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Analysis

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Recent Developments In The Applicability Of U.S. Domestic Preference Laws

Among the more complex issues facing contractors are the highly complicated trade preferences and restrictions that apply to U.S. Government procurements. In particular, the Buy American Act (BAA), 41 USCA §§ 10a-d, and Trade Agreements Act of 1979 (TAA), 19 USCA § 2501 *et seq.*, favor or generally require the use of products mined, produced, manufactured, or "substantially transformed" in the United States or countries that have reciprocal government procurement trade agreements with the United States. With few exceptions, contractors and subcontractors must strictly comply with these requirements, and maintain sophisticated tracking systems to determine the country of origin of their products.

As the global economy has placed an increased premium in recent years on the delivery of low-cost items, services, and materials from overseas markets, particularly China, Taiwan, and Malaysia, the barriers to delivery imposed on Government contractors through the BAA and TAA have risen in stature and significance. Indeed, competition has made outsourcing a basic imperative in some industries. For companies that supply products to the U.S. Government, now more than ever, the BAA and TAA for the most part run directly counter to commercial market trends. Contractors and subcontractors are being forced increasingly to confront difficult decisions that go to the heart of their business processes, such as whether to modify their supply chains and invest in costly "dual sources" of supply—one for Government customers and one for non-Government customers—to achieve compliance. Citing administrative burdens, others decide simply not to deal with the Government. In part due to the BAA and TAA, it is widely believed that the Government pays higher prices for a limited set of products when compared to the products offered in the commercial market.

Fortunately, Congress has implemented at least a temporary exemption from the BAA's applicability to certain commercial item procurements. In addition, a proposed change to the Federal Acquisition Regulation calls for the complete elimination of the

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BAA and TAA from acquisitions of commercial-off-the-shelf (COTS) products. These activities represent welcome developments for contractors, yet each is unique and should be studied carefully to determine applicability. Moreover, in the charged atmosphere of an election year, it is possible that the BAA exemption may not be extended beyond Fiscal Year 2004, and the proposed FAR rule could be altered dramatically or revoked altogether depending on the political wave of the moment.

Parts I and II of this article provide an overview of the BAA and TAA, and discuss the unique burdens each requirement places on contractors. Part III describes the limited BAA waiver enacted by Congress earlier this year. Part IV discusses a proposed change to the FAR that would waive the BAA and TAA for COTS products. The article concludes with a summary of the current status of these developments.

The Buy American Act—In an attempt to retain and harvest the nation's manufacturing base, the U.S. Government generally prefers to "Buy American." A by-product of the Great Depression, the BAA accomplishes this objective by expressly favoring contractors who offer supplies mined, produced, or manufactured in whole or substantial part using domestic resources. Stated differently, the BAA discriminates or tilts the competitive playing field against contractors who offer foreign end products by artificially increasing the price of such items for purposes of evaluating offers. The effect of this discriminatory treatment is significant. Although exceptions exist, for many procurements, the ability to offer a domestic end product is a *de facto* requirement of the solicitation. In civilian procurements, offerors of foreign end products are evaluated at either six or 12 percent above the proposed price. See FAR 25.105. This price differential increases to 50 percent for Department of Defense procurements. See Defense FAR Supplement 225.502(2).

Unless waived or subject to other exceptions, the BAA generally applies to acquisitions of supplies and construction materials for use in the U.S. The nationality of the contractor is irrelevant. In order to qualify as a domestic end product under the BAA, the article must either be an "unmanufactured end product mined or produced in the United States," or, if the article is a manufactured end product, it must satisfy a two-part test: (1) the article must be manufactured in the U.S., and (2) the cost of the domestic components must exceed 50 percent of the cost of all the components. FAR 25.101(a).

An item is said to be "manufactured" in the U.S. when its parts have been assembled domestically. Mere packaging, testing, or "kitting" of the item in the U.S. do not comprise domestic manufacturing. The basic rule considers whether the manufacturing process produces essentially the same item, or whether the process results in a fundamental change to the item. This is not always a simple determination and requires familiarity with relevant case law.

It is possible for an item to be manufactured in the U.S., but not qualify as a domestic end product. Thus, the contractor must identify and properly allocate between foreign and domestic costs of the components used directly in the end product. This requires meticulous tracking and identification of component parts and their place(s) of manufacture. If an article is manufactured domestically, and the cost of the domestic components exceeds 50 percent of the cost of all of the components, the article is entitled to preferential treatment under the BAA. Contractors are required to certify compliance and identify any foreign end products to be delivered under the contract.

