

Defense Trade Advisory Group (DTAG) Plenary Meeting Minutes
May 14, 2020 (1:00-4:51 pm)
Meeting held virtually (hosted by DDTC)

Agenda:

- Welcome
- Defense Export Control and Compliance System (DECCS) Working Group
- Compliance Guidelines Working Group
- Relook at Part 130 Reporting Working Group
- Review of Foreign Licensing Mechanisms Working Group
- Wrap-up

Ms. Andrea Battista, Department of State, Directorate of Defense Trade Controls (DDTC) provided instructions to the audience on the virtual web connections for today's Plenary.

Introductory Remarks by Ms. Andrea Dynes, DTAG Chair

Ms. Andrea Dynes, DTAG Chair, brought the meeting to order at 1:00 pm, and welcomed the public participants. Ms. Dynes expressed her excitement to have the audience join the first ever virtual Plenary.

Ms. Dynes provided remarks to the DTAG membership expressing her thanks for their support over this last DTAG term. Special thanks was provided to the DTAG members who supported the taskings for today's Plenary; particularly, the Working Group Chairs who shepherded the members to pull together an excellent work product. Ms. Dynes recognized Mr. Tom Donovan who has been acting as the DTAG Vice Chair this term, Ms. Sandra Cross who has been acting as the DTAG Recorder, and Ms. Debbie Shaffer who has served as the DTAG member manager. A full list of DTAG members is available on the DDTC website.

Ms. Dynes welcomed Mr. R. Clarke Cooper, Assistant Secretary of State, Political Affairs.

Ms. Dynes thanked Mr. Michael Miller, Deputy Assistant Secretary (DAS), State Department, DDTC, Federal Designated Officer (FDO) and Mr. Neal Kringle, Director of Management Staff, State Department, DDTC, Alternate Federal Designated Officer (AFDO) for their support of the DTAG and today's Plenary.

Additionally, a thank you was relayed to the various DDTC personnel who supported the Working Groups, Karen Wrege, Chief Information Officer (CIO) and DDTC Directors Sarah Heidema (Policy), Catherine Hamilton (Licensing), and Jae Shin (Compliance). Lastly, Andrea Battista was recognized for her support in arranging the technical aspects for today's Plenary session.

Ms. Dynes provided an overview of the agenda for the Plenary meeting, which focuses on the DTAG Working Groups' reports and recommendations on the four topics identified in the tasking letter issued March 6, 2020 by the Department of State (as reflected in the above Agenda), and will include remarks by Assistant Secretary (A/S) of State for Political Military

Affairs, Mr. R. Clarke Cooper, and Deputy Assistant Secretary (DAS) of State, Directorate of Defense Trade Controls (DDTC), Mr. Michael Miller.

Ms. Dynes also noted that the DTAG Working Groups' formal presentations and "White Papers" (to be supplied later) will provide an overview of the efforts undertaken by the DTAG Working Groups to address the topics, issues considered, and recommendations.

Ms. Dynes provided an overview of the DTAG Charter including its description of its duties to advise the State Department on defense trade policy and regulations.

Ms. Dynes turned the meeting over to Mr. Michael Miller, who in turn introduced Mr. R. Clarke Cooper.

Remarks by R. Clarke Cooper, State Department, Assistant Secretary/PM

Mr. Cooper thanked Mr. Miller for his introduction and thanked Ms. Dynes for her service over the last few years as the DTAG Chair. Mr. Cooper commended the entire DTAG membership for the work on the topics to be presented at this Plenary meeting. The work product will help guide the State Department's efforts and decision making; it is current and impactful work. He expressed his sentiment that DTAG engagement with State/DDTC is a tangible manifestation of industry-government collaborative effort.

Mr. Cooper expressed his pleasure that Mr. Miller is no longer in an Acting DAS capacity. His remarks turned toward addressing COVID 19 and its impacts. The DDTC team is thriving under the current conditions even though they may be challenging conditions; DDTC has risen to meet the moment. At this time, it is too soon to assess the full extent of the economic impacts of COVID 19. During these times it is critical to integrate with our country ally partners. The national security strategy of the President is to preserve peace through strength and to facilitate economic security through innovation and by reforming regulations. This strategy will greatly facilitate sales of U.S. material abroad while upholding and respecting human rights. The work product the DTAG provides enhances the policy tools that are available to the State Department today.

It has been a remarkable year during his time working closely with DDTC. Many of the reforms sought at DDTC that are unfolding now took years to achieve. The role of the DTAG has helped to make the State Department become better positioned to address these reforms.

Mr. Cooper addressed the agenda for today's Plenary. With regard to Working Group 1's discussion of the Defense Export Control and Compliance System (or "DECCS"), this new export licensing system was deployed in February 2020. The DTAG was instrumental in shaping the first version of DECCS. Updates to DECCS is an evolutionary process. He recognized that some in industry may miss the old system, but they are adapting to DECCS. DECCS will provide new efficiencies and functionality to both industry and to the government. Technical updates are occurring on a weekly basis utilizing the feedback received from industry to help fuel future enhancements.

COVID 19 has posed significant challenges beyond DDTC's operations and onto the national security enterprise.

Mr. Cooper provided kudos to the DTAG leadership for canvassing topics and recommendations that could be useful to DDTC during this COVID 19 pandemic. Suggestions the DTAG has already provided resulted in several changes. For instance, the reduction of registration fees for all registrants. Those companies with Tier I and II registrations expiring from now until April 30, 2021 will have their fees reduced to \$500. This is expected to provide relief in the amount of \$21 million to small and medium companies who are registered under the ITAR and help those hit by global supply chain disruptions. Additionally, DDTC extended registration expiration dates for two months up to June 2020. For licenses, DDTC extended expiration dates out 6 months for export authorizations if there is no scope change.

In the compliance area, DDTC is granting an additional 30 days for responses due in voluntary and directed disclosure matters.

Business is continuing despite COVID conditions; work goes on. COVID has impacted the economy and the posture of security to include defense budgets. Alternatively, it has highlighted that those items are still needed. Making the necessary changes to the ITAR, DDTC is providing flexibility to help keep U.S. defense manufacturers working through COVID 19.

DDTC is able to keep pace and have found time to innovate their processes and procedures. Most notably, DDTC has implemented administrative changes to handle certain types of authorizations. The Directorate is still very active with 14,000 registrants. This is an increase over the last year and they will watch this trend over the coming years. DDTC is actively working to ensure the resources are in place to oversee export requirements and licensing activity.

DDTC has reviewed 654 voluntary disclosures and 57 directed disclosures were issued. Four consent agreements were finalized recently to resolve violations. The total amount of penalties levied was \$24.4 million. Half of this fine was applied to fund remediation efforts at companies to mitigate or prevent future export violations. DDTC personnel supported criminal trials for 17 entities that violated the Arms Export Control Act (AECA). In January, a Federal Register Notice was published to rescind certain debarred parties. These entities demonstrated sufficiently that they had addressed the matters that contributed to their debarment. Additional announcements on changes to debarred parties will be forthcoming.

Since the last Plenary, DDTC made changes to the USML that showcase the desire for an agile export system in order to remain competitive. The most impactful rule change dealt with USML Categories I, II, and III. Now that those revisions are in effect, DDTC has completed its review of all USML Categories and has reshaped the USML into a positive list. The USML is putting the focus where it counts; on military critical technologies.

DDTC has been able to focus its efforts on revisiting other foundational work such as modernizing the ITAR definitions defense services and technical data. Recent changes on secure storage of technical data benefits government and industry alike by being able to take advantage

of currently available technical capabilities. These changes were received very favorable within industry and government partners were also appreciative.

The Compliance office has focused on interpretive guidance to help industry. Specifically, they are working to add Frequently Asked Questions (FAQs) on DDTC's website, such as those that address the revised encryption/export rules and U.S. Persons working abroad. Many of these changes were a result of DTAG recommendations.

On day 1 at DDTC, he focused on modernizing the Bureau which touches on systems and processes. The DTAG is at the forefront on this type of effort and the inputs of the DTAG are sincerely valued. Mr. Cooper requested the DTAG to continue to propose solutions to hard problems and to embrace change in a time of adversity.

Ms. Dynes expressed appreciation for the thoughtful comments and the recognition of the role of the DTAG to support the overall mission of the U.S. government.

Defense Export Control and Compliance System (DECCS) Working Group Presentation

Ms. Andrea Dynes introduced the Defense Export Control and Compliance System (DECCS) Working Group chaired by Mr. Alexis Mitchell and Ms. Fran Mulla. A copy of the slide presentation can be found on the DDTC webpage (under the *About DDTC* tab, look for DTAG).

