Defense Trade Advisory Group Plenary Minutes
July 26, 2012

Directorate of Defense Trade Controls (DDTC) Managing Director and Designated Federal Officer (DFO) Mr. Robert S. Kovac called the session to order at 1:30 PM and welcomed the first plenary session of the 2012-2014 Defense Trade Advisory Group (DTAG). He explained that the DTAG had been assigned issues to study and would report on their findings. Attendees would have the opportunity to ask questions. Mr. Kovac said the DTAG was one of the few forums where the Government can have a direct interaction with public on issues related to defense trade. He did not know what the Working Groups would present, and noted that the new DTAG members represented a broad spectrum of industry and academia. Members worked on a volunteer basis, and many had come from outside of the Washington, DC area. Mr. Kovac urged everyone to keep an open mind, and turned over the meeting to DTAG Chairman Sam Sevier.

Chairman Sevier welcomed DTAG members to their first Plenary session of the 2012-2014 DTAG and said the meeting would follow the printed schedule as closely as possible, with Assistant Secretary Shapiro's remarks fitting in when he was able to join the Plenary. Mr. Sevier reminded the audience that the Working Group products were developed with group consensus and the Working Group chairs presented the product developed from that consensus and was not their personal or professional opinion per se, but the group product. He also emphasized that while the Working Groups might offer a recommended position on their assigned topics, of equal importance was the documentation of their dialog on their subjects. DDTC would use portions of the industry and academia dialog in their effort to use the Working Group material in formulating policy and regulation on the subjects.

Mr. Sevier described the two tasks that DDTC had assigned to the DTAG Working Groups:

Task 1: Review of Proposed Bills for Transfer of Satellites and Related Components from the USML to CCL.
Task 2: Recommended Revisions to the ITAR Related to Transshipment of Defense Articles

The review of Task 2 will provide an industry and academia view of how the transportation function has changed since the 1970-80 time period so DDTC can assess potential changes to the ITAR for currency.

Mr. Sevier turned over the meeting to DTAG Vice Chairman William Wade, who reminded the DTAG members that after the Working Groups had presented their findings, the DTAG would vote on submitting the reports to DDTC. Addressing the audience, Mr. Wade asked that when asking questions, all should give their name and affiliation, if any, as there could be independent public attendees with questions since the meeting was open to the public at large. Mr. Wade then introduced DTAG Recorder Terry Otis, DTAG Working Group Coordinator Kim DePew, and Working Group One Co-Chairs Dale Rill and Joy Robins.

Task 1 Working Group: Review of Proposed Bills for Transfer of Satellites and Related Components from the USML to CCL, July 26, 2012

NOTE: Following is a brief summary of the presentation. The full briefing and supporting materials can be viewed at the DDTC web site.

Mr. Rill acknowledged the 20 Working Group members and appreciated their wide range of companies, backgrounds and perspectives brought to the task. He described the Working Group's agenda and purpose, which was to review legislation proposed by the House and Senate to return jurisdiction determination authority for satellites and related components to the President. Their task was to compare both proposed legislative documents and to provide insight and the potential impact as written, not suggestions to rewrite the legislation. The Working Group also considered the FY 2010 "Report to Congress" Section 1248 of the National Defense Authorization Act (NDAA) -- "Risk Assessment of the United States Space Export Control Policy," and took note of the new definition of "Specially Designed," as published in proposed rules by the Departments of State and Commerce.

DTAG members support the return of the authority to the President to determine whether satellites and related components and technology are controlled under the USML or CCL. The Working Group compared the language in the House and Senate bills and analyzed the potential impact to industry and academia, and to the U.S. Government.

The Working Group's overall assessment was:

- DTAG concurs with the proposal to move certain satellites to the CCL.

- Parts of the Bills need clarification to better understand the intent of certain language (e.g. definition of satellite, enumeration of all items "to the extent practicable," applicability to just USML XV or all USML categories).

- The House version appears more restrictive and burdensome for the USG and industry.

- The Senate version appears to uphold existing authorities of the President.

- The 1248 Report by DoS/DoD appears to establish a strong foundation or baseline that supports the implementation of transferring certain satellites to the CCL.

