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## Roth Sentenced to 48 Months in Jail, but Files Appeal

Knoxville, Tenn., U.S. District Court Judge Thomas Varlan July 1 sentenced former University of Tennessee Professor J. Reece Roth to 48 months in prison for releasing controlled defense technology to a Chinese graduate student. In anticipation of the sentence, Roth's lawyer immediately appealed the conviction to the Sixth Circuit Court. Varlan fined Roth \$1,700 but waived the fine because he found "the defendant does not have the ability to pay a fine." Roth's case has been closely watched by the academic and research communities, which have long debated the application of export controls to what some claim is "fundamental research."

The highly anticipated sentence handed Roth is far below the jail term the government had requested and even below the recommendation of a court probation officer, although for Roth at 72, any time in jail will be harsh. The government wanted Roth to go to jail for 78 to 97 months. The probation officer's report called for a sentence of 63 to 78 months. Roth had requested probation only. On June 18, prior to the sentencing, Varlan had rejected Roth's appeals for a new trial and reversal of his conviction on charges of conspiracy to violate the Arms Export Control Act (see **WTTL**, June 22, page 1).

"This case should send a stern warning to those who would betray the trust of our nation by violating the export control laws by providing our military information to foreign nationals," said a statement by Knoxville U.S. Attorney James Dedrick. He commended the special agents from the agencies supporting the investigation, including the Bureau of Industry and Security (BIS), the Justice Department's National Security Division and Assistant U.S. Attorneys Jeffrey Theodore and Will Mackie of the department's Knoxville office.

## WTO Warns of Abuse of Border Measures to Fight Climate Change

Just as the House was passing climate-control legislation that included potential border measures to block circumvention of carbon-emission controls, the World Organization (WTO) and the United Nations (UN) June 26 issued a joint report which concluded that international trade rules permit tax adjustments and other border measures to fight climate change. The report also comes as news reports quoted President Obama questioning the border measures included in the House bill (see **WTTL**, June 29, page 2). The report, however, reveals the web of complex calculations, protectionism, discriminatory trade treatment and disputes that are emerging in WTO talks over climate legislation. The WTO restated "what we all knew. Border tax adjustments are allowed," one developing-country diplomat told **WTTL**. "Countries



can pass measures to protect the environment including border taxes and measures, and cap-and-trade schemes,” he said in reaction to the report. Border-tax adjustments that are permitted by the General Agreement on Tariffs & Trade (GATT) may be relevant to carbon taxes and cap-and-trade programs, the report said. The objective of an adjustment is to level the playing field between taxed domestic industries and untaxed foreign competition, it said. The practical difficulties in implementing a border adjustment, however, include the difficulty in assessing product-specific emissions, fluctuations in the price of carbon in the emission-trading markets and possibly technical regulations instead of taxes in the country of origin, the report said.

Two main challenges in implementing border measures are (1) providing a clear rationale that accurately assesses carbon leakage and competitiveness losses, and (2) determining a fair price to impose on imported products to bring their prices into line with the domestic cost of compliance with an emission-trading scheme, the report said. One diplomat told WTTL that countries can in principle apply an adjustment based on carbon production on imports, but doing it without clear criteria becomes a problem. Deciding at the border that products from certain exporting countries without an equivalent global warming fighting system will have to pay a certain fee “would be fairly easy to combat in the WTO,” he stated.

Border adjustment measures proposed in the U.S. are counterproductive, said an executive with Third World Network at the June 26 launch of the report. Such measures may prompt developing countries to respond by issuing compulsory licenses on climate change technology to reduce royalties paid companies in developed countries, she said. Border tax measures would also adversely affect U.S. companies producing in China and exporting back to the U.S., she said.

## Corruption in Vietnam Exposed in FCPA Case

The prosecution of a New Jersey businessman for violation of the Foreign Corrupt Practices Act (FCPA) lends support to widely held complaints about corruption in Vietnam. Joseph T. Lukas, 60, pleaded guilty June 29 to conspiracy to violate the FCPA for his part in a scheme to pay bribes to officials in several Vietnamese ministries to obtain contracts for Nexus Technologies, Inc., a privately owned firm in which he was a partner and employee.

According to the September 2008 indictment of Lukas and his co-defendants, bribes were paid to officials in Vietnam’s Ministry of Transportation, Ministry of Industry, and Ministry of Public Safety. The indictment claimed, bribes, totalling \$150,000, helped Nexus win contracts to supply equipment to the Vung Tau Airport, Southern Flight Management Center, Vietsovpetro joint venture, Petro Vietnam Gas Company, and Tourism and Trading Company.

