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## Roth Appeals “Honest Services” Conviction

Ex-University of Tennessee Professor J. Reece Roth is scheduled to enter the Federal Corrections Institution in Ashland, Ky., on Jan. 18, but his attorneys are still filing motions to get his sentence reduced. In a motion filed Jan. 6 in the Nashville U.S. District Court, 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 Nashville said the government would not oppose vacating that one count because it would not change Roth’s sentence.

In October, the Supreme Court refused to hear Roth’s appeal of his conviction of numerous charges of violating the Arms Export Control Act (AECA) as well as one count of fraud for failing to provide “honest services” to the university (see **WTTL**, Oct. 10, page 1). In recent years, government prosecutors have expanded their use of the “honest services” charge not only to public officials who take bribes but also to private-sector defendants who misuse their positions.

Roth based his latest appeal on a 2010 Supreme Court ruling in *Skilling v. United States* in which the court dismissed the “honest services” charge against former Enron President Jeffrey Skilling. The appeal argues that *Skilling* should apply to Roth because he hadn’t accepted any payments for his actions. In addition to vacating this charge, the court should reconsider Roth’s sentence because his “refusal to follow his employer’s directives after being told that failure to do so would violate the law and his fiduciary duty to the University”...“certainly ‘looks worse,’ for lack of a better term, and thus deserving of more punishment,” it contends.

## Japanese Legislators Bring TPP Opposition to Washington

In addition to domestic opposition from the U.S. auto industry and labor unions, Japan’s entry into the Trans-Pacific Partnership (TPP) faces an uphill battle in its own legislature. Six Japanese lawmakers from the Democratic Party of Japan (DPJ) concerned about the trade agreement’s effect brought their case to Washington Jan. 8-12, meeting with Deputy U.S. Trade Representative (USTR) Demetrios Marantis and Assistant USTR Wendy Cutler along with congressional staff, trade associations and nonprofit organizations (see **WTTL**, Nov. 21, page 1). Former Minister for Agriculture, Forestry and Fisheries Masahiko Yamada, now a member of Japan’s House of Representatives, led the group opposed to his country’s entry into TPP negotiations. The six members represented more than half the members of the Diet who issued statements of opposition during its last session. “Even if the government would proceed [with negotiations],



the Diet would not ratify it,” Yamada told a press conference Jan. 11. As U.S. officials have repeatedly argued, the Obama administration’s goal for the TPP is complete removal of tariffs and conformity in rules and regulations, which is exactly what the group of legislators oppose. “That point was made clear to us,” Yamada noted.

When asked if he could support any version of an agreement, he said that based on his discussions [with Marantis and Cutler], there is “no such possibility at this stage.” More specifically, the plan to eliminate all exclusions and impose one set of rules for all participating countries is “not something I’d be able to accept.”

Conversations they had in Washington impressed on the Japanese the importance of two main issues: intellectual property rights (IPR) and investor-state disputes. Nobuhiko Suto, another member of the visiting group, said IPR could become a major issue as talks go forward. When the group asked U.S. officials to make more information available on proposals, Sotu said, “the response was quite shocking to us.” The group was just told to refer to the U.S.-Korea free trade agreement. In addition, Yamada mentioned biotechnology and food safety as potential issues. For example, Japan currently mandates the labeling of genetically modified food.

Despite this opposition to TPP, Japanese embassy officials told WTTL that Prime Minister Noda has the clear intention of joining the talks, but Tokyo is still gathering information, and officials are not sure when the government will “formally finalize domestic consultations.” The embassy is in “continuous contact” with the U.S. government, one official said.

## **Enforcement Task Force Would Be Deja Vu All over Again**

An Obama administration plan to create an enforcement task force would borrow a page from history, copying a similar idea established by President Reagan in 1985. The Obama proposal, first reported by the Wall Street Journal, appears to be aimed at Chinese trade violations but is more likely aimed at Congress in an attempt to dissuade lawmakers from passing tough legislation hitting Chinese currency manipulation and subsidies.

The Reagan administration called its version a trade Strike Force that focused on unfair trade policies in Japan, which was the U.S. trade nemesis of the 1980s. Responsibility for the Strike Force was given to then-Commerce Secretary Malcolm Baldrige. While the Strike Force was expected to bring more formal trade complaints against Japan, it ended up supporting negotiations on bilateral disputes instead (see WTTL, Oct. 21, 1985, page 4).

