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Editor & Publisher: Samuel M. Gilston • P.O. Box 5325, Rockville, MD 20848-5325 • Phone: 301-570-4544 Fax 301-570-4545

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QUINN SENTENCED TO 39 MONTHS IN PRISON FOR EXPORTS TO IRAN

U.S. District Court Judge John Bates Feb. 23 sentenced Robert Quinn, a former vice president for sales of Clark Material Handling Co. of Lexington, Ky., to 39 months in prison and a \$6,000 fine for exporting forklift truck parts to Iran without approved licenses from Treasury's Office of Foreign Assets Control. A federal jury in December convicted Quinn on one charge of conspiracy and five counts of illegal exports but acquitted his co-defendant Michael Holland.

Quinn was convicted of arranging for the sale of the parts to Sepahan Lifter, a forklift truck manufacturer in Eshfahan, Iran. To make the exports, he arranged for the parts to be shipped to Sharp Line Trading in Dubai, United Arab Emirates. Sharp Line then reexported them to Iran. Sharp Line's president, Khalid Mahmood, had previously pleaded guilty to related charges and testified against Quinn at Quinn's trial (see **WTTL**, Dec. 12, page 3).

Quinn's attorney, Aitan Goelman of Zuckerman Spaeder, told **WTTL** that his client will appeal the conviction and sentencing. He also said he has filed a motion with Bates to allow Quinn to stay free on bond pending the outcome of his appeal. Before ruling on that motion, Bates said Quinn will be allowed to surrender voluntarily for prison when given notice by the Bureau of Prisons. The ruling on bond, however, is likely to come before then. Bates also said he would sentence Quinn to serve his time in a minimum-security prison near Lexington.

USTR PROMISES STEPPED UP ENFORCEMENT OF U.S. TRADE RIGHTS

The U.S. plans to increase the number of cases it will take to the World Trade Organization (WTO) this year for dispute settlement, says James Mendenhall, the U.S. Trade Representative's (USTR) general counsel. The expected targets will include China and countries that impose barriers to U.S. farm products through phyto-sanitary measures that the U.S. considers in violation of WTO rules, he said Feb. 23. The U.S. also will continue to take countries to the WTO for the unfair imposition of anti-dumping measures on American products, he noted.

"I can predict a significant uptick in the number of cases we will bring, including against China," Mendenhall told the Customs and International Trade Bar Association. At the same time, he said "we have to get away from the knee-jerk reaction that any and all problems can be resolved by resort to dispute settlement." Mendenhall echoed comments USTR Rob Portman made when he unveiled the results of the "top-to-bottom" review of U.S. relations with China and noted that the U.S.-China relationship was entering a third-stage in which Beijing will be expected to comply with its WTO commitments (see **WTTL**, Feb. 20, page 3). "They've had

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enough time to get their house in order,” Mendenhall said. The U.S will not shy away from bringing cases against China, but it will not bring cases just for the sake of bringing cases, he said. The main U.S. concern about China is its lack of adequate enforcement of intellectual property rights and its tax on auto parts imports.

To set its enforcement priorities, the USTR staff has conducted a comprehensive review of potential disputes, Mendenhall reported. The USTR intends to increase its legal staff and create specialized teams to address specific areas. It already has established a post of chief agriculture counsel and will name a chief China enforcement counsel. It also plans to collect more data on Chinese practices.

“FEAR” OF CHINESE EXPORTS INHIBITING DOHA ROUND, MANDELSON SAYS

European Union Trade Commissioner Peter Mandelson Feb. 22 conceded what many countries have said privately: some WTO members aren’t making offers to cut industrial tariffs in the Doha Round because they are afraid that opening their markets will result in a flood of cheap Chinese imports (see **WTTL**, Dec. 19, page 2). Mandelson said he and USTR Rob Portman discussed China’s impact on the negotiations during his Feb. 21-22 visit to Washington.

“The fear of China’s export growth is making some in the talks inhibited, more reserved in opening their markets and their economies than they might otherwise because they are anxious about China’s rapid export growth,” he said after talks with Portman. He said they agreed that “for China to reduce this fear, to understand the anxieties about its export growth, it needs open up its own market more. It needs to create more access. It needs to give others in the international trading system greater opportunities to find outlets for their own exports.”