Background of the tasking:

- DDTC rolled out DECCS 1.0 on February 18. We are currently working through our list of known issues that have come up since the deployment. We would like DTAG to help us plan the DECCS 2.0 version.

The Working Group tasking summary:

- DDTC requests the DTAG to give its views on prioritization of enhancements. There are a lot of areas to focus on – it would be very helpful to get an industry perspective on what we should put at the top of our “to-do” list.

Key items discussed:

- DECCS is part of DDTC's IT modernization efforts.
- Commodity Jurisdiction submissions were rolled out a couple years ago with Advisory Opinions to follow in 2019. Both Registration and Licensing were released in February 2020 and vaulted licensing activities into the future. The question for the DTAG is what can be done to make the system even more user friendly.
- Ms. Mulla highlighted clarifications on the tasking received from Karen Wrege, DDTC's CIO
 - DECCS 1.0 & 2.0 are notional descriptors because DDTC is using an agile development model by making improvements on an on-going basis. When DECCS is taken offline, updates are being made behind the scenes; consisting of both general fixes and changes taken from feedback from industry. DDTC is conducting bi-weekly maintenance and enhancements to the system.

- DDTC is seeking feedback on which updates should be made and to prioritize those developmental efforts that would have the greatest impact for users.
- The One-Form is considered a future requirement based on the time required to update the ITAR prior to its release. This type of change and roll-out will require a regulatory update. The Working Group focused its attention on what can be worked now and within the next 2 years to improve DECCS.
- Mr. Mitchell discussed those items DDTC already has on their list of enhancements. DDTC solicited inputs on these items already on the drawing board and for the DTAG to include others as applicable.
- DDTC is currently working on the following enhancements
 - *Resume work on One-Form based on better understanding of data and industry feedback* – This effort is on-going and will take a good bit of work. Industry and the DTAG have already provided DDTC with comments on the One-Form. DDTC is taking that information and working changes into the Form but will ultimately require regulatory changes. More work to be done in this area and additional analysis will be needed as this progresses.
 - *Review website and create plan of action to improve content* – The website is improving over time. DDTC will be reviewing the content holistically and as new Forms/capabilities roll out, they will take a re-look at current content to update it and refresh it for consistency. They will also focus on ways to be effective in conveying guidance to industry.
 - *Release DS-7787 Disclosure Form* – Development of this new Form is nearing completion. DDTC will be proceeding to the testing phase in the near future and progress into electronic submissions of voluntary disclosures.
 - *Release updated company dashboard to external DECCS users* – Establishing a dashboard would allow company administrators to allow Empowered Officials to manage case work within the DECCS system. User interface updates will be critical for efficiencies.
 - *Implement Identity Proofing in OKTA for domestic external users (to transition away from digital certificates)* – This has been an on-going discussion and DDTC is considering a transition away from digital certificates. The system is using OKTA today for access to the website and digital certificates. Next step is to look at the digital certificates process and determine if it is still a modern approach or whether there are alternatives.
 - *Expand Industry Application Program Interface (API) for submission of new form types, disclosures and supporting documentation* – The batch interface process is over a decade old, DDTC is looking to grow that interface to accept all form types.
 - *Allow users to add supplemental submissions to Advisory Opinion and CJ forms* – These Forms were the first to be released and DDTC is now taking another look at the Forms to bring them up to the same capability as the licensing submission. Specifically, the ability to upload documentation after a form has been submitted; this is a need for industry.
 - *Refine/improve end-user self-service through DECCS portal* – Connectivity with industry and the USG is constantly improving. Education is always needed when deploying a new system. Users will need to find the tools they need (training) and

communicate with DDTTC when they run into issues or questions. They will be reviewing this process and look to work with support teams already in existence at DDTTC.

- *Indexed, searchable, and versioned ITAR information for external consumption* – Having this type of search capability of the ITAR would be a useful tool for inclusion with planned website improvements.
- *The overall goal of DECCS is to create the means to end the remaining paper processes (e.g. 123.9(c) applications, FMS Part 130, Canadian exemption reports, etc.)* – There are a few license submission requirements that necessitate paper submissions such as certain General Correspondence filings. DDTTC is looking to expand DECCS to accept these types of requests in the future electronically. There are also reporting requirements that don't align to a submission, but must still be made separately and submitted in paper. Those too will be looked at for enhancements to DECCS.

Recommendations by the Working Group

The DTAG approached the recommendations by grouping inputs for updates to the current DECCS system, new additions to DECCS functionality and finally ideas that will supplement the success of DECCS.

Updates to current DECCS functionality

- *Address foreign person submission and signature requirement for applications and association to affiliated U.S. registrant (e.g. DS-6004, DS-4294, AO's)* – Recommend DDTTC take a holistic look at new capabilities introduced by DDTTC. Foreign parties will need to approach DDTTC with applications and they'll have a different set of requirements than U.S. Empowered Officials. The current challenges in the DECCS need to be looked at; in particular, finding a new way to authenticate signatures.
- *Review and resolve new registration field requirements & submission issues (e.g. print full copy of DS-2032, multiple roles of officers/directors)* – DTAG recognized that there were a few growing pains within DECCS registration module. As industry is beginning to use features, we've been able to identify concerns found at first use. An example includes being able to print a full copy of a registration statement for company recordkeeping requirements and for ease of review. Another example is the need for flexibility in the form to identify multiple positions/titles for a member of the board of directors, senior officer, partner or owner. Recommend updates to these discrete field requirements and user interface to allow registrants to accurately relay the needed information to the Department.
- *Address concerns with change to use of special characters* – DDTTC has addressed this issue with a FAQ. The old system (DTRADE) took special characters in the submission but once the case was transferred into USXPORTS, the system interface would remove the special characters. DECCS doesn't take the special characters in the first instance. Industry is looking for an update to this capability to accurately convey foreign party names.
- *Address concerns on unit price beyond 2 decimal points* – DTAG noted that industry continues to have concern with rounding the unit price to two decimal points. DDTTC has posted a FAQ to address the concern, advising industry to round to the nearest cent.

Rounding introduces errors in valuation fields in some scenarios when round to the nearest cent. Recommend DDTC review the current process and FAQ.

- *Update to auto assign applications to group based on EO's groups assignment (including EO's with multiple roles: e.g. administrator)* – Enhancing the ability to group license submission cases based on a company's organizational business structure; particularly if they are grouped into divisions. This will allow licenses to be grouped together and reduce workload and monitoring by the Empowered Official to have to move the objects manually into the specific access group.
- *Consider form field user interface improvements (e.g. date fields)* – This is a basic recommendation to make user interface improvements.

New DECCS functionality

- *Review Forms to enhance consistency and remove redundancy (e.g. automate DSP-5 block 3 as derived from sum of countries of parties in block 14)* – Consistency across Form types would generate efficiencies. One area to investigate is whether the Forms could be updated by deriving the country list for Block 3 of a license submission from the end users in Block 14.
- *Create ability to copy a prior application / template* – There could be substantial time needed to create a license application in the system depending upon the complexity of the export situation. Applicants would benefit from having the ability to copy a prior application or create a template in situations where they are submitting the same type of application repeatedly (e.g. renewals, unshipped balance) in DECCS.
- *Create holistic Industry interface (API) from submission to expiration (e.g. submission, status, upload/download, etc.)* – The idea here is that the interface should work cradle to grave - submission, status retrieval, communication, issuance retrieval, post submission/post approval document upload, until expiration/termination.
- *Add subscription / notification option to DECCS case status functionality to identify changes to status (licensing & compliance modules)* – The idea here is to create a subscription / notification functionality during the review of an application where DECCS would notify the applicant of changes to case status including staffing replies, questions as it moves through the process or issuance.
- *Develop tool to capture all communication on an application within DECCS application similar to DECCS Support Case or BIS SNAP-R functionality* – Currently, some communication on applications does not happen in the DECCS system but rather outside the system through emails to Licensing Officers. If the tool itself could allow for a 2-way conversation, DECCS would retain the conversation history within the case rather than outside the system. The DECCS support case is a nice tool and could be expanded. All of the forms should have the communication capability and ability to upload supporting documentation.
- *Integrate all case status into single view (i.e. ELISA & CN tracking) prior to ELISA retirement* – Currently a DOD website (ELISA) is used to track pending license submissions. Before that system is retired, pull the status information from ELISA and expand the capability by incorporating the Congressional notification status spreadsheet into the DECCS system. This would be of great use to industry.
- *Allow users to access multiple company accounts within DECCS (similar to ACE) for 3rd parties who support multiple entities* – There is a need for DECCS to make the process

easier for users who support multiple companies like consultants or other third parties to see and support applications.

