

# Washington Tariff & Trade Letter®

A Weekly Report for Business Executives on U.S. Trade Policies, Negotiations, Legislation, Export Controls and Trade Laws

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## LACHMAN JUDGE HEARS ARGUMENTS ON POTENTIAL SENTENCES

Boston U.S. District Court Judge Douglas Woodlock Oct. 7 listened to over two and a half hours of debate by government and defense lawyers over the factors that should be considered in the sentencing of Walter Lachman for violating U.S. export controls. He then decided to continue the sentencing hearing until 9:30 A.M. Monday Oct. 10. Lachman was convicted in 1993 on charges of violating the Export Administration (EAA) through the export of a control panel for a hot isostatic press to India without an approved export license. The government claimed the control panel could be used for military use and therefore was considered “specially designed” for military use (see **WTTL**, Oct. 3, page 4).

In addition to Lachman, the sentencing hearing also considered potential penalties for his co-defendants, Maurice Subilia Jr., Fiber Materials, Inc. and Materials International Inc. The Oct. 7 hearing focused only on potential monetary fines; the session on Monday is expected to examine whether any jail time might be appropriate, according to one source.

Most of the hearing looked at factual issues in the case, particularly the value of the control panel that was exported. It also examined such factors as the defendants’ behavior, their age and their health, according to court sources. There was also a review of the sentencing report prepared by the court’s probation office and of Federal Sentencing Guidelines, which are no longer mandatory but are used by judges for guidance. Although the court will be closed for Columbus Day, it will open just for Lachman’s hearing, the court source told **WTTL**.

## INDUSTRY WORRIED ABOUT POTENTIAL CHANGES TO EXON-FLORIO

Foreign diplomats and representatives of U.S. industry are concerned that proposed changes to the Exon-Florio Act, which provides for the review of foreign investments in the U.S. to assure that national security is not harmed by any foreign acquisition of an American company, could hurt foreign investment in the U.S. But congressional sources say industry’s concerns may be overblown because interest in making significant changes in the law has cooled since the failed attempt by China’s China National Offshore Oil Corp. (CNOOC) to acquire Unocal.

In a letter to Senate Banking Committee Chairman Richard Shelby (R-Ala.) and Ranking Member Paul Sarbanes (D-Md.), a group of 11 trade associations warned that changing the Exon-Florio process might make the U.S. appear hostile to foreign investment and would “put at risk U.S. firms who operate in foreign markets.” The letter said proposed amendments to the law “are unnecessary and in some cases would significantly damage national economic interests

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while not improving national security.” Despite the letter, bipartisan concern about Exon-Florio and the operations of the Committee on Foreign Investment in the U.S. (CFIUS), which conducts foreign investment reviews under the statute, was evident at an Oct. 6 Banking Committee hearing. The committee heard from officials from the Government Accountability Office (GAO), which issued a report Sept. 28 calling for changes in the law to give clearer direction to CFIUS on what issues to consider in its reviews (see **WTTL**, Oct. 3, page 4).

For the second time, administration officials begged off appearing at a hearing on CFIUS. Some sources claim they didn’t testified because of a split over what position to take on changing CFIUS or Exon-Florio. The main division reportedly is between Treasury and Defense. Shelby is clearly angry with the administration’s effort to avoid testifying. “I would like to note my concern regarding the difficulties the committee has encountered in arranging for relevant federal agencies to appear to address the GAO report,” he said at the start of the hearing.

Industry’s main concern about legislation is focused on an amendment Sen. James Inhofe (R-Okla.) has proposed to the pending National Defense Authorization Act (S. 1042) and in a stand-alone bill (S. 1797). Inhofe’s proposal would require the president to notify Congress of any approval of a foreign acquisition that is reviewed by CFIUS. It would allow Congress to enact a joint resolution disapproving the acquisition. But one congressional source said industry needs to maintain some perspective on Inhofe’s proposal. “This is the view of one senator. Other senators are not clamoring for changes,” one source said.

Source say for the first time in 40 years Congress may not pass an NDAA bill this year because there are some 150 pending amendments, many of which are very controversial, and the Senate doesn’t have the time to spend dealing with all of them or with a contentious conference with the House on the equally controversial NDAA version it passed earlier this year. Nonetheless, the Inhofe bill or any amendments could be attached to other measures, a source warned.

Shelby reportedly doesn’t support a drastic change in CFIUS, but is interested in seeing more transparency in the process, particularly at the start of reviews; getting required reports from CFIUS; and in giving CFIUS more time to review complex cases. He also may support the idea of “tiering” U.S. companies based on their national security importance. But he questions the constitutionality of the resolution-of-disapproval provisions in the Inhofe amendment.

