Market Condition & Activity Bulletin

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U.S. Customs Service Country of Origin Markings Ruling Overturned

On September 8, 2000, Judge Barzilay of the Court of International Trade ruled against the Government in this case, overturning the notice of Final Interpretation published by the U.S. Customs Service in the March 14 Federal Register. In that notice, Customs announced that it would require flanges and fittings, imported unfinished, to be marked with the foreign country of origin after finishing in the United States. The court found that action to be legally defective on procedural grounds. The following is a synopsis of the court's decision.

The legal representatives, McKenna & Cuneo, L.L.P., stressed that the court did not address the question of whether unfinished flanges and fittings are "substantially transformed" in the United States. In fact, the court made it clear that Customs could determine that flanges and fittings are not substantially transformed regardless of the producers' goods/consumers' goods distinction in *Midwood,* but that Customs must follow the correct procedure. The court said:

> "In its analysis, Customs need not use the producers' goods-consumers' goods distinction in determining that forgings are not substantially transformed in the United States by the processes performed in converting them to pipe fittings and flanges. Every substantial transformation case is product specific and certain tests are more applicable than others to certain products. . . . Customs must, however, explain with reference to the forgings themselves and the processes performed on them, why no new article with a new name, character and use is created."

In short, the court has given Customs guidance on curing the procedural defect, so that it will pass judicial muster. The Government has 60 days (from September 8) to decide whether to appeal the decision to the Court of Appeals for the Federal Circuit. That decision has not yet been made, but will likely be made sometime next week. If the decision is to proceed on the administrative level, then, presumably there would be no appeal.

Outlook:
While it was disappointing to the legal team that the court decided as it did, they view it as only a temporary setback. The reason is that the court has taken the trouble to provide Customs a road map on how to achieve its objective based on factual analysis. This is actually very encouraging and leads the lawyers to conclude that the position of the United States Flanges and Fittings Marking Coalition will be vindicated sooner rather than later.

In Judge Barzilay's decision, it is noted:

> "Before Customs can require new markings on finished products made from imported article, it must explain why it no longer considers the forgings substantially transformed. Customs admits as much when it states at the end of the *Final Interpretation*, "the question of whether a good has been substantially transformed is based on specific facts…" and declares its intent to revisit rulings which it states were based on the producer's goods-consumers' goods distinction articulated in *Midwood. See 65 Fed. Reg. At 13831.* Here, Customs abused its discretion by announcing the marking change first, and postponing the factual analysis under the new name, character and use test. Customs cannot justify its actions merely by declaring that it will no longer rely on the producers' goods-consumers' goods test because "*Midwood* would be decided differently today." Id. Even were this statement true, such a determination is for a court and not for the agency."

Therefore, the court concluded that Customs' attempt to overrule the *Midwood* was "arbitrary, capricious, an abuse of discretion, and otherwise not in accordance with law." It will be interesting to follow the Government's plan of action when the decision is made to appeal or not to appeal.

The excerpts for this article are reprinted with permission of McKenna & Cuneo, L.L.P., Attorneys at Law (Peter Buck Feller) based on the United States Court of International Trade Slip Op. 90-118 – before Judge Judith M. Barzilay – Court No. 00-07-00314 in the matter of BOLTEX MANUFACTURING CO., Plaintiff, versus UNITED STATES OF AMERICA, Defendant, and UNITED STATES MARKING COALITION, Defendant – Intervenor.

STAINLESS STEEL PIPE

Pricing ↕ After reviewing manufacturers predictions, it is not clear on the direction of the market. Some see pricing decreases of 1% to 2½%, others see no change, and still another manufacturer predicts a 3% to 5% increase. The decreases predicted are a result of some pressure to move inventories from the mill level, as well as from distributor inventories. However, it is reported that acceptable demand and high nickel prices should prevent significant drops in the fourth quarter. Seamless stainless is predicting a decrease of 1% - 2½%, with the exception of small diameter.