PORT RUCKUS EXPECTED TO PROMPT CHANGES IN EXON-FLORIO ACT

Congressional sources say the strong reaction to the approved takeover of six U.S. ports by Dubai Port World will lead to legislation this year with the only question being whether the measure would be directed solely at the DPW purchase or also would amend the Exon-Florio Act and the rules governing the Committee on Foreign Investment in the U.S. (CFIUS). The trade community also is concerned the dispute might trigger legislation to mandate more inspections of incoming cargo or other border security measures that would slow down trade.

Senate Banking Committee Chairman Richard Shelby (R-Ala.), who successfully resisted efforts to amend Exon-Florio last year, reportedly is drafting his own bill to add more congressional oversight into the CFIUS process and to restrict foreign investments in the U.S. by foreign government-owned entities. The measure, however, would stop short of giving Congress the power to overrule a CFIUS decision. Shelby has scheduled a hearing for March 2 to get administration officials to testify on the DPW decision (see **WTTL**, Feb. 20, page 3).

The bipartisan “conflagration” – as one Senate source called it – over CFIUS’ approval of the DPW acquisition of Britain’s P&O Navigation, the current manager of the ports, came as a surprise to some in the trade community because the purchase had been reported in the business press months before lawmakers started to raise objections. DPW announced the deal on Nov. 29, 2005. One source said the congressional reaction may have been fueled by a lobbyist for the Port of Miami who opposes the sale. Miami is one of the ports being taken over.

DPW’s announcement Feb. 23 that it would voluntarily delay the deal may slow the rush to legislation and give the Bush administration time to brief Congress on the safeguards that have been attached to the CFIUS approval and to counter public reaction to the sale. A federal judge was asked to order a full 45-day review of the sale Feb. 24. After the review, CFIUS might place additional conditions on DPW to respond to congressional objections. Several

administration officials testified Feb. 23 before the Senate Armed Services Committee. While committee members criticized CFIUS for not conducting a full 45-day review of the DPW acquisition, some congressional sources concede CFIUS might have been justified in not extending the review – as the administration claims – if no national security issues were raised.

The National Foreign Trade Council (NFTC) said “it was disappointed by the call of some in Congress for legislation to prohibit foreign companies from owning port management operations.” It noted that many U.S. ports already are managed by foreign companies, including 90% of those on the West Coast. “It’s time for cooler heads to prevail,” said NFTC President Bill Reinsch.

EU MIGHT REDUCE FSC/ETI RETALIATION IF IT COULD GET NUMBERS

EU Trade Commission Peter Mandelson Feb. 22 said the EU might reduce its renewed sanctions against the U.S. Foreign Sales Corporation/Extraterritorial Income Tax (FSC/ETI) if it see some dollar figures on the value of remaining benefits, but so far the U.S. hasn’t been able to give him those numbers (see **WTTL**, Feb. 20, page 2). “I’ve asked the USTR. They don’t know. I’ve asked the Treasury. They don’t know. I’ve asked Ways and Means and they can’t tell me,” Mandelson said. “Nobody seems to be able to say the economic value of these sales and leasing contracts. Either they don’t know or they’re not saying,” he added.

After a WTO panel said the transition and grandfathering provisions in the revised tax law still violate the WTO subsidies agreement, the EU said it would resume the retaliation that it suspended after the law was amended. Members of Congress complained that the EU retaliation was based on the original \$4 billion value of the FSC/ETI subsidies and not the amended law. EU sources say the new retaliation has already been recalculated to account for phased out benefits but not the grandfathering provisions covering leases.

“We have two and a half months to find an amicable solution to this” before the sanctions are renewed, Mandelson said. But the level of sanctions was in the legislation the EU adopted when retaliation was first imposed. Mandelson said he would have to go back to EU members and persuade them to amend the law. “What grounds do I have to do that?” he asked.

SENIOR TRADE OFFICIALS PREPARING DOHA PROPOSALS FOR MINISTERS

One main problem with the WTO Doha Round is water. Water is the popular word trade negotiators use to describe the difference between the “bound” commitments countries have made in market access and agriculture and their “applied” practices, which reflect what they are actually doing. Because negotiations are based on bound commitments, negotiators complain that cuts being offered won’t eliminate that water and will leave bound commitments still above existing levels. In many countries, they say, the applied tariff rate is much lower than the bound rate, while the U.S., EU and Japan don’t spend all the money they are allowed to on farm subsidies.

Getting rid of the water and offering cuts that will reduce applied rates, is the toughest task facing a small group of trade ministers who will meet in London March 10. From the sound of current discussions, it doesn’t look like they will.

