**Third Party Transfer Meeting**

**25 June 2012, Canadian Embassy, Washington DC**

**Question and Answer Session, Leann Luong, Sue Plant, and Ed Richardson from (DoS)**

1. What additional requirements are needed for transfers proposed to S126.1 countries?

**Answer:** Transfers to 126.1 countries are very difficult, if not impossible, to obtain. Transfers to China, for example, require a Presidential Waiver. See the following link for more information: <http://www.pmddtc.state.gov/embargoed_countries/index.html>.

2. What are the International Traffic in Arms Regulation (ITAR) requirements for Dual and Third Country National access to items transferred via Third Party Retransfer (TPR)?

**Answer:** It is the same process as a routine TPT case. We need to know what the recipient wishes to do with the equipment and for what reason. We are in the process of clarifying the

policy, but in general we do not consider it to be a TPT if a country that buys through FMS gives a dual / third country national access to the Foreign Military Sales (FMS)-origin items as long as they are an officer, employee, or agent of that country (per Sec 3 of the Arms Export Control Act (AECA).

3. For Blanket End User Assurances, what is the scope and what steps are needed for a TPT transaction?

**Answer:** Countries that are interested can contact any action officer on the Department of State (DoS) TPT team for assistance. We have a diplomatic note that they will need to sign to join the program.

4. If the same sets of Tech Data need to be exchanged among different Direct Commercial Sales (DCS) projects, FMS projects, and different Technical Assistance Agreements, what is the most efficient way to handle a common list of data artifacts for the different TPT requests?

**Answer:** It is recommended that you contact the DoS Political-Military (PM) Regional Security and Arms Transfer (RSAT) office in advance for assistance and guidance. Each case is processed on a case-by-case basis, and since the cases vary, it is difficult to advise on a single best method.

5. Can TPT also be used for DCS acquired parts through the Worldwide Warehouse Redistribution Services system?

**Answer:** No, it cannot.

6. Cartridge Actuated Devices / Propellant Actuated Devices (CAD / PAD) demil TPT requirements were discussed at the NAVAIR Logistics Process Improvement Team (no PM/RSAT participation at the meeting). Based on my understanding, DoS has to authorize a TPT for the demil of defense material procured under FMS / DCS. This rule is universal and therefore applicable for all exported material with a signed End-Use statement in place. This includes CAD/PADs or like items (ammunition, parts, etc.). A former head of PM/RSAT said that TPT was required if the intended End Use changes. Therefore all parties procuring CAD/PADs annually have to request TPT authorization for the demil of shelf life expired CAD/PADs.

**Answer:** Yes, that is correct. A change of End Use request is required for the disposition of U.S. origin material.

7. If the DoS approved a TPT for a system / items under an initial Capital Procurement case, does the FMS Customer have to re-submit for the follow-on support case?

**Answer:** TPT is not based on a specific case, but on the signed TPT Assurance, which is Gov't-to-Gov't. If the system procured is new to the country, but it is common and unclassified with another F-18 country then the item can be transferred.

8. Concerning End User Assurances from Third Party entities, if the companies have not changed from the original capital case do they carry over to the follow-on case, or do FMS

Customers have to process new Assurances through DoS?

**Answer:** Same answer given for question 7 above.

9. For Technical Data / Publications some DoS approvals have excluded transfer of Tech Data and/or publications. Why are these excluded and can the FMS Customer get a TPT approval for these items if a separate request is submitted?

**Answer:** The F-18 TPT includes Technical Data if it's in support of the named system that is being exchanged such as maintenance records. Technical data by itself is not to be used under the TPT and must go through the same program review as requesting data from the PMA.

It is assumed that if the part is common and unclassified then the requesting country should already have the technical data. If a country uses their Direct Requisitioning Procedures (DRP) case then they are still required to have a NATEC FMS Logistics Element Manager (LEM) to process their data request.

10. Many FMS Customers order publications on their DRP FMS cases. Is a TPT required, when a publication is ordered if the FMS Customer intends to share this with a commercial entity?

