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Professor Roth Gets Resentencing Hearing

Two years into a four-year prison sentence, ex-University of Tennessee Professor J. Reece Roth is getting a second sentencing hearing Feb. 24 in Knoxville U.S. District Court. The hearing comes two years after he filed a petition to vacate one of his 18 export control convictions and could lead to the shortening of his prison term.

> "Petitioner contends that his conviction and sentence for wire fraud should be vacated based upon the *Skilling* decision and the government agrees. Accordingly, the Court will vacate petitioner's conviction and sentence for wire fraud," District Judge Thomas Varlan said Jan. 2.

In its 2010 ruling in *Skilling v. United States*, the Supreme Court dismissed the "honest services" charge against former Enron President Jeffrey Skilling. Roth's appeal argued that *Skilling* should apply to Roth because he hadn't accepted any payments for his actions (see **WTTL**, Jan. 16, 2012, page 1).

Roth entered the Federal Corrections Institution in Ashland, Ky., Jan. 18, 2012. In a motion filed two weeks earlier, Roth's attorney asked the court to vacate his conviction on one count of failing to provide the university his "honest services" and to reconsider his sentence. In an earlier letter to the Sixth Circuit Court, the U.S. Attorney in Knoxville said the government would not oppose vacating that one count because it would not change Roth's sentence.

"While the government objects to resentencing as unnecessary and unwarranted because petitioner's remaining convictions are valid, the nature and circumstances of the offenses are a factor that the Court considered in sentencing the defendant; thus, the Court finds it appropriate to exercise its discretion and conduct a full resentencing hearing on petitioner's remaining convictions," Varlan said in his opinion.

Commercial Banks Getting Back into Export Financing

After fleeing export credit markets during the Great Recession, commercial banks are starting to reenter the export financing business. As a result, Export-Import Bank (Ex-Im) financing in fiscal 2013, which ended Sept. 30, 2013, declined nearly 24% from the year before to $27.3 billion even as U.S. exports increased. "This is actually a good trend," Ex-Im Chairman and President Fred Hochberg told the Senate Banking Committee Jan. 28. "Where the banks step in, we're happy to step back," he said. Despite the decline, Ex-Im financing is still far above its average during the years before the recession, including the $14.4 billion it loaned or guaranteed in fiscal 2008.

> The decline seen last year continued into the first quarter of fiscal 2014, which started Oct. 1, 2013, Hochberg reported. "We're happy to see banks stepping up more than they have in the last few years," he said. Whether that support will continue is unknown, he suggested. "It is difficult to gauge how well the capital markets and banks will support U.S. exports. We have seen greater support this year for aircraft. We are monitoring this on a regular basis," he said.

A large share of the decrease was due to a falloff in financing for aircraft exports, which was down $3.5 billion from the year before even though deliveries of American-made planes increased. "The aerospace industry is less reliant on Ex-Im largely because other forms of financing became more available in the last few years," he noted.

While the dollar value of bank financing went down, the number of transactions that Ex-Im approved went up to 3,842 compared to 3,796 in fiscal 2012. The rise was due to more financing for small businesses which usually require smaller loans or backing. Ex-Im has been under pressure from Congress to increase its support for small exporters and almost 90% of its deals are with small firms, but the value of that financing is still below the 20% that Congress has mandated.

Pressed by Sen. Richard Shelby (R-Ala.), Hochberg said Ex-Im would be willing to finance exports of planes that Airbus will manufacture in a plant being built in Shelby's home state of Alabama. "We're about supporting jobs. If those jobs are in the United States, we'll support them to the extent that they have to make the planes here; not just assemble them. They really have to make them here," Hochberg said.

He noted Ex-m financing for Siemens for exports of turbines made at its factory in North Carolina. "We treat Siemens no different than we treat General Electric. They make the goods here; they employ Americans," the Ex-Im chief said. He indicated that Ex-Im would be open to co-financing an Airbus export with a foreign export credit agency, covering just the U.S. portion of the transaction. Ex-Im has such a deal with Japan's export bank for financing exports of Boeing 787s that have significant Japanese content.

Hochberg faced questioning about guidelines the bank issued in December to restrict financing for coal-fired power plants (see **WTTL**, Dec. 16, page 8). The Omnibus Appropriations Act that President Obama signed Jan. 17 prohibits implementation of that policy before Sept. 30. "Obviously, it's an evolving policy," Hochberg said.