- Reporting could potentially be onerous on the USG and/or industry/academia. For example, with "Industry drift," technology developed and used for a specific application today may change over time and be a viable solution for supporting new applications tomorrow; such as GPS, which began with satellites and is now in cell phones, navigation and mapping tools and many public-use products.

Mr. Rill and Ms. Robins noted that the Working Group had not commented on the issue of the proposed wording of "Specially Designed," but noted that it would be a part of the overall discussion on transferring jurisdiction and enumerating the items for movement to the CCL. The DTAG supported the return of jurisdiction determination to the President, and attempted to determine the potential impact of such a change to industry, academia and to the USG.

Assistant Secretary for Political-Military Affairs Mr. Andrew Shapiro arrived. Chairman Sevier paused the briefing to introduce the Assistant Secretary, who addressed the DTAG Plenary.

Remarks by Mr. Andrew Shapiro, Assistant Secretary of State for Political Military Affairs

Thank you all for being here today and it is my great pleasure to welcome the new Defense Trade Advisory Group.

We have many new faces, but I am also glad to see so many familiar faces. We are thrilled to have Sam Sevier back as DTAG Chair. Sam has done an outstanding job during what was a very busy two years. We are also excited to have Bill Wade as Vice Chair, as well as Kim DePew and Terry Otis serving as DTAG leadership. Overall, we have 28 returning members and 16 new members. Additionally, we are also excited to have so many DTAG members coming from outside the Beltway and bringing that perspective to deliberations.

These are certainly exciting times to come on board. This Administration has made tremendous progress in advancing export control reform and expanding U.S. defense trade with our allies and partners. As DTAG members, you provide an invaluable service to the Political Military Affairs bureau and the State Department. As we seek to reform our export control system, expand our defense trade abroad, and protect our most sensitive systems and technologies, your knowledge, experience and insight will be critical to guiding us through these eventful times.

Just in this past year, there have been a number of significant events with implications for the defense trade. The Arab Awakening in the Middle East has brought sweeping change to the region. Countries like Egypt, Libya, and Tunisia have undergone dramatic transitions. The recent events in Syria promises more dramatic change, as the Syrian people rise up against the brutal rule of the Assad regime. Each of these developments forces us assess the nature of our relationships with these countries and the region, and to take a look at our policies and practices. In addition, to these events in the Middle East, the Administration's renewed focus on Asia will have significant defense trade implications. As we seek to reinvigorate existing alliances and develop new partnerships in Asia, our defense trade will be an important aspect of our diplomatic engagement. I have already spent more time on Asia than I anticipated coming into this job and I expect this to become the norm going forward.

While we navigate through these changing times, we look to you for advice and guidance. Defense trade is a critical component of our foreign policy and I encourage you to take advantage of these DTAG sessions to make your voices heard.

Today, I want to talk to you briefly about our efforts to expand the defense trade.

As many of you know, this Administration has made it a top priority to promote U.S. business abroad. We view the American defense industry as an integral part

of our efforts to advance U.S. national security and foreign policy. This is because security cooperation is fundamentally a foreign policy act. It is therefore the Secretary of State that is given the authority to oversee and authorize all arms sales in order to ensure they advance U.S. foreign policy. As a result, we only allow a sale after we carefully examine issues like human rights, regional security and nonproliferation concerns and determine a sale is in the best foreign policy and national security interests of the United States.

The arms transfer process sometimes causes consternation among our international partners. Some may gripe about onerous rules and procedures, intrusive monitoring, and rigorous investigations of potential violations. And at times it makes countries perhaps reluctant to partner with the United States. However, the safeguards we have in place are critical to U.S. foreign policy.

What is remarkable, though, is that despite our high bar for approving transfers and our aggressive monitoring, more and more countries want to partner with the United States.

At the State Department – when we deem that cooperating with an ally or partner will advance our national security – we advocate tirelessly on U.S. companies behalf. And, as I like to say, I have the frequent flier miles to prove it.

It is no longer just our Ambassadors who promote U.S. security cooperation abroad. Senior State Department officials regularly advocate on behalf of U.S. bidders on foreign government and foreign military procurements. We do so when we meet with officials on our travels abroad, on the margins of international conferences, and in regular diplomatic correspondence to foreign government officials.

