U.S. DEPARTMENT OF STATE
Defense Trade Working Group
DTAG REPORT
November 2001

December 2001 Plenary Meeting
The next Defense Trade Advisory Group (DTAG) meeting will be held on Wednesday, November 12, 2001, at the National Foreign Affairs Training Center located in Arlington, VA. The meeting has been notified in the Federal Register and will focus on reviewing the activities of the last year and establishing future work programs.

DTAG Activities in 2001
The DTAG officers coordinated regularly throughout the year with various offices within the US Government. Bill Schneider, DTAG and Policy Working Group Chairman, Mona Hazera, DTAG Vice Chairman, and Mike Richey, Regulatory/Technical Working Group Chairman also met on various occasions to assess the efforts and direction of the various Working Groups.

On July 23, 2001, the DTAG met with new PM Assistant Secretary Lincoln Bloomfield, William Lowell, Director, Office of Defense Trade Controls (DTC), and members of their staff at the DTC offices. The officers and Working Group chairmen offered a summary of the current projects and recommendations on new projects the DTAG could pursue in 2002.

One of the members recommended that DTAG meet with smaller companies to garner a better understanding of their concerns. Mike Richey and Mona Hazera arranged meetings with various industry members with the assistance of several DTAG members. The concerns were not dissimilar from those of the larger companies.

Policy Working Group
The DTAG Policy Working Group, chaired by Bill Schneider, has been addressing various issues including Sanctions, control of technical data and exemptions thereto, definition of US and foreign persons, and the Defense Trade Security Initiatives.

Sanctions
Recent circumstances have brought forth the realities of dealing with legislative sanctions. The multitude of sanctions managed by various government agencies, some of which are unilateral in nature and open-ended, strongly suggest this subject be revisited.
Defense Trade Security Initiatives (DTSI)
The Policy Working Group on DTSI met at the State Department on December 11, 2000 for a working session with State counterparts on DTSI implementation. Bill Schneider is the chairman and key members including Mona Hazera, Mike Richey, Ken Williamson, Giovanna Cinelli, and Debi Davis. Whereas industry and the US Government have since that time made several efforts at DTSI, and a few cases were submitted with approval currently pending, practical implementation challenges continue. The Policy and Regulatory/Technical Working Groups coordinated on various occasions to exchange information and progress. Industry finds it difficult to structure an offering without a template while DTC must work out new details for each new program and DOD, as a key participant, is sorting through the requirements. Issues of liability, subcontractor issues, intellectual property, associated special auditing, unique reporting requirements, and overall roles and responsibilities, continue to make the DTSI unattractive.

ITAR Definitions – Control of Technical Data
The ITAR sections dealing with controlled technical data, data in the public domain and exemptions with regard to university access are currently under review by State. As it currently exists, the ITAR requirements apply to any person who participates in controlled activities with controlled goods, technical data and services. Whether a commercial transfer, a US contract, an industry-university collaboration, or litigation brought by foreign parties in the US, if related to a defense article or defense service, the activity/transfer requires a license. The US Government has determined that the ITAR will be revised to offer clarity while ensuring that regulations are fulfilled. The draft regulations would benefit from DTAG input. The Canadian exemption is an example of positive interaction between DTAG and DTC from a practical implementation perspective.

Definition of a US Person
The definition of a US Person as defined in the ITAR should be revisited. The interpretation between and among agencies does not provide for a single standard in terms of regulatory practice. In examining the definition of US person, considerations include defining US companies with foreign ownership, US consultants representing foreign parties, and what constitutes a “foreign person” as described in the ITAR. The evolution of regulatory interpretation are also part of the analysis.