The spending measure (H.R. 3547) states that none of the funds appropriated or otherwise made available to Ex-Im may be obligated or expended before Sept. 30 "for the enforcement of any rule, regulation, policy, or guidelines implemented pursuant to— (C) the Supplemental Guidelines for High Carbon Intensity Projects approved by the Export-Import Bank of the United States on December 12, 2013 when enforcement of such rule, regulation, policy, or guidelines would prohibit, or have the effect of prohibiting, any coal-fired or other power-generation project the purpose of which is to: (i) provide affordable electricity in International Development Association (IDA)-eligible countries and IDA-blend countries; and (ii) increase exports of goods and services from the United States or prevent the loss of jobs from the United States." Another provision restricts Ex-Im support for exports that might establish or increase farm production of crops already in surplus with certain exceptions.

EU Creates Advisory Group on Transatlantic Trade Talks

The European Union (EU) is taking very seriously its effort to get public and industry advice as it negotiates the Transatlantic Trade and Investment Partnership (TTIP) with the U.S. Just a week after it announced plans to open the investment-dispute provisions of TTIP to public comment, it has created a 14-member advisory group to "examine specific challenges which may arise during the TTIP negotiations in their fields of expertise, and to provide candid feedback to EU negotiators" (see **WTTL**, Jan. 27, page 3). The move reflects the EU's growing sensitivity to criticism of TTIP among some European groups, particularly in Germany.

> As the two sides prepare for the fourth round of TTIP negotiations in Brussels March 10-14, the EU said chief negotiator Ignacio Garcia Bercero, who will chair the group, may share negotiating documents with the advisory group if necessary. As negotiations progress, Bercero "will share detailed information about progress in the talks, and for the first time, will also when necessary share EU negotiating documents, in a manner that ensures confidentiality," the EU said in announcing the group, which will hold its first full working session Feb. 25.

The 14 named advisors represent banks, trade unions, consumer and environmental groups, manufacturing, agriculture and chemical industry associations plus public health organizations. "The members' broad representation of interests will also help to ensure that Europe's high standards in, for example, protection for consumers and the environment, are respected and upheld in the negotiations," the EU noted.

Separately, prior to the advisory committee meeting, USTR Michael Froman and EU Trade Commissioner Karel De Gucht will meet in Washington Feb. 17-18 to "take stock of the negotiations to date," the USTR's office said.

Backlog of CJs Caught up in Export Control Reform

Many exporters of sensors and night-vision products are sitting in limbo waiting for commodity jurisdiction (CJ) determinations for their products because of delays in the publication of proposals to move items in U.S. Munitions List (USML) Category XII (fire controls and night vision) to the Commerce Control List (CCL). While resource restraints are one cause of the hold-up on CJ decisions, Bureau of Industry and Security (BIS) officials also admit some determinations are deliberately being held in anticipation of changes coming to Category XII.

The category has been one of the toughest, along with firearms, to gain interagency agreement on which products to move from the USML to the CCL. Officials have finally gotten to reviewing Category XII items and say a proposal could come this spring. At a meeting Jan. 28 of BIS' Sensors and Instrumentation Technical Advisory Committee (SITAC), BIS officer Chris Costanzo said there are 60 CJs currently pending, 20 of which are on night-vision related products covered under Category XII. He blamed some of the backlog on resource constraints. "It wouldn't surprise me if the USML rewrite has kind of taken people away from certain areas where they might have been focused on resolving the CJs to help work on the rewrite. There are only so many people."

> Costanzo hinted at a more deliberate reason for the delay in rulings. "It's difficult knowing that Category XII is being revised; what is the purpose of issuing the commodity jurisdiction, knowing the revision may change it, in one direction or the other," he said.

SITAC Chairman Steve Tribble of FLIR Systems was more honest. "The safe assumption is that if … Category XII is under rewrite, if you're going through the normal CJ review, are you really going to make a provocative decision? Probably not. I think we're probably seeing a lot more escalation," he said. "The higher you go, the less frequent the meetings are, the more is on the line, and the more complicated it gets," Tribble added.

In general, SITAC members, who held a closed-door briefing with BIS officials on the status of the Category XII review, said they were enthusiastic about the prospect of their products moving from State to BIS jurisdiction under export control reform. One member noted that some foreign competitors can promise delivery in two weeks, while a State license can take up to seven months to get approval. If a USML license takes six to nine months, "it's a non-starter," he said.

While U.S. technology traditionally been seen as head and shoulders above foreign competitors, some members argued that doesn't matter when it comes to working around delayed licensing or other requirements. "It doesn't have to be the best, it just has to be good enough" for foreign buyers, one member noted.

Fast Track, Trade Gets 65 Words from President Obama

Fear of losing the Senate to Republicans in the fall appears to be one reason behind Majority Leader Harry Reid's (D-Nev.) opposition to bringing fast-track legislation, also known as Trade Promotion Authority (TPA), to the floor for a vote anytime soon. With vacant Democratic seats in Michigan and West Virginia and Democratic incumbents facing tough fights in North Carolina, Minnesota and Arkansas, Reid doesn't want to force his members to vote on a bill that is clearly unpopular among many of the party's constituents, trade observers say.

