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REPORT ON CHINESE MILITARY IDENTIFIES ACQUISITION TARGETS

The Defense Department's latest annual report on China's military power, released March 4, identifies the dual-use and defense items and technology that Beijing is seeking to acquire from the U.S. and other Western countries. It also warns that China's military capabilities are being aided by technology transfer from foreign companies investing in China with new factories or research and development facilities. "China's defense industry has benefitted from integration with China's rapidly expanding civilian economy and science and technology sector, particularly those elements that have access to foreign technology," the report states.

The Pentagon notes that officials from the Federal Bureau of Investigations (FBI) have identified China "as running an aggressive and wide-ranging effort aimed at acquiring advanced technologies from the United States." It says officials from U.S. Immigration and Customs Enforcement (ICE) have referred to China "as the leading espionage threat to the United States." The reports say that between 2000 and May 2006, ICE initiated more than 400 investigations involving the illicit export of U.S. arms and technologies to China.

DoD based some of its findings on China's 11th Five-Year Plan for 2006-2010. From that plan, it says, "China's defense-related industries will continue to reap benefits from: transfers of technology and skills from foreign joint ventures; increased government funding for research, development, and procurement; the manned space flight program, including its vessels and tracking stations; legal and illegal acquisition of foreign military and dual-use technology; increased partnerships with some academic institutions, which improve student recruitment and technical training for existing staff; and overseas training and experience gained by an increasing number of scientists, engineers, and managers returning to China."

COMMERCE ASKS SUPREME COURT TO REVERSE URANIUM RULING

The U.S. Solicitor General, on behalf of Commerce's International Trade Administration (ITA), argued that national security is at stake in a Feb. 15 writ of certiorari to the Supreme Court, asking it to overturn an appellate court ruling that said imports of refined low enriched uranium (LEU) was a service and not subject to the antidumping law. Legal sources believe the appeal is the first time in history the Solicitor General has asked the Supreme Court to review an anti-dumping case. The government and a companion writ filed by U.S. Enrichment Corp. (USEC), the petitioner in the case, also said the Court of Appeals for the Federal Circuit (CAFC) and the Court of International Trade (CIT) had failed to apply appropriately the High Court's doctrine in *Chevron USA*, which says courts should defer to the expertise of regulatory agencies

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unless Congress in legislation has provided clear interpretation of a law. The writs seek to overturn an October 2007 CAFC ruling upholding a CIT decision that said imports of LEU that had undergone enrichment under a separate work unit (SWU) contract represented a service and thus weren't subject to the antidumping law (see **WTTL**, Oct. 1, 2007, page 4). The ruling was CAFC's third decision involving LEU imports by Eurodif and is known as *Eurodif III*.

"The consequences of the decision below go far beyond the substantial adverse effect on the effective administration of the trade laws," the Solicitor General's writ declared. "The decision below, in a truly unprecedented manner for a trade case, threatens to undermine U.S. foreign policy and national security interests in the remarkably sensitive context of nuclear fuel, nonproliferation, and ensuring domestic supplies for nuclear weaponry," it continued.

"Because enriched uranium is essential to nuclear power, the government's ability to regulate its entry into the United States is a matter of great significance. The court's decision in this case puts at risk full implementation of an international nuclear nonproliferation agreement and the continued survival of the only domestic source of nuclear materials for military uses. Those consequences further justify this Court's intervention," the government argued. [**Editor's Note:** Copy of U.S. writ of certiorari will be sent to **WTTL** subscribers on request.]

It also said the ruling might put at risk a Feb. 1 antidumping suspension agreement the U.S. reached with Russia on imports of highly enriched uranium (HEU). "Even if Russia continued full performance under the HEU Agreement, the Agreement might still be threatened by a failure fully to implement the antidumping suspension agreement," the writ declared.

USEC made some of the same arguments as the government. "The federal circuit's interlocutory decisions in *Eurodif I* and *Eurodif II* have now become incorporated in a final judgment," wrote its attorneys at Steptoe & Johnson. "Absent review by this Court, those decisions will become the governing law regarding the dividing line between trade in goods that are subject to the antidumping law and trade in services that are outside the scope of the antidumping law," they said. "This petition presents a classic example of the trouble that a federal appellate court can cause when it fails to follow the basic framework of *Chevron*," the writ argued.