**Answer:**  This is considered a TPT exchange and cannot be done without having the proper paperwork submitted to DoS for industry approval.

11. Can a FMS Customer submit a request to DoS requesting a commercial entity be authorized as a "Trusted Agent" for a list of systems instead of submitting individual requests for each system?

**Answer:** Congress will only accept the Freight Forwarder as a "trusted" agent. It's been a request for over 10 years, and DoS does not plan to bring it back up again.

12. Must a FMS Customer submit a new request for TPT if additional capabilities / upgrades are being acquired after the initial acquisition for previously approved TPT equipment? Do

they need to go back to DoS, so they can allow their domestic contractors access to the upgraded / enhanced system / data? Is there a defining boundary when a change demands a renewed approval?

**Answer:** Foreign contractors cannot have access to the equipment without a separate TPT with industry.

13. Does a FMS Customer need to request DoS approval if equipment or technical data is requested by another FMS Customer sharing the same platform or a party to an international agreement between user countries? For example, there are some blanket approvals for

certain aircraft platforms, i.e. F/A-18. Does this just cover aircraft parts or can parties to this Agreement also include sharing data?

**Answer:** International Agreements between foreign country to foreign country do not include exchanging U.S. Origin military parts. That is accomplished with the DoS TPT. A blanket approval can cover both parts and tech data, but it must be specified in the TPR.

14. Are the Metrics for turnaround times for TPT being monitored?

**Answer:** Yes, this is done annually and is currently under action.

15. What is the expectation on processing times for urgent cases for those for the OEM?

**Answer:** As with all cases, this depends on the circumstances surrounding the case and the interagency clearance process. There have been cases done in two or three days, but it really depends on the specifics of the case.

16. What is the process for a TPT if it's for a group of nations, e.g. the Blanket Retransfer Agreement for C-17or P-3?

**Answer:**  PM/RSAT doesn't require each country to submit a TPT. These cases can be done as a joint application through the Program Office. These are relatively straight forward if all countries on the application currently have the capability. It's best to work with the Program Office and RSAT case officer to get a complete package that has all relevant information.

17. Is there any current initiative to simplify the process and reduce processing times when the transfer is to the U.S. Government or DoD?

**Answer:**  Yes, cases that are going back to the U.S, Government or DoD do not typically take as long to process.

18. Currently Blanket Retransfer Agreements can only be obtained for unclassified equipment. Is there any intent to include common classified equipment?

**Answer:** If it's on an existing Blanket Retransfer Agreement, then you can go through your sponsor and ask them to add it.

19. If the transfer is to a private entity listed on the Letter of Offer and Acceptance (LOA) is it correct that it doesn't need a TPT?

**Answer:**  Yes, if the private company is listed in the LOA and acting on behalf of the USG supporting the FMS contract, then a TPT is not required, however, any subsequent transfer of FMS items to a third party after delivery to the purchasing government requires TPT approval from PM/RSAT irrespective of whether that third party might be mentioned in the LOA.

20. Do all Blanket Retransfers need a MilDep sponsor?

**Answer:** No, but it does help.

21. What about hybrid cases?

**Answer:** If the majority is FMS, RSAT will do it if it can't easily be separated, otherwise it can be worked on together. It does help if they are separated and the other application can be referred to in the submission. If you know you are going to be working on a hybrid case, RSAT suggests you meet with the Directorate of Defense Trade Controls (DDTC) and RSAT.

22. The State Department has provided a generic process for TPT requests on their website: <http://www.state.gov/t/pm/rsat/c14030.htm>. Is this process to be followed for all TPT requests such as the ones listed below?

a. TPT for unclassified items

b. TPT for classified items

c. TPT within your own country

d. TPT to another country

e. Blanket TPTs between countries both for common unclassified and common classified items

**Answer:** Yes, the same process should be followed for all TPT requests. This would also include change of End Use and disposal requests.

23. It would be helpful if the State Department would issue TPT request templates like they did for the repair of unclassified items and the other scenarios.