“Neither the public nor the agencies that comprise CFIUS should be under any misunderstanding about this committee’s position on the current process,” Shelby said. “Evidence and analysis indicate that improvements are needed,” he continued. “The extent to which changes are warranted, however, is unclear,” he said. Shelby said the CFIUS process is too murky. “It is too opaque to allow for the appropriate level of congressional oversight,” he said.

## **U.S., OMAN COMPLETE TALKS ON FREE TRADE AGREEMENT**

The Bush administration’s Middle East trade caravan has stopped in Oman, which has concluded a free trade agreement (FTA) with the U.S., U.S. Trade Representative (USTR) Rob Portman announced Oct. 3. The deal provides for immediate duty-free access upon implementation for all industrial and consumer goods except textiles and apparel, which will be subject to special product-by-product rules for five years. A limited amount of textiles and apparel will be exempt temporarily from the “yarn-forward” rule of origin. About 87% of U.S. farm tariff lines will get duty-free treatment when the accord goes into force with the rest having market access liberalized over 10 years.

The U.S. and Oman have agreed to implement their own labor laws, and each will only have “to strive to ensure that its laws provide for labor standards consistent with International Labor Organization (ILO) recognized labor rights,” according to a USTR fact sheet. “The agreement makes clear that it is inappropriate to weaken or reduce domestic labor protections to encourage trade or investment,” it adds. The accord calls for the two countries to continue cooperating

on further improvements in labor standards. The FTA will provide “substantial” market access for U.S. services companies and assures transparency in the regulatory process. “Oman does not apply the boycott on Israel nor does it have any law establishing the primary, secondary or tertiary boycott on Israel,” the USTR’s office notes. The U.S. exported \$330 million in goods to Oman in 2004 and imported \$420 million. To emphasize the potential benefits of the deal, Portman told a press conference how Jordan’s exports to the U.S. grew after it signed an FTA with the U.S., with its exports going from \$16 million in 1998 to \$1.1 billion in 2004.

### **CRIMINAL COMPLAINT ADDED TO CARRINGTON EXPORT WOES**

John Carrington, the North Carolina state senator who had his export licensing privileges denied for five years as part of a settlement agreement with the Bureau of Industry and Security (BIS), was hit with a criminal complaint Oct. 5 by the Justice Department in the Raleigh, N.C., U.S. District Court (see **WTTL**, Oct. 3, page 1). “The one count criminal information charges Carrington with exporting crime control equipment to the People’s Republic of China in an amount in excess of \$1.2 million without having first obtained the required authorization from the United States Department of Commerce,” Justice announced.

Meanwhile, BIS reposted its agreement with Carrington’s company, Sirchie Finger Printing Labs of Youngsville, Ohio. Under the deal, Sirchie will pay a \$400,000 civil fine and have a five-year denial of export privileges suspended on the condition that it stays in compliance with U.S. export controls. BIS charged Sirchie with the same 181 violations of the Export Administration Regulations that it charged Carrington with for the export of fingerprinting equipment and supplies to Hong Kong through Italy without approved licenses.

### **VOLUNTARY SELF-DISCLOSURES HELP THREE FIRMS CUT PENALTIES**

Three firms collectively saved more than half a million dollars in potential civil fines because they voluntarily self-disclosed export violations to BIS, according to settlement agreements they reached with BIS. Parker-Hannifin of Cleveland, Ohio, a maker of fluid controls and industrial equipment with over \$8.2 billion in annual sales, saved the most. A BIS proposed charging letter cited it for 53 alleged violations related to valve exports to China and Taiwan without approved licenses. The firm could have faced a fine of \$583,000 but paid only \$185,000.

Sermatech International of Pottstown, Pa., disclosed to BIS the transfer of technology to its South Korea joint venture, Sermatech Korea, Ltd., on five occasions after the expiration of a license it had obtained and without obtaining new authorization. Instead of a fine of \$55,000, it paid a penalty of \$17,500.

Norman, Fox & Co. of Los Angeles, voluntarily self-disclosed the export of 12 shipments of a controlled chemical, triethanolamine, to Hong Kong without an approved license. BIS imposed a civil fine of \$42,000 rather than the full potential fine of \$132,000. The company also agreed to conduct an audit of its export management system and provide a copy of its findings to the BIS Office of Export Enforcement.

