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## Qioptiq Pays \$25 Million Penalty for ITAR Export Violations

Qioptiq S.a.r.l. of Luxembourg will pay a \$25 million penalty – partly in a civil fine and partly through remedial corrections – to settle 163 charges of violating the Arms Export Control Act (AECA) with unauthorized exports of night vision technology and products to more than a dozen countries. Qioptiq was the target of charges for violations that occurred at several divisions of Thales France, which Qioptiq acquired in 2005 and before the acquisition. The consent agreement signed Dec. 19 was announced on Jan. 5.

Some of the charges were linked to export violations cited in the government's prosecution of ITT Night Vision in 2007. The proposed Charging Letter issued by State's Directorate of Defense Trade Controls (DDTC) cited unlicensed exports to countries such as Singapore, China, Iran, Israel and Russia. Some of the violations were the subject of voluntary disclosures that Thales made to DDTC at the time it sold the divisions to Qioptiq, which was then known as Eye 3 S.a.r.l. Others were uncovered during the government's subsequent investigation.

Under the settlement, Qioptiq will pay a \$15 million civil fine and be required to spend \$10 million on remedial actions to improve its export compliance system. Of this \$10 million, the firm will get credit for \$5 million it has already spent on corrective measures. The other \$5 million will have to be spent over a three-year period. The company will also have to implement a compliance program dictated by DDTC in an annex to the agreement and appoint an Internal Special Compliance Official to oversee implementation of the remedial actions.

"From Qioptiq's inception we have pursued a comprehensive export compliance program, voluntarily disclosed all issues revealed during our internal reviews and cooperated fully with the U.S. authorities," said Benoit Bazire, chief executive officer of Qioptiq, in a statement issued by the company. "With this settlement we have reached closure regarding the serious compliance issues that existed before the creation of Qioptiq. We will continue to work to ensure that our compliance systems remain robust and develop with our business. This is a task I and the employees of Qioptiq are committed to accomplishing," he said.

## Schwab Says It's Time to "Step Back" in Doha Round Talks

In her valedictory visit to Geneva Jan. 6-7, U.S. Trade Representative (USTR) Susan Schwab conceded it may be time for negotiators to step back and consider the future course of Doha Round talks, but she said she opposed the idea of suspending the round. "I think there is an



opportunity right now to step back, review where we are in the Doha Round, and to take some time to move it forward,” she told reporters Jan. 7. “There are points when you have a dramatic acceleration and intensification of activity, and there are other points where you’re better off stepping back, reviewing the bidding, and seeing are there changes that you need to make,” she said. “I think the front end of this year certainly, we have the opportunity to be patient, we have the opportunity to be intense in our activities in a much quieter way,” Schwab added.

Schwab said not concluding the round is an obvious disappointment in her three-and-a-half-year tenure as USTR. She was in Geneva for a last set of talks with WTO Director-General Pascal Lamy, who will stay in his post for another four years because no one else has applied for the job, which is up for renewal.

Despite the failure of negotiators to conclude the round, Schwab praised the Bush administration’s trade record. “I think the Bush administration trade legacy is, by any definition, an incredibly strong one,” she boasted. She pointed to the role the administration had in launching the Doha Round and “helping to pick it up periodically when it stumbled.” She also noted the number of free trade agreements it has negotiated.

Schwab also defended the Bush administration’s record in bringing trade complaints to the WTO. “Our record I think is very very strong,” she asserted. “Where we have taken cases we have either been able to win or settle successfully those cases over 90% of the time. In cases where we’ve been a defendant we have succeeded either in winning or in settling, satisfactorily settling, cases over half the time,” she added.

Schwab, who will leave office Jan. 20 with the departing Bush administration, said she does not expect an increase in WTO disputes but is worried about a potential increase in protectionism around the world. “I don’t know that we have any reason to believe that disputes, the rate of disputes, will go up,” she said. “What I worry more about is protectionist actions being taken that are surreptitious, that are non-transparent, that undermine the fundamentals of the WTO,” she stated. “So I worry more about those kinds of protectionist actions than I do about the legitimate use of dispute settlement which is an effort in a transparent manner to support and to use a rules-based system,” Schwab said.