Additional ideas for DECCS implementation

- DDTC could stand up a routine schedule to meet with applicants and/or DTAG to review DECCS and solicit input to prioritize development tasks. The goal of this type of review is to solicit inputs on how to improve the system.
- DDTC could publish DECCS release notes along with the enhancements implemented on a bi-weekly basis. This will allow industry to understand what DDTC has accomplished and understand what they will see with the bi-weekly updates.
- DDTC could publish their near-term development tasks. This is expected to reduce the volume of support calls on the same topic. Industry could see the items being worked in the background and will lessen their need to contact DDTC.
- DDTC could stand up a technical working group with IT professionals to explore the various electronic signature / authentications solutions to determine which may work best for DECCS.
- DDTC could continue to utilize the DTAG to provide inputs on DECCS and provide an analysis on digital vs. paper applications and U.S. government workflow processes for reviewing license submissions.
- A long lead time suggestion is for DDTC to review application requirements to reduce redundancy and enhance consistency (e.g. agreement, transmittal letter, license vehicle).

Top 3 recommendations by priority

1. Develop tool to capture all communication between DDTC Licensing Officers and applicants within a specific DECCS application. This would be similar to DECCS Support Case or BIS SNAP-R functionality. This type of communication gives industry the ability to have two-way communication with DDTC on a specific submission.
2. Implement identity proofing to transition away from digital certificates for signature and foreign person signature requirement. In observation, it is more difficult to utilize a digital certificate process in DECCS than it is to transfer money in a banking system.
3. Create the ability for users to copy prior applications or create templates. Entering cases manually for repeat activity drives the potential for errors.

Additional recommended non-development initiatives

- Stand up a DECCS working group with applicants and/or DTAG to review workflow methodology, automation, form requirements, prioritization and schedule, including technical working group with IT professionals for technically challenging requirements
- Publish near term listing of development tasks and publish DECCS release notes
- Continue to enhance training DDTC offerings:
 - Continue to provide DECCS training webinars, DDTC has put forth a great effort to do webinars on DECCS
 - Produce sample/example completed cases for industry to use as training materials
- Create a more efficient means for applicants to communicate notices of administrative changes to active authorizations directly in DECCS, as opposed to uploading a “letter”. Consider ways to streamline this process by putting a check box into DECCS and eliminate the letter requirement.

Questions posed to the DECCS Working Group.

- *Karen Wrege, DDTC* acknowledged and expressed appreciation for the Working Group's efforts. She noted the Working Group did a wonderful job looking at near, mid, and long term recommendations. The DTAG has been instrumental in developing the first phase of DECCS and the website and DDTC will continue with improvements to the website to allow for people to interact with the system. Ms. Wrege agreed with the prioritization presented. Regarding communication improvements, the expansion of the help desk functionality and use of a similar model to allow Licensing Officers and industry to communicate back and forth is interesting. This enhancement could create a lot of efficiencies in the processing of cases. Continuing the collaboration from a technical and business perspective will be of great help to get an understanding to how industry interfaces with the system. Ms. Wrege was very enthusiastic about the desire to modernize the digital certificate and that it is a top 3 priority. As background, the U.S. government needs to purchase the digital certificates as well (they feel your pain). She is looking forward to using modern technologies and to figuring out better ways to improve foreign individuals' access to the system. She is also looking forward to initiating on-going dialogue with the DTAG to ensure the U.S. government is on target with these recommendations. She thanked the DTAG for their support over the years.

Mr. Donovan explained that due to the virtual nature of the Plenary, the DTAG was asked to vote earlier in the week for approval of the presentation, the vote passed in favor of the presentation.

The DECCS Working Group "White Paper" will expand on the presentation and will be made available on the DDTC website (under the *About DDTC* tab, look for DTAG).

Compliance Guidelines Working Group Presentation

Ms. Andrea Dynes introduced the Compliance Guidelines Working Group chaired by Ms. Dava Casoni and Ms. Heather Sears. A copy of the slide presentation can be found on the DDTC webpage (under the About DDTC tab, look for DTAG).

Background of the tasking:

- The Office of Defense Trade Controls Compliance advises parties engaged in defense trade to establish and maintain an ITAR compliance program. DDTC relies on the defense industry to help protect our nation's sensitive technologies. In designing a viable compliance program, industry needs to understand how their business works to determine compliance risk areas. Possessing defense articles or technical data raises risk of an inadvertent violation. Many companies that don't engage in manufacturing, exporting, or brokering, still maintain compliance programs to reduce the risk of such violations. DDTC seeks areas to enhance the current compliance program guidelines to help industry reduce risk and improve their compliance programs.

The Working Group tasking summary:

- DDTC requests the DTAG make broader recommendations to improve general compliance guidelines, including a section on specific compliance elements to enhance export controls at universities.

Key items discussed:

- Ms. Sears identified that there was a lot of interest in DDTC providing additional guidance on compliance.
- The DTAG in 2016 and 2019 suggested that DDTC consider revisions to the guidelines and/or to task DTAG with reviewing the guidelines. Today's presentation identifies what the DTAG thinks can improve the guidance.
- Industry can find itself stuck in the position of figuring out compliance when there is no guidance, which may end up with a body of unwritten rules. Guidance from DDTC will help minimize those unwritten rules.
- Common compliance hurdles to comply with the ITAR
 - *Regulatory Interpretation* – In many instances the ITAR is unclear, and thus industry must interpret how to comply with the regulatory requirements with limited available guidance. DDTC could minimize these interpretations and prevent inaccuracies by providing new detailed guidance.
 - *Management/Leadership Buy-In* – Registration requires a degree of management buy-in, but there are areas that go beyond this element. A company needs to live compliance and that message needs to come from management. For example, having management ask if trade is involved in a program in meetings demonstrates their buy-in to the function export compliance plays. Additional guidance from DDTC may help industry get the leadership buy-in they need.
 - *Internet/Electronic transfer risk* – Electronic transfers increase a company's risk level and scares a lot of compliance folks. It is very easy for an employee to mistakenly release information by attaching documents to emails. Compliance professionals are doing as much as we can to mitigate violations. But it gives us a hurdle. There are measures industry has put in place to prevent violations, but guidance on addressing this issue would be well received.
 - *Foreign Complexity* – There are varying foreign complexities depending on your organization. At universities, there are tons of international students and faculty to manage. Within industry, there may be foreign national employees or the entity itself may be foreign owned (parent). All of these situations present very complex compliance challenges.
 - *Restricted Parties/Affiliates* – Most companies have implemented a screening software to review restricted parties. However a challenge exists in that the software may not be catching everything it should or screening may be insufficient. Guidance on effective screening would be beneficial.
 - *Lead Times/Pace* – The pace of business can be very fast. Any delays in getting licenses can take the opportunity for this business out of realm of the possibility. For example, handling an aircraft on the ground situation where a license is needed to get parts out of the country is a challenge. The guidelines can highlight how a company can do business quickly and compliantly.

- *Number of people involved* – There are a number of people involved in export activity at companies. There is a requirement to continually train employees involved as there is transition and new-hires. Additionally, there may be answer shopping that occurs if the process becomes too complex.
- *Industry: O-Visa, Outsourcing by Suppliers* – This hurdle is specific to industry and not universities. Industry occasionally will stumble upon a genius who will help the company’s technology growth. When this person is found, if the company has to wait a month until a license is in place, the genius will go somewhere else; this is problematic. Another hurdle exists when buying supplies from a U.S. provider, who then sends the order to a subsidiary abroad and they don’t comply with the export rules. Even if the drawing is marked, they still send abroad without authorization or telling the purchaser it is being sent overseas. The purchaser then has to make disclosures when those suppliers are breaking the rules.
- Ms. Casoni discussed common compliance hurdles associated with universities. Interestingly, the U.S. Government Accountability Office (GAO) issued a report this week on export compliance issues for universities¹ and recommending that DDTTC issue ITAR compliance guidance for universities. Ms. Casoni noted that there are foundational differences between industry and academia.
 - Core Mission of University
 - Educate, create and disseminate knowledge.
 - Philosophy of universities is to promote academic freedom which is deeply seeded within universities. Universities have a world view, it is a core value.
 - Open forum of collaboration is another core value. Additionally, universities are largely open facilities and campuses with limited access controls.
 - Fundamental Research adds to training and education hurdles as researchers must understand that despite performing fundamental research, if they use defense articles or technical data as part of their research or create a controlled output, they are still subject to the regulations.
 - Open campus environments and facilities lends its own challenges as there are no inherent access controls.
 - In addition, academia has a unique leadership structure. There is substantial authority in well-funded labs and tenured faculty at universities.
 - Additionally, there exists decentralization in the departments and subject areas. In many universities, decisions are made all over the campus in different centers.
 - Adding to this, many DOD officials misinterpret “fundamental research”.
 - Management structure at universities
 - Faculty/Lab level in addition to top-down
 - Often non-profit
 - Decentralized /department silos

¹ *State and Commerce Should Improve Guidance and Outreach to Address University-Specific Compliance Issues*, GAO-20-394: Published: May 12, 2020.

