



ACQUISITION,  
TECHNOLOGY  
AND LOGISTICS

## THE UNDER SECRETARY OF DEFENSE

3010 DEFENSE PENTAGON  
WASHINGTON, DC 20301-3010

### DETERMINATION UNDER SECTION 807 OF THE STROM THURMOND NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 1999

Section 807 of the Strom Thurmond National Defense Authorization Act for Fiscal Year 1999 (Public Law 105-261) provides authority to the Secretary of Defense to procure articles containing para-aramid fibers and yarns manufactured in a foreign country that is a party to a defense memorandum of understanding entered into under 10 U.S.C. 2531 and permits the United States firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country, if it is determined that (1) procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the national technology and industrial base would result in sole source contracts and subcontracts for the supply of such para-aramid fibers and yarns; and (2) such sole source contracts or subcontracts would not be in the best interest of the Government or consistent with the objectives of 10 U.S.C. 2304.

#### FINDINGS

DuPont™ is the sole manufacturer of para-aramid fibers and yarns within the national technology and industrial base, i.e., the United States and Canada. The Berry Amendment (10 U.S.C. 2533a) permits the procurement of synthetic fabric and coated synthetic fabric only if it is produced in the United States or its possessions (including all textile fibers and yarns that are for use in such fabrics). Until February 12, 1999, when the Under Secretary of Defense for Acquisition, Technology and Logistics made a determination under section 807, application of the Berry Amendment resulted in sole-source contracts or subcontracts to DuPont™ for the supply of para-aramid fibers and yarns.

Under the authority of 10 U.S.C. 2531, the Department of Defense has entered into reciprocal defense procurement (RDP) memoranda of understanding (MOU) with twenty-one countries, referred to as "qualifying countries" to promote rationalization, standardization and interoperability of defense equipment with allies and friendly governments. Under these RDP MOUs, each country waives "buy national" restrictions and customs and duties, and allows the other's industry to participate, on a competitive basis, in its defense procurements without unfair discrimination. The 1999 determination was approved for only one country, the Netherlands. At that time, the Netherlands was the only qualifying country that actively pursued this waiver.



Under the Defense Production Act (DPA), DuPont™, in its capacity as a U.S. domestic producer, is required to prioritize its work under DX and DO rated contracts over its commercial contracts. At the present time, global demand for para-aramid fiber is strong and growing, particularly in the commercial market due to high demand for first responder (law enforcement and fire service), automotive, aerospace, and oil and gas production markets. However, under the DPA, DuPont™ is mandated to devote much of its current U.S. production capacity to fulfill DoD's high priority programs on its contracts. For example, MRAP is just one of these DX rated programs for which DuPont™ is providing para-aramid fiber and yarns.

Teijin, a Netherlands' company, produces Twaron, a para-aramid fiber similar to Kevlar. Teijin does not produce para-aramid fiber in the U.S. and is not subject to the DPA. As a result, Teijin currently has a competitive advantage with respect to non-DoD requirements because it is not required to commit its capability to U.S. defense requirements over commercial customers. In fact, Teijin can decline U.S. defense business in favor of global commercial work if it chooses to do so. This leaves DuPont™ in a difficult situation, competitively, with regard to its U.S. assets. Currently, DuPont's U.S. assets are primarily assisting DoD, thereby limiting its ability to expand its commercial customer base due to limited capacity.

Recently, DuPont™ committed to invest more than \$50M in its Richmond, Virginia plant to increase its Kevlar polymer production and \$500M to build a new Kevlar fiber plant in Charleston, SC to meet growing military demand for armored vehicle programs like MRAP and civilian law enforcement. This new capability is expected to come on line in 2010. However, in the interim, DuPont™ has decided to move some of its body armor fiber manufacturing work currently performed in Richmond to its United Kingdom (UK) plant in Northern Ireland in order to free up additional capacity for DoD/MRAP at this time. This move also would allow better efficiency for both its Richmond and Northern Ireland plants. As a result, DuPont™ will sacrifice its DoD body armor work to Teijin, unless a determination is made to allow DoD to procure para-aramid fibers and yarns from foreign sources other than in the Netherlands.

Between 1971 and 1985 para-aramid fiber was only produced in the U.S. by DuPont™ in 1986, Akzo began commercially producing a competing para-aramid product called Twaron at three locations in the Netherlands. Akzo was acquired in 2000 by the Teijin Group, which is headquartered in Japan. To service the European market, in 1988, DuPont™ began producing Kevlar fiber at a second plant in Maydown, Northern Ireland. (DuPont™ also produces meta-aramid fiber at a plant in Spain.)

As para-aramids become a primary innovation in force protection products, the Department would benefit greatly by expanding its ability to buy para-aramid fibers and yarns from any RDP MOU country, particularly in light of the current constricted supply. Such expansion would not harm DuPont™ in the U.S., and indeed DuPont™ has

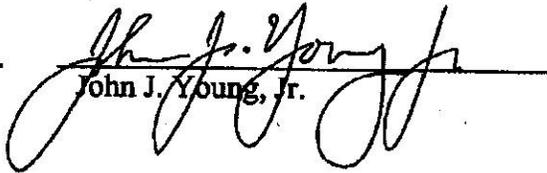
requested an expansion of the previous 1999 determination to help DuPont™ meet DoD body armor needs from its plant in the UK. Additionally, DoD will benefit by increased competition. Each RDP MOU country agrees, as part of the language in the agreement, to waive "buy national" rules with respect to the industries of the other country. Therefore, these qualifying countries have made these commitments, and have agreed not to unfairly discriminate against U.S. industry with regard to defense procurements. Additionally, DuPont™, the sole producer of para-aramid fiber in the U.S., has stated that it is not aware of any acquisition discrimination for defense related purchases by a qualifying country.

### DETERMINATION

I hereby determine that procuring articles that contain only para-aramid fibers and yarns manufactured from suppliers within the national technology and industrial base would result in sole-source contracts or subcontracts to DuPont™ for the supply of such para-aramid fibers and yarns. I also determine that such sole-source contracts or subcontracts would not be in the best interests of the Government or consistent with the objectives of 10 U.S.C. 2304, except for those contracts for which a sole-source is justified and approved under section 2304 and for those subcontracts for which there is a similar justification. I also determine that all qualifying countries permit the United States firms that manufacture para-aramid fibers and yarns to compete with foreign firms for the sale of para-aramid fibers and yarns in that country. Consequently, I authorize the procurement by the Department of Defense of articles containing para-aramid fibers and yarns manufactured in the qualifying countries listed at DFARS 225.872-1(a) and (b) consistent with this determination.

DATE: \_\_\_\_\_

AUG 15 2008

  
John J. Young, Jr.