Senior trade negotiators are working on proposals that ministers from the U.S., EU, Brazil, India, Australia and Japan can use when they meet to make new offers on the “modalities” for agriculture and non-agriculture market access (NAMA). These officials will be meeting again in Paris the week of Feb. 27. Meanwhile in Washington Feb. 22, EU Trade Commissioner Peter Mandelson gave cryptic responses to reporters’ questions about EU willingness to make new offers on agriculture. “If we have serious offers in industrial tariffs, in services, if we really see a commitment by others including the emerging economies in this round, and we have to see more evidence of that than we’ve seen to date, in those circumstances and only if, then both

of us in my opinion, the European Union and the United States, will be in a position to look again at our offers in agriculture,” he said. “I wouldn't look to any meeting in March in particular for what I have described as a process, not an event,” he added.

Brazil's ambassador to the WTO, Clodoaldo Huguency, told a conference in Washington Feb. 23 that Brazil cannot accept the deep cuts that developing countries are being asked to make in industrial tariffs under the “two-coefficient Swiss Formula” being discussed. “That proposal is impossible,” he said.

While the formula would hardly affect the low tariffs in the U.S. and EU, it would force Brazil to reduce its average bound tariff from 30% to 15%, he noted. “The amount of sacrifice that is being requested in NAMA [for Brazil] is twice or three times the amount of sacrifice you are requesting from developed countries,” he said. The deeper cuts have been called for to reach the applied rates. “Don't come with applied rates, because if we are going to go to applied rates, let's eliminate all the water in domestic support in agriculture and then we will discuss applied against applied,” he declared.

NEW OFFER FROM CHINA ON IPR MAY COME AT JCCT MEETING

American and Chinese officials are discussing the possibility of China making a new commitment to the enforcement of intellectual property rights (IPR) as part of the agreements that will be announced at the next meeting of the U.S.-China Joint Commission on Commerce and Trade (JCCT) in April. A team of USTR trade officials are headed to Beijing for talks March 1 with their Chinese counterparts on China's IPR enforcement and the JCCT agenda (see **WTTL**, Feb. 20, page 3). The U.S. officials expect to review data the Chinese have collected on their IPR enforcement, information the U.S. requested under Article 63 of the WTO Agreement on Trade-Related Intellectual Property Rights (TRIPS). The talks also will cover China's tax on imported auto parts, a topic U.S. officials say could become the target of a WTO complaint.

*** * * BRIEFS * * ***

SYRIA: BIS in Feb. 24 Federal Register amended EAR to clarify that General Order issued in May 2004 to implement Syria Accountability and Lebanese Sovereignty Act superseded other EAR provisions on Syria.

CAFTA-DR: USTR Rob Portman Feb. 24 said he has asked President Bush to declare El Salvador in compliance with terms of CAFTA-DR as of March 1.

COLOMBIA: USTR officials expected to complete FTA talks with Colombia Feb. 17 while President Uribe was in Washington, but USTR Rob Portman Feb. 22 said, “I believe we are very close to finalizing an agreement.” Some issues remain. “We are hopeful that we can finalize the agreement and then move Peru and Colombia, and Ecuador even, together” through congressional approval process, Portman said.

JAPANESE WHALING: Human Society Feb. 21 wrote to Commerce Secretary Carlos Gutierrez asking him to certify that Japanese whaling is “deminishing” effectiveness of international program to protect whales and to recommend imposition of sanctions on Japan under Pelly Amendment.

LIBERIA: President Bush Feb. 22 renewed GSP for Liberia. Benefits will come in two stages after Congress is notified. In end, just one quarter of Liberia's non-rubber exports will get duty-free treatment.

TREASURY: Treasury Secretary John Snow Feb. 17 named OFAC Director Robert Werner to be director of Financial Crimes Enforcement Network (FinCen). Barbara Hammerle will become acting OFAC chief.

STEEL: In “sunset” review determination Feb. 23, ITC voted 5-1 that revoking CVD and antidumping orders on structural steel beams from Japan and Korea will not cause recurrence of injury to U.S. industry.

OFAC: Coca-Cola of Atlanta has agreed to pay \$136,500 civil fine to settle OFAC charges that it exported financial and marketing services to its Sudan bottler without OFAC approval. Coke self-disclosed actions.

AIRBUS: After discussions with USTR Rob Portman Feb. 22 on Boeing-Airbus dispute, EU Trade Commissioner Peter Mandelson said, “We do not yet have a basis for negotiations.”