The Justice Department said Lukas admitted that from 1999 to 2005, he and other employees of Nexus agreed to pay and paid bribes to Vietnamese government officials in exchange for the contracts. The charges against Lukas’ co-defendants and Nexus are still pending trial. Lukas won’t be sentenced until April 2010.

## ITC Tries to Avoid Economic Costs with Tire Remedy

Although the International Trade Commission (ITC) agreed with the United Steelworkers that tire imports from China are causing market disruption, it rejected the union’s request for a quota on imports to remedy the problem in its June 29 recommendation in the Section 421 case (see WTTL, June 22, page 3). The decision to recommend to President Obama a tariff of 55% in the first year, 45% in the second year and 35% in the third year may have been based on an ITC staff report which estimated a “net welfare loss of \$310 million to \$524 million from the petitioner’s proposed remedy.” The Steelworks itself had estimated that a quota would cost U.S. consumers \$772 million. The current tariff on Chinese tire imports is 4%. With a tariff of 50%, the net welfare cost to the U.S. economy could range from a negative \$53 million to a

positive \$80 million, the report suggested. The report raises doubts about the benefits of any relief for the industry. One major factor that may limit help from Section 421 safeguard relief is the large market share of imports of subject tires from nonsubject countries, particularly Canada, Japan and Korea. "Imports of the subject product from nonsubject countries as a share of the quantity of apparent U.S. consumption increased from 31.9 percent in 2004 to 33.7 percent in 2008," the report noted. In addition, the higher prices that the tariff would create may cause consumers to delay buying new replacement tires, the staff noted. Regardless of any remedy, tire sales are expected to decline in 2009, the report predicted.

One goal of the Steelworkers' petition – to keep open several U.S. tire plants that are slated for closing – might not be realized, the ITC staff suggested. "While the industry may be able to \*\*\* and keeping plants scheduled to be closed open, it is more likely that it would take more than just a temporary change in price for this to occur," the report said, with confidential information removed. The staff estimated that a 50% tariff would raise Chinese tire prices by 11.4% to 21.4%, but increase domestic prices only 1.2% to 2.1%. While the supply of Chinese tires could decline 35.8% to 55.5%, the quantity of domestic supply would grow only 3.2% to 6.4%. These price and supply changes would be nearly the same with the 21-million-tire quota the union requested.

## Obama Remains Vague on Future of Colombia FTA

After meeting with Colombian President Uribe June 29, President Obama danced around questions from reporters about the fate of the U.S.-Colombia Free Trade Agreement (FTA) and Uribe danced along with him. "Obviously, a lot of work has already been done on the free trade agreement, and we are hopeful that we can move forward to completion," Obama told reporters. "I don't have a strict timetable, because I'm going to have to consult with Congress obviously on this issue. We've got a lot on our plates, if you haven't noticed," he said. "It is a matter of getting both countries to a place where their legislatures feel confident that it will be ultimately to the economic benefit of these countries," he added.

Uribe in the past has spoken forcefully about Bogata's progress on human and labor rights and law enforcement, but he was subdued in his defense of his policies as he sat next to Obama in the Oval Office. "We are open, we are very receptive, to receive any advice, any suggestion on how we are going to fulfill our goal of ceasing civil violations of human rights in Colombia," Uribe said.

"We have a recognition to advance in security, human rights, state restructure, to advance in economics, to advance in social cohesion, and for all these things it is very important to have the permanent support of President Obama, of the government of the United States, of the Congress of the United States," Uribe stated.

Obama noted "a special concern that is bipartisan and shared both by this administration and Congress, that the human rights issues in Colombia get resolved." He said, "President Uribe has assured me that he is interested in resolving those issues." Not mentioned at the press briefing was a possible U.S. request to Colombia to move the U.S. Air Force's antinarcotics airfield to Colombia from Ecuador, which is refusing the renew the U.S. lease. Washington's need for an air base in Colombia would raise the national security stakes for the FTA.