U.S. WINS SMALL VICTORY IN SOFTWOOD LUMBER ARBITRATION

An international arbitration panel March 3 issued a split decision in a dispute between the U.S. and Canada over the interpretation of the Softwood Lumber Agreement (SLA), but unlike Solomon, the panel's ruling didn't try to cut the baby in half. Canada won a bigger victory with the panel's decision that requirements for quota adjustments don't apply to Western Canadian provinces, while the U.S. won a smaller point with the panel's opinion that Canadian provinces that do apply quotas under the accord needed to adjust them as of Jan. 1, 2007 and not July 2007. With the collapse of the U.S. housing market in the last year, sources say Canada has already been shipping less lumber than permitted under its quotas and the adjustment, which has not yet been determined, will have little impact on future lumber imports.

"We appreciate the tribunal's professionalism and diligence in adhering to the expedited timetable established by the SLA for this arbitration, but we respectfully disagree with the key result," said a statement by USTR spokeswoman Gretchen Hamel. "We are pleased that the tribunal agreed with our interpretation that the adjustment factor is not applicable to British Columbia and Alberta," said David Emerson, Canada's minister of international trade.

The U.S. had asked the London Court of International Arbitration (LCIA) to apply the quota adjustment rule under paragraph 14 of the SLA to all Canadian provinces. Ottawa had argued the adjustment rules applied only to Manitoba, Ontario, Quebec, and Saskatchewan, which had opted for Option B under the accord and use of quotas to restrict softwood lumber exports to the U.S., and not to Alberta, British Columbia coast and British Columbia interior, which chose

Option A, using an export tax and cap to restrict exports. “The Tribunal does not see how, as Claimant [U.S.] argues, the use of the term ‘quota’ in international trade, by the U.S. Customs and Border Protection and in the 1996 SLA supports its interpretation regarding the specific use in paragraph 14,” the three-judge LCIA wrote. “Rather, as relevant for the interpretation of the present SLA, the Tribunal acknowledges Respondent’s [Canada] forceful argument that the term ‘quota’ is used no less than 23 times in the SLA and that it is used every time with regard to Option B regions and never regarding Option A regions,” it added. Regarding the timing for the first quota adjustment under the accord, it said the agreement “obligates Canada to make this calculation for all export measures for softwood lumber as of January 1, 2007.”

WAR TALK IN LATIN AMERICA NOT HAVING IMPACT ON COLOMBIA FTA

The threat of war between Colombia and two on Washington’s main Latin American nemeses, Venezuela and Ecuador, doesn’t appear to be changing Democratic opposition to the U.S.-Colombia Free Trade Agreement (FTA), congressional sources say. “I’m not sure the situation in the region is appropriate justification for the FTA,” one source said; noting that the conflict in the area “is a separate thing from the FTA.” Another congressional source said Democrats in Congress “are not really impressed” by the national security argument for the accord.

White House use of the crisis in Latin America to link the FTA with national security and foreign policy comes amidst renewed rumors that it might try to force a vote on the pact by sending the deal up to Congress by April. The apparent goal would be to submit the implementing legislation so lawmakers would have to vote on it under the deadlines set by fast-track rules before they recess in August. If the administration did that, however, one source said, even Democratic supports of the accord would vote against it in solidarity with House Speaker Nancy Pelosi (D-Calif.) and Ways and Means Chairman Charles Rangel (D-N.Y.).

President Bush March 4 said he had talked to Colombian President Uribe. “President Uribe told me that one of the most important ways America can demonstrate its support for Colombia is by moving forward with a free trade agreement that we negotiated,” Bush said in a statement on the South Lawn. “Our country’s message to President Uribe and the people of Colombia is that we stand with our democratic ally. My message to the United States Congress is that this trade agreement is more than a matter of smart economics, it is a matter of national security,” Bush stated. Congressional sources say lawmakers are willing to support Colombia with military aid. They note Congress’ approval of additional funds last year for Plan Colombia, the U.S. aid package that has provided Colombia about \$5 billion in military and police assistance over the last 10 years to fight drug trafficking and terrorist insurgents.

At same time as the administration is pressing for approval of Colombia FTA, Democrats are raising new questions about the dismissal of a popular Colombian judge who apparently had issued rulings against some Colombian soldiers. Rep. George Miller (D-Calif.) wrote to Colombia’s Superior Council of the Judiciary Feb. 29, asking it to explain the dismissal of Judge Jose Nirio Sanchez. In previous correspondence with Uribe, Miller had been told the selection and removal of judges was up to the council and not the executive branch.