### **FCPA INDICTMENT CHARGES BRIBERY OF AZERBAIJAN OFFICIALS**

The Justice Department Oct. 6 unsealed a federal indictment in Manhattan U.S. District Court charging three men with violating the Foreign Corrupt Practices Act (FCPA) as part of an alleged scheme to bribe government officials in Azerbaijan to obtain control of the State Oil Company of the Azerbaijan Republic (Socar) when the company was being privatized in the late 1990s. One of those indicted was David Pinkerton, managing director of American International Group’s private equity group. AIG announced that Pinkerton has been placed on administrative leave. The two others named were Viktor Kozeny, a resident of the Bahamas,

whose two companies, Oily Rock, Ltd., and Minaret, Ltd., allegedly participated in the privatization scheme, and Frederick Bourke Jr., an individual investor in the two companies. Three other individuals had previously pled guilty for their part in the alleged actions.

In addition to the FCPA charges, the 27-count indictment includes charges of conspiracy, money laundering, violation of the Travel Act, and making false statements to the FBI. According to Justice, those indicted allegedly paid the Azeri officials and executives of the Azeri State Property Committee in cash, jewelry, travel and medical treatment to obtain vouchers and options that would have allowed Oily Rock and Minaret to gain control of Socar when it was privatized. [**Editor's Note:** A copy of the 64-page indictment and 10-page Justice press released will be provided WTTL subscribers free on request.]

\* \* \* BRIEFS \* \* \*

USTR: As expected, President Bush Oct. 7 nominate Susan Schwab to be deputy USTR (see **WTTL**, Sept. 19, page 4). She is currently president of the University of Maryland Foundations, which manages school's endowment. Previously, she worked for Motorola, served as assistant secretary of Commerce and director general of U.S./Foreign Commercial Service and was trade aid to Sen. John Danforth (R-Mo.).

ITA: David Steele Bohigian, who is director of policy and planning and assistant to Commerce Secretary Carlos Gutierrez, was nominated by President Bush Oct. 7 to be assistant secretary for market access and compliance. Earlier Bohigian was managing director of Idealab, founder and managing director of VenCatalyst and director of Jefferson Partners.

EXPORT ENFORCEMENT: FedEx has reached settlement agreement with BIS to settle five agency charges that it exported goods on behalf of denied parties, aided and abetted export to Syria, and filled false statement with Automated Export System. BIS imposed \$40,000 civil fine on firm.

SOFTWOOD LUMBER: Binational NAFTA Oct. 5 issued fourth remand decision on ITA's CVD ruling on softwood lumber from Canada. It ordered ITA to set log sellers' profit at C\$4.34, not to apportion profit between logs and timber and to recalculate profits in Ontario, Manitoba and Saskatchewan based on revised treatment of sales in Quebec. If ITA follows orders, CVD on lumber might fall below *de minimis*.

DOHA ROUND: Negotiations on farm trade in Geneva made little progress week of Oct. 3, as everyone appears to be waiting for message to come out of mini-ministerial U.S. is hosting in Zurich on Oct. 10.

RED WHEAT: Complying with NAFTA panel ruling, ITC in Oct. 5 remand determination voted 4-1 that U.S. industry is not injured nor threatened with injury by subsidized and dumped imports of hard red spring wheat from Canada. Commissioner Jennifer Hillman wrote dissent. In original ruling, ITC split 2-2, with Commissioner Marsha Miller joining Hillman on affirmative side. Miller has since left ITC.

TEXTILES: U.S. and China will resume talks in Beijing Oct. 12-13 on comprehensive textile safeguard agreement. Meanwhile, CITA Oct. 5 agreed to consider nine requests from U.S. textile industry to renew current safeguard actions that expire Dec. 31, 2005. It also will examine requests for new restrictions on four other textile categories (see **WTTL**, Oct. 3, page 2).

CHINA SAFEGUARD: Ruling on special China safeguard petition, ITC Oct. 3 voted 4-2 that circular welded non-alloy steel pipe from China is being imported at levels that cause or threaten to cause injury to U.S. industry (see **WTTL**, Aug. 8, page 1). It will now turn to what remedy to recommend to President Bush and USTR Rob Portman. Report to president is due by Oct. 21

GSP: USTR Oct. 6 called for comments on need for changes in GSP program. It also set hearing for Nov. 3. It wants advice on whether to change program to help countries that have not been major users of preferences and whether major beneficiaries have become sufficiently competitive to no longer need program.

MEXICO: WTO dispute-settlement panel Oct. 10 ruled that Mexico's taxes on beverages using high-fructose corn syrup and beet sugar imported from U.S. violate WTO rules and nullify U.S. WTO benefits.

SEMICONDUCTORS: In fourth remand ruling, in *Hynix Semiconductor v. U.S.* (now Hynix IV), Court of Appeals for Federal Circuit Oct. 5 mostly sided with ITA in affirming in part, reversing in part and remanding to CIT decision on ITA's administrative review of DRAMS from Korea.