

Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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Vol. 27, No. 7

February 12, 2007

DEFENSE CONTRACTORS SEE BENEFITS IN TRADE OFFSETS

Defense exporters have a different view of offset required in foreign defense sales than Congress or the White House. In its annual report on offsets in defense trade Feb. 5, the Bureau of Industry and Security (BIS) included the results of an interagency committee survey that found defense firms mostly have positive views on these conditions in foreign sales. Opposition to offsets has come mainly from unions and members of Congress who complain about defense jobs going overseas. Democratic administrations have raised concerns about them because of potential job losses, while Republican White Houses have objected for free trade reasons.

“U.S. prime contractors view offsets as a necessary part of doing business and, accordingly, execute offsets as a profit-making enterprise,” said the report of the Interagency Team on Offsets in Defense Procurement. Creation of the team, which also consulted with foreign defense ministries, was mandated by Congress in 2003. Its third and final report was included in the BIS annual offset report.

“Offsets are perceived by the U.S. aerospace industry and others as giving U.S. defense prime contractors a competitive advantage in opening foreign defense markets and winning foreign competitions,” the report stated. As a result of these findings, the team recommended maintaining the current policies on offsets, including continuing consultations with other countries to support an open, competitive procurement system. “Nations demanding offsets should be encouraged to give contractors maximum flexibility in fulfilling offset requirements so they can make sound business decisions,” the Interagency Team recommended.

The BIS section of the report indicated that the number and value of new offset-containing deals declined in 2005 to their lowest level in 13 years. In 2005, there were 25 new offset-containing deals with 18 countries. Offsets represented \$1.5 billion of the total \$2.3 billion in sales. BIS cautioned against reading too much into the decline, because yearly tallies fluctuate. “Whether the drop in offset agreements is an anomaly or the beginning of a downward trend cannot be determined based on one-year reporting data,” the agency said. “Nonetheless, the deep decline in the number and value of new agreements, coupled with the drop in the number of countries participating in defense system offset agreements, is noteworthy,” it asserted.

VETCO UNITS PAY RECORD \$26 MILLION IN FINES FOR FCPA VIOLATIONS

Three divisions of Switzerland-based Vetco International agreed Feb. 6 to pay \$26 million in criminal fines as part of plea agreements with the Justice Department to settle charges that they violated the Foreign Corrupt Practices Act (FCPA) by paying illegal bribes to agents of the

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Published weekly 50 times a year except last week in August and December. Subscription in print or by e-mail is \$647 a year. Combo subscription of print and e-mail is \$747. Additional print copies mailed with full-price subscription are \$100 each. Circulation Manager: Elayne F. Gilston

Nigerian Customs Service. The settlement represents the largest criminal fine ever imposed under the FCPA. The Vetco divisions that paid the fines were Vetco Gray Controls, Inc.(\$6 million), Vetco Gray Controls, Ltd.(\$8 million), Vetco Gray UK Ltd.(\$12 million). A fourth division, Aibel Group Ltd., entered a deferred prosecution agreement with Justice.

Settlement of the FCPA charges was a condition of Vetco's sale of the units to General Electric, which acquired all of the Vetco Gray oil and gas exploration operations on Jan. 8 for \$1.9 billion. "This settlement fulfills a closing condition for the previously announced sale of its Vetco Gray division to GE," Vetco said.

The illegal bribes, which totaled \$2.1 million, were made through an international freight forwarder which was only identified as "Agent A" in court documents. The money went to speed the clearance of supplies and equipment Vetco imported to Nigeria to support its work on the Bonga offshore oil exploration project. Although Vetco in July 2005 voluntarily disclosed the illegal payments, Justice sought the high penalties because this was the second time a Vetco units was found guilty of FCPA violations and also because the new violations occurred after the department in 2004 had granted a waiver to Vetco's owners from successor liability on the condition that they impose an FCPA compliance program to prevent future violations.

The waiver was granted to a group of investors that bought the Vetco oil and gas operations from Swiss-Swedish conglomerate ABB for \$925 million after that settlement in 2004. Three equity investors, Candover, 3i, and JP Morgan Partners, sought and were granted a waiver of successor liability from Justice in a 2004 FCPA Advisory Opinion (see **WTTL**, Oct. 18, 2004, page 1). "The corrupt payments underlying today's guilty plea continued unabated from the period prior to the [2004] acquisition until at least mid-2005, notwithstanding the acquirer's commitments to the Justice Department under the Opinion Release," a Justice statement said.