- Value of the compliance guidelines
 - Educate in the area of trade compliance.
 - Ability to benchmark where your organization is against others; run a test diagnostic of the program.
 - Provides a roadmap for those new to export controls on how to set up a program.
 - Highlight the essential nature of management buy-in and how it forms the basis to get resources to function appropriately.
 - Outlines DDTC's expectations of how to apply compliance and clarify understandings of process.
 - The guidelines are not meant to reiterate the regulations or deter people from reading the regulations. Rather it is a guide for people on how to apply the regulations in varying circumstances and to understand how to think through the regulations.
- The Working Group's methodology for this tasking involved
 - Conducting a review of the current DDTC guidelines to identify where there might be gaps.
 - Analyzing other agencies' guidelines including BIS, OFAC and DOJ² to identify elements that DDTC might want to adopt.
 - Splitting the Working Group into subteams to review the other agency guidelines and draft ITAR specific compliance guidelines.
 - Preparing a draft set of recommendations and suggestions to improve the current DDTC guidelines.
- Observations of the current DDTC guidelines
 - They are easy to read
 - Includes questions to help frame a compliance program, what a company should be asking of its program
 - Permits range of implementation
 - Does not follow DOJ criteria or Sentencing Guidelines on evaluation
 - Missing key topics (e.g., Part 130) that are high risk to industry and addressed elsewhere by DDTC but not as part of the guidelines
 - Restates ITAR requirements in a vacuum by providing an overview of the ITAR but with no examples
 - Provides limited guidance or instruction.
- Observations of BIS guidelines
 - It is 56 pages long
 - Provides detailed guidance and walk-throughs of how to build a program
 - Permits a wide range of implementation and examples of sufficient implementation efforts
 - The guidelines are more aligned with DOJ Sentencing Guidelines
 - The Working Group opined that DDTC's adoption of a similar approach would meet regulatory requirements and be beneficial to compliance. Creating more industry friendly, helpful, and clear guidance will amplify the expectations from the Department of State and would result in developing strong programs in

² BIS - Bureau of Industry and Security, Department of Commerce; OFAC – Office of Foreign Assets Control, Department of Treasury; DOJ – Department of Justice

industry. The Working Group liked the BIS model. DDTC could use the BIS model as a road map for changes to its guidelines.

- Observations of OFAC guidelines
 - These guidelines provide context up-front on the benefits of following the framework and gives a vision from the enforcement perspective to help reinforce using the framework
 - Permits a wide range of implementation and examples of sufficient implementation efforts
 - Provides notice of the elements important to OFAC’s mission and what it expects from industry. One key element included in the guidelines is a risk matrix which provides concrete factors to evaluate a company’s risk-profile. It lays out areas of exposure, helps companies to determine how to allocate funds to address compliance concerns.
- Observations of DOJ guidelines
 - Provides a way to understand how DOJ analyzes a company’s program
 - Helps you evaluate your internal program. Each program has to meet all 3 of these critical framework questions:
 - “Is the corporation’s compliance program well-designed?”
 - “Is the program being applied earnestly and in good faith?” “Is the program being implemented effectively?”
 - “Does the corporation’s compliance program work in practice?”

Recommendations by the Working Group

Short term solution to edit the current guidelines by section

- There are some band-aids, quick fixes that can be applied immediately.
 - Add university bullet to the Organization Structure section to address different levels of authority at academia
 - Add identification of risk areas and management buy-in from those areas as well as registration to the Corporate Commitment & Policy section
 - Add bullets to track defense services and deemed exports, as well as add university specific questions to the Identification Receipt and Tracking of ITAR Controlled Items / Technical Data section, DDTC can also add university specific questions to evaluate their type of program
 - Reference Part 130

Mid-term solution to create a new checklist

- Use what DDTC currently has and create a bulleted checklist. To clarify, this is not a to-do list, rather, it is a list of topics that any ITAR compliance program should address
- DDTC could highlight ITAR issues impacting universities in the checklist

Long term solution to rewrite current compliance program guidance

- Craft a new set of compliance program guidelines
- Expand on current guidance to include interpretive guidance on how to think through complex issues and apply to unique environments (industry and universities)
- Cite to regulatory obligations throughout the guidance
- Include a range of examples to address the checklist items and provide simple scenarios

- Explain why each element of the ITAR compliance program is important, the purpose, and regulations the element is meant to address
- Tie the guidance to risk levels and create a risk matrix that will help industry conduct periodic risk assessments of their company's risk profile that can be used to guide their overarching compliance program. This will also assist companies in identifying how best to allocate budgets to address where holes exist in their current program
- Explain how best to deal with aggravating and mitigating factors where exposure in one area may help shed light on where else exposures might be
- University-specific guidance addressing items already discussed (above)
- Incorporate templates and checklists. The Working Group found mixed opinions on the inclusion of templates in such guidance. The concern is the templates may come to be interpreted as requirements. Members of the DTAG expressed concerns with how this could be implemented. One viable option is to include templates as an example with clear guidance that it is not meant to be the only method or approach, as there is no one size fits all solution.

Pull details from BIS, OFAC and DOJ

- All three of these guidelines incorporate aspects of the model that the DTAG is proposing to DDTC
- Specifically, include a walk through on how to set up a program that addresses ITAR compliance needs
- Develop a risk matrix to help highlight where to look for possible exposures (low, med high risk)
- Revising the guidance to include DDTC's interpretations, consolidate web guidance and FAQs
- Enhance the guidelines by including university-specific guidance. Speak to how universities handle compliance. The guidelines should account for the different types of organizations out there to include universities, small businesses, and non-US entities.
- Templates/hand-holding approach

Sections to add to DDTC Guidelines

- Existing guidance does not mention the below topics which are important to the success of a compliance program. They should be referenced at some level to guide companies to include them in their overall compliance program. Recommend that a checklist to remind registrants that they address each of these elements or that they've determined that there is no risk exposure for the specific elements.
 - Registration (including for multiple campuses/locations)
 - Public Release
 - Defense Services
 - Mandatory Reports
 - Part 130
 - Brokering
 - Third-Party Management
 - Regulatory Citations
 - Cyber Guidance

Benefits and concerns of the recommended revisions

- **Benefits**
 - Provides U.S. government expectations to industry/universities
 - Provides an actionable road-map
 - Clear guidance will improve management buy-in, additional detail is particularly helpful to smaller companies with fewer resources. Additionally, it tells management where to expend money to support its compliance program
 - Conforming DDTC's guidance against the other agencies will allow for easier implementation by industry/universities and consistency amongst the government agencies
 - Aggregates ITAR compliance obligations in one place for ease of implementation or cross-referencing the guidance
- **Concerns**
 - Important that the examples incorporated do not relay a message that this is the only way to do compliance, one way to approach, implementation must continue to be flexible accounting for differences in registrants. Keep open a range of acceptable implementation options (not one best practice).
 - Guidance needs to be aligned with regulations to avoid scope issues
 - President's EO 13891 (Promoting the Rule of Law Through Improved Agency Guidance Documents) and EO 13892 (Promoting the Rule of Law Through Transparency and Fairness in Civil Administrative Enforcement and Adjudication) require that agencies craft any guidance in accordance with the regulations, not as unenforceable, non-binding detail. They should not set new criteria for industry to follow.

Summary

- The Working Group agrees, DDTC's Compliance Guidelines can use revision
- Detailed guidance and regulatory citations would provide clarity and baseline U.S. government expectations
- The new guidelines should provide a range of examples highlighting varying companies/entities
 - Applies to multiple entity types
 - Increases management buy-in
- Working Group's white paper will include sample language and detailed outline for DDTC's consideration.
- Follow-on taskings DDTC could consider for the DTAG include:
 - ITAR deep-dive to link citations to compliance requirements,
 - Draft guidance/checklists for DDTC to consider, and/or
 - Allowing the DTAG to comment on a DTCC draft.