The BAA does not absolutely require domestic end products. Foreign end products may be acquired when (i) they are purchased to preserve the public interest, (ii) the products to be acquired are not available domestically in sufficient and reasonably available quantities of a satisfactory quality, (iii) the cost of a domestic end product is unreasonable, and (iv) foreign end products are acquired for resale through a commissary. See FAR 25.103.

Not surprisingly, the Government's preference to "Buy American" comes at a cost. For the Government buyers, access to the products and materials available in the commercial market is necessarily limited. For contractors, the BAA forces them to implement unique manufacturing processes to produce domestic end products. Many companies interested in selling to the Government must alter their supply chains or develop "dual sources" to accommodate the need to achieve domestic manufacturing. Other companies, for whom sales to the Government are not essential, simply decide not to deal with the Government, leaving the Government with fewer purchasing options. Finally, given the complexity of the statute's requirements, the systems necessary to ensure compliance with the BAA can be extremely onerous. All of these factors contribute to the Government paying higher prices for a reduced product selection.

The Trade Agreements Act—Whereas the BAA discriminates against the acquisition of foreign end products, the TAA eliminates such discrimination against certain foreign end products. In this sense, the TAA cuts against the domestic preference provisions of the BAA, and allows the Government to take advantage of free trade for certain items. The TAA was enacted as a result of the Tokyo and Uruguay Rounds of international trade agreements aimed at eliminating domestic trade preferences. Accordingly, when the TAA applies (for acquisitions estimated to exceed \$175,000), the BAA is waived. The TAA is limited in scope, however, and, in many ways, more effective than the BAA at maintaining barriers to free trade.

Specifically, the TAA applies only to acquisitions of “eligible products,” or end products from or substantially transformed in the U.S., or a so-called “Designated,” “Caribbean Basin,” or “Free Trade Agreement” country. See FAR 25.003. Subject to limited exceptions, for items originating from so-called “non-designated” countries (including China, Taiwan, and Malaysia among others), the TAA *prohibits* the Government from acquiring such items. The TAA also requires offerors to certify compliance and identify end products proposed to be delivered from non-designated countries.

Ensuring compliance with the TAA has never been more challenging. As many products are sold to the Government using multiple tiers of suppliers and vendors, a country of origin label provided by a lower-tier supplier may not be relevant to determining whether the product complies with the TAA. Often the most critical determination is whether a product that originated from a non-designated country has been “substantially transformed” in the U.S., a designated, or free trade agreement country. Stated another way, companies increasingly need to know what minimal manufacturing processes must occur in the United States, a designated, or free trade agreement country so that the end product can be said to have been substantially transformed in such a country.

Substantial transformation occurs when the article is a new and different article of commerce with a name, character, or use distinct from that of the article or articles from which it was transformed. In most situations, interpreting this subjective standard with confidence requires a detailed understanding of rulings issued by U.S. Customs and relevant case law.

The objections to the TAA are similar in nature to the BAA, but perhaps have taken on even greater significance given the dramatic increase in outsourcing

to such non-designated countries as China, Taiwan, and Malaysia, among others. As discussed below, a proposed change to the FAR offers some hope for relief, at least as to the acquisition of COTS products.

Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item—Congress has enacted some important, if limited, relief from the BAA. Specifically, § 535(a) of Division F of the FY 2004 Consolidated Appropriations Act (P. L. No. 108-199), exempts acquisitions of foreign information technology that is a commercial item from the requirements of the BAA:

In order to promote Government access to commercial information technology, the restriction on purchasing non-domestic articles, materials, and supplies set forth in the Buy American Act, shall not apply to the acquisition by the Federal Government of information technology that is a commercial item.

P. L. No. 108-199, Div. F § 535(a) (2004) (citations and parentheses omitted). In addition, the legislation permanently altered the definition of IT (codified at 40 USCA § 11101) to include equipment used for, among other things, analysis and evaluation of data, as well as certain security and surveillance equipment. See P. L. No. 108-199, Div. F § 535(b) (2004).

As a result, unless otherwise restricted, IT products that qualify as “commercial items,” regardless of the place of manufacture and relative cost of components, will be treated equally for purposes of evaluation. Given the massive expenditures the Government dedicates annually to acquiring such products, this legislation represents a significant step toward allowing both the Government and contractors to conduct more efficient procurement activities.

