



ACQUISITION AND  
TECHNOLOGY

THE UNDER SECRETARY OF DEFENSE  
3010 DEFENSE PENTAGON  
WASHINGTON, D.C. 20301-3010



12 FEB 1999

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:

Sec. 807. PARA-ARAMID FIBERS AND YARNS.

(a) **AUTHORITY.**--The Secretary of Defense may procure articles containing para-aramid fibers and yarns manufactured in a foreign country referred to in subsection (d) if the Secretary determines 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 or 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 interests of the Government or consistent with the objectives of section 2304 of title 10, United States Code.

(b) **SUBMISSION TO CONGRESS.**--Not later than 30 days after making a determination under subsection (a), the Secretary shall submit to Congress a copy of the determination.

(c) **APPLICABILITY TO SUBCONTRACTS.**--The authority under subsection (a) applies with respect to subcontracts under Department of Defense contracts as well as to such contracts.

(d) **FOREIGN COUNTRIES COVERED.**--The authority under subsection (a) applies with respect to a foreign country that--

(1) is a party to a defense memorandum of understanding entered into under section 2531 of this title; and

(2) permits 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, as determined by the Secretary of Defense.

(e) **DEFINITION.**--In this section, the term "national technology and industrial base" has the meaning given that term in section 2500 of title 10, United States Code.



## FINDINGS OF FACT

1. 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.
2. The Berry Amendment (section 9005 of the Department of Defense Appropriations Act, 1993 (Public Law 102-396), as amended, (10 U.S.C. 2241, note) permits the procurement of synthetic fabric only if it is produced in the United States or its possessions. Section 8109 of the Department of Defense Appropriations Act, 1997, (as contained in section 101(b) of Public Law 104-208) provides that the term "synthetic fabric" includes all textile fibers and yarns that are for use in such fabrics. Thus, the Berry Amendment results in sole-source contracts or subcontracts to DuPont for the supply of para-aramid fibers and yarns.
3. Sole-source contracts or subcontracts generally result in higher prices being paid and less favorable terms and conditions, including delivery schedule, being provided for the property or services purchased by the Department of Defense.
4. Section 2304 of title 10, United States Code, provides that the Department of Defense in conducting a procurement for property or services shall obtain full and open competition through the use of competitive procedures except when use of other than competitive procedures is justified and approved. Sole-source contracts are not consistent with the objectives of section 2304 unless justified and approved under section 2304. Sole-source subcontracts are not consistent with the objectives of section 2304 unless similar justification to that required for contracts under section 2304 exists.
5. Since August 24, 1978, the Netherlands has been a party to a defense memorandum of understanding entered into under section 2531 of title 10, United States Code.
6. The Netherlands permits United States firms that manufacture para-aramid fibers and yarns to compete with other firms for the sale of para-aramid fibers and yarns in that country. This finding is based on information provided by officials representing the Netherlands and DuPont, and contained in the Netherlands section of the Department of Commerce Trade Compliance Center's 1998 Country Reports on Economic Policy and Trade Practices. DuPont has made allegations that the Netherlands has discriminated against DuPont in its procurements. We have been unable to verify these allegations. Information from the Netherlands embassy indicates that during 1995-1996, i.e., the last period in which significant contracts for articles

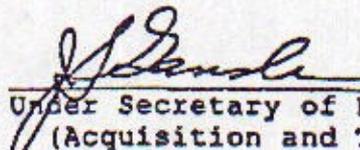
containing para-aramid fibers and yarns were awarded, the Royal Netherlands Army awarded contracts for articles containing DuPont Kevlar® and in the amount of 6.2 million Dutch guilders and awarded contracts for articles containing Akzo Nobel Twaron® in the amount of 26.0 million Dutch guilders. The embassy states that these procurements were open tenders according to European Union rules in which no preference was given to either one of the materials.

#### DETERMINATIONS

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 section 2304 of title 10, United States Code, except for those contracts for which a sole-source is justified and approved under section 2304 and for those subcontracts for which there is similar justification. I also determine that the Netherlands permits 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 Netherlands consistent with this determination.

DATE

2/12/99

  
Under Secretary of Defense for  
(Acquisition and Technology)