Lead Times – Fill rates remain high at 60% to 90%, with standard items not in stock shipping in 4 – 10 weeks. Non-stock specials are forecast to ship in 10 – 16 weeks.

Comments – Surcharges remain in effect. Nickel is up because of supply tightness reports one manufacturer. The Sunset Review on Taiwan and Korea was successful. Duties will remain in effect against these countries. Imports remain strong with Taiwan, Malaysia, Korea, Brazil, and South Africa. The price of nickel has rebounded to first quarter levels above $4.00/LB thru most of September, sustaining relatively high surcharges into the fourth quarter. Dumping suit in effect on Japan on seamless stainless. An appeal filed with International Trade Commission, after ruling filed in favor of Japan. It is reported that a dumping case is being considered on Korea for seamless. Tons have increased to unacceptable levels reports one seamless manufacturer.

STAINLESS STEEL WELD FITTINGS

Pricing ↘ One manufacturer indicates no change in pricing this quarter. Several other manufacturers predict a 3% - 5% decrease that will be industry wide by the end of the quarter.

Lead Times – Forecast on lead times for commodity items is 3 – 4 weeks. Fill rates are reported to be 80% - 100%. Deliveries seem to be quite good. Non-stock specials are shipping mostly 3 – 4 weeks, depending on material availability with some 4 – 6 weeks.

Comments – Malaysian fittings are becoming more prevalent. However, duties may change for Malaysia. Manufacturers from the Philippines, Italy, Germany, and Malaysia are trying to ship as much into the US as they can before the final dumping margins are announced in December. Aggressive pricing exists due to lack of domestic demand. Many plant facilities have laid off some of their workforce. Demand for domestic fittings continues to drop. End users who historically bought domestic are now buying import. Hopefully, final dumping margins will help the domestic market.

STAINLESS 150 AND HI-PRESSURE FITTINGS

Pricing ➔ Manufacturers predict no change in pricing for this quarter.

Lead Times – Fill rates of 90% - 100% with 3 – 4 week deliveries.

Comments – Manufacturers indicate that projects are picking up. One manufacturer notes that foreign prices still control the market.

STAINLESS STEEL FLANGES

Pricing ↘ Several manufacturers predict that prices will stay at the same level thru this quarter. One manufacturer noted that their last increase in July did not stick as expected. Several other manufacturers predict a decrease of 3% - 7% due to foreign pressure and demand.

Lead Times – Fill rates of 50% to 75% for commodity items with lead times of 2 – 4 weeks on commodity items. Non-stock specials forecast deliveries in 4 – 12 weeks.

Comments – The U. S. Customs ruling on country of origin markings discussed in our 2nd Quarter 2000 Bulletin was overturned. But one manufacturer notes that the issue is not dead. Look for this issue to reappear in 9 – 12 months. The weak Euro has helped European suppliers; however, this may change as the Euro strengthens. Foreign competition is seen as increasing from Mexico, Korea, Italy, France, India and Taiwan. One manufacturer indicates that inventories are high with little project demand. Instead of import versus domestic, the trend seems to be approved versus non-approved on Approved Manufacturers List from the end users.

CARBON STEEL PIPE (CONTINUOUS WELD)

Pricing ➔ Manufacturers predict no change in pricing this quarter for continuous weld carbon steel pipe. However, due to slow business and lower hot band prices, some discounting is occurring.

Lead Times – Commodity items are shipping in 1 – 2 weeks. Fill rates are 90% to 100%.

Comments – A manufacturer comments that Industry shipments are low indicating an economy in worse shape than the Feds are reporting. One manufacturer notes that import prices are falling as world hot band prices are down. Another comments that Asian countries including China and Korea are being very aggressive.

Please note that arrows inserted after pricing is only a "Best Guess" of pricing direction after compiling information from select suppliers. It does not reflect input from all mfgs. nor does it include study of national economic indicators.