Despite its significance, contractors should be cautioned that § 535 exempts the BAA from acquisitions for a limited range of products, and only for acquisitions conducted using FY 2004 funds. Unless the acquisition is for IT that is a commercial item (defined under 41 USCA § 403), the provisions of § 535 do not apply. Acquisitions for other than IT, or IT that is not a commercial item—i.e., IT used solely for governmental purposes, or IT that requires more than minor modifications to meet Government requirements—are not affected by § 535, and are not thereby exempt from the BAA.

Section 535(a) was passed as part of consolidated appropriations legislation for FY 2004, and is there-

fore, limited only to acquisitions using funds for that year. While the intent of its drafters reportedly was to effect a permanent change to the Buy American Act (and amend 41 USCA § 10a accordingly), § 535(a) has been interpreted to apply only to procurements using FY 2004 funds.

On May 18, 2004, Director of Defense Procurement and Acquisition Policy issued a memorandum entitled “Class Deviation—Exemption from Limitations on Procurement of Foreign Information Technology that is a Commercial Item,” advising the military services that certain DFARS clauses implementing the BAA are inapplicable to purchases of commercial item IT products. Notably, the memorandum limits the deviation to acquisitions using FY 2004 funds, and will remain effective “until incorporated in the DFARS or until otherwise rescinded.”

Similarly, a June 18, 2004 memorandum issued by the Civilian Agency Acquisition Council (CAAC) provided guidance on class deviations under the FAR, and confirmed “that the Office of Management and Budget has determined that this exemption applies only to Fiscal Year 2004 funds . . . [and that the FAR] is not being changed.” While it is expected that an exemption similar to § 535(a) will reappear in future legislation and perhaps extend the exemption, prudent contractors should not rely upon such an extension when evaluating procurements that will require the use of FY 2005 or later funds.

Section 535 did not explicitly address the applicability of the TAA. Thus, barring any regulatory changes, the prohibitions imposed by the TAA upon IT products that are commercial items likely remain in effect. Indeed, the class deviation memoranda from both DOD and CAAC asserted that the TAA still applies when appropriate. However, in comments submitted by the American Bar Association Section of Public Contract Law in response to an Advance Notice of Proposed Rulemaking (ANPR) published in the Federal Register (68 Fed. Reg. 4874) (discussed in greater detail below) on January 30, 2003, the Section indicated that the TAA’s prohibition against purchases of goods from non-designated countries applies only to procurements to which a waiver of the BAA has taken effect. The Section concluded, therefore, that if the BAA is determined to be inapplicable to a particular type of procurement, no waiver of its applicability could take effect to trigger the application of the TAA. The Section essentially argued that where the BAA is determined to

be inapplicable, (and therefore not requiring a waiver), the TAA is inapplicable as well. It remains to be seen whether this interpretation is valid for purposes of § 535 (or otherwise), and contractors would be well advised not to rely upon this interpretation without additional regulatory guidance or case law.

Proposed FAR Rule: BAA and TAA Are Proposed to be Inapplicable to Acquisition of COTS Items— On January 15, 2004, a proposed rule was published in the Federal Register (69 Fed. Reg. 2448) as a follow-on to two ANPRs (61 Fed. Reg. 22010, May 13, 1996; and 68 Fed. Reg. 4874, Jan. 30, 2003) issued in response to the Federal Acquisition Reform Act of 1996 (FARA), P. L. No. 104-106. Among other things, FARA mandated the creation of a list of laws that would be inapplicable to the acquisition of COTS items. See FAR 12.505 (listing laws inapplicable to acquisition of COTS items). Currently, neither the BAA nor the TAA is on this list. Under the proposed rule, however, both statutes are identified as inapplicable to COTS acquisitions. If the proposed rule is adopted, it would significantly broaden the scope of procurements not covered by the BAA beyond the changes affecting the IT industry discussed above, and remove the roadblocks to certain acquisitions currently subject to the TAA.

The proposed rule defines COTS to mean: “(i) A commercial item . . . ; (ii) Sold in substantial quantities in the commercial marketplace; and (iii) Offered to the Government, without modification, in the same form in which it is sold in the commercial marketplace.” See 69 Fed. Reg. 2449. Importantly, this definition is narrower than that of a commercial item. Thus, under the proposed rule, the range of products that may be sold without regard to the BAA and TAA represent only a subset of commercial items. The proposed rule does not cover commercial items that have not been sold in substantial quantities in the commercial marketplace, or require modification before being offered to the Government.

