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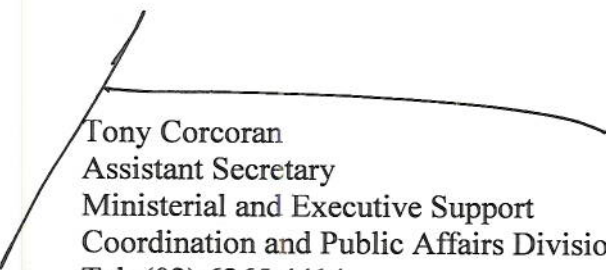
Ms Siobhan Leyne
Committee Secretary
Joint Standing Committee on Treaties
Department of House of Representatives
Parliament House
CANBERRA ACT 2600

Dear Ms Leyne

Please find attached responses to question on notice provided by Senator Birmingham at the hearing of 16 June 2008.

Please do not hesitate to contact me if you would like to discuss further.

Yours sincerely



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JOINT STANDING COMMITTEE ON TREATIES

Questions on Notice

Subject: AS-US Treaty on Defence Trade Cooperation

Senator Birmingham, Hansard, 16 June 2008, p 16

Q1. Implementing arrangements for Defence Trade Cooperation Treaty were agreed to in March this year. For listed projects under the arrangements will Australian defence industry acquire legislative authority to inquire as to the nationality of their employees?

RESPONSE

(a) No.

Q2. Defence industry is currently faced with the requirement to obtain exemptions to State and Territory anti-discrimination laws to allow it to obtain certain information from employees and potential employees and to act upon that information to comply with the requirements of the International Traffic in Arms regulations (ITAR). Will the Treaty and any associated legislation remove the requirement of industry to obtain such exemptions?

RESPONSE

While the Treaty does not govern industry practices that have arisen under existing US export procedures, the regime that it establishes does not require exemption from any anti-discrimination laws for industries operating pursuant to the Treaty.

The individual employee applies for a security clearance not the employer, and, therefore, there is no need for the employer to ask for nationality details, only that the employee have the ability to obtain a RESTRICTED clearance (or higher as required).

Q3. Under the Treaty what obligations will reside with industry (as opposed to government) to inquire about and act upon employees' nationality?

RESPONSE

Industry will continue to be obliged to comply with contractual and licensing obligations for non-Treaty licensed defence imports from the US. This includes the obligations for ensuring that third country and dual nationals do not have access to US defence technology unless they are qualified (that is, by having a RESTRICTED security clearance) or unless such access has been approved by the US State Department either in the licence itself or under a separate written approval.

Under the Defence Trade Cooperation Treaty, all employees with access to licence-free US defence technology will be required to have a minimum RESTRICTED security clearance. In addition to the standard checks conducted as part of a RESTRICTED security clearance, the individual will undergo a check for indicators of 'significant ties'. Where indicators of

significant ties to countries proscribed under ITAR Section 126.1 are revealed, the Australian Government will conduct a dedicated assessment as for a SECRET clearance.

Q4. In practical terms, will there be greater access to ITAR controlled material for dual nationals previously intended to be dealt with by what is known as the "Hillen letter"?

RESPONSE

The test under the Treaty will be one to determine indicators of 'significant ties' to second countries, the practical effect of which can only be determined over time.

Q5. Australian defence industry currently faces burdensome requirements to limit access of certain employees to ITAR controlled material. This includes the heavy onus upon industry to deny access to such material to those termed "dual nationals". Could you explain how the Treaty will change these existing requirements?

RESPONSE

All Australian citizens, including dual nationals, will be able to access defence articles under the Treaty, provided they meet the security clearance requirements.

Different tests apply:

- Under International Traffic in Arms Regulation (ITAR) 124.8(5), access to licensed US defence technology is prohibited to "nationals of a third country" unless access has been granted under the licence or by the prior written approval of the US State Department. The State Department interprets "nationals of a third country" as including "dual nationals".
- Access to US defence technology acquired under the licence-free Treaty regime will be controlled by a requirement that those accessing the technology must have at least a RESTRICTED security clearance. A RESTRICTED security clearance will involve a check of identity, nationality and police record. The employee will undergo additional checks for indicators of "significant ties" to second countries. Where there is evidence of significant ties to a country proscribed under ITAR Section 126.1 (eg China, Vietnam, North Korea and Cuba), the Australian Government will conduct a dedicated assessment as for a SECRET clearance.

Q6. To what extent will this change the existing administrative burden on industry?

RESPONSE

The existing administrative burden on industry will ease because more employees will be granted access via security clearances rather than via individual nationality checks under the Treaty. However, industry will have to introduce new administrative measures to control access to imported US defence articles as companies are likely to have ITAR license processes running in parallel to Treaty processes.

Q7. Under Section 6 of the implementing arrangements there is a subsection dealing with "Access". Could you describe what practical steps will be undertaken by the Australian Government to carry out the scheme described under this subsection?

RESPONSE

This will be addressed by modifying existing vetting procedures to accommodate the 'Access' subsection, as shown below.

- Modify application process:
 - Applicant to state requirement to access material under the Treaty in order to trigger the check for indicators of significant ties.
 - Applicant to provide additional information on overseas travel and affiliations beyond the current requirements.
- Conduct standard RESTRICTED clearance and additional check for indicators of significant ties.
- Where indicators are revealed:
 - Seek additional information as required.
 - Conduct clearance process at the SECRET level.

Q8. What is understood by the term "nationality" within subsection 11(a) of the implementing arrangements? Does this include an inquiry into a person's place of birth, as seems to be the case from guidance provided by the US State Department in a notice in the *Federal Register* of 19 December 2007?

RESPONSE

The test under the Treaty is one as to significant ties. While there are a number of indicators of nationality, and an inquiry as to a person's place of birth may be part of any routine security assessment, national origin is not a factor in determining if significant ties exist under the Treaty.