These efforts are having an impact. Despite the global economic strain, demand for U.S. defense products and services *is stronger than ever*.

We recently released the 655 Report – an annual report of defense articles and services that were authorized for export. This report focuses on Direct Commercial Sales and it showed that there was a *more than $10 billion increase* in FY11 in items authorized for transfer. In 2011 the Directorate for Defense Trade Controls processed more than 83,000 licenses. *The most ever*.

I can also confirm that this is a record-breaking year for Foreign Military Sales. We have surpassed $50 billion in sales in FY12. This represents at least *a $20*

billion increase over FY11 and we still have a chunk of the fiscal year left. To put this in context, FY11 was a record setting year at just over $30 billion. This fiscal year will be at least 70 percent greater than FY11. These sales support tens of thousands of American jobs, which is welcome news in this economy.

Let me briefly outline why I think we are seeing such strong interest in U.S. systems.

First, it's because countries want to partner with the United States of America. The defense industry should understand – when it comes to sales abroad, it does better when America's image abroad is strong and when countries want to partner with the United States. This Administration has done a tremendous amount to rebuild America's image and that is demonstrated in record FMS and DCS sales.

We have reached out to new partners and emerging markets where we see the defense trade growing. This spring I was in India for the first Political-Military talks in six years. Cumulative defense sales have grown from virtually zero to more than $8 billion since 2008. One of the major goals we had during these talks was to make progress in advancing the defense trade. We sought to better familiarize the Indian government with our system and to address any concerns they may have. We think the U.S.-India defense and trade relationship would benefit from linking defense sales with broader strategic goals. That's why we specifically articulated the technical and political advantages that FMS offers.

We have also actively engaged Brazil. Brazil is seeking to modernize and expand its military capabilities and we are seeking to support these efforts. Last year, I travelled to Brasilia to restart Political-Military talks and this past February a Brazilian delegation travelled to Washington, as we hope to make this an annual dialogue.

And in February, I travelled to the Philippines, Indonesia, Malaysia, and Singapore; and in June to Thailand, Vietnam, and Brunei. Many of these partners are seeking to modernize their defense sectors andwe are hopeful that our defense trade with these partners will continue to grow in the years ahead.

For a country to be willing to cooperate in the area of national defense – perhaps the most sensitive area for any nation – they have to be sure about the nature of the relationship with the United States. When a country buys an advanced U.S. defense system through our FMS, DCS, or Foreign Military Financing programs, they aren't simply buying a product they are also seeking a partnership with the United

States. These programs both reinforce our *diplomatic* relations and establish a long term *security* relationship. The complex and technical nature of advanced defense systems frequently requires constant collaboration and interaction between countries over the *life of that system* – decades in many cases. This cooperation therefore helps build bilateral ties and creates strong incentives for recipient countries to maintain good relations with the United States.

For many countries procurement decisions aren't simply based on the specifications of the given system. Our advocacy helps demonstrate that the U.S. government believes these sales are critical to our diplomatic relationships. The fact that more countries want to deepen their defense trade partnership with the United States is a sign that our broader diplomatic efforts are having an impact.

Second, countries want to buy the best. And to get the best they rightly turn to U.S. defense systems. These systems are "made in America" and the growth in defense sales abroad demonstrates the capabilities of American manufacturing and of American workers. This administration has worked hard to support the U.S. defense industry abroad because it helps sustain our defense industry base and supports jobs here at home.

For example, our agreement in December to expand our security cooperation with Saudi Arabia not only helps advance the security of a critical ally, it is projected to have a significant impact on the U.S. economy. According to industry experts, this agreement will support more than 50,000 American jobs. It will engage 600 suppliers in 44 states, and provide *$3.5 billion in annual economic impact to the U.S. economy*. This will support jobs not only in the aerospace sector, but also in our manufacturing base and support chain, which are all crucial for sustaining our national defense.

Third, we are also working to improve our ability to cooperate with our partners. Nothing shows our commitment to expanding U.S. exports more than our Export Control Reform efforts.