Nonetheless, because the proposed rule desires to release all acquisitions of COTS products—for IT and otherwise—from the restrictions of the BAA and TAA, it offers great promise for suppliers of COTS products, including large commercial suppliers who until now have elected not to deal with the Government in light of the intrusive administrative burdens imposed by the statutes.

It is obviously too early to know whether this proposed rule will be implemented in its current form. The

comment period for the proposed rule expired on March 15, 2004, and no further action has been taken to date. Some observers have indicated that the proposed rule has been stalled at OMB, and if implemented, may reflect significant changes. Contractors should watch closely for publication of the rule in the near future.

Conclusion—With the enactment in January 2004 of a temporary exemption from the BAA for commercial item IT products, both the Government and suppliers of these products have at least a narrow window of opportunity to seize the benefits of an open procurement for goods available in the global marketplace, without the administrative burdens that come with the obligation to comply with the BAA's domestic preferences. It remains to be seen, however, whether this exemption will extend beyond FY 2004, but clearly the plight of contractors in this area have been heard in Congress, and perhaps more reform will be forthcoming.

Also promising, but still in limbo, is the proposed FAR rule to exempt all COTS products from the restrictions of both the BAA and TAA. If implemented, such an exemption would in many ways be much more far reaching than the BAA exemption for commercial item IT acquisitions. In light of the growing need of businesses to shift sourcing priorities to such non-designated countries as China, Taiwan, and Malaysia, many contractors see the prohibitions imposed by the TAA and its subjective "substantial transformation" test as the greater impediment to efficient procurement. Both developments bear close attention in this election year.



This analysis was written for INTERNATIONAL GOVERNMENT CONTRACTOR by William J. Crowley of Piper Rudnick LLP, Washington, D.C.

Developments

¶ 11

Congress Begins Hearings On Defense Offsets—"A Complex Problem"

The U.S. House of Representatives' Committee on Armed Services (HSAC) has been conducting hearings concerning the long-term implications of De-

fense Trade Offsets on the U.S. defense industrial base and defense workforce. Noting the seriousness of the problem, HSAC Chair Representative Duncan Hunter (R-Calif.) said at a recent hearing that "we face a complex problem that once was small but has now reached a level that demands that it be brought under control."

Defense offsets include a full range of industrial and commercial benefits that firms provide to foreign governments as inducements or conditions for the purchase of military goods and services. Direct offsets are usually in the form of co-production arrangements, subcontracting, technology transfers, training, in-country procurements, production, marketing, joint ventures, and financing activities associated with the product being sold. Whereas indirect offsets occur when the compensation is not associated with the product being sold.

Citing a Lockheed Martin sale, Rep. Hunter said offsets are "usually described as a percentage of how much you sold compared to how much you had to give away." He noted that the Lockheed Martin sale of 48 F-16 fighters to the Polish government shows both direct and indirect offsets. The F-16 contract is worth \$3.5 billion and the estimated value of the corresponding offset deal is \$9.7 billion. As a result, Rep. Hunter added, this sale has a 260% offset or nearly 2.6 times the value of selling the F-16s by themselves. According to Hunter, some of the transactions are either inflated or have credit multipliers that reduce the actual cash value of the offsets, but "any way that you look at this sale, we gave away much more than the Polish government purchased."

Examining a partial listing of the offsets given for the F-16 sale, the Representative noted that as an example of direct offsets, Pratt & Whitney Corp. purchased a Polish factory, modernized it, and established a manufacturing line that produced lower complexity, F-100 engine components for the Polish F-16s. These components and assemblies are then shipped back to the U.S. for assembly into the engine. Noting the indirect offsets on the list, Hunter said these are offsets that are not associated with the F-16 production such as the purchases of Roll-on Roll-off Ships from a Polish shipyard, tooling for Cessna and Lycoming from Polish sources, components for land moving equipment, aircraft and helicopter parts, electronic parts, and accelerator technology from the University of Texas. All for a total of \$9.7 billion dollars, he added.