Questions posed to the Compliance Guidelines Working Group

- *Jae Shin, DTCC*, thanked the Working Group for a thoughtful and comprehensive presentation. A lot of research went into this. This is timely to align with the GAO report. DDTC is interested in how universities are complying with the ITAR. Intend to use DTAG's information to improve compliance guidelines. Long overdue. Glad to get help from the DTAG. Thanked industry for taking compliance seriously. He looked forward to seeing the white paper.

- *Jae Shin asked* - Other than various COVID restrictions, what was the most challenging part of the study? *Ms. Casoni responded* – Understanding that we could go deeper on this study and propose actual language to the guidelines, but the time limitations made this a challenge. There was disagreement on what level of detail the guidelines should include. Guidance that goes too far will become overly proscriptive, might limit the range of acceptable approaches. Concern that guidance will narrow what is available to industry. Vast majority of the team agreed to provide details to ensure we are all on the same page and what is important to DDTC. *Ms. Sears responded* – One area the Working Group struggled with was to make sure where a suggestion was made, that it wouldn't be limited. They didn't want to decrease flexibility, while trying to explain things companies should focus on; walking a fine line. *Ms. Casoni commented* – There is a clear process to update the regulations, in this case, with updating the guidelines, suggestions were only limited to those on the membership of the DTAG, DDTC should seek a broader voice beyond the DTAG, such as AUECO for university-related guidance.
- *Jae Shin asked* - Different agencies view risk based assessment differently, which one is most applicable to ITAR compliance? *Ms. Casoni responded* – The OFAC risk matrix. *Ms. Sears asked* – In drafting the white paper, would it be helpful for DDTC if we identify what we think should be in a matrix? *Jae Shin responded* – Yes that would be most helpful.

Mr. Donovan identified that due to the virtual nature of the Plenary, the DTAG was asked to vote earlier in the week for approval of the presentation, the vote passed with approval.

The Compliance Guidelines Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the *About DDTC* tab, look for DTAG).

Relook at Part 130 Reporting Working Group Presentation

Ms. Dynes introduced the Relook at Part 130 Reporting Working Group chaired by Mr. Daniel Perrone and Mr. Steven Pelak. A copy of the slide presentation can be found on the DDTC webpage (under the About DDTC tab, look for DTAG).

Background of tasking:

- Under Section 39(a) of the AECA, DDTC must "require adequate and timely reporting on political contributions gifts, commissions and fees" paid, offered or agreed to be paid in relation to certain sales of defense articles and defense services, including "the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments." 22 U.S.C. § 2779. When DDTC originally promulgated ITAR Part 130 in 1976, it adopted an approach of requiring AECA Section 39(a) reporting on a sale-by-sale basis for certain exports of defense articles or defense services satisfying specific dollar thresholds. *See* 41 Fed. Reg. 40608-11 (Sept. 20, 1976). DDTC has maintained that same fundamental approach to Part 130 reporting for over four decades with modest adjustments to certain dollar thresholds. Yet, during that same

nearly 44-year timeframe, the volume, dollar values, and complexity of U.S. defense trade companies' arms exports have increased dramatically.

The Working Group tasking summary:

DDTC requests the DTAG to

1. Recommend modifications to Part 130 reporting rules to increase accuracy and transparency and avoid duplicate reporting (or over reporting).
2. Explore the advantages and disadvantages of allowing reporting of information on a periodic basis (e.g. semi-annually or annually) and on an aggregate basis per recipient with appropriate disclosure of the relevant foreign nation and relevant sale or foreign military program.
3. Explore the advantages and disadvantage of establishing an automated reporting form or process for submitting Part 130 reports. (3/20/2020 Tasking Letter by DDTC to DTAG)

Key items discussed:

AECA & ITAR Background

- Mr. Pelak walked through the historical information and context of Part 130 and circumstances that surround Part 130.
- Under AECA §39(a), Secretary of State “shall require adequate and timely reporting on political contributions, gifts, commissions and fees paid, offered or agreed to be paid, by any person” in relation to certain sales of defense articles/defense services either as part of foreign military sales or direct commercial sales
 - Congress put forth general categories of what is to be reported. Department of State has broad discretion, only requires timely reporting.
- Hearings conducted in Congress uncovered a number of instances of illegal campaign contributions and it was in this context that part 130 was promulgated. Congress directed that “regulations shall specify the amounts and the kinds of payments, offers, and agreements to be reported, and the form and timing of reports, and shall require reports on the names of sales agents and other persons receiving such payments.” AECA §39(a), 22 U.S.C. 2779
- Original ITAR Part 130 in September 1976 required AECA §39(a) reporting on a transactional or sale-by-sale basis for certain exports of defense articles/defense services satisfying a specific dollar threshold, then \$100,000. See 41 Fed. Reg. 40608-11 (Sept. 20, 1976).
- ITAR Part 130 largely unchanged for 40+ years with modest adjustments to certain dollar thresholds (increased to \$250,000 in 1984 and \$500,000 1993). Yet, during that same nearly 40+ year timeframe, the volume, dollar values, and complexity of U.S. defense trade companies’ arms exports have increased dramatically.

Challenges of Part 130

- The Working Group began to identify the challenge of handling Part 130 reporting, they discussed the “art of the possible”.
- Broke the Working Group into 2 teams. Team 1 addressed the question, what is the problem we are trying to solve? Team 2 addressed the question, what does the regulation and AECA require today that would limit making recommendations?

- Principal aim of the Working Group is to improve transparency and accuracy in Part 130 reporting to DDTC while decreasing uncertainty, costs, and time in compliance for industry and consider automation
- Principal findings
 - Transactional or sale-by-sale reporting requirement drives inconsistency, inaccuracy, and the need to hedge.
 - Over reporting or duplicative reporting
 - The multiplicity of potential parties from which to gather information and complications arising from the intersection of FMS contract awards and DCS licensing mechanisms exacerbate confusion and inconsistent reporting.
 - Congress in the AECA provided the Department of State with sufficient discretion and flexibility to rethink the timing of “reporting on political contributions, gifts, commissions and fees” on a sale-by-sale or transactional basis.
 - Congress has not dictated a certain method of reporting
 - Moving to a periodic report, as an alternative method of reporting, could eliminate transactional and licensing-related confusion, align better with the way business is conducted in 2020, and ultimately provide improved accuracy and transparency to DDTC.
 - Align with annual registration renewal, reduce compliance costs and uncertainties
- Mr. Perrone walked through a scenario outlining the key factors associated with Part 130 reporting. This scenario included the identification of several key roles, the short timeframes to get information necessary for Part 130 reporting, the various contractual relationships that may exist and multiple intersecting sales.

Scenario Outline

- The scenario exemplifies the complexity of part 130 tracking and deals with a hybrid model of FMS and DCS, a frequently seen situation in industry
- The reporting company, We Make Emerging Tech, Inc. is pursuing sales in a country (We Want Emerging Tech).
- The items to be sold have been exported previously and can only be sold through Foreign Military Sales (FMS), are Significant Military Equipment (SME), are quite expensive, and will require direct commercial sales (DCS) of services to support the items once sold.
- The company has two main suppliers/vendors (1. We Help You Make Your Emerging Tech Corp, and 2. We Help Them Make Your Emerging Tech, Inc.)
- The company has been pursuing a sale with the country for 10 years. Originally, the company utilized a foreign sales rep #1 (We Know Who Wants Your Tech, LLC) but they were unsuccessful in capturing the business. However, they were able to establish key relationships for the company and make significant strides with the customer. The contract with foreign sales rep #1 ended after the first 5 years of the pursuit. Their contract offered a proposed commission of 10% if successful in making the sale.
- The company then moved to sales rep #2 (We Used To Help You Sell Your Tech But Don't Any More, Inc.) who is contracted to receive up to 5% commission if the sale is

successful. This sales rep did not provide a lot of support to the company and didn't really help with the sale.

- The company utilizes a consultant for all of its international work (We Help You Sell Your Tech, Corp.). The consultant is under a monthly retainer and does not have an incentive fee or commission if successful in making a sale. They were quite helpful in identifying another consultant (Ex-Military Guy Who Knows What This Country Wants, plc.) who was very familiar with the country and knew all the right people.
- To help with the negotiations, the country customer hired a consultant (Ex-Military Guy Who Knows What This Country Wants, plc.) to engage with the company's consultant to finalize the deal since they both know each other. The country customer will pay their consultant a fee if the sale goes through.
- While working the sale with the country, they identified the need for offsets to be involved. The company started to make arrangements with the in-country offset provider (Offset Company)
- Details surrounding the sale
 - The 100 widgets to be sold FMS, USD\$50 million
 - Repair services to be subject of an immediate FMS modification to an existing ID/IQ.
 - Training related to the widgets will go DCS, US\$5 million.
 - Set up manufacturing of a component (offset) will go DCS.

