

## Judge Denies Roth's Pleas for Acquittal and New Trial

Knoxville, Tenn., U.S. District Court Judge Thomas Varlan June 18 denied former University of Tennessee Professor J. Reece Roth's motions for acquittal and for a new trial, but still hasn't announced Roth's sentencing for the release of defense data to a Chinese graduate student. While rejecting Roth's motions, Varlan opened the door for other defendants who want to argue that the government hasn't proven that a specific product or technology falls under the provisions of the U.S. Munitions List (USML) (see **WTTL**, May 18, page 1).

"After reviewing the statutory language and the arguments of the parties, the Court determines that it is appropriate for the Court to determine if the government presented sufficient evidence for a reasonable trier of fact to determine whether the equipment and documents charged in the indictment fit into one of the defined categories of the United States Munitions List," Varlan wrote. "The Court, however, finds it inappropriate to review the policy decision of whether a certain item or category of items should or should not be placed on the United States Munitions List," he added.

"Although defendant is correct that not all of the evidence supported a finding that the items listed in the indictment were defense articles or technical data, the standard for a judgment of acquittal is not whether there is some evidence supporting a different conclusion, but rather whether there is sufficient evidence to support the conclusion the jury did reach," the judge stated. "Here, the Court finds that there was sufficient evidence," he ruled.

## Court Says Beef-Hormone Retaliation Has Terminated

In a ruling that might set off a stampede to the Customhouse, Court of International Trade (CIT) Senior Judge R. Kenton Musgrave June 16 ruled that authority to impose 100% tariffs on imports from the European Union (EU) in retaliation for its ban on hormone-treated beef from the U.S. "terminated by operation of law on July 29, 2007." Although Musgrave's opinion in *Gilda Industries v. U.S.* applied only to one product, his decision could prompt other importers to rush to file protests with Customs and Border Protection (CBP) to bar liquidation of entries whose liquidation deadline has not yet passed. Because of the potential wide reach of the decision, the government is expected to appeal the ruling to the Court of Appeals for the Federal Circuit. Gilda had previously challenged the imposition of sanctions on its imports of rusks and toasted breads from Spain, and the USTR's office deleted the product from the retaliation list when it proposed a new list of imports for duties as part of its effort to use the "carousel"



provisions of Section 301 of the Trade Act. Application of the carousel provisions was suspended as part of a settlement the U.S. reached with the EU (see **WTTL**, May 11, page 2). In his new ruling, Musgrave granted Gilda summary judgment and said its imports after July 29, 2007, must be liquidated without the 100% retaliatory tariff. In addition, CBP “shall refund to the plaintiff all of the retaliatory duties (described herein) collected on Gilda’s toasted bread imports from Spain between July 29, 2007 and March 23, 2009,” he ordered.

“Unless people are filing protests, it’s[the ruling] not going to do them any good,” Gilda’s attorney Peter Herrick of Miami, Fla., told **WTTL**. He said Gilda has been filing protests on its entries since July 2007. In its filings, Gilda “argued the list is terminated; it’s history,” he said. Herrick, who has been following the hormone case closely, said he was not aware if other firms hit by the retaliation list have filed protests on liquidations, but noted that liquidation doesn’t occur until 314 days after entry and importers then have 180 days to file a protest. As a result, imports subject to 100% tariffs in the last 494 days could seek refunds on duties.

Musgrave said the retaliation terminated because the domestic beef industry had not asked for an extension before the end of the four-year period of sanctions. Although the USTR’s office had failed to provide notice of the coming end of the sanctions, the industry still had the obligation to monitor the situation. Musgrave rejected the government’s claim that the USTR’s failure to provide notice justifies extension of the retaliation. “Moreover, because other provisions contained in section 301 expressly provide that some of the USTR’s actions *are contingent* upon an actual consultation with the domestic industry (which entails, at the very least, notice) and *do* involve the USTR’s discretion, the court is loathe to judicially insert such a provision where none exists,” Musgrave ruled.

## Obama Keeps Korean FTA on Backburner

President Obama appeared to give Korean President Lee Myung-Bak no hope that he is prepared to act on the U.S.-Korean Free Trade Agreement (FTA) anytime soon during their June 16 meeting at the White House. After their talks, Obama told reporters there are still issues to resolve about beef and cars. “What I’ve done is to affirm to President Lee that we want to work constructively with the Republic of Korea in a systematic way to clear some of these barriers that are preventing free trade from occurring between our two countries,” Obama said. “Once we have resolved some of the substantive issues, then there’s going to be the issue of political timing and when that should be presented to Congress,” he added.

“We want to make sure that we have an agreement that I feel confident is good for the American people, that President Lee feels confident is good for the Korean people, before we start trying to time when we would present it,” Obama said. Lee said the two leaders welcomed “the initiation of working-level consultations to make progress on the issues surrounding the KORUS FTA and agreed to make joint efforts to chart our way forward on the agreement.”