Noting that the U.S. Government cannot enter into, encourage, or finance offset agreements, the Representative said the decision whether to engage in offsets and the responsibility for negotiating and implementing offset arrangements is with the companies involved. Although American defense contractors have used offsets successfully in the past to make export sales, Rep. Hunter stated that now the European defense industries “compete head-to-head with the U.S. companies for an ever shrinking foreign defense market.” This results in “a buyer’s market that demands higher and higher offsets.”

GAO Testifies—According to the Government Accountability Office, views on defense offsets range from “beliefs that they are both positive and an unavoidable part of doing business overseas to beliefs that they negatively affect the U.S. industrial base.” Testifying before the committee, GAO’s Managing Director of Acquisition and Sourcing Management Katherine V. Schinasi said that defense offsets can be the key to foreign sales and thus increased business on the prime contractor level, and they can also result in reduced unit costs to the U.S. military because of the increased size of production runs. However, GAO noted that the use of a foreign supplier by a U.S. prime contractor as a result of an offset may lead to decreased business opportunities for U.S. suppliers. In addition, these prime contractors may develop long-term relationships with foreign suppliers, which may lead to the transfer of capability from the U.S. defense industrial base, Schinasi noted.

Following congressional concerns about defense offsets, GAO examined how offsets are used in defense trade, how that use has changed over time, and the quality and extent of information concerning offsets that is currently available. GAO noted that foreign governments use offsets to reduce the financial impact of their purchases, obtain valuable technology and manufacturing know-how, support domestic employment, create or expand their defense industries, and make the use of their national funds for foreign purchases more politically palatable.

GAO has been studying defense offsets for nearly 15 years, and has found that countries buying U.S. defense items have become “increasingly sophisticated” in their offset demands. Their demands include requiring offsets prior to contract award and increasing the offset value as a percentage of contract value. GAO noted that these demands “have steadily increased in value so that today [they] often equal and may exceed 100 percent of the value of the transaction.” Citing

the Joint Strike Fighter program as an example, GAO said the Department of Defense’s current emphasis on joint development programs can be seen as an “even more sophisticated offset.” The expenditure of public funds by one country to support another country’s weapon system development program will be offset by access to developing technology that the first country could not have individually afforded and subsequently the opportunity to take part in producing the system and the jobs that production will create.

According to GAO, the current information available on offsets fails to provide an adequate basis for evaluating offset practices. GAO found that defense exports involving offsets are small relative to the U.S. economy as a whole, and consequently, “it is difficult to measure effects using national aggregated data.” This lack of reliable data regarding the impact of offsets on the U.S. economy has been a continuous concern. As a result, Congress has passed various legislation requiring federal agencies to address offset issues, among which, a national commission to report on the extent and nature of offsets in defense trade. The Department of Commerce currently reports to Congress on an annual basis on offset agreements, as well as activities that U.S. companies engage in to fulfill offset obligations. DOD and the Department of State also include limited offset information when they notify Congress of large sales of defense items to foreign countries.

Even given these efforts, however, “no direct linkage has been made between the information collected on these sales and associated offset agreements and any impact on the U.S. economy,” GAO found. Although the U.S. Government “has maintained a ‘hands off’ policy toward defense offsets, viewing them as part of the transaction between the contracting parties,” examining these transactions now could provide the Government with new information into what is occurring in the industrial base and whether these transactions need to be considered on a policy level, GAO said.

¶ 12

EC Refers Italy To Court For Violating Public Procurement Policy

The European Commission has decided to take Italy to the European Court of Justice over the procedures used by the Italian Government to buy helicopters

for civilian use. The EC noted that the Italian government has a “longstanding policy of awarding contracts, directly and without competition, to the Italian company Agusta, for the supply of helicopters for civilian use by various public services,” according to a European Union press release.

The Commission found these direct awards to be in violation of the EU Directive on the procurement of supplies. The Commission’s decision came after the Italian authorities failed to change these procedures, despite a request to do so. The helicopters involved are used by certain public services, including the forestry department, financial police, fire services, police and security forces, coastguard, and the civil defense department.

EC stated that although the Directive allows direct award of contracts, without the publication of a tender notice in certain circumstances, none of these conditions were met in this case. Specifically, the Directive provides an exception when “contracts which are declared secret, or when the execution of which must be accompanied by special security measures in accordance with the laws, regulations or administrative provisions in force in the Member States concerned or when the protection of the basic interests of the Member State’s security so requires.” Italy had failed to prove that any of these situations applied in the case of supplying the helicopters.

