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

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COURT FINES FORD \$20 MILLION FOR CUSTOMS VIOLATIONS

In two parallel rulings (Slip Op. 05-86, 05-87), Court of International Trade Judge Nicholas Tsoucalas July 21 imposed more than \$20 million in civil fines, custom duties and unspecified interest on Ford Motor Company for making false statements on entry documents for imports of vehicles, vehicle parts and manufacturing dies between 1987 and 1992. The cases against Ford stemmed from a Customs enforcement effort called Operation Hat Trick, which was initiated by Michael Turner, who was then a supervisory special agent in Customs' Detroit office and is now director of the Bureau of Industry and Security (BIS) Office of Export Enforcement.

Customs had charged Ford with understating the price of the imported items, failing to state that prices were not final and subject to adjustment, and not reporting the value of assists that Ford provided in the production of the imports. Customs claimed the company's actions on vehicle and vehicle parts imports deprived the U.S. of \$8,644,139 in duties, of which \$68,178 remains unpaid.

The testimony of Turner and a colleague from the Detroit office, Robert Neckel, was crucial to the government's victory in the case. "The court finds the testimony of Messieurs Turner and Neckel highly probative and credible based on their demeanor and ability to independently recollect Customs' investigation of Ford," Tsoucalas wrote. "Operation Hat Trick was initiated by Mr. Turner based on his personal observations and information obtained from import specialists indicating that Ford and other car manufacturers were not declaring the full value, or price paid or to be paid, for merchandise entered into the United States," the judge noted.

The fines against Ford could have been much higher. In one case, the government charged Ford with being grossly negligent in its filing of entry documentation on vehicles and parts and called for a civil fine of \$34.5 million. Tsoucalas ruled the company merely negligent and fined it two times the lost duties or \$17,151,923.60 plus interest. He denied Customs' request for payment of unpaid duties. In the case involving die imports, Customs claimed Ford's actions were fraudulent and warranted a \$21 million fine and payment of \$184,495 in duties. The judge found Ford to be grossly negligent, fined it \$3 million plus duties and interest.

DR-CAFTA SUPPORTERS GROWING OPTIMISTIC AS VOTE NEARS

It may win by one or two votes, but legislation to implement the U.S.-Dominican Republic-Central American Free Trade Agreement (DR-CAFTA) is likely to get approval when the House votes on the measure, the deal's supporters assert. "They have the votes," one supporter declared. But as of press time, neither supporters or opponents were certain where those votes

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were. The two main factors that will determine DR-CAFTA's fate will be the ability of House leaders and the White House to impose discipline on Republican members to vote yes and the uncounted and unannounced special deals that will be made to win wavering lawmakers.

The legislation appears to have six Democratic supporters locked in with 12 to 15 still struggling with how to vote, one source suggested. "I think it will pass," Rep. William Jefferson (D-La.), one of the handful of Democrats already supporting the bill, told reporters July 19. He said it won't get the 21 Democratic votes that helped pass fast-track legislation in 2001, but "it may very well challenge it." Best guess now for Democratic support is 12-15 votes.

Republican Majority Whip Roy Blunt (R-Mo.) July 22 announced the House schedule for the week of July 25. On Tuesday, July 26, it will take up Rep. Phil English's (R-Pa.) China bill (H.R. 3283) under a suspension-of-the-rules procedure that will require a two-thirds majority to pass. On Wednesday, July 27 or Thursday July 28 it is scheduled to vote on DR-CAFTA (H.R. 3045). Earlier in the day before Blunt's notice there was speculation, mostly among opponents of the legislation, that the vote might be put off until September if enough votes couldn't be found to pass it. Veterans of past trade legislation argued strongly against that idea, saying it would only give opponents six more weeks to lobby lawmakers in their home districts.

CHINA'S REVALUATION OF YUAN COOLS CONGRESSIONAL PRESSURE

China's revaluation of the yuan July 21, while small, has defused pressure in Congress for trade sanctions against Chinese imports and raised hopes that further revaluations will come in the future. The yuan was revalued 2.1% to 8.11 yuan to the dollar from 8.27. Beijing also dropped the currency's peg to the dollar and pegged it to a basket of currencies. The move has bolstered the Bush administration's contentions that it is better to use diplomacy and negotiations to get China to change its policies than statutory retaliation. Because Beijing will allow the yuan's value to fluctuate as much as 0.3% a day against the basket of currencies, there is widespread expectation that its value will continue to increase incrementally in the years ahead.