**Answer:** We do not have an official template for the questionnaire since each request contains different information. Countries that wish to have a sample should contact their TPT POC.

24. What are the benefits for a country to sign the TPT Blanket Assurance Agreement if the transferring country needs to have TPT in place anyway for the transfer and the receiving country needs to sign an End User statement?

**Answer:** The Blanket Assurance program is beneficial to countries that receive a lot of equipment from other countries. This eliminates the need for signing additional Assurances where the transfer is from one country to another. It is probably not as beneficial to countries

that use private industry as their intermediaries since they would still have to sign the Country private entity End Use Assurance for the transfer to be approved.

25. Is the TPT process restricted to items procured through FMS, or can the same process be applied for items procured through DCS?

**Answer:** Items that were originally acquired via FMS will need to go through RSAT for approval, and items that were originally acquired via DCS will need to go through DDTC for approval. Please reference DDTC website for more information on the DCS transfer process.

26. Can the TPT process be used to get USG approval for permanent transfer / sale of DCS procured material to another country directly?

**Answer:** The TPT process is only for FMS acquired material. All DCS acquired material will need to go to DDTC for adjudication.

27. The current TPT process where a TPT is tied to certain FMS cases, to a specific list of items, to a specific maintenance contract, etc., will most likely lead to a huge workload at the State Department when the TPTs need to be renewed. At least until now, TPT approvals are one time only, and they can't be amended. Could the State Department consider having a "lighter" TPT process to renew TPTs where, for example, only the maintenance contract number / period of performance needs to be updated?

**Answer:**  We currently have a program to allow countries to designate private companies, which wish to perform maintenance, repair, and overhaul to do so with a blanket designation request. Instead of submitting a TPT request, the country would submit a request to designate the private company to service whatever platform they wish to have work done on.

28. To be as efficient as possible and save costs, many countries would like to move material using common transportation means. A hypothetic example: Country A would want to ship FMS procured material to Country A troops in Afghanistan on Country B’s cargo plane. How do the TPT requirements support these kinds of needs and are there some concerns with this?

**Answer:** We will need more information to determine how to advise the country. In some cases a TPT would be required, which could be processed quickly. In other cases where the FMS procured material remains in the possession of the transferring government (under guard, etc.) a TPT may not be required.

29. Outsourcing maintenance / repair/modifications to private entities has been an ongoing trend in many countries. How could the TPT process be made as supportive as possible of these trends without compromising security requirements?

**Answer:** A blanket TPT would be appropriate for this type of ongoing work.

30. Many countries have bilateral General Security Agreements with the U.S. In these agreements the government ensures that it will treat the material procured from the U.S. according to the security requirements of the USG. The foreign governments assure in these agreements to enforce their contractors to meet and follow the security requirements. Since these kinds of agreements are in place why do we still need to have TPTs for our in-country contractors? I know the requirements come from the AECA and ITAR and the LOA clauses, but it still seems like this just creates additional bureaucracy.

**Answer:** PM RSAT is doing everything it can to help streamline the TPT process and create more blanket approaches where possible to help eliminate unnecessary TPT submissions.

31. How are subcontractors of the prime contractor to be taken into account in the TPT process?

**Answer:** They are treated the same as the prime contractor. All prime and subcontractors will need to be listed in the request, and End-Use Assurances from all parties will need to be obtained prior to the country submitting the request to RSAT.

32. What are the possibilities and requirements for controlled goods that are "traded" between international governments?  Is it necessary to seek approval to transfer a controlled good back to the U.S. government?  I’m sure the DoS requires who, what, when, where, and how about the goods that the End Users wish to transfer, and DoS likely needs to be informed how the country acquired the goods being transferred.  If the traded goods from the U.S. are delivered under an active FMS case would anything out of the norm be required by DoS from the U.S. source or the country? This must depend on whether the country had a TPT already for the goods.

**Answer:** It would depend on how the country acquired the goods and what they wish to do. I would also refer to the LOA or contract in which it was originally provided.