In February 2004, the EU adopted a legislative package to clarify, modernize, and simplify the Directives to achieve further savings. See 46 GC ¶ 73.

¶ 13

Afghanistan Reconstruction Efforts Continue To Need Improvements, GAO Says

Under the Afghanistan Freedom Support Act, which authorized assistance funds to help Afghanistan rebuild a stable, democratic society, the Government Accountability Office was directed to monitor the implementation of U.S. humanitarian and development assistance.

For Fiscal Years 2002-2003, GAO analyzed U.S. obligations and expenditures in Afghanistan, results of assistance projects, the assistance coordination mechanisms and strategy, and major obstacles that affected the achievement of U.S. goals.

GAO found that of the \$900 million that the U.S. Government spent on nonsecurity-related assistance in Afghanistan in FYs 2002-2003, over 75% supported humanitarian efforts, including emergency food and shelter; and over 20% supported long-term reconstruction. The U.S. Agency for International Development, and the Departments of State and Defense spent \$508 million, \$254 million, and \$64 million, respectively, for humanitarian, quick-impact, and some long-term projects, GAO found. U.S. funding represented about 38% of the \$3.7 billion the international community provided over the two-year period.

According to GAO, although U.S. humanitarian and short-term assistance helped Afghanistan, “longer term reconstruction efforts achieved limited results by the end of [FY] 2003 due to late funding.” Also, USAID and DOD’s quick-impact projects helped in rebuilding small scale infrastructures, such as schools and bridges. In addition, USAID began various “longer term reconstruction activities, such as repairing the Kabul–Kandahar road and starting a democracy program.” However, despite these efforts, “because of delays in funding, most major assistance contracts were not signed until summer 2003, limiting the results in [FY] 2002-2003,” GAO found.

GAO also noted that although U.S. coordination mechanisms for Afghanistan assistance were “generally effective,” international assistance was not well coordinated. Moreover, because the U.S. lacked a complete and integrated assistance strategy, the U.S. Government’s ability to focus available resources and hold itself accountable for measurable results was hampered. Additionally, GAO found that U.S. officials responsible for coordinating efforts “lacked complete financial data, which hindered their ability to oversee the assistance.” Along with the lack of staff, poor working conditions, and delayed reconstruction funding; security deterioration and increase in opium production further endangered U.S. reconstruction efforts. GAO noted that in September 2003, the U.S. Government announced the “Accelerating Success” initiative, which provides \$1.76 billion for reconstruction in 2004.

GAO recommended that to improve oversight, USAID “revise its strategy to delineate goals, resource levels, and a schedule of program evaluations.” In addition, GAO suggested the State Department produce an annual consolidated budget

report and semiannual reports on obligations and expenditures.

For the complete report, *Afghanistan Reconstruction: Deteriorating Security and Limited Resources Have Impeded Progress; Improvements in U.S. Strategy Needed* (GAO-04-403), visit <http://www.gao.gov/cgi-bin/getrpt?GAO-04-403>.

¶ 14

EU-U.S. Announce Roadmap For Regulatory Cooperation

The European Commission and the U.S. Government have developed a roadmap for EU-U.S. Regulatory Cooperation and Transparency. Announced at a recent EU-U.S. Summit, the roadmap outlines a broad range of activities intended to reduce costs, expand market opportunities, and help minimize EU-U.S. regulatory differences, according to a European Commission press release.

The roadmap demonstrates the importance of EU-U.S. regulatory cooperation for removing undue barriers to transatlantic trade and investment, and represents a move toward implementation of the EU-U.S. Guidelines on Regulatory Cooperation and Transparency, according to the release. The Guidelines, established in 2002, are an important part of the Transatlantic Economic Partnership and provide a useful policy tool for EU and U.S. regulators. The Guidelines offer political support to the process and help regulators define their own approaches for effective regulatory cooperation, the release said.

The roadmap addresses several on-going regulatory cooperation projects in the areas of pharmaceuticals, auto safety, information and communication technology, cosmetics, consumer product safety, and nutritional labeling. It also addresses new areas of cooperation and sets out a number of horizontal initiatives, such as improving the regulatory environment, exchanging regulatory work plans, promoting exchanges of regulatory experts, and encouraging outreach activities.

In addition, the roadmap looks into a possible expansion of the current Guidelines, including the development of a model confidentiality agreement to support the sharing of confidential information under a range of EU-U.S. regulatory cooperation projects.

