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TWO SENTENCED TO JAIL FOR ATTEMPTED MUNITIONS EXPORTS TO CHINA

Federal undercover investigations continue to sweep up more attempted exports of aircraft and missile parts in violation of the Arms Export Control Act (AECA). In the latest case, Los Angeles U.S. District Court Judge A. Howard Matz Sept. 9 sentenced Gabriela De Brea of Alta Loma, Calif., to one year in prison for her part in a scheme to export parts for F-4 Phantom jets, Hawk missiles and Sidewinder missiles to China. Her partner, Ahmad Nahardani, was sentenced to 21 months in jail in August. They had both pled guilty in September 2003 to two counts of violating the AECA.

> The case against them and their company, Mexpar International of Azusa, Calif., resulted from a five-year undercover operation staged by the Immigration and Customs Enforcement Bureau (ICE), the Naval Criminal Investigative Service and the Defense Criminal Investigative Service. During that time, the defendants sold the parts to government agents on eight occasions, according to the Los Angeles U.S. Attorney. Customs seized all the parts before they were exported.

Mexpar, which had advertised itself as "Experts in Exports", was fined $75,000 in July for its part in the scheme, which lasted from 1998 to 2001. De Brea, Nahardani and Mexpar agreed to be placed on administrative debarment by State and to refrain from participating in any U.S. government contracts. "This case should be a wake-up call for anyone engaged in illegally exporting these types of items that they will pay a significant price for putting our nation at risk," said Loraine Brown, the ICE special agent-in-charge in L.A.

ITC COMPLIES WITH PANEL ORDER TO REVERSE THREAT RULING ON LUMBER

The International Trade Commission (ITC) Sept. 10 reluctantly and bitterly complied with a NAFTA binational panel ruling which required it to reverse its threat-of-injury ruling in the softwood lumber from Canada cases. Reaffirming its belief that there was evidence to support its injury determination, the commission said it continues to view the panel's decisions "throughout this proceeding as overstepping its authority, violating the NAFTA, seriously departing from fundamental rules of procedure, and committing legal error."

The ITC appeared to have no choice but to comply with the panel's ruling (see **WTTL**, Sept. 6, page 1). Not to have reversed its determination would have led to a "constitutional crisis" over the enforcement of NAFTA, one trade lawyer said. The decision now sets the stage, following the panel's affirmation of the new decision, for the U.S. to appeal the panel's order to an Extraordinary Challenge Commission (ECC). Voting 5 to 1, with Commission Chairman

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Stephen Koplan dissenting, the ITC said it was issuing its new opinion because it "respects and is bound by the NAFTA dispute-settlement process." Nonetheless, in a statement expressing its "views" on the new determination, the commission explained how it repeatedly accepted the authority of the panel to question its conclusions and how it repeatedly attempt to explain its original decision. Then it launched a broadside on how the panel has violated NAFTA and U.S. legal precedents.

> "By failing to apply the correct standard of review and by substituting its own judgment for that of the Commission, the Panel has violated U.S. law and exceeded its authority as established by NAFTA," the ITC declared.

The commission also objected to the panel's directive to reverse its threat determination. "While specific remand instructions may be appropriate, depending on the facts and issues involved, instructions directing the outcome have been held by the Federal Circuit, most recently in *Nippon Steel*, to exceed even the CIT's authority, despite the CIT's authority, in 'rare circumstances,' to reverse, an authority the Panel has not been provided," the ITC stated.

PARALLEL LEGAL FIGHTS CONTINUE OVER SOFTWOOD LUMBER

As the ITC was reversing its threat-of-injury determination in the softwood lumber from Canada cases in response to an order from a NAFTA binational panel (see story page 1), the technical fight has intensified over the International Trade Administration's (ITA) subsidy finding in the countervailing duty (CVD) leg of the dispute. The NAFTA panel is due to receive additional briefs Sept. 13 contesting the CVD rate ITA found in its last remand determination. The ITA in July set the rate at 7.82%, but Canadian respondents continue to argue it should be zero.

> At the same time, ITA's preliminary decision in the first administrative review of the initial CVD order has produced a legal fight over its use of stumpage prices in the Canadian Maritime Provinces, New Brunswick and Nova Scotia, as the new benchmark for determining the level of subsidy. It set that rate at 9.24%. "We preliminarily determine that the Maritimes' private prices are market-determined prices in Canada, and are therefore usable under the first tier of our adequate remuneration hierarchy," ITA said in its June 2 finding.

