

COURT SAYS NIXON EXCEEDED POWER ON IMPORT SURTAX

Ruling Could Bring Refunds of \$500-Million — Appeal by U.S. 'Almost Certain'

By BRENDAN JONES

In a decision that could lead to the refund of \$500-million to importers, the United States Customs Court ruled here yesterday that President Nixon had exceeded his authority in 1971 when he imposed a 10 per cent surcharge on all dutiable imports.

The decision was the unanimous finding of a three-judge special panel of the nine-member court.

The members of the panel were Chief Judge Nils A. Boe, Judge Herbert Maletz and Judge Edward Re.

In the main opinion, Judge Boe declared that Mr. Nixon's action, which was a part of his dramatic proclamation of the Phase I economic controls and related measures on Aug. 15, 1971, "arrogated" to the President "a power beyond the scope of any authority delegated to him by Congress."

Owned by Japanese

The case was brought in February, 1972, by Yoshida International, Inc., a New Jersey-based importer of zippers wholly owned by a Japanese company.

Andrew P. Vance, chief of the Customs section of the Justice Department, said that the decision was almost certain to be appealed by the Government "because of the issues of law involving Presidential authority and the unusually large amount of money involved."

The surcharge on existing tariffs was in effect for four months, from Aug. 16 to Dec. 20, 1971. Because there are no tariffs on most raw materials and unfinished goods, it applied chiefly to consumer and other manufactured goods — appli-

ances, home furnishings, liquors, automobiles, machinery, and other items.

Following protests by importers, Government price-control authorities permitted importers to pass on the cost of the extra duty to consumers. Thus, assuming that the Customs Court decision is upheld,

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the refund of the surcharge duties would be a windfall for importers.

Mr. Vance said that there was no provision of law for rebating the surcharge to consumers. The surcharge, like the excise tax on cigarettes or liquor, was imposed on the importer, and in some cases was wholly or partly absorbed by individual importers.

The surcharge was part of Administration strategy to correct a huge deficit in this coun-

try's balance of international payments, by ultimately compelling Japan and other countries to revalue upward their currencies. The point was to make foreign goods more expensive and American exports cheaper, and thus more competitive.

When the major countries formally agreed in December, 1972, to the currency adjustments, the surcharge was lifted. Legal or not, the imposition of the surcharge had achieved its purpose.

However, importers were incensed by the sudden action and thousands filed claims for refunds. The Yoshida suit was accepted as a test case. Earl R. Lidstrom, a member of the law firm of Barnes, Richardson &

Colburn, was chief attorney for Yoshida.

The plaintiff challenged the surcharge as a wholly new establishment of tariff rates and, therefore, the sole prerogative of Congress. The Government asserted that the President acted under his authority to terminate established tariff rates "in whole or in part."

Judge Boe declared in his opinion:

"This court is not without appreciation of the burdensome problems encountered by the Executive as he represents these United States in the society of nations. Nor can the court fail to recognize the efforts of the President to achieve stability in the international trade position and the monetary reserves of this country.

"But neither need nor national emergency will justify the exercise of a power by the Executive not inherent in his office nor delegated by the Congress. Expedience cannot justify the means by which a deserving and beneficial national result is accomplished. To indulge in judicial rationalization in order to sanction the exercise of a power where no power in fact exists is to strike the deadliest of blows to our Constitution."

The Government has 60 days in which to decide whether to appeal. The appeal process involves first the United States Court of Customs and Patent Appeals in Washington and, if necessary, the Supreme Court.

There would be no refunds until the case is finally settled.