Our export control reform efforts are ultimately about making sure that our system appropriately protects the things it needs to protect and prioritizes how we protect them. To that end, we are focusing our efforts in the near term on the re-write of the U.S. Munitions List, or USML, and the Commerce Control List, or CCL, to create clear bright lines between munitions and dual-use items. Our work is focused now on the removal of the majority of parts and components from the USML to the CCL in these categories. They also will remove some end items,

including unarmored military vehicles, cargo and utility aircraft, auxiliary surface vessels, and commercial communications satellites from the USML. We are working category by category, using objective rather than subjective criteria, to create that bright line between the USML and the CCL. We are making significant progress in this effort.

As part of our broader Export Control Reform Initiative, we have also recently reformed the broken "pre-notification" process with Congress. Under the old system, U.S. industry was placed at a competitive disadvantage as a result of the unpredictability and uncertainty of the process. This prompted our allies to question our reliability as a defense and security supplier. The new process, which is currently in place, has a tiered review process that, while bounded, allows significant time to review all potential arms sales under the Foreign Military Sales and Direct Commercial Sales programs.

Nothing about Congress and the Administration's legal authority has changed under the reformed new system. Congress is still able to stop the entire pre-notification process if a Representative or Senator raises a concern. But under the new process, if a committee staffer thinks that an arms sale should be delayed, that staffer must escalate that concern to their representative or senator to convey to the Department. The Department has a strong history of being responsive to Member concerns, and this will not change.

We are committed to the new pre-notification process because we believe it will make the U.S. a more reliable partner and ally and will therefore help expand U.S. defense trade.

Lastly, we have advanced defense trade through the Defense Trade Treaties with the UK and Australia. This past April the United States and the UK signed an exchange of notes which brought the U.S.-UK Defense Trade Treaty into force. This treaty is the first of its kind and allows for the more efficient transfer of certain defense articles between the U.S. and UK. We are also making progress in the implementation of the treaty with Australia, which we hope to be completed in the next year.

So from all of this, I think it is clear we are doing a lot. And that we are going to keep you busy.

Before I close, I would once again like to thank the DTAG members for their willingness to serve and for their dedication in reforming defense trade. The last

DTAG had a very busy – but successful – two years and I fully expect this DTAG to be just as busy and just as successful as the last.

With that, I am happy to take any questions you might have.

Question: A DTAG member asked about progress in the discussions covering the Congressional Notification (CN) process, where a key issue is the Administration's notification of the list review results. What had been the interaction of State with the Hill so far, and how were things moving forward?

Answer: Mr. Shapiro said there had been a number of consultations and briefings for the Congressional staff, and that DDTC Managing Director Bob Kovac and his DoD counterparts had visited with Congress numerous times to brief the Export Control Reform initiatives. They had briefed Congress prior to Federal Register publication of the proposed rules in several categories and would continue to consult with Congress and would follow the law that requires Congressional notification before making changes to the U.S. Munitions List (USML). The exact timing is uncertain, but the process is moving along.

Question: A follow-up question: Will Congressional notifications be sent to Congress category by category or all categories together?

Answer: The notifications will be done on a rolling basis.

Question: A DTAG member was interested in Mr. Shapiro's observations on the USG policy on the export of Unmanned Aerial Systems (UAS). The market is growing, technology is facilitating their development and there are new industrial players. Did Mr. Shapiro have any observations on how the export market for UAS would develop?

Answer: Mr. Shapiro noted the many questions pertaining to UAS such as their range, intended use, whether they were armed or unarmed; all of which had to be addressed on a case-by-case basis. Other issues to be sorted out were multilateral regime obligations and regional stability. The key is a case-by-case review. How the UAS will be utilized will assist the USG in making decisions on exports.

Question: A DTAG member asked about the success of the Congressional notification system.

Answer: Mr. Shapiro said that in both FMS and DCS sales, in all cases, the letter of the law was followed. More information on these proposed sales is being provided to Congress than they ever had. On Section 38(f) notifications, State will continue to have robust consultations with the Congress before going forward with the category changes.

There were no further questions for Mr. Shapiro, who concluded by thanking DTAG members very much for their service and said he was looking forward to the outcome of the plenary reports. He emphasized that the DTAG had been a critical part of the State Department's review process, and thanked the DTAG for providing a "gut check" on Export Control Reform efforts. Assistant Secretary Shapiro then departed the plenary meeting.