## **Chamber Says Now is Best Time for Doha Round Deal**

Contrary to those who are calling for a suspension or delay in WTO Doha Round negotiations, U.S. Chamber of Commerce President Thomas Donohue argues that finishing the round now would prevent a repeat of the policies that led to the Great Depression in 1929. “Let’s not forget that when the stock market crashed in 1929, the principle policy responses were to raise taxes and severely restrict trade. As a result, a recession turned into the Great Depression,” Donohue said Jan. 14 at a briefing unveiling the Chamber’s report on the state of U.S. business.

“While some may say this is a bad time to try to get a Doha deal done, I say this is the best time,” Donohue asserted. “Completing the Doha Round would provide a tremendous boost of confidence and commerce across the globe,” he added.

Donohue acknowledged the need to assist Americans who are dislocated by changes in the global economy, including by providing workers more access to effective job training programs. “We also need to better tap the enormous potential that small businesses have to become exporters,” he said. “The government can help by significantly boosting export promotion programs geared to small companies,” Donohue suggested.

Chamber Vice President Bruce Josten said he supports proposals to allow U.S. companies to repatriate foreign earnings. “Temporarily allowing foreign subsidy earnings of U.S. companies to be repatriated at a reduced tax rate could ameliorate some of the liquidity challenges confronting companies, relive some stress on the commercial paper market, and make it easier for companies to make contributions to their pension plans in order to meet funding requirements

and generally increases funds available to business,” Josten said. “All of these outcomes could be achieved while producing a positive revenue effect for the U.S. Treasury,” he added.

## **BIS Looking to Extend “Direct-Product” Rule to Encryption**

The Bureau of Industry and Security (BIS) say it is considering a change in the Export Administration Regulations (EAR) to extend current rules controlling foreign products that are the “direct product” of U.S. technology to foreign encryption products. In the Jan. 6 Federal Register, it published a Notice of Inquiry, saying it wants “to determine the appropriate extent and scope of U.S. export controls on foreign products that are the direct products of U.S.-origin encryption technology or software.” In particular, it asked for comments “on the potential impact of controlling such foreign made items for Encryption Items (EI) reasons under the EAR (i.e., those that are classified under ECCN 5A002 or 5D002) if the direct product of U.S.- origin ECCN 5E002 technology or ECCN 5D002 software.”

“When the foreign-produced direct product of such technology or software would be classified under ECCN 5A002 or 5D002, it would meet the definition of ‘direct product’ under section 736.2(b)(3)(ii)(A) of the EAR,” BIS said. The EAR already controls certain foreign goods that are the direct product of U.S. technology under EAR Section 736.2(b)(3)(ii)(A).

Under the possible changes, foreign direct product ECCN 5A002 or 5D002 hardware or software “would be subject to the license requirements of sections 742.15 (EI encryption items) and 742.4 (NS national security), or to the review requirements of section 740.17 (License Exception ENC),” the notice stated. “Reporting requirements under section 740.17(e) would not apply to exports from the country of manufacture of foreign-produced direct products, as reporting is required only for export from the United States or reexports from Canada,” it said.

## **Apparel Industry Presses Obama to End Tariffs and Restrictions**

Along with a long line of industries offering advice to President-elect Obama, apparel manufacturers and retailers have called on the incoming administration to cut tariffs on apparel imports and to end trade policies that treat textile and apparel imports differently than other goods. With the last quotas on textile and apparel imports ending Dec. 31 with the expiration of quotas on 22 categories of imports from China, the new administration “should take advantage of this smooth transition to establish and implement uniform policies that are not riddled with exceptions for one industry or another,” Obama’s transition team was advised in a White Paper submitted by the U.S. Association of Importers of Textiles and Apparel (USA-ITA).

The USA-ITA paper called for the elimination of high tariffs that still remain on apparel imports. It also said the special restrictions applied to textiles and apparel in trade agreements and trade preference programs should end. “One administration after another has acquiesced to demands for separate and different – discriminatory – treatment for imports of textiles and apparel products in trade agreements and in unilateral preference programs,” the group complained.