This decision drew objections from the Coalition for Fair Lumber Imports and a request for the agency to reopen the record to allow the filing of data to oppose use of the Maritime prices. ITA agreed to reopen the record and hundreds of pages of additional information were submitted Aug. 31. In its filings, the Coalition contends Maritime prices are distorted by stumpage programs in other provinces and should be rejected just as private sale prices in Ontario and Quebec were rejected. Canadian respondents argue that the use of Maritime prices represents the same cross-border price comparisons that a WTO panel found illegal under WTO rules.

USTR ZOELLICK REJECTS CHINA CURRENCY PETITION

With the Olympics completed just a few weeks ago, U.S. Trade Representative (USTR) Robert Zoellick Sept. 9 established a new indoor world record for rejecting a Section 301 petition, refusing a request from the China Currency Coalition to investigate China's alleged manipulation of the remimbi in under four hours. Coalition attorneys expected the quick rejection, but they say they hope the filing of the petition two months before the election will put pressure on the Bush administration to push Beijing to revalue its currency.

In particular, they are waiting for the result of talks Treasury officials will hold with Chinese finance ministry officials during the annual International Monetary Fund meeting in Washington Oct. 2-3. Chinese officials have been making statements for several months suggesting that Beijing is getting ready to revalue the remimbi. After the petition was rejected, Treasury spokesperson Rob Nichols, issued a statement explaining the efforts the department has made to

get the Chinese to change their exchange-rate policy. "The Bush administration has had an unprecedented level of engagement with the Chinese in urging them to move more rapidly to a flexible, market-based exchange rate," he said.

> But Coalition advisors say the administration is seeking the wrong solution by advocating a floating exchange rate for the remimbi. They say such an approach will result in what they call a "dirty float", an exchange rate that is ostensibly free to float but in actuality will be manipulated by Beijing the same way Japan intervenes in exchange rate markets to keep the yen's value down. They would prefer a stepped, predictable revaluation to a fair value for the remimbi.

In addition, the Coalition warns that a floating rate could lead to a hard landing for the remimbi, if it actually were allowed to float. They site the fears of Asian finance officials that a sharp drop in the remimbi would reprise the 1997 Asian financial crisis. At a Sept. 2-3 meeting of the Asia-Pacific Economic Cooperation (APEC) forum, finance ministers didn't call for floating exchange rates in the region. Instead, they said they welcomed moves to "facilitate freer and more stable capital flows and the choice to move to an exchange rate regime with greater flexibility, in some economies, if they deem appropriate."

Zoellick in the past has said he was uncertain about bringing a case to the WTO because he was not sure the U.S. would win. Nothing in WTO rules expressly forbids use of fixed exchange rates, and Article 15 of the General Agreement on Tariffs & Trade (GATT) gives the International Monetary Fund (IMF) the lead in exchange rate issues except where rates are used to frustrate concessions provided under trade agreements. U.S. officials have been concerned that any attempt to test these provisions could lead to a disruptive legal battle at the WTO.

According to IMF data in the Coalition's petition, only 40 countries have independently floating currencies. The rest, including most WTO members, have various forms of managed exchange rates. These systems range from the full use of other currencies, such as the dollar or euro, to fixed pegs against other currencies or baskets of currencies or the use of currency bands and currency boards to set exchange rates. Coalition advisors say their petition doesn't challenge the use of a pegged currency, but rather the economic and political factors used to set the peg. In China's case, they claim, the purpose is to subsidize exports and limit import in circumvention of the commitments Beijing made when it joined the WTO.

Although the business community has divided views on the 301 petition, the Coalition claims the support of numerous trade associations and unions. The petition asked the USTR to conduct an investigation to confirm that China is intentionally undervaluing its currency and imposing an unjustified burden on U.S. companies. Such a finding could lead to the filing of an unfair trade case against China at the WTO. "In April, the administration made it clear that accepting such a petition would be a retreat into economic isolationism," said USTR spokesman Richard Mills. "That is path we would not take then, and it is a path we will not take today."

CHINA EXPECTED TO CHALLENGE ANY TEXTILE SAFEGUARDS AT WTO

If the U.S. takes unilateral action to invoke safeguard restrictions against Chinese textile and apparel imports, Beijing is likely to file a WTO complaint claiming Washington has violated the terms of China's WTO accession agreement. While Chinese officials have stopped short of announcing that decision, they have made it clear that they disagree with the U.S. interpretation of the textile safeguard provisions in the accord and that China has the legal right to challenge any safeguard measures at the WTO (see **WTTL**, Sept. 6, page 3).