> While there is still some hope that Reid might allow a vote to take place during a lame-duck session of Congress after the elections in November, for now, TPA is dead in the Senate. "I'm against fast track," Reid declared Jan. 29, less than 24 hours after President Obama urged its passage in his State of the Union (SOTU) address. "I think everyone would be well advised just to not push this right now," the majority leader told reporters.

Obama could not have said less about trade than he did, using just 65 words to promote his trade agenda. "When 98 percent of our exporters are small businesses, new trade partnerships with Europe and the Asia-Pacific will help them create more jobs. We need to work together on tools like bipartisan trade promotion authority to protect our workers, protect our environment, and open new markets to new goods stamped 'Made in the USA.' China and Europe aren't standing on the sidelines. Neither should we," he said. The parsimonious reference to trade reinforced the views of some that the presi-dent doesn't have his heart in TPA or new trade deals at this point. Nonetheless, both supporters and opponents of free trade agreements and the fast-track heard what they wanted to hear. Both sides pounced on those 65 words.

> After the speech, National Foreign Trade Council (NFTC) President Bill Reinsch said his organization was "encouraged to hear President Obama highlight the importance of expanding trade and reforming our immigration system to U.S. economic growth and competitiveness." Business Roundtable President John Engler called "on the President and Congress to follow up immediately on these expressions of goodwill by passing laws to unlock the full potential of the U.S. economy."

On the other side of the political debate, Jim Dean, Chair, Democracy for America, said he was dismayed by Obama's speech. "It is particularly dismaying, despite all of his positive rhetoric about taking on income inequality, that President Obama continues to press members of Congress to pass fast-track authority and the job-killing Trans-Pacific Partnership." Other labor and nonprofit groups cite a new poll showing that a majority of registered voters oppose fast track authority (see related story below).

House Speaker John Boehner (R-Ohio) has repeatedly said Obama needs to make this a legislative priority. "Trade Promotion Authority has already been introduced in the House, and it is now up to the president to join and lead the effort to get it passed," said a statement from Boehner's office during the president's address. The next day, Ranking Finance Committee Member Orrin Hatch (R-Utah) noted that Obama "barely mentioned his trade agenda" in the SOTU. "I've been underwhelmed at this administration's support of our bill and extremely disappointed with the efforts they've made to get Democrats in Congress on board," he said in a speech to the Chamber of Commerce.

Poll Claims Majority of Voters Oppose Fast Track Authority

If a poll financed by opponents of fast-track negotiating authority and a Trans-Pacific Partnership deal (TPP) is accurate, a majority of Americans oppose both initiatives. Commissioned jointly by the Sierra Club, the U.S. Business and Industry Council (BIC) and the Communications Workers of America (CWA), the poll was conducted by two research groups, one Democrat-leaning and one Republican, and questioned 816 registered voters Jan. 14-18 (see related story, page 4).

> By a margin of more than two to one, responding voters said they oppose (62%) rather than favor passage of fast-track negotiating authority for the TPP deal. Among those with a strong opinion, the ratio was more than three to one (43% strongly opposed, 12% strongly favorable).

Although Republicans in Congress have been generally supportive of fast-track or Trade Promotion Authority (TPA) and the majority of Democrats opposed, polled Republicans overwhelmingly opposed giving fast-track authority to the president (87% against), as did Independents (66%). Only Democratic voters gave a slight edge to favoring fast track, with 52% in favor and 35% opposed. This result could weaken the support of GOP lawmakers for the measure but help gain support among their Democratic colleagues. On a call with reporters Jan. 29, however, BIC President Kevin Kearns highlighted the 27 Republicans in Congress who have publicly voiced opposition to fast track compared to those that have not. "I can tell you there were a bunch more that didn't want to go public at the time, but said they were opposed to fast track. I think the number of Republican members is somewhere between 50 and 70 opposed," Kearns said.

Although the sponsors say this poll sends a message to elected officials, almost half of respondents (46%) said the two measures won't affect their vote. On the other hand, 43% said they are less likely to vote to reelect a member of Congress who supports fast-track authority, while 11% feel more motivated to vote for such a candidate.

Bank of Moscow Settles Charges of Dealing with Iran Bank

At the same time Treasury is loosening sanctions on Iranian exports and other industries, its Office of Foreign Assets Control (OFAC) charged a Russian bank with processing funds on behalf of an Iranian bank. OFAC reached a settlement Jan. 27 with Joint-Stock Commercial Bank (Bank of Moscow), which agreed to pay $9.5 million to settle 69 charges of violating Executive Order 13382 and the Weapons of Mass Destruction Proliferators Sanctions Regulations from January 2008 to July 2009.