Continued - Task 1 Working Group: Review of Proposed Bills for Transfer of Satellites and Related Components from the USML to CCL, July 26, 2012

Mr. Rill resumed the presentation. He recapped the initial assessment slides and turned the presentation over to Ms. Joy Robins to walk through the detailed analysis of the House and Senate bills (see full presentations). Ms. Robins highlighted problems with inconsistent terminology in the bills; that the intent of Congress was not clear in the language; that technology safeguards are critical; ambiguity can sometimes be a good thing, but what was meant by the terms "unacceptable risk", "risk-mitigation controls" and to "reduce such risk to an absolute minimum"? The Working Group stressed that the Administration needs to establish levels of risk management and mitigation, but undefined terms may make it impossible for industry to satisfy these requirements, particularly if any new requirements were more restrictive than current national security requirements.

The Working Group suggested that since embargoed countries and sanctions change over time, specific countries should not be written into the legislation, but rather be determined by reference to existing authorities regarding denied parties or embargoed nations. Also, there are both lethal and non-lethal sales to countries, which might be covered under some circumstances but not others.

Ms. Robins noted that industry's role in the reporting mandates or data collection included in the bills was not fully defined. There was uncertainty regarding the roles of industry and academia in supporting the annual reporting requirements by the Director of National Intelligence. What did the legislation intend to capture? Would industry be required to submit data to support such reporting requirements?

Quarterly reporting would be a never-ending activity that would require industry to incur the cost of additional staff, and if the results were available to the public, might infringe on company proprietary information, such as marketing or competition sensitive.

Language in the House bill regarding the "enumeration of the item or items" was also unclear; would this requirement apply just to satellites or to the entire USML? There are hundreds or even thousands of items involved in a satellite supply chain. Items are also procured from foreign sources and that would add another layer of complexity. The DTAG considered the House bill Section 1243 language to be the most significant part of the bill.

Ms. Robins discussed the DTAG's concern that the criteria for "strong safeguards" was not defined, nor were other terms in the legislation such as "sufficient documentation" and "commercial spacecraft." The DTAG was not sure how much information would be required, or the impact on industry and academia of the collection requirements. Did the legislation mean there was a need for new monitoring programs.Would they repeat programs already in existence? Would new monitoring programs result in new costs levied on industry and academia for End Use Monitoring or other monitoring programs? These and other issues were laid out in the Working Group slides.

Mr. Rill indicated that the Working Group considered the House bill to be more comprehensive but also more restrictive and burdensome, and noted that the Senate bill would return the authority to the President to determine whether satellites and related components and technology are controlled under the USML or CCL. In the Senate bill, the term "satellites" was not defined. The Senate bill supports procedures set forth in Section 38(f) of the AECA. Mr. Rill also mentioned that the Working Group had concerns similar to those identified in the House bill regarding explicitly enumerating countries rather than referring to existing regulations. He concluded by reviewing the Working Group 1 summary assessment slide.

Prior to the Q&A session, DTAG Chairman Sevier commented that the DTAG purpose was to review the proposed legislation and related issues and to provide information back to DDTC. The DTAG Working Group deliberations would be part of the written summary. The DTAG deliberations were as important as the final DTAG product, and would be provided to Mr. Kovac for the Administration's use.

Question: A public attendee asked how the two bills would meet. The House had put all of its language back into the State Department Authorization bill and as an amendment to the NDAA while the Senate proposed a new bill.

Answer: Mr. Kovac replied that the bills were on the floor but the outcome was not known.

Question: A public attendee asked if there had been any determination about using existing USG data bases on the new reporting requirements in the pending legislation.

Answer: Ms. Robins indicated this was not certain as there was ambiguity about which components and technologies were covered and at what level. Depending on the intent and interpretation of the reporting requirements some types of information are not available from current USG database systems.

Mr. Rill said the Working Group did look at that and companies are required to maintain data on licenses, technical data transfers, exemptions and so forth, but the exact reporting requirements of the new legislation are not known, nor the potential impact on industry and academia. For example, could universities possibly keep records on all foreign students who touch a satellite component?