LAWMAKERS QUESTION IMPACT OF TANKER DEAL ON WTO AIRBUS CASE

Senators from Kansas and Washington state, who are irate along with many other lawmakers over the Air Force’s decision Feb. 29 to award a \$40 billion aerial refueling tanker contract to Northrup Grumman and Europe’s EADS, one of the parents of Airbus, grilled U.S. Trade Representative (USTR) Susan Schwab March 6 about the impact the pending U.S. complaint against Airbus in the WTO might have on the contract. At a Senate Finance Committee hearing, Sen. Pat Roberts (R-Kans.) questioned what would happen if the U.S. prevails at the WTO and ends up imposing retaliatory tariffs on Airbus exports to the U.S. “It truly makes me question our trade agenda when we brought a massive case before the WTO challenging unfair

subsidies for launch aid provided by the EU government to Airbus, then turn around and bestow one of the largest military contracts we've ever had to the same company using the very aircraft developed with unfair launch aid," Roberts declared. "Let's get this straight, U.S. taxpayers could potentially foot the bill for higher duties imposed on spare parts for the Airbus tanker being finished in the United States. That's quite a Catch-22," Roberts said. "I think this is a ridiculous situation," he declared. "I think the irony is almost laughable, if it weren't true and so serious," he told Schwab.

A WTO panel is expected to distribute in April or May a confidential interim ruling on the U.S. complaint that Airbus is benefitting from illegal subsidies from European governments to support the launching of new aircraft production, Schwab told the committee. An interim ruling on the EU's counterclaims against alleged U.S. subsidies given to Boeing isn't due for several months, she noted.

Roberts, who said Sen. Maria Cantwell (D-Wash.) shares his concerns, asked Schwab what role the USTR had in the Air Force decision. "We had discussions with the Department of Defense at an early stage of procurement, the so-called criteria stage, and we described to them the litigation. Beyond that point we had no interaction at all with the Air Force on their procurement," Schwab replied. "I sincerely hope, and I know that Senator Cantwell does as well, that the tanker decision doesn't make this mountain you're climbing any steeper," Roberts said.

* * * BRIEFS * * *

CHINA: U.S. and EU March 3 requested WTO dispute-settlement consultations with China to challenge Beijing's treatment of foreign financial information providers. New Chinese regulations, from 2006, require foreign financial information suppliers to supply their services through entity designated by China's regulatory authority. "In 1996, China attempted to impose restrictions and requirements on foreign financial information suppliers similar to those currently being imposed," a USTR statement said. "That matter was resolved in 1997 when China agreed to allow foreign financial information suppliers to contract directly with customers in China and to distribute their services directly to these customers. Ten years later, China's regulator has again attempted to impose similar restrictions on foreign suppliers," it noted.

TRADE PEOPLE: Assistant USTR for Europe and the Middle East Shaun Donnelly is joining NAM as senior director for international business policy. He will fill post of Bill Primosch, who is retiring.

IRAQ-AFGHANISTAN: DDTTC March 1 said priority license review treatment will be given only to licenses for "Defense articles and services to forces or organizations deployed in Afghanistan and Iraq; Defense articles and services to forces or organizations within 90 days of a scheduled deployment." Licenses requesting "expedited handling not meeting these criteria will be returned without action for resubmission by the applicant as a routine license," it said.

EX-IM BANK: David Villongco, 51, of San Mateo, Calif., was sentenced in D.C. U.S. District Court Feb. 29 to 33 months in prison for his role in a \$20 million scheme to defraud the Export-Import Bank (see WTTL, Oct. 15, page 3). He was placed on three years of supervised release and ordered to pay restitution of \$14,284,652 to Ex-Im and to complete 100 hours of community service. "The substantial assistance Villongco provided to the government in its investigation and prosecution of others was taken into consideration at sentencing," Justice Department statement said. Villongco pleaded guilty on March 16, 2007, to one count of conspiracy to defraud government.

STEEL THREADED ROD: Vulcan Threaded Products, Inc., Pelham, Ala., March 5 filed antidumping petitions at ITA and ITC against imports of steel threaded rod from China.

CUSTOMS: ICE reported that Armando Salcedo, 45, owner of Friends Global Logistics trucking company, admitted in L.A. U.S. District Court March 3 that he used Customs in-bond transportation system to illegally bring Chinese-made wearing apparel into U.S. without paying required duty in violation of bilateral trade agreements and import quotas. As part of his guilty plea, Salcedo agreed to forfeit nearly \$5 million in personal property and other assets. Indictment of Salcedo charged him with smuggling in approximately 3,200 containers. "Customs documents associated with those containers claimed that the value of goods in those containers was approximately \$267 million, but the government believes that the true value of goods was much higher," ICE said. Customs did intercept and seize clothing worth about \$67 million plus some \$25 million in cash, it reported.