Analyzing the Scenario for Part 130 reporting requirements by compliance professionals

- The company compliance professional must review the supply chain to identify suppliers and vendors as defined by Part 130 and request inputs from them on their payments of fees or commissions. There are significant challenges in getting these inputs.
 - Do the suppliers even know they meet the definition of vendor/supplier under Part 130?
 - Identification of sub-tier vendors and suppliers is a challenge.
 - Ability to get information to the company within the 20 day reporting requirement outlined in the ITAR is quite difficult, particularly for smaller mom and pop shops.
 - What happens if the company is unable to get the information?
- Then the compliance professional must analyze the relationships with all the parties involved in getting the sale.
 - Does the company need to identify the payments associated with market research?
 - The original sales rep #1, who is no longer under contract but helped greatly in getting the sale, if they are paid anything from the original agreement which allowed for up to 10%, is that reportable?
 - Then what about sales rep #2 who actually didn't help that much to make the sale and is contracted to get up to 5%. Is that reportable?
 - The consultant who helps the company sell all of their products who is under a monthly retainer for many programs, how does a company isolate the part of that retainer to this particular sale in order to make a report?
 - Is an offset considered reportable?

- What about country customer's consultant who is getting paid a fee, is that to be included even though the company itself is not the one paying the fee?

Analyzing the various contracts and contract modifications for Part 130 reporting requirements

First contract - FMS

- In handling the first FMS case, the aggregated vendor inputs are collected. There is a high probability that the vendors will not provide their inputs in the timely manner of 20 days and therefore the company will be required to make supplemental reports. Keeping track of this type of reporting can be quite difficult depending upon the number of vendors involved. Additionally, we negotiated to pay only a % to the sales rep #1 and not the entire 10%. But which number is provided, the original 10% as that was what was originally offered or the re-negotiated smaller %? The company has yet to settle on the payment for sales rep #2 who was originally offered 5% and they did very little to do with the final sale. This is currently under negotiation between the companies; out of abundance of caution, the full 5% is reported to DDTC. Lastly, to identify and consider is the retainer information for the consultant. Which amount gets reported, payments from their initial start date with the company or only the few months leading up to the sale? Finally should it only be a portion of the payment since the retainer covers several programs?
- Clearly a Part 130 report is required as the sale meets the threshold. The suppliers in this situation qualify as vendors and owe the company a report. The supplier #2 was not able to get info in time and therefore the company could not include those details in their report to DDTC.
- The rep #1 was reported at full 10% even though there is no current contract. A legal perspective is that they could still recoup commissions owed but nothing has been negotiated yet, so the company included all 10%.
- Rep #2, with the agreement for payment 5% is under review and legal guidance is that they will most likely only pay 2%. But out of abundance of caution and because the negotiations are not complete yet, the company will include the full 5%.
- The consultant under monthly retainer has been working for the company for 3 years and only spent about 15% of his time pursuing this sale. The company could not parse that out for this particular contract, and decided to include the full 3 years retainer amount in its report to DDTC.
- When supplier #2 is able to provide its inputs, the initial DDTC report will be adjusted leading to a second report.

Second contract – FMS contract modification

- The company has a current FMS contract for the performance of services to several other country customers. This FMS contract is modified to add this new country customer.
- A prior report for the original FMS case was filed with DDTC. By adding the new country and expanding the FMS contract, the previous Part 130 report must be adjusted to include the new sales commissions. This could lead to double reporting.

- Additionally, supplier #2 was able to provide the company with a report. This requires an adjustment to both the original report under the first FMS contract and a supplement to this FMS contract's reporting letter.
- Another element to consider is the consultant continued to work for two months to get this new service contract and the FMS case modified. The company decides that it should add those two months of retainer to the report filing and makes this adjustment as well.
- Finally, as part of the revised FMS contract, a different country's efforts were lessened and resulted in deobligation of money. This required yet another adjustment to the DDTC filing where the company had to devalue the report.

Third contract – DCS contract for services

- This will cover training services to be provided to the country customer. What should be included in this report? The sales rep #1 had in their contract a commission for follow on services such as training and repair, they will be getting a payment on this sale but not sales rep #2 who did not have the commission included for follow on services.
- The consultant will continue to work the DCS contract effort and keep working under its retainer. How much of that retainer is to be reported?
- Another element to consider is that the company incentivized its staff to get this DCS contract and has awarded a bonus to its employees. The company deemed this incentive payment as reportable and included it in the Part 130 report.
- The company never wants to be in a position of under reporting, so again, out of an abundance of caution they will likely over report here.

Fourth contract – DCS contract with offset provider

- In this portion of the sale, dealing with the offset provider, the company finds itself not meeting the definition of “applicant” (see § 130.2) and will not provide a Part 130 report here. However, there could be situations where this type of contract would require reporting.
- As background, the sales rep #1 didn't have components as part of its contract scope and would not include their 10% fee, but sales rep #2 did, which could result in submitting a report. Additional complexity, rep #1 negotiated down to 3%. Does that mean we need to update all prior part 130 reports to change it down from 10% to 3%? Various elements to keep track of throughout the 4 different contracts.
- All of this reporting is required before delivered anything to the customer

AECA Analysis of the Working Group

- The Working Group discussed whether the AECA permitted DDTC to implement a periodic reporting element to Part 130.
 - What under the law is allowed?
- Congress requires timely reporting, but congress left that to the discretion to Department of State to codify in the regulations.
- AECA §39(a) outlines the “timely reporting” of Part 130 payments and allows the Department of State discretion to establish the meaning of “timely”. There is no definition in the AECA as to what constitutes timely.

- The Working Group could only identify one instance where the AECA requires sale-by-sale Part 130 reporting and that relates to Congressional Notification per AECA §36(b)(1).
- The Working Group identified 145 notifications to Congress, each one reported in the Federal Register that no Part 130 payments were made
- The Working Group found that Part 130 allows a party to report at time of applying for a license or at a later date. The ITAR allows for a delay in providing a report. This same allowance has been in place since 1976.
- The Working Group believes this provides for flexibility to the Department of State to set and adjust the time of reporting
 - DCS: 130.9(a), at time of application for license or approval
 - FMS: 130.9(b), 30 days after the FMS contract award
 - Supplementary Reports: 130.11(b), within 30 days after payment, offer or agreement to pay not previously reported
- The dictionary defines timely as “happening, done, said . . . **at a suitable time**” or an “opportune” time.
- A **Suitable time** from the perspective of improving the accuracy and transparency of Part 130 reporting and Congress’ intent:
 - Transparency advanced through more readily available information – One consolidated Part 130 Report
 - Maintenance of Congressional intent: To “insure traceability” of payments (per 1976 Senate Report at 64)
- In this context, with the goal of improving transparency and accuracy, what would be timely?
- The Working Group looked at the legislative history of the provision, which is relatively sparse in relation to the specific provision, confirms this assessment. The key point made in the legislative history was that the reporting or disclosure requirement was to “Insure Traceability” of payments. Thus, to the extent that the speed of reporting and the accuracy of reporting must be balanced against one another, the most reasonable conclusion is that “accuracy” should generally prevail.

Recommendation by the Working Group

1) Industry Education – Update December 2013 Part 130 Guidance with FAQs and Additional Illustrative Examples

- Better to help industry understand how to implement part 130
- Updating the guidance will greatly assist industry.
- Conducted a poll of the DTAG membership on this topic
 - 70% of DTAG polled agrees that industry is generally confused.
 - More than 30% indicated their company has no documented process for managing Part 130.
 - Almost 100% of respondents indicated that despite good faith efforts, their process resulted in some combination of estimations, potential misrepresentations, and a requirement to later reconcile payments.
 - 55% said the transactional nature of the requirement hurt their ability to remain compliant.

- More than half of the respondents indicated the difficulty meeting some timing requirements.
- 75% of respondents indicated semi-annual or annual reporting requirements would be a viable option that could help compliance in this area.