Chairman Sevier commented that looking at this from an equipment level, most equipment contains items from various levels of the supply chain, and that increasingly the supply chain comes from overseas. Would the new legislative language require U.S. firms to report to the level of overseas components? It is one thing if you are keeping track of an M1A tank and another if you are tracking all the components.

Ms. DePew also commented that if the legislation required reporting all parts of a satellite, it would be difficult for industry to comply, perhaps impossible for foreign designed components.

Mr. Wade thanked the team for their efforts.

DTAG Vice Chairman William Wade called for a motion to submit Working Group 1's "DDTC the Review of Proposed Bills for Transfer of Satellites and Related Components from the USML to the CCL" report and recommendations to DDTC. The motion was seconded and passed unanimously by a show of hands.

Following a brief break, Chairman Sevier introduced Mr. Vann Van Diepen, Principal Deputy Assistant Secretary, International Security and Nonproliferation Bureau, Department of State, who discussed the U.S. Government position and strategy regarding negotiations on the United Nations Arms Transfer Treaty (ATT).

Mr. Vann Van Diepen, Principal Deputy Assistant Secretary, International Security and Nonproliferation Bureau

Mr. Vann Van Diepen said his boss, Assistant Secretary Tom Countryman, was at the U.N. for the ATT negotiations, where a vote was scheduled for the following day, July 27th. Mr. Van Diepen described the U.S. approach as seeking to engage players across a broad range of interests including human rights, defense industry, and other areas on the potential effects of an ATT. The starting point for negotiations was that international arms trade was a legitimate commercial activity of states and needs to remain so. At the same time, an ATT that inhibits conventional arms transfers to known human rights violators, criminals, terrorists, or those subject to United Nations arms embargos would be an important contribution to U.S. national security. The U.S. was working hard to ensure a strong ATT is negotiated.

Mr. Van Diepen emphasized that the U.S. would only agree to an ATT with four attributes:

First, an ATT that would have no impact on domestic gun ownership laws, or on domestic transfers of weapons, ammunition, or their parts and components.

Second, an ATT that would improve U.S. national and global security by requiring other countries to implement safeguards and national procedures the U.S. already implements.

Third, an ATT that would ensure that the decision to transfer arms internationally remains a national decision.

Fourth, an ATT that would be consistent with existing U.S. export controls and procedures.

A vote on the ATT draft was scheduled for the following day, July 27th, and Mr. Van Diepen said it was unknown whether consensus would be achieved.

Mr. Van Diepen opened the floor for questions.

Question: A public attendee said Mr. Van Diepen had outlined what the USG did not want, but could he elaborate on what the USG did want from the ATT?

Answer: Mr. Van Deipen replied that the U.S. wanted the ATT to help bring other countries' controls up to the U.S. standard, or as close as possible to the U.S. standard.

Comment: A DTAG member said it was important that the ATT be consistent with current U.S. law and not impose any new burdens on U.S. industry, such as in the area of recordkeeping and reporting. The ATT draft talked about a 10-year reporting period while U.S. law was 5 years. How would recordkeeping flow down from an ATT? If recordkeeping requirements were to be initiated for 10 years, the requirement should be limited to states and the federal government, and not include industry.

Question: A DTAG member asked if ATT would cover transit and transshipment, as a lawful export also requires a transshipment approval from another state. Had this been addressed? If required, some shipments might require multiple authorizations when shipments pass through their jurisdictions.

Answer: Mr. Van Diepen said he did not have an exact answer but the intent was not to levy more requirements on the U.S. But other countries could impose whatever restrictions they wanted.

Question: A public attendee asked if there was a new ATT draft today, noting that the USG objected to the last draft.

Answer: Mr. Van Diepen said he had not seen it yet but that the Department would see it that afternoon.

Question: A public attendee asked if the ATT covered registration or control of brokering. If exports were under the Commerce Department's 600 series of dual-use items, would they require brokering regulations?

Answer: Mr. Van Diepen said the USG wants a situation where U.S. requirements do not change. Part of Export Control Reform (ECR) is to figure out brokering regulations. The USG will make sure that the ATT is consistent with ECR and

annual reporting requirements made public (the U.N. register of conventional arms).