The 2004 FCPA violations were committed by what was then known as ABB Vetco Gray UK, Ltd. Justice's 2004 opinion required Vetco to implement an extensive FCPA compliance program and to continue internal investigations into potential violations of the antibribery law. These investigation apparently led to the discovery of the latest violations. In addition to the fines, the new plea agreements require Vetco – now GE – to adopt additional FCPA compliance measures, including the hiring of an outside monitor.

CANADIAN INTERN FILES HUMAN RIGHTS COMPLAINT CITING ITAR

A Canadian civil rights group Feb. 6 said it planned to file a complaint before the Quebec Human Rights and Youth Rights Commission on behalf of a Canadian permanent resident who was born in Venezuela and claims he was fired by Bell Helicopter Textron in Canada because of restrictions imposed by the International Traffic in Arms Regulations (ITAR). The complaint is the latest in a wave of criticism that has been raised in Canada recently about defense firms that have been laying off foreign born workers or restricting their access to ITAR-controlled technology to meet new State restrictions on "dual-nationality" persons.

State's Directorate of Defense Trade Controls (DDTC) has begun to prevent foreign nations who were born in proscribed countries from having access to defense information as a condition in Technology Assistance Agreements and Manufacturing License Agreements. [**Editor's Note:** A feature article on the new DDTC rules appears in the February 2007 issue of our affiliate publication, *The Export Practitioner*. A copy will be sent to WTTL subscribers on request.]

The Center for Research Action on Race Relations (CRARR) said it was filing the complaint on behalf of Jaime Vargas, 52, who was born in Venezuela but is now a Canadian permanent resident. Vargas claims he was fired from an internship at Bell after State added Venezuela to its list of proscribed countries. Press reports said Bell has reassign 24 employees because of ITAR restrictions. Vargas is seeking \$110,000 in damages. "Based on the information we obtained, it appears that the manner in which ITAR is being applied constitutes a direct and

intentional violation of Canadian sovereignty,” said CRARR Counsel Nancy Gross. “Canadians must not turn a blind eye to this kind of institutionalized racial and ethnic discrimination that is destroying careers, destabilizing families, and denigrating fellow citizens,” she said.

DOHA NEGOTIATING COMMITTEES HEAD BACK TO WORK

“We have resumed our negotiations fully across the board,” declared World Trade Organization (WTO) Director General Pascal Lamy Feb. 7 to the WTO General Council. “As I set out at an informal meeting of the TNC [Trade Negotiations Committee] one week ago, political conditions are now more favorable for the conclusion of the Round than they have been for a long time,” he added (see **WTTL**, Feb. 5, page 4).

Lamy’s remarks signaled the relighting of the boilers under the Doha Round negotiations on agriculture and non-agriculture market access (NAMA). Agriculture Committee Chairman Crawford Falconer, New Zealand’s WTO ambassador, held an informal meeting Feb. 9 and has tentative plans for more informal multilateral meetings Feb. 23 and March 9. He also will continue holding what have become known as “fireside chats” with small groups of countries.

About 20 countries have been taking part in the fireside chats. Sources say progress will be needed after March 9 to justify increasing the frequency of meetings. Falconer will hold a fireside chat Feb. 12 on domestic support, overall cuts, Amber Box, Blue Box, market access for developing countries and sensitive products for developed countries. There may be a fireside chat later on developing country issues, including special products.

The next set of NAMA talks will be Feb. 26 and will focus on non-tariff barriers (NTBs). The group is waiting for new submissions on ad valorem equivalents (AVE). Sessions will also discuss the impact of trade preference programs on less developed countries. An informal “NAMA Caucus” is expected shortly before Feb. 26. Other negotiating groups are also starting to pencil in formal and informal meetings for the coming weeks. A proposed Feb. 26 meeting of the Council for Trade in Services is expected to be formal, but no announcement has been made (see story below).

Informal consultations between members of the Council for Trade-Related Intellectual Products (TRIPS) and the chairman will take place on Feb 13 before or after the regular TRIPS Council meeting, a well-placed source said. WTO Deputy Director General Rufus Yerxa will also consult members on outstanding implementation issues, as well as Geographic Indications. The Special Session of the Dispute Settlement Body will have informal consultations Feb. 20-23. The Committee on Trade and Development may meet March 6, sources say.

The Committee on Trade and Environment is expected to meet March 1-2, but the chairman will determine the format after consulting with members. If no new submissions are received, a formal meeting won’t be needed. Submissions are expected, however, including one from the U.S. on the relationship between the WTO and multilateral environmental agreements (MEA) secretariats. The first formal meeting of the Negotiating Group on Trade Facilitation is March 12-14. The group is waiting for progress in other negotiating areas, sources report.

