simplify the rule. Mr. Hill suggested a note in the Federal Register notice to clarify what activities are not considered brokering.

Mr. Wade thanked the presenters and solicited a vote from the DTAG.

DTAG Vice Chairman Bill Wade called for a motion to submit Working Group "Review of the Draft Brokering Rule, November 28, 2012" recommendations to DDTC. The motion was seconded and passed unanimously by a show of hands.

Mr. Wade said that public comments could be sent to Mr. Terry Otis at otisassociates@verizon.net until COB December 5, 2012.

Mr. Sevier closed the session.

Mr. Kovac, State Department DFO officially adjourned the DTAG Plenary at 1630.

The public comment period ran through Wednesday, December 5. Two comments were received which qualify as public comments after the plenary. They are included in these Minutes as "Public Comments Submitted during the Public Comment Period".

Public Comment No. 1 – Following formal adjournment, a person in the audience approached one of the Brokering presenters, asking that DDTC consider addressing it, whenever a rule is published. The question was – are activities related to "offsets" considered brokering?

Public Comment No. 2 – Following the meeting, a member of the public commented by email that regarding the brokering presentation, there was a comment by the presenters concerning the fact that DTC was interested in controlling brokering to the extent that it relates to temporary imports and they thought this was confounding because they did not extend it to permanent imports. DDTC does not, by law, control permanent imports – ATF and other agencies do.

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

Dated: January 4, 2013

By: The DTAG Executive Secretariat

Robert S. Kovac
Designated Federal Officer

George S. (Sam) Sevier
Chairman, 2012-2014 Defense Trade Advisory Group