Second Set of Q&As from NAVAIR Third Party Transfer Meeting, 25 June 2012

1. Does/will Department of State (DoS) RSAT (Office of Regional Security and Arms Transfers) release Third Party Transfer (TPT) Team performance/completion statistics to countries or make available?

Our office policy is that we do not release TPT Team performance metrics to outside entities.

1. If a country is originally on a contract why do they have to have a TPT to do future work?

If the work, which requires retransfer, is not covered in the Letter of Offer and Acceptance (LOA), the law requires a U.S. Government (USG) approval before any retransfer can take place. If covered in the LOA then a TPT is not required if the private company is doing work on behalf of the USG.

1. Is there any plan to have electronic submission capability to get TPT case and tracking number online?

Yes, we expect to have an electronic submission application up by the end of the year, it will be part of the Security Cooperation Information Portal (SCIP) website.

1. What is the new process for maintenance, repair, and overall?

This option is a tool to be used if a country can foresee a platform undergoing constant retransferring of unclassified parts/data, etc. in support of a maintenance, repair, and/or overall endeavor which will take place over an extended period of time. We offer blanket approval so the divesting government does not have to submit multiple TPTs for the same purpose. This option is only available for retransfers of unclassified items for the purpose of maintenance, repair, and overall. For more details contact your TPT country representative.

1. Are TPTs required for in-country companies scheduled to do repair if they are listed in the LOA?

A TPT is not required if the work to be performed is covered in the LOA, however, if the work, which involves a retransfer, is not covered in the LOA, a TPT is required.

1. What is the appropriate process for retroactive TPTs? Will violations be processed?

Facts concerning the violation will need to be gathered, but the process for submitting a retroactive TPT is the same for a regular TPT. It is the law to report a Section 3 violation to Congress.

1. Does TPT come into play for a platform used as a static display in another country?

It depends on the details of the request; we review these types of requests on a case by case basis. Generally, if there is no transfer of technology then a TPT is not necessary. Military forces should provide guidance on how to present equipment for air shows and static displays.

1. What can be added to a LOA to facilitate the TPT process and what is the best way to do it?

Since the LOA is a government-government document, very little can be done to add in language to avoid a TPT where the country is wishing to divest itself of the equipment.

1. Is there a State Department program for transporting material when shipped from one country to another?

Unless the country specific states that a country will be their freight forwarder in their export license, they will need to complete a TPT for the temporary retransfer of the equipment.

1. If Country A is getting repair done in Country B, does the equipment or item need to be shipped back through the U.S., or can it be sent directly from Country A to Country B?

With DoS retransfer approval, Country A can be ship directly to Country B.

1. What are the criteria for a Section 3 violation report?

The facts of the transfer need to be presented clearly and with detail. PM (Political-Military Affairs/DDTC (Office of Directorate of Defense Trade Controls) is the office responsible for reporting Section 3 violations to Congress and can provide better guidance on what is required.

1. Will DoS approve a Blanket Country over Private Entity (COPE) agreement for countries to sign for Private Entity (P/E) retransfers?

No, this type of agreement is not reasonable because the legal issues surrounding such an agreement are so many that the costs (in terms of manpower, time, and resources) outweigh the benefit.

1. When is a TPT required if an aircraft flies into another country, what about the prohibited countries in 126.1, is this the guideline?

If the plane is flying into another country in a manner outside the original intent and scope of the aircraft set forth in the LOA, then a TPT should be considered. Generally, a TPT is not necessary because there is no change in title or possession.

1. Afghan/Iraq drawdown and disposal processes for near future, countries will most likely submit one big request, how will DoS handle this?

To Be Determined.

1. What about countries’ equipment that is transferred/shipped by another country like a freight forwarder, when will a TPT be required?

PM/DDTC can designate a country as a freight forwarder.

1. How does RSAT/TPT define and address third party dual nationals End Use Assurances (EUAs) as needed?

The country or private entity is responsible and accountable for meeting the terms and conditions written into the EUAs they provide to us.

1. What is RSAT’s view on a country providing a private entity a network of data to manage, for example, a cloud computing service for the storage of data since the contractor will be the administrator and will have access to data?

This will be determined on case-by-case basis; our office would need to review the details and circumstances to provide guidance for a request of this nature.

1. Is the length of the formal notification period (15 day for NATO+5 and 30 day for all other) for Congressional notification cases determined from the divesting government or the recipient government?

The length of the formal notification period to Congress is based upon the recipient government.

1. Can a country use General Security of Information Agreements (GSOIAs) in place of EUAs?

EUAs and the GSOIA cover different issues, though there may be some overlap. The GSOIA is between us and the country and discusses how classified information will be handled. EUAs are broader and reflect statutory requirements that place limits on use that go beyond the handling of the items, classified or unclassified. One has to do with the capability of handling and protecting classified information or items, while the other goes to limitations on uses of the items.