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U.S. And Australia Sign Missile Defense Agreement

The United States and Australia have signed a Memorandum of Understanding providing a framework for future Australian participation on cooperative missile defense activities. According to a DOD new release, the agreement will provide a foundation to facilitate opportunities for joint U.S.-Australian missile defense system development, testing, and the potential for future operations; allow information exchange aimed at establishing new joint efforts; and include Australia as a participating country in the U.S. missile defense program.

Moreover, the 25-year agreement will include more specific arrangements along with the potential for industry-to-industry cooperative ventures for technology development. The near-term cooperative efforts will include development and testing of advanced radar technology capable of providing improved early detection of ballistic missiles after launch, and also potential options for providing a missile defense capability for a new Australian destroyer.

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Lockheed Martin And EADS To Explore Partnership On Missile Defense Initiative

Lockheed Martin Corp. and European Aeronautic Defense and Space Co. (EADS) have signed a Memorandum of Understanding (MOU) to explore partnership opportunities on missile defense programs in the U.S., Europe, and elsewhere, according to a Lockheed Martin press release. Announced July 20, the MOU addresses the "potential of joint investments in key technologies that can significantly enhance the effectiveness of current and emerging missile defense programs." The companies will identify areas in which they have compatible capabilities that can be collaboratively applied to benefit current and future customers.

The companies will begin their discussions with missile defense initiatives, including sea-based systems; systems integration; Command and Control, Battle Management and Communications (C2BMC); early warning and sensor networking; interceptor concepts and systems; and targets and countermeasures.

Dave Kier, Lockheed Martin vice president and managing director of missile defense and protection programs noted that "By gaining a better understanding of each company's capabilities, we can collaborate to develop unique solutions and opportunities. Given the inherent capabilities of both companies, when combined to attack specific missile defense problems, I would expect innovative and comprehensive solutions to be developed."

The current MOU builds on the long-term relationship of the two companies, that are also teamed on MEADS International, a tri-national program among Lockheed Martin, EADS/LFK, and MBDA to design and develop a medium-range air and missile defense system to protect deployed U.S. and Allied forces. In addition, within the Deepwater System program to modernize the U.S. Coast Guard assets, EADS has a contract with Lockheed Martin to supply two CN-235 Maritime Patrol Aircraft with an option for six additional aircraft. EADS will also support the Deepwater program through the emergent re-engine work of the Coast Guard's fleet of HH-65 Eurocopter helicopters, the news release stated.

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U.S. Small Business Administration Promotes International Trade; Signs Statement Of Collaboration With Ecuador Foreign Ministry

The U.S. Small Business Administration and the Ministry of Foreign Trade, Industrialization, Fishery, and Competitiveness of the Republic of Ecuador recently signed a Statement of Collaboration for Ecuador to join the Small and Medium Enterprise (SME) Congress of the Americas. "The SME Congress is a hemispheric network of micro, small and medium enterprise providers created to enhance the ability of SMEs to participate and benefit from international trade opportunities and facilitate opportunities for SME trade linkages throughout the Americas," according to an SBA press release. SBA is the lead coordinator for the SME Congress.

Among other things, the statement's purpose is to (1) have the parties engage in dialogue with other organizations in the Western Hemisphere to consolidate, strengthen, and energize the network of SME service providers; (2) further the SME Congress of

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the Americas through their presence and participation in the first SME Congress meeting in Santiago, Chile, scheduled to take place Oct. 5 and 6, 2004; and (3) facilitate the sharing of information and experiences regarding small business development strategies and product and services that each participant provides.

According to SBA, the agency has recently been very active in promoting international trade and the creation and expansion of new markets for U.S. businesses. SBA has signed a similar Statement of Collaboration with Colombia's Ministry of Trade, Industry, and Tourism to incorporate Colombia into the SME Congress of the Americas; and has signed a Memorandum of Understanding with Export-Import Bank on a program to enhance the ability of small businesses to gain access to capital for their export transactions.

SBA is also participating in 2004 U.S.-Mexico Partnership for Prosperity Entrepreneurial Workshop; signing a Letter of Intent with the People's Republic of China to cooperate in facilitating U.S. exports to that country and work to foster contacts between U.S. SMEs and Chinese companies; signing a Letter of Intent with the Israeli SME Authority to initiate institutional cooperation; and is participating in the second Ministerial Conference of the Organization for Economic Cooperation and Development in Turkey.