## **Obama Trade Consolidation Plan Could Renew Old Fight**

President Obama’s announcement Jan. 13 that he will ask Congress for authority to reorganize federal agencies, particularly combining six trade-related agencies into the Commerce Department, is likely to reignite a fight that killed the same idea when Sen. William Roth (R-Del.) proposed creation of a Department of International Trade and Industry (DITI) in 1983. The Reagan administration officially supported the legislation (S. 121), but then-USTR William Brock opposed it along with Senate Democrats. After a year of legislative effort, the measure finally died in mid-1984 (see WTTL, July 9, 1984, page 1).

By all expectations, Obama’s proposal is probably dead on arrival. It will certainly produce jurisdiction fights among House and Senate committees that oversee different trade agencies. In addition, major exporters that are heavy users of Export-Import Bank (Ex-Im) financing, such as Boeing, General Electric and Caterpillar, are unlikely to want the lending process to come under more political oversight at Commerce than it already does. Obama will ask Congress for authority to propose reorganizations of federal agencies and departments, with congressional approval or disapproval of those changes subject to a “fast-track” up or down vote. He said his first proposal would be to bring together Commerce’s core business and trade functions,

which for now appears to include the Bureau of Industry and Security (BIS), plus the Small Business Administration, the USTR's office, Ex-Im, the Overseas Private Investment Corporation and the U.S. Trade and Development Agency (TDA).

The new Commerce Department would retain the Census Bureau, Patent and Trademark Office, National Institute of Standards and Technology and Bureau of Economic Analysis. The National Oceanic and Atmospheric Administration, which accounts for about half of Commerce's current budget, would move to Interior. Also to be moved to Commerce would be Labor's Bureau of Labor Statistics. The White House said the proposal aims to cut 1,000 to 2,000 jobs through attrition, most in administrative posts, and save \$3 billion.

Key congressional committees quickly raised concerns about moving the USTR to the new department, even though Obama intends to keep the USTR as a member of the Cabinet. "Taking USTR, one of the most efficient agencies that is a model of how government can and should work, and making it just another corner of a new bureaucratic behemoth would hurt American exports and hinder American job creation," said a joint statement by Finance Chairman Max Baucus (D-Mont.) and Ways and Means Committee Chairman Dave Camp (R-Mich.).

## **Petitions Seek Review of GSP Eligibility for Ukraine, Indonesia**

Ukraine has failed to live up to two agreements to strengthen its protection of intellectual property rights (IPR) and should have its eligibility for Generalized System of Preferences (GSP) reviewed and withdrawn if it doesn't live up to its promises, the International Intellectual Property Alliance (IIPA) urged in a petition filed with the USTR's office Jan. 9. In a separate petition, it sought a similar review of GSP eligibility for Indonesia for its lack of IPR protection and restrictions on market access for foreign audio-visual products.

Ukraine, IIPA noted, lost its GSP eligibility in 2001 because of IPR failures and had it restored in 2006 after Kiev agreed to an action plan to improve enforcement. After new complaints from U.S. industry, Ukraine adopted a second action plan in 2010. That plan "was never implemented; in fact, some actions have been undertaken by Ukrainian officials that are contrary to the proposed plan, and would weaken, not strengthen enforcement," IIPA contended.

Indonesia's lack of IPR protection and enforcement "has resulted in extremely high levels of physical and online piracy (it is estimated that 87% of business software is unlicensed, while retail and mall piracy rates are even higher)," IIPA asserted. It complained about market restrictions on theatrical prints and home videos, customs valuations, a 60% local-content quota, strict censorship requirements, and a prohibition on the dubbing of imported films.

## **Wolf Optimistic about Reform, But Much Work Left**

As export control reform continues, even without Congress getting into the picture, exporters have raised concerns about what happens to existing licenses issued by State's Directorate of Defense Trade Controls (DDTC) when licensed items are moved from the U.S. Munitions List (USML) to the Commerce Control List (CCL). BIS plans to address that issue in a "transition rule" to the Export Administration Regulations (EAR), Assistant Secretary for Export Administration Kevin Wolf advised during a conference call Jan. 11.