Reassessment of Country Risks
In the fast moving legislative and regulatory arena since September, the policy (and sanctioned) world has been completely rewritten. In a matter of days or weeks, various sanctions and risk assessments against Pakistan and India were revised. Certain allies, such as the UK, have risen up to and beyond the challenge of supporting the US. With these events, foreign policy and national goals have changed, but have the inherent policies and guidance that existed for years been modified accordingly? A discussion into these areas would be constructive in terms of defense trade.
Regulatory/Technical Working Group

Mike Richey, Chairman of the Regulatory/Technical Working Group, chaired a meeting at the Office of Defense Trade Control on March 27, 2001 to plan the 2001 agenda. Mr. Will Lowell, Director, Office of Defense Trade Controls (DTC) and members of his staff participated. This was the first meeting of the replenished group following the plenary meeting in November 2000. An extensive agenda was prepared which included the following topics: Electronic Licensing; Canadian Exemption; SME and Exception Value; Software Provisos; Direct Shipment Validation System; Registration with DTC; Agreements and FMS; Commodity Jurisdiction.

The ITAR and FMS Working Group
Sam Sevier chaired the Working Group which includes Ken Williamson, and Rich Gogolkiewicz. The Group analyzed when an agreement would be required to support an FMS arrangement. The Group coordinated with DSCA and State and made recommendations regarding export in support of foreign military sales and corresponding defense services under the ITAR, specifically in 22 CFR 125.4 and 126.6. The dialog and recommendations were accepted and resulted in procedural changes and some language change. However, to be consistent, several changes must be made to the DOD FMS procedures, specifically with regard to the LOA descriptions for hardware, services and cost, and the subcontracting issues. And additional revisions to the ITAR would enhance the consistency overall.

Canadian Exemptions Working Group
The Working Group was co-chaired by Mike Richey and Mona Hazera and the members are Paula Reynolds, Stuart Quigg, Sam Sevier, Marlene Gross and Walt Rupinski. DTC tasked the Working Group to review the draft regulations and offer practical implementation recommendations. Following publication in the Federal Register, the Group met with the Canadian Embassy for clarification, another member attended a Canadian seminar on the subject, and through the Society of International Affairs (SIA), collected questions and issues pertaining to the new regulations. Based on the body of information, the Working group drafted Q&As for DTC, which after revisions, were published on the DTC website for clarification and interpretation purposes. The Working Group completed its objectives and has been retired.

Automated Export System
George Rao chairs the Working Group and the members are Mona Hazera, Beth Ann Johnson, Giovanna Cinelli, Ken Williamson and several subject matter experts that accomplished the DTAG Working Group members. Working Group continues to meet with State and Customs, most recently Tuesday, Nov. 27 in preparation for the implementation of the new process on April 1, 2002. The new regulations will require electronic filing of export license documentation through the US Customs Service and State Department. The requirements are mandated under Section 1302 of HR 3194. Some of the issues addressed by the joint DTAG/USG group included the restructuring of the Commerce/Census SED capture State data and standardization in terms of quantity and value to conform to US Customs standards. DTC has requested that the
DTAG Working Group comment on the draft regulations prior to publication in the Federal Registrar.

**Electronic Licensing Working Group**
Mona Hazera chaired the Group, which includes Ken Williamson, Beth Ann Johnson, Giovanna Cinelli, George Rao and Donna Cumberland. The members have met as a group or independent with DTC throughout the year and progress was made in analyzing the industry standards. The members have discussed electronic signature, encryption, expanding use of current licensing by including the DSP attachments electronically, assessing requirements for transmitting agreements, and more. The events of September 11 have emphasized the need to proceed more quickly. The Group is also working with USXports, the DOD component of electronic management of the process. The Group recommends that DTC brief the DTAG on standards and implementation expectations.

**Review of the USML Working Group**
Mike Richey chaired the group, which included Ken Williamson, Sam Sevier, George Rao, with participation from Mona Hazera and Bill Schneider. Several member of the Policy Working Group also expressed an interest, which could result in a joint Working Group effort. DTC advised that the DTAG would be brought in for review at the appropriate time. The USML categories under review are Firearms; Explosives and Propellants; Toxic, Chem-bio Items Nuclear Weapons Design and Test; and Military Aircraft. In areas such as military aircraft and explosives, DTC indicated the DTAG would be particularly useful. The working group is prepared to offer comments on the USML upon receipt of the list.