## Obama Cuts Trade Benefits for Bolivia, Warns Ecuador

President Obama June 30 continued the Bush administration's hardline stand against Bolivia, issuing a directive cutting off its duty-free benefits under the Andean Trade Preferences Act (ATPA) as of June 30. President Bush had suspended those benefits in November (see **WTTL**, Dec. 1, page 4). Bolivia's main problem is inadequate support for antinarcotics efforts. Despite its expropriation of some foreign assets, Obama noted that the U.S.-Bolivia Bilateral

Investment Treaty (BIT) remains in effect. “No U.S. company has alleged that the Bolivian government has acted inconsistently with the ATPA’s investment-related eligibility criteria,” Obama conceded. Obama decided to allow Ecuador to keep its benefits for now, but raised concerns about the country’s trade and investment policies. Ecuador got a passing mark on its antinarcotics efforts, but Obama raised concerns about its trade and investment policies.

Ecuador in January invoked the Balance-of-Payments exception under GATT rules to raise tariffs for one year on a large number of imports above the bound rates it had agreed to in the WTO. Although it also imposed quotas on some products, it has agreed to phase out many of those restrictions earlier than January 2010, Obama noted. The president also cited complaints by several U.S. companies about Ecuador’s investment policies. “My administration will monitor Ecuador’s investment policies to ensure that Ecuador continues to meet its BIT obligations,” Obama said. He cited Ecuador’s decision not to renew the lease on the U.S. Air Force base in Manta, Ecuador, but said the two countries are considering other initiatives to strengthen bilateral cooperation.

Sen. Charles Grassley (R-Iowa) applauded Obama’s decision. “I will examine the conformity of each of the remaining eligible beneficiary countries with all of the program’s various eligibility criteria over the next six months as I evaluate the extent to which these preferences should remain in place,” he said. “I’ll make that evaluation in the context of my ongoing effort to undertake a comprehensive legislative overhaul of all our trade preference programs,” he added.

\* \* \* **Briefs** \* \* \*

CORRECTION: Brief on Delphi Corporation settlement with BIS on unlicensed export of chemicals to South Africa and China should have noted fine was suspended for one year and will be waived if company remains in compliance with export rules during that time (see **WTTL**, June 29, page 4).

NOT-BY-BREAD-ALONE-DEPT: After reversal of his earlier ruling by Court of Appeals for Federal Circuit, CIT Judge Timothy Stanceu July 1 remanded to ITA its scope determination in antidumping order on imported shrimp (Slip Op. 09-69). Agency acted contrary to law when it treated “dusted” shrimp same as “breaded” shrimp and excluded it from order, he ruled.

EXPORT ENFORCEMENT: After pleading guilty and being sentenced to 35 months in prison, Traian Bujduveanu of Broward County, Florida, June 19 filed appeal of conviction on charge of conspiracy to export USML aircraft parts to Iran (see **WTTL**, June 15, page 4). In earlier court briefs, Bujduveanu complained that his co-defendant Hassan Saied Keshari was sentenced to just 17 months in jail because he cooperated with prosecutors. “Had Mr. Bujduveanu come to this realization earlier on in this matter, he may have very well entered his guilty plea prior to Mr. Keshari,” Bujduveanu’s lawyer told court.

ISRAEL: In Federal Register July 2, USTR’s office rejected Institute for Research: Middle Eastern Policy petition asking it to open Section 301 investigation to determine if Israel violated WTO obligations to protect intellectual property rights. “To the extent the petition does describe any TRIPS Agreement issues, those issues would be addressed more effectively through the established Special 301 process and the ongoing Out-of-Cycle Review of Israel’s IPR protection,” notice said.

SATELLITE EXPORT CONTROLS: 2009 National Defense Authorization Act (H.R. 2647) passed by House June 25, includes provision calling for State and Defense departments to conduct risk assessment of removing satellites and related components from U.S. Munitions List (USML). Departments would also have to provide recommendations on “space and space-related technologies that should remain on, or may be candidates for removal” from USML based on national security risk assessment. Measure would tell departments also to examine “the degree to which other nations’ export control policies control or limit the export of space and space-related technologies for national security reasons.”

GSP: President Obama June 29 made annual GSP determinations. He waived graduation for 112 exports from 16 beneficiary countries from being excluded from program because they exceed statutory import ceilings. He agreed that 12 products from six beneficiary countries are now sufficiently competitive to no longer need GSP treatment. Among graduated products was polyethylene terephthalate (PET resin) from Indonesia, but Obama waived graduation for PET from India. No country lost GSP status in response to complaints about intellectual property protection or worker rights violations. Several beneficiaries remain under active scrutiny because of such concerns, including Lebanon, Russia and Uzbekistan regarding IPR protection, and Bangladesh, Niger, the Philippines and Uzbekistan regarding worker rights.