

IN THE UNITED STATES COURT OF INTERNATIONAL TRADE

BEFORE: THE HONORABLE JANE A. RESTANI, JUDGE

SMURFIT-STONE CONTAINER CORP., <sup>1</sup>	)	
	)	
Plaintiffs,	)	
	)	
v.	)	Court No. 96-10-02366-S
	)	
UNITED STATES,	)	
	)	
Defendant.	)	

DEFENDANT'S STATUS REPORT

Pursuant to this Court's order dated April 5, 2001, defendant, the United States, respectfully submits the following status report.

On April 16, 2001, the United States Supreme Court denied the petition for a writ of certiorari filed by plaintiff, Smurfit-Stone Container Corporation ("Stone Container"). Stone Container Corp. v. United States, 229 F.3d 1345 (Fed. Cir. 2000), cert. denied, 69 U.S.L.W. (April 16, 2001). The decision of the United States Court of Appeals for the Federal Circuit is final. That decision, which affirmed this Court's decision, concluded that the two-year statute of limitations was applicable to Stone Container's claims for refund of the Harbor Maintenance Tax ("HMT") it paid upon exports, and that the statute of limitations

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<sup>1</sup> Smurfit-Stone Container Corporation is the successor to Stone Container Corporation, Stone Container International, and Savannah River Pulp and Paper.

was tolled during the pendency of two motions for class certification. Stone Container Corp., 229 F.3d at 1347-48, aff'g, 27 F. Supp. 2d 195 (Ct. Int'l Trade 1998). The United States previously had refunded to Stone Container the HMT upon exports paid within the two-year statute of limitations. We now have forwarded this Court's judgment for the tolling period, which was stayed during the pendency of all appellate action, to the Customs Service for payment of the remaining HMT owed. No further action need be taken in this case.

With regard to the thousands of other cases that continue to be stayed based upon Stone Container, those plaintiffs would be entitled to a refund for the tolling period, when applicable. However, as we stated in our previous status report, in light of Swisher Int'l, Inc. v. United States, 205 F.3d 1358 (Fed. Cir.), cert. denied, 121 S. Ct. 624 (2000), those claims for additional HMT paid based upon the tolling of the statute of limitations are essentially moot. Swisher permits HMT taxpayers to seek an administrative refund of all HMT paid based upon Customs' refund regulation, 19 C.F.R. § 24.24(e)(4). See 66 Fed. Reg. 16854 (Mar. 28, 2001) (amending refund regulation to provide simplified process for requesting refunds of HMT paid upon exports). To date, Customs has received over 2000 administrative refund requests pursuant to Swisher and 19 C.F.R. § 24.24(e)(4). Those refund requests will be processed immediately following the

resolution by Customs of the "Swisher-type" cases now pending in this Court. See Swisher Int'l, Inc. v. United States, Slip Op. 01-20, No. 95-03-00322 (Ct. Int'l Trade Mar. 13, 2001) (consent order establishing refund procedures for Swisher-type cases); see also Defendant's Status Report, Swisher Int'l Inc. v. United States, No. 95-03-00322 (April 13, 2001) (reporting that refund reports had been issued for 66 of the 174 claims pending during the first month of the Swisher refund process).

Because HMT plaintiffs can seek a full refund based upon the Swisher administrative procedures, it is unnecessary to establish procedures for a partial refund based upon the Stone Container tolling period. To require Customs to engage in a refund procedure based upon both legal theories would be an enormous and unnecessary waste of resources, and would result in a duplication of effort and a substantial delay to all involved parties. We presume that most plaintiffs will want to take advantage of the administrative refund process because it provides the opportunity for a refund of all HMT paid upon exports. Accordingly, to the extent that a party has overlapping and duplicative claims based upon both Stone Container and Swisher, the advisable and most efficient course of action would require the plaintiffs to exhaust their administrative remedies, pursuant to Swisher, prior to seeking any relief in this Court.

We understand that the plaintiffs in the related cases might be unwilling to dismiss their actions in this Court for the tolling period until the administrative refund process is complete. Although we believe that such an action is unnecessary because there will be an opportunity for adequate judicial review following the administrative process, we would not object to a continued stay of the related cases until each individual plaintiff's administrative claims are resolved, presumably mooted its case pending in this Court. In any event, those cases will continue to be stayed until resolution of the pending interest issues.

As stated above, no further action in the HMT export cases is required at this time based upon the final decision in Stone Container. Because the plaintiffs can seek a refund of the remaining HMT paid upon exports through the administrative process, it would be duplicative and a waste of resources for this Court to establish an additional refund process based upon Stone Container. Further, because issues remain pending regarding interest, a final judgment could not be issued in these cases at this time. Following resolution of the interest issue, which is, to our knowledge, the only remaining issue with respect to the HMT upon exports, the Government intends to consult with the Plaintiffs' Steering Committee to propose a final order disposing of all of the HMT export cases.

For these reasons, we respectfully request the Court to maintain the existing stay of all of the export-related HMT cases.<sup>2</sup>

Respectfully submitted,

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May 8, 2001

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<sup>2</sup> To the extent that the stay already has been lifted in a particular test case for resolution of issues other than those raised in this case, we are not seeking reimposition of the stay. Nor is our request meant to cover any of the so-called "Swisher-type" cases that are proceeding pursuant to a consent order entered by this Court on March 13, 2001. Swisher Int'l, Inc. v. United States, Slip Op. 01-20, No. 95-03-00322 (Ct. Int'l Trade Mar. 13, 2001).