CARBON STEEL PIPE (ERW & SEAMLESS)

Pricing ↘ Manufacturers predict pricing decreases of 1% - 2½% for this quarter. Still another manufacturer predicts no change. Demand for oil country is still strong. The import mills continue to edge pricing up towards domestic. The major import mills closed last quarter with 3% - 5% increases.
Lead Times – Fill rates of 50% - 80% remain with delivery for commodity items not in stock at 6 – 12 weeks. Non-stock specials are shipping in 8 – 16 weeks.
Comments – Business seems to be stable for ERW and seamless. Foreign competition is seen as increasing with some mills and decreasing from others. One manufacturer notes that they are keeping an eye on China.

CARBON STEEL WELD FITTINGS AND FLANGES

Pricing ↗ Several manufacturers predict no change in pricing this quarter for carbon steel fittings; however, carbon steel flange manufacturers are predicting increases of 8% - 10% due to raw material costs and freight.
Lead Times – Deliveries are 2 – 6 weeks for commodity material with 70% to 100% fill rates. The forecast lead time for non-stock special items is 4 – 6 weeks.
Comments – Foreign competition is seen as increasing with special attention from Thailand, Mexico, France, Indonesia, and Korea. One manufacturer notes that the market has shown a slight strengthening in the last 3 – 4 weeks.

FORGED STEEL FITTINGS

Pricing → No price change forecast for this quarter. However, look for a forged steel increase in the first quarter of 2001.
Lead Times – Fill rates of 80% - 100% with 3 – 6 week deliveries for commodity forged steel fittings. Non-stock specials are shipping in 8 – 12 weeks.
Comments – Inventories at the manufacturers are improving. Lead times should be slightly shorter.

STAINLESS GATES, GLOBES, CHECKS

Pricing → No change in pricing forecast for this quarter. Watch for possible change by year end. One manufacturer comments that the third quarter increases were a result of raw material increases over the past few years.
Lead Times – Most lead times are 4 – 6 weeks. Inventories on commodity product ranging 80% - 90%. Special valves shipping in 8 – 12 weeks.
Comments – Foreign competition is seen as increasing from China, Taiwan, and Korea. Sales and quotations for this product are approximately 30% above '99, notes one manufacturer.

FORGED STEEL GATES, GLOBES, CHECKS

Pricing ↗ Predictions are for an increase of 1% - 2½% due to raw material costs. The movement is noted across the market.
Lead Times – Commodity valves are shipping 4 – 6 weeks. Non-stock specials shipping 6 – 8 weeks, also.
Comments – Some manufacturers see foreign market increasing from Italy, Korea, and China.

BRONZE AND IRON GATES, GLOBES, CHECKS

Pricing ↗ Bronze and Iron valves are expected to have an increase of 5% - 7% due to raw material costs. One manufacturer notes that the steady cost increase of raw materials could force increases in early 2001.
Lead Times – Commodity valves are shipping in 4 – 6 weeks with fill rates of 80% - 90%.
Comments – Increasing competition from China. Copper prices continue to increase at a steady rate according to manufacturers.

CAST STEEL GATES, GLOBES, CHECKS

Pricing → Manufacturers predict no change for cast steel valves this quarter. Supply, foreign pressure, capacity, and demand are all holding prices level.
Lead Times – Commodity cast steel shipping in 1 – 2 weeks with 70% - 80% fill rates. Special valves out 12 – 16 weeks.
Comments – The lack of product activity world wide is leading to over capacity and weak demand. One manufacturer notes that butt weld end valves continue to be hot both in sales and quotations.

QUARTER TURN VALVES — BALL AND WAFER

Pricing → Manufacturers predict a quarter with no price change.
Lead Times – Deliveries are 1 – 2 weeks for 80% of commodity items and the balance shipping in 4 – 6 weeks. Fill rates are noted to be 80% to 90%. Non-stock specials are shipping in 8 – 12 weeks.
Comments – One manufacturer notes that foreign competition is seen as increasing from Asia. Another manufacturer comments that the high pressure ball valve market share continues to grow, along with overall actuation sales.