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CIT IMPOSES \$36.6 MILLION PENALTY FOR ANTIDUMPING CIRCUMVENTION

Two steel importers and their owners were ordered to pay more than \$36.6 million in penalties in a Dec. 28 ruling by Court of International Trade (CIT) Judge Evan Wallach, who found that they had intentionally circumvented an antidumping order and committed fraud (slip op. 07-188). Wallach granted a government motion for summary judgment that claimed the executives and the companies circumvented an order on silicon metal from China by importing the metal from Korean firms that had obtained it from China and transshipped it to the U.S.

Martha Matthews, who is also known as Martha O'Grady, and Daniel McGuire, along with their firms, North Star Metals, LLC, and McGuire Steel, will be jointly liable for the penalties, Wallach ruled. Matthews and McGuire are co-owners of North Star, and McGuire is founder and president of McGuire Steel.

“Given the need for deterrence, the egregious and unremitting nature of Defendants’ fraud, and their failure to offer any valid evidence of mitigation, Plaintiff’s Motions for Summary Judgment are granted,” Wallach ruled. He order the defendants to pay (1) \$12,417,039 plus interest for unpaid antidumping duties on North Star entries; (2) \$417,844 plus interest for unpaid antidumping duties on McGuire Steel entries; (3) a penalty of \$23,000,293.44 for the North Star entries; and (4) a penalty of \$797,662 for the McGuire Steel entries.

An antidumping duty of 139.49% was imposed on silicon metal from China in 1991. The government alleged that after the order was imposed the defendants imported the metal from two Korean trading companies and on entry documentation had claimed the material had come from Korea. The government also said that Matthews had gone to Korea, visited the warehouse where the metals were stored, and knew they had come from China.

The government “has met its burden of establishing fraud by clear and convincing evidence, and statutory penalties are appropriate in this case,” Wallach stated. “As established above, Ms. Matthews’ communications with the Korean companies demonstrate beyond refute they were not only aware of the Chinese origin of the silicon metal they were importing and the additional duties that were owed to the United States, but also made specific efforts to disguise the true origin from the government,” he declared.

JUDGE DENIES CHI MAK RETRIAL PLEA; ICE ARRESTS KIN

A federal judge refused to declare the Arms Export Control Act (AECA) “void for vagueness” in a Jan. 7 ruling rejecting motions for acquittal or retrial filed by Chi Mak, who was convicted

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in May 2007 of attempting to export defense technology to China (see **WTTL**, Aug. 20, page 1). “Several circuit courts of appeal, including the Ninth, have relied on the AECA’s scienter requirement to reject vagueness challenges to various aspects of the statute,” wrote Santa Ana, Calif., U.S. District Court Judge Cormac Carney. “This court agrees,” he declared. “The scienter requirement eliminates any concern that the statute did not provide Mr. Mak with adequate notice,” Carney ruled. Mak is scheduled to be sentenced on March 24.

Within 10 days of sentencing, Mak intends to appeal his conviction to the Ninth Circuit, his lawyer, Marilyn Bednarski of Kaye, McLean & Bednarski, told **WTTL**. She said they will also ask Carney to impose a “reasonable” sentence on Mak who is 67 and has been incarcerated since his arrest in 2005. Under federal Sentencing Guidelines, he could be sent to jail for 15 to 20 years.

Two days after Carney’s ruling, Immigration and Customs Enforcement (ICE) agents Jan. 9 arrested Chi Mak’s sister-in-law, Fuk Hueng Mak Li, and her son, Billy Yui Mak. In June 2007, the pair had pleaded guilty to their role in the attempted export of the controlled technology that Chi Mak was accused of trying to export. Billy Mak was sentenced to 11 months in prison, time he had already served, and Mak Li received probation.

“ICE placed the pair in removal proceedings based upon their criminal convictions for assisting in the scheme to export sensitive defense information to China,” an ICE statement said. “If an immigration judge upholds the charge and orders Mak Li and Billy Mak removed from the country, it would preclude them from ever returning to the United States legally. The two will remain in ICE custody pending their deportation hearings,” it said.