2) Shift the reporting requirement to Periodic/Annual Part 130 Reporting -- rather than Transactional or Sale-by-Sale Reporting

- Annual reporting would lessen the double reporting and over reporting by requiring only actual payments for the prior year to be reported.
- The Working Group favored annual reporting and to time it with annual registration renewal. The added time to collect and understand the information from all the parties involved would assist in accuracy and lessen need to estimate payments result in more accurate reporting.
- Adapting the reporting to align to registration would also allow for automation of the process leading to greater efficiencies. It is believed that the Department of State would find automation of this process valuable as all reporting data would be assembled in one place making it easier to identify rather than through individual license.
- DDTC could roll this out on a trial basis, and could offer a choice between annual reporting or reporting at time of license filing on an elective basis
- This recommendation would result in an ITAR Amendment: Addition of subsection to Part 130 allowing for an alternative periodic reporting at time of renewal of registration. An exception would exist for those sales that require Congressional Notification.

3) One Update and Two Clarifications of Part 130 Reporting Rules – to refine scope of reporting

- The update to the ITAR would be to increase the reporting threshold amount from \$500,000 to \$1,000,000. There has been no increase since 1993 to this threshold amount. The size and complexity of foreign sales has increased over the years.
- One of the clarifications to the ITAR would be to exclude the inclusion of non-contingent, regular payments to certain consultants from “Fees or Commissions”
 - Among those payments excluded are technical operations – 3rd party consultants
 - These consultants can assist multiple programs and companies default to over reporting all of their monthly rates.
 - A number of situations where technical consultants who are hired and retained may also interface with a purchaser and thereby may provide promotional services
 - Many consultants do not receive a special commission on sales but rather are paid through regular monthly payments of the same amount. These consultants may also interface with customers and thereby promote sales.
 - This change will help eliminate the inclusion of payments that are not contingent upon the sale, increase accuracy of the reporting, and avoid double or over reporting
- The DTAG recommends that the clarification of “Fee or Commission” should focus on not including payments to consultants that are – 130.5(b)(4)
 - payments at “annual” or monthly rate;
 - no “contingent compensation;”

- written agreement;
- not retained solely for “any particular sale;” and
- payments “not disproportionate in amount with value” of services furnished
- The second clarification of the ITAR relates to the requirement to notify DDTC of “Substantially Different” payments in the form of Supplementary Reports, 130.11(a)(2)
- What makes a report no longer accurate and complete? If an address of recipient changes, should we submit an updated report? Most likely not, the focus should be on payments. The Working Group recommends making adjustments and clarifications.
- Industry is to provide DDTC a Supplementary Report when the initial information reported is no longer accurate or complete. To address reports for small shifts in payments, the DTAG recommends that the Part 130 Guidance or FAQs define “substantially different” by certain percentage difference in payment, e.g., 20%+ decrease or increase.

Questions posed to the Relook at Part 130 Reporting Working Group

- *Catherine Hamilton, DDTC* thanked the team for taking on this complex subject. Something DDTC has struggled with for years.
- *Catherine Hamilton asked* – What were the most common misconceptions of Part 130? *Mr. Pelak responded* – There are misconceptions in a number of different areas, most commonly on promotion and solicitation. Often times companies will think promotion and solicitation can only occur in formal meetings rather than in ‘soft’ technical meetings performed by advisors or consultants. This misunderstanding may lead to reporting failures. These advisors may not be viewed at providing promotional services. *Mr. Perrone responded* – How to apply regulations and when to supplement the reports is misunderstood. Digesting the requirements of the ITAR into company practice is a challenge to implement.
- *Catherine Hamilton asked* – How would an annual report result in completeness and fewer estimations? *Mr. Perrone responded* – The ability to look back on your year and focus on the reps and consultant we deal with and the exact payments we made in the past year. Year over year, getting more accurate information as you are looking at actual payments rather than payments offered. *Mr. Pelak responded* – In an FMS context, it is complicated with multiple parties, the 30 days to file a report is simply insufficient to weave your way through the complexity of the sale. As a result, companies will default to over reporting. The added time of reporting annually will allow companies to address and identify and collect the information.
- *Catherine Hamilton asked* – The benefit of reporting at registration based on a program or on a totality, what is the vision? *Mr. Perrone responded* – It could be looked at it multiple ways, not program by program basis but by a rep/consultant basis. Each of those persons has a list of products they are working on for the company, annually saying this person was paid for the promotion of this product to this country. They were also paid for this other product to the same country. *Mr. Pelak responded* – The substance of the reporting would not change. Cross reference the fee to the specific sale and all their sales would be in one place. More detail will be forthcoming in the White Paper, possibly a table format for guidance to industry.

Mr. Donovan advised that due to the virtual nature of the Plenary, the DTAG was asked to vote earlier in the week for approval of the presentation, the vote passed favorably.

The Relook at Part 130 Reporting Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the *About DDTC* tab, look for DTAG).

Review of Foreign Licensing Mechanisms Working Group Presentation

Ms. Dynes introduced the Review of Foreign Licensing Mechanism Working Group chaired by Mr. Bryce Bittner and Mr. Josh Fitzhugh. A copy of the slide presentation can be found on the DDTC webpage (under the About DDTC tab, look for DTAG).

Background of tasking:

- To support the development of a modern and agile export control system, one of the areas that DDTC is reviewing are the systems by which U.S. partners and allies authorize exports. Particularly, we are interested in "open" or otherwise flexible licensing schemes, such as those administered by the UK (e.g., the Open General Export License), EU, and others. Getting feedback from DT AG members who have used these systems will help inform our understanding of them as we look to new systems to support authorizing munitions exports.

The Working Group tasking summary:

- DDTC requests the DTAG to provide feedback to DDTC on the types of "open" or other flexible export authorizations administered by other countries and in the member's experience, what works well when you operate within them and what does not.

Key items discussed:

- The Working Group approached this task in 3 ways
 - 1) Survey general licensing (GL) regimes with a focus on typical regimes around the world to draw lessons from the regimes to come up with common themes
 - 2) Determine if the AECA permits GLs by examining the language of the AECA for amenability to include elements of a GL type option
 - 3) Identify elements of GL regimes that could be used under the AECA and highlight areas the Working Group believes would be useful for DDTC to look at for the ITAR

1) Overview of General Licensing Survey conducted

- The Working Group sought to define the world of GLs and understand the different set of approaches countries use for general licensing schemes
- Exemptions in the ITAR are the closest we have to compare to GLs. Look at GLs as more of a template; a license that is filled out already by the government.
- They all require some form of general authorization, GLs require advanced authorization, but vary in:
 - Who may use it;
 - What pre-approval is required;

- Scope, end uses/user, and destinations; and
 - Compliance measures required such as recordkeeping/reporting/oversight.
- General rule, GLs tend to be MORE restrictive than exemptions, but LESS restrictive than ITAR licenses. They have more conditions than most ITAR exemptions.
- The Working Group focused on four GL regimes:
 - Australia GLs (AUSGELs)
 - Japan Bulk Licenses
 - Netherlands GLs
 - UK Open General Export Licenses (OGELs)
- The WG thought these 4 countries provided a useful review comparison to what the U.S. could analyze
- Focused in on a number of key characteristics. We examined **scope, eligibility, end use/user restrictions, reporting, and other** conditions.
- We found broad diversity across the regimes.

- *General License Scopes*
 - Because most non-U.S. regimes do not differentiate between dual use and military goods, most GLs apply to dual use AND military items.
 - As a whole, GLs appeared to be more permissive for dual use goods than for sensitive military goods, resulting in more restrictions for military goods. Dual use items benefit from:
 - Fewer eligibility criteria;
 - Fewer end use and end user restrictions; and
 - Fewer reporting requirements.
- *General License Eligibility*
 - Certain countries require pre-approval (Australia), which varies depending on the sensitivity of the goods. A less sensitive dual use item may have a more proforma pre-approval in a simple request and simpler review. More sensitive items requiring longer more in-depth reviews.
 - Others (UK) require pre-registration but not pre-approval.
 - Nearly all require notice or registration of some form before using a GL.
- *General License End Use*
 - End use is specific to each GL.
 - Restrictions are specific to each GL.
 - Many prohibit Weapons of Mass Destruction (WMD) uses.
 - Some dual use licenses prohibit military use.
- *General License End User*
 - End users face a broad range of restrictions.
 - Many GLs restrict end users in different ways:
 - Many specifically prohibit sanctioned parties;
 - Some prohibit military end users for example certain dual use goods; while
 - Others require military end users, or limit end users to the licensing country's military.
 - Enormous range of end user requirements/restrictions

- *General License Destination*
 - Only a few GLs are available for all destinations.
 - Almost all of them require restrictions to sensitive or sanctioned countries but can range by the level of the goods. Sensitive goods or transactions may be limited to allies.
 - Dutch GLs in some instances allow for immediate country neighbor exports but not beyond that region.
 - Most are restricted by sensitivity of goods or transactions.
- *General License Compliance*
 - Recordkeeping is always required but details vary widely even within regimes.
 - Some require annual audits.
 - Japanese GLs require internal compliance and training programs, and periodic reporting.
- *General License Conclusions*
 - The range of GLs allow for a template to be used and a range of restrictions, allows for flexibility in approach depending upon end user and goods to be exported.
 - DDTC could review GLs in different levels
 - **Lenient:** Pre-register, keep records, and audit.
 - **Middle:** Pre-approval, maintain compliance program, keep records, and audit.
 - **Restrictive:** Rigorous pre-approval, report 1st or each use, keep records, audit, etc.
 - Alternatives, in few licensing regimes, advanced exporters could rise to the level of less oversight, where newer exporters would be under a period of scrutiny or review.
 - GLs for “safer” end users have a broader scope of technologies and destinations, with fewer or no pre-approvals.