Comment: A DTAG member said he was impressed with Mr. Van Diepen's staff, and complimented them on their good preparation.

Question: A Plenary attendee asked about the motivations of other countries and what they were trying to get from the U.S. in the ATT.

Answer: Mr. Van Diepen said there was a whole range of agendas on the ATT, with people in the middle expressing a legitimate interest in putting international regulations in an area where they have not been historically. Small arms and conventional weapons was the area where most people die, with developing countries' internal problems exacerbated by illegal weapons. The situation is fed by irresponsible arms transfers. There are grey or black markets, and national security issues. The ATT negotiations were a balancing act among competing interests. There are major goals the ATT hopes to achieve, but hoping and getting are two different things.

Question: A DTAG member commented that history was not positive on ratifying those types of treaties. If the USG can support the ATT, what is the process to convince the Congress that the ATT is meritorious?

Answer: Mr. Van Diepen said that even if the U.S. does not sign or ratify the ATT, it is in the interest of all parties of bringing all to a higher level of control. We will work hard to dialogue with the Congress.

Chairman Sevier thanked Mr. Van Diepen and asked if the DTAG could have a copy of his remarks. The Deputy Assistant Secretary agreed.

DTAG Vice Chair Wade then introduced the Task 2 Working Group on Recommended Revisions to the ITAR Related to Transshipment of Defense Articles, headed by Mr. Bryon Angvall and Ms. Andrea Dynes.

Task 2 Working Group: Recommended Revisions to the ITAR Related to Transshipment of Defense Articles, July 26, 2012

NOTE: Following is a brief summary of the presentation. The full briefing and supporting materials can be viewed at the DDTC web site.

Mr. Angvall quipped that transshipment issues were a narrower subject than space, the final frontier! He explained that the Working Group was charged with more specific issues, such as changes in shipping arrangements that rely on hubs rather than the direct shipping routes that were in place when the current regulations were drafted. He identified the Working Group members and thanked them for their efforts.

The issue addressed by the Working Group was that the current shipment language in certain ITAR sections is outdated (1980's) and does not reflect the use of global logistics networks. The Working Group's two tasks were:

1. Review several ITAR subsections (§123.11, §123.12 and §123.13) for clarity and usefulness in today's environment and identify recommended changes and rationale for such changes. Any recommendations must preclude shipments through proscribed destinations. And if recommendations offer relief from reporting or other requirements, then identify other control requirements that cover the activity

2. Identify any other subparts of the ITAR that may also require modification with respect to shipment of licensed items.

With those two taskings in mind, the Working Group's goals included: updating the ITAR to reflect current global logistics networks; transshipments of ITAR items through non-§126.1(a) countries en route to authorized destination should be permissible without further DDTC authorization when certain conditions protecting against diversion are satisfied; and consideration of the consequences of not allowing transshipments at all. In other words, under current regulations, ITAR shipments have to be transported point-to-point (e.g., direct flights, chartered vehicles); today's logistics network is generally not set up to deliver in this manner and cost would most likely be prohibitive.

This Working Group was a large and diverse team. The final product was truly a team effort. There was a lot of input from both returning and new members during the nine working meetings. The goal was to recognize the impracticality of direct-only shipments and offer solutions for alternative shipment methods. The Working Group also looked at other laws and regulations, multilateral agreements, commercial shipping terminology and current transportation practices in assessing this issue.

Ms. Dynes briefed the proposal overview, which was to define "transshipment" in §120 to reflect common understanding of the term; to revise §123.9 to address modern transshipments; to revise other sections to be consistent with the revised §123.9; and to leave §123.12 unchanged.

Ms. Dynes reviewed several elements of the transshipment issue, including the physical transit of a defense article through the territory of a third country; an item not entering the commerce of the third country; items en route to an authorized end-user; and transshipment issues such as bond transfers, temporary stops for refueling, consolidating or deconsolidating cargo, and transferring cargo from one means of conveyance to another.

The Working Group's key proposal was:

- New §123.9(d) allows transshipments en route to an authorized destination if the defense articles:
  -- Do not enter commerce (e.g., remain in Customs custody) of a third country and are not disposed of in any unauthorized manner, and
  -- Do not transit or enter a country listed in §126.1(a), and
  -- Are not transported by a proscribed carrier under §126.1(b), and
  -- Remain under effective control of either an authorized participant in the transaction OR the government of the third country, e.g., Customs.