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EADS And Northrop Grumman Sign Ballistic Missile Defense Programs MOU

The European Aeronautic Defense and Space Co. (EADS) and the Northrop Grumman Corp. announced July 22 plans to collaborate on ballistic-missile defense programs. The companies signed a Memorandum of Understanding, which establishes an "industrial framework to enable and structure formal discussions between the two companies in order to identify and pursue business opportunities in the emerging global ballistic-missile defense market," an EADS press release reported.

According to Donald C. Winter, corporate lead executive for missile defense and sector president, Northrop Grumman Mission Systems, "We expect our relationship to go beyond a single project, to

include multiple projects in the area of sensors, weapons, command and control, battle management and infrastructure support.” An executive steering committee will begin immediately and include individuals from both companies.

According to EADS, the two companies are also involved in existing collaborations in defense and homeland security-related activities. The Eurohawk program, which provides unmanned high altitude capability, is a private-sector initiative of EADS and Northrop Grumman for the German Air Force. In addition, the companies are also leading the Transatlantic Industrial Proposed Solution offer, which will provide the North Atlantic Treaty Organization with an Alliance Ground Surveillance system.

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Developments In Brief...

- (a) **American BDG Awarded Key Israeli Business Contract**—The American Business Development Group of Arlington, Virginia, a consulting and marketing firm, was awarded a competitive contract to represent the Israel Export and International Cooperation Institute (IEI), according to a company press release. IEI is an Israeli quasi public-private organization geared toward increasing export sales and trade growth. The contract will facilitate sales of new Israeli military and homeland defense technologies, and create teaming and manufacturing opportunities in the U.S. for Israeli companies.
- (b) **Czech Republic Awards Raytheon-Lockheed Martin Javelin Contract**—The Raytheon-Lockheed Martin Javelin Joint Venture was awarded a contract to provide the Javelin weapon system to the Czech Republic Army. The Czech Republic is one of nine international customers that have selected Javelin in the past two years, according to a Lockheed Martin press release. Raytheon Co. provides system engineering management and support, and produces the Command Launch Unit, missile guidance electronic unit, and system software. Lockheed Martin provides missile engineering and production support, produces the missile seeker, and performs missile all-up-round assembly. The Czech Republic’s decision to purchase Javelin ensures its military inter-operability with the U.S. Army, Marine Corps, and Special Operations Forces around the world. In addition to the U.S. forces, Australia, Ireland, Jordan, Lithuania, New Zealand, Norway, Taiwan, and the United Kingdom have selected Javelin.
- (c) **China Will Supply Parts, Assemblies for Boeing 7E7 Dreamliner**—The Boeing Co. has signed a Memorandum of Understanding with China Aviation Industry Corp. I (AVIC I) and China Aviation Industry Corp. II (AVIC II) to provide parts and assemblies for Boeing airplanes, including the rudder for the Boeing 7E7 Dreamliner, according to a company press release. Boeing is also developing opportunities with Hafei Aviation Industry Co. Ltd., an AVIC II affiliated company, to produce metallic and composite parts and assemblies for various Boeing jetliners. The total value of China opportunities with Boeing, including the 7E7 rudder and work on other airplanes, could reach several hundred million dollars, the release said. According to the company, Boeing has worked with China’s aviation industry for over 30 years, and to date, it has procured more than \$500 million of aviation hardware from China.
- (d) **Lockheed Martin to Provide Missile Defense Radar for Kingdom of Bahrain**—The U.S. Marine Corps has awarded Lockheed Martin a \$43.6 million contract to provide an AN/TPS-59(V)3 ballistic missile defense system for the Kingdom of Bahrain. According to Lockheed Martin, the company will provide the AN/TPS-59(V)3 radar system, along with associated supplies, equipment, and services to the Kingdom of Bahrain as a foreign military sale. The contract covers costs associated with resuming production of the radar at Lockheed Martin’s facility in Syracuse, N.Y. The AN/TPS-59(V)3 is the only 360-degree coverage mobile radar in the world certified to detect tactical ballistic missiles, the company noted. It can precisely predict missile launch and impact points, and cue defensive weapons against incoming threats. The radar can detect both single and multiple targets, and detect and track small air breathing targets such as aircraft. It is designed to operate with weapons systems such as HAWK and Patriot missile defense systems.

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