OFAC claimed Bank of Moscow processed 69 transfers totaling $41,306,113 for Bank Melli Iran ZAO, Moscow, which was a designated entity. Bank of Moscow did not voluntarily self-disclose the alleged violations.

"None of the Society for Worldwide Interbank Financial Telecommunication (SWIFT) payment messages sent by Bank of Moscow in connection with these funds transfers included specific references to 'Melli,' 'Iran,' or BMI Russia's SWIFT Business Identifier Code, but instead identified the bank through abbreviations," OFAC noted. "U.S. financial institutions processed all 69 of the funds transfers straight through without manual intervention," it added.

OFAC said it mitigated its fine because the bank had not had a violation in the last five years, took remedial actions and cooperated in the investigation. That was balanced by such aggravating factors as the Bank of Moscow's failure to exercise an appropriate caution or care to avoid the violations and the "significant harm' the violations caused to the U.S. sanctions program. The agency also noted that Bank of Moscow is a large and commercially sophisticated financial institution that did not have adequate compliance policies or procedures in place at the time the alleged violations occurred.

"A number of financial transactions falling within the purview of sanctions that nowadays are removed from Iran has been carried out on the order of the ex-top management of the Bank of Moscow and by the order of CJSC Bank Melly Iran, BANK MELLI IRAN subsidiary bank in the period of January, 9, 2008 till July, 13, 2009," said a Bank of Moscow spokesman in an e-mail to WTTL. "The questions posed to the Bank of Moscow during negotiations with Management of Foreign Assets Control (OFAC) of the U.S. Trea-sury Department were resolved and the Settlement Agreement was concluded within the frameworks of ceasing of investigation of this problem, conducted by OFAC," he said.

* * * Briefs * * *

EX-IM FRAUD: El Paso, Texas, business owner who was involved in three separate cases of defrauding Ex-Im Bank was sentenced in El Paso U.S. District Court for his role in schemes. Leopoldo Parra, owner of Poma Tools, was sentenced Jan. 28 to 87 months in prison, as well as three years' supervised release and was ordered to pay $11,846,923 in restitution, $13,638,060 in forfeiture and $1,500 fine. Most recently, coconspirator Manuel Ernesto Ortiz-Barraza was sentenced Oct. 17 to 36 months in prison for his role in scheme to defraud bank of nearly $7.2 million (see **WTTL**, Oct. 21, page 9).

OPTION 4: In Jan. 31 Federal Register Census asked for volunteers for heralded Advance Export Information (AEI) pilot, under which participating exporters will file 10 specific data elements pre-departure along with any additional information they would file post-departure under Option 4. If successful, AEI could replace current Option 4 program (see **WTTL**, Sept. 16, page 1). Volunteers will be accepted until April 1.

BEDROOM FURNITURE: Commerce correctly classified wooden hospital beds within the scope of antidumping order on bedroom furniture from China, CIT Judge Nicolas Tsoucalas ruled Jan. 29 (slip op. 14-9). Medline Industries "acknowledges that its end panel components are wooden furniture as described in the scope language, but disputes Commerce's interpretation of the scope language with regard to the term 'bedroom'," he noted. "Because the Order specifically identifies wooden headboards and footboards as subject merchandise, Commerce's interpretation of the scope language was reasonable," Tsoucalas ruled.

CANDLES: CIT Judge Timothy Stanceu remanded to Commerce Jan. 31 department's scope ruling on petroleum wax candles from China (slip op. 14-11). "Commerce unreasonably interpreted the Order when placing within the scope a large number of candles made in the shapes of identifiable objects," he ruled. Order, which dates back to 1986, specifically identified shapes of candles covered. Trade Associates Group, Ltd., had sought, and Commerce denied, exclusions for candles in the shapes of acorns, beach balls, caramel apples, cupcakes, flip flops, floating leaves, flowers, fruits, garden birdhouses, haunted houses, metallic balls, pears, snowmen, trees, vegetables, witches' hats, and woodies with surfboards, among many others.

APPROPRIATIONS: Omnibus appropriations bill (H.R. 3547) that President Obama signed into law Jan. 17 included variety of special provisions, including prohibition on use of any funds "to implement the Arms Trade Treaty until the Senate approves a resolution of ratification for the Treaty." Measure also bars funding "for processing licenses for the export of satellites of United States origin (including commercial satellites and satellite components) to the People's Republic of China unless, at least 15 days in advance, the Committees on Appropriations are notified of such proposed action." Another provision blocks funds "to promote the sale or export of tobacco or tobacco products, or to seek the reduction or removal by any foreign country of restrictions on the marketing of tobacco or tobacco products, except for restrictions which are not applied equally to all tobacco or tobacco products of the same type."