2) *AECA Compatibility*

- The Working Group believes there is potential under the AECA to reduce the burden for common licenses and streamline the licensing process by utilizing GLs.
- The AECA requires all ITAR exports to be authorized by a license or an exemption. However, the statute does not require that licenses be issued individually.
- DDTC could establish GLs that are clearly differentiated from exemptions. There are a lot of restrictions around exemptions. For example, the UK and Australia Defense Trade Cooperation Treaty exemptions are not widely used due in large part to the restrictive nature of the exemptions. DDTC could consider moving away from that model and move towards a GL regime.
- ITAR GLs would need to include certain content typically associated with a license:
 - Scope
 - Duration
 - Parties
 - These could be defined by reference to categories or types of GL users, “approved communities”, or individual pre-approval

3) *Proposal to utilize General Licenses*

- Lots of ways to use GLs in the U.S. § 123.1 could be amended to allow for GLs or issue a notice allowing GLs under § 126.3. DDTC would need to issue guidance on how to use these options.
- Require that companies using a GL be:
 - ITAR Registered (§ 122)
 - Pre-approved
 - Approval can be withdrawn at any point by DDTC
- Restrict countries and entities based on the sensitivity of the transaction and/or items:
 - **Highest** sensitivity – Five Eyes³ countries only
 - **High** sensitivity – NATO + countries
 - **Moderate** sensitivity – Participating Governments/NATO+/STA 36⁴
 - **Low** sensitivity – Pre-approved companies from eligible countries
- GLs could restrict the scope of activities:
 - Limited to certain USML entries.
 - Limited to specific programs.
 - Set a cap on the total value of exports.
 - Congressional notification required if total value exceeds thresholds.
- GLs could be of limited duration.
 - Fixed duration (e.g. 2 years) with automatic renewal subject to DDTC opt-out, or
 - Indefinite duration (may be revoked).
- GLs would be published to notify those who want to participate.
- Participants would file reports:
 - Who, what, where, & when.
 - Annually, semiannually, or quarterly.
- Participants agree to audits (USG or 3rd party) for more sensitive items.
- Participants agree to have Internal Compliance Programs based on industry standards, including training.

Recommendation by the Working Group

- Create new General Licenses
- #1 Five Eyes
 - Establish a GL for cooperative defense activities with the UK, Canada, Australia, and New Zealand, similar to Australia and UK GLs.
 - Limit GLs to certain USML entries (including SME and non-SME);
 - Limit GL period and value, and make required Congressional notifications.
 - Big opportunity for industry and for USG when there are standard provisos to move away from individual licenses to a GL.
 - Companies wishing to use a “Five Eyes” GL would:
 - Receive pre-approval up to certain values;
 - Report use in the Customs Automated Commercial Environment (ACE) through their Electronic Export Information filings (EEI) and entry documents;

³ Five Eyes refers to the following countries: Australia, Canada, New Zealand, United Kingdom, and United States.

⁴ § 740.20 Strategic Trade Authorization (STA) exception is available for countries listed in Country Group A:5

- Report (annually or semi-annually);
 - Maintain records; and
 - Agree to periodic auditing.
- #2 NATO
 - Five Eyes GLs, expanded to include NATO+.
 - Limit GL use:
 - Specific USML entries (e.g., Non-SME).
 - Shorter duration and lower value.
 - Limit number of participants.
 - More frequent reporting and audits
- #3 Program Specific
 - Similar to a Five Eyes GLs, but limit to specific governments and pre-approved industry partners in the same programs.
 - If a prime contract has 100 subs, they are all working the same program, rather than having each come in for individual licenses, they could be covered by one GL.

Questions posed to the Review of Foreign Licensing Mechanism Working Group

- *Sarah Heidema, DDTC*, remarked this was a really great presentation. Significant amount of research. This concept could move DDTC forward and take the export control regime even further after Export Control Reform (ECR) to reflect the more modern business practice. Support the defense industrial base and partners and allies, looking at new and novel systems in place. Have not looked at the licensing aspect under ECR and appreciates the research done here.
- *Sarah Heidema asked* - Looking at the expanse of GLs, were there any pitfalls that they should look out for if they implement GLs? *Mr. Fitzhugh responded* – I can't say that the Working Group saw any particular pitfalls. Make sure the parameters of GLs are outlined well, this type of general licensing regime is more beneficial to U.S. government and industry than getting an individual license. In order to achieve this, putting these concepts in place, they need to be more efficient and effective than individual licenses. Work closely with industry as this regime is being reviewed, industry input would help the utilization of the GLs.

Mr. Donovan indicated that due to the virtual nature of the Plenary, the DTAG was asked to vote earlier in the week for approval of the presentation, the vote passed favorably.

The Review of Foreign Licensing Mechanism Working Group “White Paper” will expand on the presentation and will be made available on the DDTC website (under the *About DDTC* tab, look for DTAG).

Ms. Dynes introduced Mr. Michael Miller, DAS, DDTC who provided remarks to the DTAG membership and audience.

Remarks by Mr. Michael Miller, Deputy Assistant Secretary of State for DDTC

Closing remarks

From a technical perspective, this plenary has gone exceptionally well. Thank you to the DTAG for flexibility. Mr. Miller thanked Andrea Battista for keeping the meeting going in this virtual format.

Mr. Miller also acknowledged Mr. Cooper's enthusiastic and supportive introductory remarks.

Mr. Miller also thanked Ms. Dynes and Mr. Donovan and noted the topics were particularly good and will generate helpful results. Thanks were relayed to the Working Group Co-Chairs. The information provided is expected to generate advancements in DDTC's work. With respect to Working Group 1, Mr. Miller expressed the view that the DECCS proposals and recommendations were tremendous; narrowing down priorities was helpful.

With respect to Working Group 2, Mr. Miller noted that the discussion on U.S. government Compliance Guidelines was helpful. DDTC has not updated this document in a while. DDTC is interested in examining other government agencies' ideas on compliance guidelines so as to not reinvent the wheel.

With respect to Working Group 3, the Part 130 hypothetical highlighted a detailed proposal and explained how industry has to navigate the challenges under this part of the ITAR. Overall, Mr. Miller thought this was a well-structured presentation.

Working Group 4's surveying across the world of the different GLs and what DDTC could glean from other countries' systems was also quite helpful.

DDTC is working on all of these topics at this time. Mr. Miller felt the four hours of the Plenary were very well spent with practical and thoughtful discussions. He said that DDTC is looking forward to the White Papers. He concluded by noting the fantastic work of the DTAG and called the Plenary a hallmark of the DTAG. Mr. Miller expressed he is looking forward to working with many of the DTAG membership in the next term.

Wrap-Up and Concluding Remarks

Ms. Dynes led the **Wrap-Up** discussion.

Ms. Dynes thanked Mr. Miller for his collaborative leadership while he has been leading DDTC. She added the DTAG's appreciation of Mr. Miller's interest in the aerospace and defense industry and engagement with the DTAG membership, noting that such active engagement has reinvigorated the DTAG. Ms. Dynes also expressed appreciation for the work DDTC has undertaken in exploring these topics with the DTAG and making changes to policies and regulations; keep making things better and more efficient for both the U.S. Government and industry.

No written comments from the public were received by the Department of State prior to the Plenary meeting as permitted by the Federal Register Notice announcing the Plenary meeting. Any additional Q&A from the public should be sent to DTAG Recorder, Ms. Sandra Cross at sandra.cross@hii-co.com. Alternatively, additional questions or comments can be sent to DTAG@state.gov.

DDTC will publish the DTAG presentations, Plenary Meeting Minutes and White Papers on its website in short order.

Plenary Meeting concluded at 4:51 pm.

Meeting minutes recorded by Ms. Sandra Cross.

Approved on June 8, 2020 by:

Andrea Dynes
Chairman