While the revaluation has put off legislation to imposed a 27.5% tariff on Chinese imports in retaliation for Beijing's alleged manipulation of yuan, the House is expected to go ahead the week of July 25 with a broader China bill (H.R. 3283) that would monitor the Chinese currency as well as make Chinese goods subject to action under countervailing duty law (see **WTTL**, July 18, page 2).

COURT AGREES TO REVIEW PRESIDENTIAL ACTION ON CHINA SAFEGUARD

In a rare decision to hold an en banc hearing, the Court of Appeals for the Federal Circuit (CAFC) July 15 said it will review whether the president and the U.S. Trade Representative (USTR) can be sued over a decision to reject special safeguard relief from Chinese imports under Section 421 of the law granting China permanent normal trade relations status. The case is based on a suit by Motion Systems Corporation, which sued President Bush and USTR Robert Zoellick after Bush denied the company's request for safeguard relief from imports of pedestal actuators from China even though the International Trade Commission (ITC) had found injury and recommended the imposition of quotas (see **WTTL**, Jan. 17, 2003, page 4).

A divided ITC supported the company's petition for relief, which was the first one brought under the provisions of the China PNTR legislation. Court of International Trade (CIT) Judge Timothy Stanceu denied the company's complaint against the president and Zoellick in a June 2004 ruling (Slip Op. 04-58).

The full 12-member CAFC will hear oral arguments Oct. 6. That hearing and briefs will address four specific issues: (1) whether the president is an "officer" under 28 U.S. Code 1581 (i), which establishes the CIT's jurisdiction, and whether his actions under 19 USC 2451, the

China safeguard law, are subject to judicial review, (2) is there a constitutional barrier that would preclude the CIT from imposing an injunction on the president, (3) should the CAFC ruling in *Corus Group v. ITC* be overruled en banc as far as it does not authorize relief against the president under 1581(i), and (4) is relief against the USTR available under 1581(i) or 2451.

RENEWED TALKS ON SOFTWOOD LUMBER MAKE NO PROGRESS

U.S. official brought a new proposal to the negotiating table during resumed July 18-19 talks with their Canadian counterparts to settle the long-running dispute over trade actions against imports of softwood lumber from Canada. In addition to an export tax on Canadian lumber, the U.S. now wants to add a volume restriction as part of an offer to drop the antidumping and countervailing duty (CVD) cases against Canadian lumber. The new proposal has drawn a negative reaction from Canadian lumber producers, who contend it came from the domestic U.S. industry. U.S. and Canadian officials plan to meet again at the end of August, but sources say it will take months of further negotiations before any deal is possible.

The reopening of the long-dormant talks came as two major developments have changed the dynamics of the bilateral dispute. One was the July 18 announcement by International Paper (IP), one of the largest U.S. producers of softwood lumber, that it was restructuring the company and planning to sell off its lumber business and timber properties. The other is the growing concern about the destruction the pine beetle is causing to softwood timber in British Columbia.

IP is one of the primary financial backers of the U.S. Coalition for Fair Lumber Imports, the group that represents domestic lumber producers, and its exit from the lumber business could significantly reduce the Coalition's ability to continue pursuing complaints against Canadian imports, one source suggested. The pine beetle problem in BC is forcing the provincial industry to accelerate timber harvesting to salvage lumber before it is ruined. This process is expected to add significant volume to BC production over the next few years. In the end, however, BC could be mostly out of the lumber business, industry sources predict.

The latest talks come as a NAFTA binational panel has reportedly issued another remand to the International Trade Administration (ITA), rejecting the agency's motion for reconsideration of its ruling on the zeroing methodology used in the antidumping case on Canadian lumber. Canadian sources seem convinced Washington will continue to maintain dumping and CVD orders on Canadian lumber unless ordered to withdraw them by a U.S. court.

WTO FARM TALKS STUCK OVER FLEXIBILITY ON TARIFF CUTS

The World Trade Organization (WTO) General Council won't issue, as originally hoped, any "first draft" or "first approximation" of what a Doha Round agreement might look like during its meetings on July 27 and 29. Instead, participants will merely hear status reports from the chairmen of the various sub-negotiating committees, including agriculture, services and non-agriculture market access (NAMA). Ahead of the meeting, WTO Director General Supachai has told delegates he has now "pressed the panic button," warning them to get moving or face failure at the ministerial meeting in Hong Kong in December.