Wolf said the rule will deal with how BIS "would treat those authorizations, and how they would migrate and what the grandfathering and grace periods are for items that would be described under the revised 600 series." Wolf also maintained his optimism that final rules for moving specific categories from the USML to the CCL will happen in 2012. When asked about an estimated timetable for a final rule on military vehicles and related items, Wolf replied, "Other than saying this year, no, because there are several things that need to happen before

any of the proposed rules go final.” Those things include proposing rules for each of the existing USML categories, reviewing public comments, and preparing and following through with the congressional notification process, Wolf said. The last step in that process is addressing the long-debated definition of “specially designed.” “The plan is that State and Commerce will do as proposed rules another definition, one that would be usable for both the ITAR and EAR, with only subtle modifications given slightly different terminology, but the same essential definition,” Wolf said.

## Judge Rejects Gun Show Defendants’ Motion for Mistrial

Just weeks after Justice was handed a setback in its Foreign Corrupt Practices Act (FCPA) prosecution of 22 arms dealers, it notched one victory Jan. 9 when D.C. U.S. District Court Judge Richard Leon denied a motion for mistrial filed by five of the defendants (see **WTTL**, Jan. 2, page 3). The defendants claimed a mistrial was warranted because the grouping of the prosecution of the 22 defendants into three smaller groups allowed in prejudicial evidence.

The defendants seeking the mistrial -- John M. Mushriqui, Jeana Mushriqui, R. Patrick Caldwell, John Gregory Godsey and Marc Frederick Morales -- were among 22 arms dealers caught in a widely publicized sting operation. To handle the unwieldy number of defendants, an agreement was previously reached to break the group of 22 into three sets of defendants for three joint trials.

The defendants’ motion for mistrial criticized this grouping. “The consequence of this improper joinder was the admission in the government’s case-in-chief of hearsay statements of alleged co-conspirators and other testimony and exhibits that would not have been admissible at individual trials,” their motion stated. Justice’s response brief defended the grouping, citing previous case law. “Because the defendants and offenses were properly joined at the beginning of trial – regardless of whether sufficient evidence supported the conspiracy count – there can be no misjoinder at this stage of the case,” the response noted.

### \* \* \* Briefs \* \* \*

**TRADE FIGURES:** U.S. merchandise exports in November rose 11.2% from year ago to \$126.5 billion, Commerce reported Jan. 13. Services exports increased 8% to \$51.3 billion from year ago. Goods imports went up 14.1% from November 2010 to \$189.7 billion, as services imports gained 6.1% to \$35.9 billion.

**SOUTH SUDAN:** President Obama issued memo Jan. 6 authorizing export of defense articles and services to South Sudan. “I hereby find that the furnishing of defense articles and defense services to the Republic of South Sudan will strengthen the security of the United States and promote world peace,” he declared.

**ELECTRONICS:** USTR Jan. 11 asked ITC to conduct Section 332 investigation of U.S. exports of used electronic products, such as audio and visual equipment, computers, and peripheral equipment, digital imaging devices, telecommunication equipment and component.

**EXPORT ENFORCEMENT:** Nadeem Akhtar of Silver Spring, Md., owner of Computer Communication USA, was sentenced Jan. 6 in Baltimore U.S. District Court to 37 months in prison, followed by two years’ supervised release for conspiring to commit export violations and defraud U.S. in connection with scheme to illegally export nuclear-related materials. He pleaded guilty Sept. 9 (see **WTTL**, Sept. 19, page 4).

**MICROWAVE COMPONENTS:** BIS in Jan. 9 Federal Register issued final order imposing new licensing requirements on microwave and millimeter wave electronic components, including technology and software. It said it will also seek Wassenaar Arrangement agreement this year to add these products to multilateral controls. Rule creates new ECCNs 3A982, 3D982 and 3E982, to be controlled for regional stability and antiterrorism reasons. These items will not be eligible for License Exception STA, rule states.

**AIRBUS:** WTO agreed Jan. 13 to name arbitrator under GATT Article 22.6 to determine level of retaliation U.S. is entitled to impose in response to WTO finding of illegal EU member export subsidies given to Airbus. U.S. had asked for authority to retaliate in December, claiming effort to reach agreement with EU had failed (see **WTTL**, Dec. 12, page 4).