China has the right to appeal a safeguard action to the WTO, Liu Hai Yan, first secretary at the Chinese embassy in Washington told the Washington International Trade Association. "I cannot say whether we will, but we have the right," he said. Liu said Commerce regulations implementing the textile safeguard agreement fail to include a definition of market disruption, which is what U.S. textile firms claim Chinese imports will cause when the global Multifiber

Arrangement (MFA) ends Dec. 31, 2004. He warned that the imposition of new safeguard measures "will open a flood gate for more bilateral trade disputes." Liu also claimed that the fast rate of growth of Chinese apparel exports will not continue. He said China's cost advantage is eroding because labor costs are rising. Economic structural changes are also cooling down the sector, as well as government restraints on loans to the industry and lower VAT rebates. "China is not encouraging excessive investment in the sector," he said.

> Liu also dampened Bush administration hopes that China would agree to a broad deal to restrict the growth of textile exports as part of settlement of the safeguard cases. "China will not accept any kind of voluntary export restrictions," he said.

TWO WINS AT WTO GIVE BRAZIL STRONG HAND IN DOHA TALKS

As the WTO Doha Round talks enter their last two years, Brazil is going into the negotiations with strong leverage provided by two WTO rulings against U.S. and European Union (EU) subsidies for cotton and sugar, respectively. Brazil, masterfully represented in the Doha Round talks by its trade minister, Celso Amorim, has already succeeded in thwarting U.S. and EU ambitions in the round through its creation and leadership of a group of countries known as the G-20 who are demanding steep cuts in U.S. and EU farm subsidies.

> USTR Robert Zoellick was quick to announce his intention to appeal the Sept. 8 final dispute-settlement panel ruling, which declared that U.S. export subsidies for cotton violated WTO rules. Washington is taking a two-track approach to defending its aid for cotton producers, appealing the panel ruling to the WTO Appellate Body and seeking new rules in the Doha Round talks to allow it to shift its cotton program into a new permitted Blue Box (see **WTTL**, Aug. 2, page 1).

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TRADE FIGURES: U.S. goods exports in July of $67.5 billion were up 12.3% over July 2003. Services exports of $28.4 billion were 11.2% ahead of last year. Merchandise imports, however, surged 16.4% to $122 billion, and services imports gained 11% to $24 billion. While imports from China for first seven months of 2004 were up 29% from same period last year to $103.4 billion, imports from entire Pacific Rim increased just 16.5%, reflecting shifting of production from other Asian countries to China.

EU: New head of EU delegation to Washington will be former Irish Prime Minister John Bruton. He will succeed current delegation chief Gunter Burghardt in November.

CIT ON STAINLESS: Fractions matter and are likely to lead to the reversal of ITA's CVD ruling on stainless steel wire rod from Italy. CIT Judge Delissa Ridgway Sept. 8 (Slip Op. 04-114) issued remand ordering ITA to reverse its finding of subsidies in rents charged for province-own facilities and EU-wide worker programs. ITA had calculated 1.28% CVD rate, just above de minimis level.

POLYVINYL ALCOHOL: Celanese Chemicals Sept. 7 filed antidumping complaints at ITA and ITC against imports of polyvinyl alcohol from Taiwan.

GSP: In proclamation signed Sept. 7, President Bush designated Iraq as eligible for benefits of Generalized System of Preferences (GSP). Proclamation also implements changes in textile rules for AGOA countries in Africa and NAFTA tariff rules for computers. Separately, USTR's office published notice in Sept. 10 Federal Register seeking public comment on whether to give Serbia and Montenegro GSP benefits.

URUGUAY: U.S. and Uruguay Sept. 7 announced conclusion of talks on Bilateral Investment Treaty (BIT).

BAHRAIN: U.S. and Bahrain scheduled to sign free trade agreement Sept. 14.

DEEMED EXPORTS: ***Washington Tariff & Trade Letter*** and ***The Export Practitioner*** will cosponsor audio-conference Oct. 19 on "Deemed Exports and the Employment of Foreign Nationals – A Practical Approach to Coping with U.S. Requirements." Featured speakers will be Richard Pettler and Steven Brotherton, attorneys with Fragomen, Del Rey, Bernsen and Loewy in San Francisco, and Michelle Oakes, senior corporate counsel at Marvell Semiconductors. For details, call Elayne Gilston at 202-463-1250, Ext. 2.