In his ruling on Chi Mak’s motions, Carney rejected claims that the government intimidated key witnesses and had distorted the fact-finding process. One of those potential witnesses, Dr. Yuri Khersonsky, had a full and frank discussion with his legal counsel about his Fifth Amendment rights and chose not to testify, the judge noted. “There is no prosecutorial misconduct where the witness’s decision not to testify arises from his own concerns about exposure to potential criminal liability,” Carney wrote. “There is no evidence that the prosecutors threatened, harassed, or intimidated Dr. Khernonsky or Mr. Williams [his lawyer].” Carney found. **[Editor’s Note: Copy of Carney’s opinion will be sent to **WTTL** subscribers on request.]**

BUSH ADMINISTRATION FOCUS ON FTAs LEAVES DOHA TO TECHNICIANS

Bush administration officials have launched a full-court press to get Congress to approve the free trade agreements (FTAs) with Colombia, Panama and Korea this year, planning new visits to Colombia for congressional delegations and touting statistics on the drop in violence and the growth of its economy. With the focus on the FTAs, the Doha Round has been left in the hands of technicians who are slogging through the technical details of draft texts on agriculture, non-agriculture market access (NAMA), services and rules (see story below).

To put more focus on Doha, Commerce officials plan to prepare data showing how the proposed cuts in tariffs would affect specific products and industries. These numbers will be shared with industry and Congress. If a balanced deal can be reached, Congress will approve it, Chamber of Commerce President Tom Donohue told **WTTL**. “If we get a deal cut, then Congress will support it,” he said. “They would offer fast-track coverage to do that,” he added, cautioning that “it’s a long way from here to a deal on Doha, but we continue to make progress.”

DOHA FARM TALKS GET INTO DETAILS OF SUBSIDIES AND MARKET ACCESS

Progress was claimed in Doha Round agriculture negotiations Jan. 11 after 10 days of talks on 16 supplemental technical papers that Agriculture Negotiating Committee Chairman Crawford Falconer has circulated to members since late December. He released four papers on domestic

support in December and 12 on market access Jan. 4. The market access papers cover recently acceded members, special products, special agricultural safeguard, tariff quotas, tariff simplification, tariff escalation, sensitive products, and the tiered formula for tariff reductions.

At an informal meeting with members Jan. 11, Falconer said he is aiming to have a revised draft modalities text, which will consolidate all these technical papers, by the end of January. This paper would supercede the one he released last July. "We have made significant progress in the discussions we've had. There've been significant openings by delegations," he told the meeting. A revised paper on non-agriculture market access (NAMA) is also expected by the end of the month.

Falconer's market access texts read like stream-of-conscious writing, with most options and figures in brackets indicating that no agreement has been reached on them. The papers are "cleverly drafted," one Latin American diplomat told WTTL. The problem is they are still finding ways out for developed countries, he contended. For example, the special safeguard mechanism (SSM) is left out, but solutions are there for the U.S., South Korea, and Japan, he complained. Developed countries are getting their flexibilities, but they resist flexibilities in NAMA, the diplomat claimed.

Falconer allayed some of the concerns of a group of developing countries, known collectively as the G-33, which questioned the percentage of "special product" tariff lines that would not be subject to the full tariff-cut formulas in any final farm deal, a high-ranking G-33 diplomat said. The G-33 wants a maximum 20% of agriculture tariff lines at the 8-digit level in developing countries to be eligible for treatment as special products which would face less than full formula tariff cuts. Under this umbrella, it has called for a maximum of 8% of all farm products at the 8-digit tariff level not to be subject to any formula cuts. These figures are at the high end of options in Falconer's paper.

"India would not accept any treatment of special products which is less favorable than that of the sensitive products," said an Indian official involved in the talks. "Unless India's satisfaction on special products is met, it will be a kind of red line," he said.

A number of questions are left open on sensitive products, which developed countries will be able to shelter from full tariff cutting, the Latin American diplomat said. Some countries have not clearly said when they will provide information about domestic consumption which will be needed to determine the size of the tariff-rate quota expansion they would be required to offer in lieu of full tariff cuts. The representative from the G-33 country said progress was claimed, however, on "how to arrive at domestic consumption, whether it's through partial designation or the full product designation, as long as there's transparency on what will be the final quotas."

The paper on special agricultural safeguard (SAG) "drastically, really eliminates the special safeguard or provides a phase out of the special safeguard" for developed countries, the G-33 diplomat said. "It's a big advance," he added. "The special safeguards will disappear or will remain with very few exceptions" for a limited number of tariff lines, he explain, noting that the SAG for developing countries remains.