PROGRESS ON DOHA SERVICES TALKS AWAITS FARM AND TARIFF MOVES

Two weeks of informal talks in Geneva at the end of January on the services leg of the Doha Round found diplomats eager to make progress in this sector but unsure of when to begin the formal process for making new market access offers. Participants in the bilateral and multilateral talks, which stretched from Jan. 22 to Feb. 2, said they were waiting for instructions from ministers on when to resume formal talks and trying to decide how the services talks will meld with talks on agriculture and non-agriculture market access (NAMA). Some diplomats want to wait until clear progress is seen in farm and tariff talks before making new offers in

services, while others said the three legs should move in parallel (see **WTTL**, Jan. 29, page 2). Most countries agreed it was not up to the Council on Trade in Services to decide on the timing for revised offers, a diplomat in the group said. The decision has to be made by ministers, he said, and so far there's no agreement on that. "One question is when do the revised offers now come in, and I think there is a bit of discussion going on when will be the appropriate time for people to put forward their revised offers," one diplomat told **WTTL**.

Time is becoming a factor in the services talks, which have lagged behind the negotiations on agriculture and NAMA. "The decision when countries will submit revised services offers is not an easy one because there are a number of elements to be considered," a developing country ambassador said.

One question is how to synchronize the timing of services talks with those in the other sectors. Governments have had plenty of time to prepare their offers for submission, but there is no indication they are ready to do it from a technical or a political sense, one source said. Countries may need to see evidence of real movement in agriculture before they submit improved services offers, he added.

The time line also is closely linked with renewal of President Bush's fast-track negotiating authority which expires July 1. Countries that made requests for market openings in the services field last spring are still waiting to hear responses to those requests. Thus, negotiators are discussing whether to skip another round of bilateral offers and responses and move instead toward a pluralateral package for inclusion in any final Doha deal.

* * * BRIEFS * * *

EXPORT ENFORCEMENT: Continental Airlines has agreed to pay \$11,000 civil fine as part of settlement agreement with BIS to resolve one charge of violating the EAR. BIS claims the airline loaded and exported shipment of computers and computer equipment on its aircraft to United Arab Emirates via London after Customs issued "Cargo Hold Sheet" prohibiting lading.

ITAR: DDTTC in Feb. 7 Federal Register amended ITAR Section 126.1 to add Venezuela to list of countries subject to defense-trade restrictions. Policy has already been applied since last May (see **WTTL**, May 22, page 2). Agency also added section clarifying that licenses for exports of non-lethal defense items to Libya will be reviewed on case-by-case basis with policy of denial.

BUSH BUDGET: Business community has applauded provisions in Bush administration's 2008 budget proposal Feb. 5 which would allow Ex-Im Bank to finance itself on self-financing basis without congressional appropriation. Proposal, if adopted, would blunt some of "corporate welfare" criticism of Bank. Separately, budget proposed increase in BIS budget to \$79 million from \$75 million, but actual money available may be less due to decrease in offsetting collections. Budget also calls for elimination of Emergency Steel Guarantee Loan Program and Technology Administration in Commerce.

ITC: Irving Williamson was sworn in as ITC Commissioner Feb. 7. Williamson, former USTR deputy general counsel and trade consultant in New York, was confirmed by Senate Feb. 1 to fill seat formerly held by Commissioner Stephen Koplan whose term expired. Dean Pinkert, who also was confirmed to fill expired term of Commissioner Jennifer Hillman, is expected to be sworn in Feb. 26.

SODIUM HEXAMETAPHOSPHATE: ICL Performance Products and Innophos, Inc. filed antidumping complaints Feb. 8 at ITA and ITC against imports of sodium Hexametaphosphate from China.

RESELLERS: Court of Appeals for Federal Circuit Feb. 9 (case 2006-1386) upheld ITA Reseller Policy in application of antidumping duties. It affirmed earlier CIT ruling in *Parkdale International v. U.S.*

ANTIDUMPING/CVD: 2006 set new low for number of antidumping and countervailing duty complaints filed in one year. There were only two CVD cases and eight dumping case. Because six of those cases involved one product, coated paper, and two another, lemon juice, only four products were targeted.

DIAMONDS: In one of first cases involving enforcement of 2003 Clean Diamond Trade Act, ICE agents arrested two men Feb. 4 in Tucson, Ariz. One is national of Guinea; other is naturalized U.S. citizen. They were charged with smuggling 11,000 carats of rough diamonds into U.S. and attempting to sell them.