The Working Group spent considerable time reviewing Destination Control Statement (DCS), particularly under the provisions of the new U.S.-UK Defense Trade Cooperation Treaty, along with discussion of a non- continuous voyage. The Working Group made several recommendations to include a new Destination Control Statement; a new§ 123.9(c); a new §123.9(d) (a new authorization for certain transshipments); and revisions to §123.11 on the Movements of Vessels, Aircraft and Vehicles Covered by the USML Outside the U.S. No changes were recommended to §123.12, as the current language is consistent with proposed §123.9 revisions. Some revisions to §123.13 were suggested to reflect similar concepts underlying authorized transshipments and to capture multiple modes of movements (vehicles).

The Working Group discussed other issues they considered including diversion risk, impacts of changing the destination control statement, and continuous vs. non-continuous voyages. The Working Group concluded that there was no need to differentiate continuous and non-continuous voyages. The Working Group also identified other potential issues such as how temporary imports were handled, and

noted that any changes to destination control statements would require corresponding changes to other ITAR sections (e.g., MLA and WDA §124.9 and §124.14).

The floor was opened for questions.

Question: A DTAG member asked if the proposed changes would allow shipments via a FEDEX hub such as the hub in Hong Kong.

Answer: Mr. Angvall said yes, that would be fine as long as the shipments were not via embargoed countries and Hong Kong is not a §126.1 proscribed country.

Chairman Sevier commented that this Working Group was one where the discussion and education was as valuable as the final recommendations. The discussion included the perspective of a DTAG member who was an actual freight forwarder and who was familiar with the implications of various approaches. One of the main goals in recruiting DTAG membership is diversity of expertise.

Question: A public attendee asked about authorized participants such as common carriers because they are not always identified on the DSP license.

Answer: Mr. Angvall responded common carriers are not "unauthorized" just because they are not listed on the license.

Question: A public attendee asked why not revise temporary import section versus the definition?

Answer: Mr. Angvall said the Working Group considered it but it was a huge tasking with significant background work required. The Working Group did not focus on import provisions as they did not have the time nor did they have a customs expert on imports. For example, Canadian and Mexican border shipments suggest that it is possible to make some shipments without a license. Those questions were not a part of the Working Group's taskings, but the Working Group could take on those issues next if needed.

Question: A public attendee asked about third country transits and could a government of a third country take "possession", or seize a shipment through their customs?

Answer: A DTAG Working Group Task 2 member said those items generally were in bond in a transit country. The generally accepted WTO (World Trade Organization) in-bond for transit status may need more refinement after looking at WTO in-bond status to refine this language. You either need to keep physical possession, or otherwise the item is secured in customs or other government status.

Mr. Angvall continued that the updated language being proposed does not make the situation better or worse because the risk issue already exists today and would exist whether all "stops" made on a voyage were specifically licensed or not.

Mr. Wade thanked the members of the Working Group, and then asked for a motion to accept the recommendations as presented and submit the report prepared by the working group.

DTAG Vice Chairman William Wade called for a motion to submit Working Group 2's "Recommended Revisions to the ITAR Related to Transshipment of Defense Articles", report and recommendations to DDTC. The motion was seconded and passed by a majority by a show of hands.

DTAG Chairman Sam Sevier again thanked all the DTAG members. Attendees were instructed to send any additional comments or papers for the record via e-mail to DTAG Recorder Terry Otis at OtisAssociates@verizon.net by COB on Friday, August 3, 2012. Submissions must not be marked as proprietary.

DFO Robert S. Kovac declared the DTAG Plenary session officially closed at 4:45 PM.

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

Dated September 7, 2012

By: The DTAG Executive Secretariat

Robert S. Kovac
Designated Federal Official

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

Attachments

1 – Working Group 1 Report: Review of Proposed Bills for Transfer of Satellites and Related Components from the USML to CCL

2 – Working Group 2 Report: Recommended Revisions to the ITAR Related to Transshipment of Defense Articles