DDTC ISSUES GUIDANCE ON DUAL-NATIONALS' ACCESS TO TECHNOLOGY

Defense exporters who want to take advantage of new liberalized rules for sharing defense technology with third-country and dual nationals in nations that are close U.S. allies will have to include specific new language in their technical assistance and manufacturing license agreements (TAAs/MLAs), the Directorate of Defense Trade Controls (DDTC) has announced. The agency posted the required wording on its website Jan. 4. As first forecast in WTTL, State revised the rules for technology transfers to dual nationals in the Dec. 19 Federal Register (see WTTL, Sept. 24, page 1). Holders of existing TAAs and MLAs will have to submit amendments to their licenses. The change in Section 124.16 of the International Traffic in Arms

Regulations (ITAR) will mean exporters will no longer need additional approvals “for release of technical data, defense services, and access to defense articles for third party/dual national employees of the foreign signatory/sub-licensee to an agreement that are exclusively from NATO, EU, Australia, New Zealand, Japan, and Switzerland,” DDTC explained. Such individuals, however, may not hold nationality from any other country.

Current procedures require third country/dual nationals authorized under TAA/MLAs to execute Non-Disclosure Agreements (NDAs) before they receive access to defense articles or defense services. “Execution of NDAs by individuals who are third country or dual nationals meeting the preceding criteria would not be required,” DDTC said.

In its latest website posting, DDTC said its new policy on TAA/MLA wording becomes effective Feb. 1. “Any submission not meeting these requirements is subject to being Returned Without Action” it declared. There are three variations of wording that will be required on applications depending on whether the applicant is not requesting coverage for third country/dual nationals, is requesting treatment for third country/dual nationals who do not qualify for ITAR 124.16, or is requesting coverage of third country/dual nationals that do qualify.

EX-IM PUBLISHES GUIDELINES FOR DUE DILIGENCE IN LENDING

After 10 individuals were indicted on charges of defrauding the Export-Import Bank on some \$80 million in loans, the Bank Jan. 11 published guidance called “Transaction Due Diligence Best Practice” to help avoid similar illegal activities in the future (see **WTTL**, Oct. 15, page 3). “Export transactions have become increasingly complex with significant third party involvement, and Ex-Im Bank, like every lender, faces the challenge of ensuring that transactions are both creditworthy and legitimate,” said Ex-Im General Counsel Howard Schweitzer.

“Ex-Im Bank’s due diligence guidelines are intended to provide transaction parties with an understanding of Ex-Im Bank’s underwriting process,” the guidelines state. “The best practices guidelines do not constitute a checklist and do not create any specific legal obligation. Ex-Im Bank believes, nonetheless, that certain basic due diligence should be conducted in every transaction,” they add.

“Ex-Im Bank recognizes that due diligence generally should be risk-based, with the level of analysis scaled to the nature, complexity, and perceived risk level,” the guidelines note. “It is important to note that transaction parties must comply with their legal and regulatory obligations irrespective of the fact that Ex-Im Bank, a U.S. Government agency, is involved in a transaction. For example, if a lender is required by law or regulation to determine whether a transaction party appears on a U.S. Government prohibited parties list, the lender must make that determination irrespective of Ex-Im Bank’s participation in the transaction,” Ex-Im says.

*** * * BRIEFS * * ***

TRADE FIGURES: Goods exports in November rose 13.7% from November 2006 to record \$101 billion, Commerce reported Jan. 11. Services exports were up 11.4% to \$41,358. Merchandise imports increased 12% to \$173.6 billion, due mainly to rise in oil prices. Services imports grew 8.3% to \$31.7 billion. In third quarter of 2007, exports contributed 1.4% to growth in GDP, offsetting 1.1% decline caused by correction in housing, Commerce Secretary Carlos Gutierrez told reporters Jan. 10.

ITA: Deputy Assistant Secretary for AD/CVD Policy and Negotiations Joseph A. Spetrini retired Jan. 11 after 32 years in government. Ronald K. Lorentzen has been named as acting deputy assistant secretary. Spetrini led negotiations on dozens of bilateral agreements including one with Russia on steel following breakup of Soviet Union and settlement of trade dispute over Mexican cement. He also was on staff in early 1980s that managed government’s Steel Trigger Mechanism.

STAINLESS STEEL BAR: ITC in Jan. 7 “sunset review” ruling determined that U.S. industry would not face recurrence of injury if CVD order on stainless steel bar from Italy and antidumping orders on product from France, Germany, Italy, Korea and United Kingdom were revoked.