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U.S. Trade: WTO, NAFTA and the DOC

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Summary:

President Bush's goodwill trip to Canada could not have come at a better time. In addition to the current lack of a softwood lumber agreement, the WTO gave formal approval on Friday, November 26, for Canada and seven other jurisdictions to punish the U.S. for refusing to amend or rescind the Byrd Amendment. This controversial trade legislation provides for the disbursement of collected import tariffs to American companies that support the tariff.

If that weren't enough, on Tuesday, December 1, a NAFTA trade dispute panel ruled for the third straight time to reject the methods used by the Department of Commerce to prove that Canadian softwood lumber is subsidized by the government. The decision by the panel found fault with a dozen factors used by the United States government to determine the cost of logs harvested in Canadian provinces.

Last week, to signal perhaps a new approach to how the U.S. will handle trade, President Bush nominated Carlos Gutierrez, CEO and Chairman of Kellogg Co., to be the next Secretary of the Department of Commerce (DOC). If confirmed by the Senate, Gutierrez will become the first Hispanic to hold the position. He is considered by many to be an unusual choice because, unlike Secretary Evans before him, he is not well known by Bush.

In a related matter, WTCA sent a letter on Wednesday to James Jochum, Assistant Secretary for Import Administration at the DOC, reiterating our industry's commitment to a long-term negotiated settlement of the current softwood lumber dispute between the U.S. and Canada. The letter also addressed concerns over Senator Max Baucus' (D-MT) S. 2992, the *Softwood Lumber Duties Liquidation Act*, which was introduced during the recent "lame duck" session of Congress. The measure threatens to liquidate the duties collected on Canadian softwood lumber imports and give them directly to members of the Coalition for Fair Lumber Imports. A copy of that letter, and a similar letter sent on behalf of the Value-Added Wood Products Alliance to Ambassador Allgeier, is attached.

Component Manufacturer Impacts:

The WTO has followed-up on its ruling in 2000 that the Byrd Amendment was illegal and formally allowed Canada, Japan, the EU and others to punish American exports by \$150 million annually.

- While Canada has not formally decided on subsequent duties on U.S. imports, the government has purportedly been considering 100% duties on U.S. products ranging from dried peas, mittens and pearls, to softwood lumber products such as particle board, plywood and chemical wood pulp.
- The European Union has targeted 78 U.S. products it may impose duties on. Japan has also submitted a retaliation list to the WTO where steel, textile and some agricultural products predominate.

The softwood lumber dispute between the U.S. and Canada continues to grow more complex.

- The DOC has filed an extraordinary challenge last week with NAFTA regarding an August review panel's ruling the U.S. imposed tariffs were without grounds.
- However, this extraordinary challenge appears even less likely to succeed given the NAFTA panel ruling on Tuesday which clearly stated the reasoning behind the duties imposed by the DOC is flawed.
- Senator Max Baucus' (D-MT) S. 2992, the *Softwood Lumber Duties Liquidation Act*, has caused great concern within the Canadian Trade Ministry and sparked threats of retaliation. While the bill appears to be dead in the water, it has made getting back to the negotiation table more difficult.

Gutierrez is relatively unknown in Washington, but is admired in the business sector.

- John Engler, president of the National Association of Manufacturers, hailed the appointment saying, "Gutierrez understands every level of manufacturing and he will use that knowledge to further strengthen the U.S. economy."
- In accepting the nomination, Gutierrez said, "'I believe in your [Bush's] call for a vibrant, growing, entrepreneurial society where everyone has the opportunity to experience the joy and the pride of ownership, where everyone can contribute and where everyone can benefit. I have had the opportunity to live that American dream, so I know that the president's vision is noble, I know it's real and I know it's tangible."

Additional Background:

WTO Rules on Byrd

The World Trade Organization imposed penalties to the tune of \$150 million annually on U.S. exports ranging from apples to textiles. The action escalates a trade dispute the Bush administration has struggled to defuse by unsuccessfully urging Congress to repeal the Byrd Amendment.

Korea and India have named agricultural and seafood to their lists. Brazil has not published a list. Duties from most or all of the countries are expected to go into effect early next year.

The administration has signaled it will accept the penalties in the short term, but also warned that the United States would aggressively protect its own trading interests and expects fair treatment from the WTO. "We've worked hard to comply with the WTO," President Bush said, speaking to reporters in Crawford, Texas. "It's important that all nations comply with WTO rulings."

Senate Finance Committee Chairman Charles Grassley, an Iowa Republican, said he was disappointed but not surprised by the WTO ruling. He criticized how the law was implemented — by being inserted in an appropriations bill instead of going through the authorizing committee process. "The fact that we are now subject to sanctions only underscores the need for quick congressional action," said Grassley, whose committee oversees international trade issues. "I intend to consult closely with my colleagues in determining the next steps."

NAFTA Board Rules Against U.S.

For the third time, a trade dispute panel rejected on Wednesday some methods used by the United States Commerce Department to prove that Canadian lumber is subsidized. The United States lumber industry has long argued that Canadian provinces unfairly undercharge lumber companies for cutting down trees on government land, which is the source of most of Canada's lumber.

But Harry L. Clark, a lawyer for the Coalition for Fair Lumber Imports (CFLI), an American industry group predicted that it would have no impact on the American industry's complaint. "Even with the overreaching by this panel, there is still going to be a subsidy," he said. "This will never affect what anyone pays in terms of duty."

Gutierrez To Head DOC

If confirmed by the Senate, Gutierrez would succeed Commerce Secretary Donald Evans, a Texas friend of Bush's, who announced his resignation shortly after the November 2 election. The president called the 51-year-old Gutierrez, a "great American success story" and a visionary executive, who understands the world of business from the "first rung on the ladder to the very top."

"Carlos' family came to America from Cuba when he was a boy," Bush said in the Roosevelt Room. "He learned English from a bellhop in a Miami hotel and later became

an American citizen. When his family eventually settled in Mexico City, Carlos took his first job for Kellogg as a truck driver, delivering Frosted Flakes to local stores."

Gutierrez is the first new member of Bush's economics team for his second term. He is considered one of the most prominent Hispanic corporate executives in America and is credited with turning Kellogg into a corporate titan and Wall Street darling through smart deals, strict fiscal management and a shift of focus from peddling cereal by the ton to selling higher-end products.

WTCA Letter to Jochum

While it is uncertain who everyone at the table may be if a negotiated settlement of the current softwood lumber dispute between the U.S. and Canada goes forward, it is likely DOC Assistant Secretary for Import Administration, James Jochum, will continue to be involved. In an effort to reiterate our industry's support of a long-term negotiated solution, WTCA President Kendall Hoyd and Legislative Committee Chair Allen Erickson sent a letter to Jochum.

The letter also addresses S. 2992, the *Softwood Lumber Duties Liquidation Act*, which was recently introduced by Senator Max Baucus (D-MT), threatens to give the over \$3.6 billion in duties collected on Canadian softwood lumber imports to a portion of the U.S. lumber industry represented by the CFLI. The bill is seen as an end-run around the WTO's recent unfavorable ruling on the Byrd Amendment.