Still blocking the talks is the disagreement over the formula for cutting agriculture tariffs. Although negotiators have focused on the broad idea of creating "tiers" into which all farm products would be placed depending on their current tariffs and with different levels of tariff cutting in each tier, there is wide disagreement over how much flexibility each country would be permitted in meeting the reduction requirement within each tier (see **WTTL**, July 18, page 3).

The European Union (EU) and members of the so-called G-10 -- developed countries with high farm tariffs such as Norway, Korea and Israel -- are pushing for a formula with maximum

flexibility that would allow them to make the smallest possible tariff cuts in each tier. Members of the G-20 group, which includes Brazil, India and China, want less flexibility to ensure meaningful cuts in each tier. The final decision on flexibility may determine how quickly the Doha Round can be completed. "The more flexibility you build in, the more time is needed to haggle over the details," one source in Geneva explained.

EXPORTERS CITE BURDENS OF LICENSES FOR MT EXPORTS TO CANADA

The cost and burden of a proposal to require licenses for U.S. exports of missile technology (MT) items to Canada could have a serious political and economic impact, according to comments filed with the Bureau of Industry and Security on the May 24 proposal. BIS could face at least a 25% increase in the number of licenses it reviews annually, and U.S. and Canadian firms could be forced to spend nearly \$200 million in added export compliance costs, if the agency goes ahead with its proposal, the comments claimed (see **WTTL**, June 13, page 2).

L-3 Communications Electronic Systems, which is based in Toronto, told BIS its repair and maintenance services for U.S. aviation equipment could require its U.S. customers to submit 1,000 licenses a year at a cost of \$2-4 million annually.

United Technologies said it might have to file more than 1,000 license a year to support the production of its planned PW600 aircraft engine in Canada and another 5,000 by 2020 for engines returned to Canada for repair and maintenance.

Boeing told BIS that it alone could increase the agency's licensing load by 25% due to planned production of portions of its 787 Dreamliner in Canada. With the U.S. in a trade battle with the European Union (EU) over subsidies for Airbus and concern about competition in the large airplane market, Boeing warned BIS that its proposal could cause a delay in production of the plane and reduce the efficiency of doing work in Canada. "Any disruption in the 787 program that would affect our launch date could put us at a competitive disadvantage with respect to the new airplane being developed by Airbus," Boeing wrote.

* * * BRIEFS * * *

INDIA: Promises made by President Bush and Indian Prime Minister Singh during Singh's visit to Washington July 18 won't lead to immediate relaxation of U.S. controls on exports of civilian nuclear products and technology to India. Bush said he would work with U.S. allies and Congress to get restrictions lifted. Singh said India "would be ready" to assume same responsibilities as members of Nuclear Suppliers Group. Neither set of promises will be easy to achieve.

EXPORT ENFORCEMENT: Gould Pumps, Seneca Falls, N.Y., will pay civil fine of \$123,500 to settle BIS charges that it exported magnetic drive and double mechanical seal industrial pumps to Egypt, Saudi Arabia, India, Taiwan and China without licenses on 13 occasions. BIS also claimed it made false statements on SEDs that goods were eligible for NLR license exception. Firm made voluntarily self-disclosure.

TRADE PEOPLE: USTR Spokesman Richard Mills will leave trade agency around Aug. 1 to become senior advisor for communications for Deputy Secretary of State Robert Zoellick...President Bush has nominated Martin Gruenberg to be member and vice chairman of Federal Deposit Insurance Corporation. Gruenberg is senior Democratic Counsel on Senate Banking Committee and played major role in drafting EAA legislation over the years.

NUCLEAR MATERIALS: BIS in July 21 Federal Register announced that it has taken licensing jurisdiction for nuclear grade graphite from Nuclear Regulatory Commission.

CHEMICAL WEAPONS: In July 21 Federal Register BIS called for comments on impact Chemical Weapons Convention Regulations are having on small business entities.

ZEROING: CIT Chief Judge Jane Restani July 19, in Corus Staal v. U.S. (Slip Op. 05-85) sustained use of zeroing methodology in ITA administrative review of hot-rolled steel from Netherlands.

EDITOR'S NOTE: All issues of *Washington Tariff & Trade Letter* for 2004 are now available without charge online on the Web at WTTLOnline.com.