Also on the association’s wish list is the elimination of the Committee for the Implementation of Textile Agreements (CITA), long the nemesis of retailers and importers. “It is time to make transparent the development of policy and decisions on actions involving apparel trade through the full application of the Administrative Procedures Act, including the Government in the Sunshine Act,” USA-ITA said. It also recommended that government staff that has worked on implementing restrictions on apparel imports be transferred to work on trade promotion instead. The advice to the Obama administration comes as importers remain worried about the next threats they may face now that 40 years of quotas have ended. A main legal question is whether there is any “industry” left in the U.S. that would have standing to file an antidumping or countervailing duty case, since the vast majority of apparel firms in the U.S. now import

their products and would oppose such petitions. Legal sources say a small U.S. firm with the backing of Unite Here, the apparel workers union, could file a case on some specific lines. While the trade and economic impact of such a case might be small, one attorney in the field suggested the case would have greater ramifications because it would send a chill throughout the entire global apparel supply chain and create new uncertainties about sourcing.

## Executive Pleads Guilty to Worldwide FCPA Violations

A former sales manager for global valve manufacturer CCI has pleaded guilty to conspiracy to violate the Foreign Corrupt Practices Act (FCPA) with \$1 million in bribes to government officials in Brazil, China, India, Korea, Malaysia and the United Arab Emirates. In a plea entered Dec. 18 but announced Jan. 8, Mario Covino, an Italian citizen living in Irvine, Calif., admitted to paying bribes to obtain sales of valves used in power plants. The government claimed the sales produced \$5 million in profits for CCI, a division of IMI in the United Kingdom.

The payments went to officials of state-owned power companies. The foreign entities named in the information and plea were Petrobras (Brazil), Dingzhou Power (China), Datang Power (China), China Petroleum, China Resources Power, China National Offshore Oil Company, PetroChina, Maharashtra State Electricity Board (India), KHNP (Korea), Petronas (Malaysia), Dolphin Energy (UAE) and Abu Dhabi Company for Oil Operations (UAE). CCI was only identified as “co-conspirator company A” in the information the government filed against Covino.

In response to an inquiry from WTTL, IMI issued this statement: “IMI plc (IMI) notes the announcement today by the U.S. Department of Justice concerning action against a former employee of CCI, a wholly owned subsidiary of IMI. Neither IMI nor CCI intend to make any public comment on these individual actions. No current employees of CCI or IMI are expected to be included in any further prosecutions by the U.S. Department of Justice in respect of this matter. IMI initiated an independent investigation into irregular payments associated with certain trading contracts entered into by CCI, its severe service business, in August 2007. This independent investigation has been completed and we continue to hope that we can resolve this matter with the U.S. Department of Justice by the end of March 2009.”

## BIS Wants Evidence of Foreign Buyers “Designing Out” U.S. Parts

BIS in the Jan. 5 Federal Register issued a Notice of Inquiry to get industry comments on long-running complaints that foreign buyers “design out” U.S. parts and components from their products to avoid getting caught under U.S. export controls. The agency said it want specific evidence on “whether U.S. export controls influence manufacturers’ decisions to use or not use U.S.-origin parts and components in commercial products and the effects of such decisions.”

Evidence that could be submitted include advertising or marketing efforts that use the absence of U.S. origin components or exemption from U.S. export controls as a selling point; customers’ stated preferences for non-U.S.-origin components; data on lost sales; examples of specific commercial products that were designed or modified to explicitly exclude U.S. parts and components; and decisions to locate or relocate production or research facilities outside the United States.

\* \* \* Briefs \* \* \*

COMMERCE: ITA Assistant Secretary for Import Administration David Spooner moved Jan. 5 to DC law firm of Squire, Sanders & Dempsey where he will work with former USTR Rob Portman. Spooner can be reached at 202-626-6612 or dspooner@ssd.com.

EX-IM BANK: John Richter named VP for small business division. Prior to joining bank, he worked for Trade and Development Agency as regional director for Africa and Middle East.