## Russia Backtracks on Vow to “Terminate” WTO Bids

More questions than answers emerged from a June 17 briefing Russian officials gave in Geneva to explain plans Russia, Kazakhstan and Belarus have to withdraw their individual requests to join the World Trade Organization (WTO) and to apply together as a customs union (see **WTTL**, June 15, page 1). Russian Prime Minister Putin June 9 said the three will “terminate” their individual bids to join the WTO, but officials attending the briefing told **WTTL** the three countries may only be seeking a suspension of talks for now. They will ask for suspension of individual multilateral accession talks while they explore if and how they could join as a customs union, said Iceland Ambassador Stefan Johannesson, who chairs the WTO working party on Russia’s accession. “Suspending is not dropping,” one diplomat told **WTTL**. Putin

used the word “terminate” but was talking about something other than what was floated in the closed-door briefing, the diplomat reported, suggesting that the inconsistency could reflect intense talks within the Kremlin. Russia hasn’t sent anything formally in writing to the WTO, one ambassador reported. No new accession meetings are scheduled for the three countries.

Russia is likely to keep its bid, a trade diplomat said, noting that Moscow wants to continue its accession process while it probes whether it’s possible to supercede its accession eventually with a joint request for the customs union. Such a request would require a degree of coordination that “I’m not sure even the EC has,” the official said. It also might require a change in WTO rules, which will not be easy, one official noted.

Russia said it still wants to join the WTO, but its priority is to have the customs union join first, another high-ranking trade diplomat said. Then they will pick up the threads to relaunch their individual accessions talks, he explained. The process will take longer, several officials said. The Russians, Kazakhs and the Belarusians need to clarify even further what they’d like to do, an ambassador who attended the briefing said. It wasn’t clear to participants at the session what the three countries would like to do in pursuing the new approach, he said. Gambling its own accession on pulling along Belarus is a risky gambit for Russia, the first diplomat said. No Belarus working party meeting has been held since 2005.

## **India’s New Trade Minister Claims Commitment to Doha Round**

During his June 16-18 visit to Washington, India’s new commerce minister, Anand Sharma, repeatedly said his country is ready to restart Doha Round negotiations but revealed no change from positions taken by his predecessor Kamal Nath (see **WTTL**, June 1, page 1). Sharma seemed to have hit it off with USTR Ron Kirk, with whom he shared some single-malt scotch during their talks. Sharma, however, emphasized that India’s position in the negotiations are not determined by individuals but by national interests. It would “not be fair to take governmental positions as individual positions,” he told reporters at the end of his visit. “I am deeply rooted in India’s national realities, sensitivities and priorities,” he declared.

Sharma was soft-spoken and expansive in the two speeches he gave in Washington, quoting Mahatma Gandhi and reciting numerous statistics about the Indian economy, foreign direct investment and outsourcing. He said India’s position in the resumed Doha talks this fall will be determined in August after the government completes its budget process.

The collapse of Doha trade talks in July 2008 was due to the nonconvergence of many issues, Sharma argued. He discounted suggestions that the elections in the U.S. and India would make it easier for the two governments to reach a deal. “The nonconvergence was not linked either to our elections or to American elections,” he said. Nonetheless, he said there can be hope for the round because “you have strong governments in position” in both countries. He said Indian Prime Minister Singh wants the round taken to a successful conclusion. “That is the mandate I have from our prime minister,” he said.

## **ITC Finds Tires from China Disrupting U.S. Market**

President Obama won’t be able to avoid facing his first test under Section 421 Safeguard rules on imports from China following the International Trade Commission’s (ITC) 4-2 vote June 18 that tire imports from China are causing market disruption in the U.S. President Bush’s refusal to grant safeguard relief during his term stirred complaints from Democrats, unions and some in U.S. industry. Now Obama will have to show whether he takes a different view than Bush. “I believe that, unlike the Bush Administration, President Obama will decide the safeguard case on the merits, not on an ideological rejection of import relief,” said Rep. Sander Levin (D-Mich.). ITCers voting in the affirmative were Chairman Shara Aranoff and Commis-

sioners Charlotte Lane, Irving Williamson and Dean Pinkert; voting negative were Vice Chairman Daniel Pearson and Commissioner Deanna Okun. The majority found imports “increased in such quantities or under such conditions as to cause or threaten to cause market disruption” to domestic tire makers. The ITC must now decide on a remedy to recommend to the president. Its report to the president and the U.S. Trade Representative’s (USTR) office is due by July 9.

“Obviously, we would have hoped [the vote would have gone] otherwise, but it goes on to the White House,” said David Spooner with the law firm of Squire, Sanders & Dempsey, which represents the tire subcommittee of the China Chamber of Commerce. The 4-2 vote “helps us make our case when it goes to the USTR and White House that it was not a unanimous decision,” he told WTTL.

The United Steelworkers, which filed the petition in the case, has asked the ITC to recommend the imposition of a quota of 21 million tires in the first year with a 5% increase in the second year and 5% more in the third year. It wants the quota to be allocated along the same Harmonized Tariff Schedule lines as imports in 2005. “A lot of times when you have a quota, the import community moves up to the highest value product,” said Terence Stewart, of Stewart and Stewart, which represents the Steelworkers. “So if you are going to have a quota, you want a quota that reflects the market; that reflects historical trends,” he told WTTL. “If you are going to ship less, you may choose to cherry pick what you ship and ship to certain segments of the market,” he noted. He said the split ITC vote doesn’t matter because the determination goes to the president as an affirmative finding.

## Resumption of Doha Farm Talks in Fall Planned

Doha Round agriculture talks will move back to multilateral meetings this summer in preparation for the resumption of negotiations in the fall, New Zealand Ambassador to the WTO David Walker, who chairs the talks, told WTO members June 18. Members will spend much of this time “outcome testing” various modality scenarios that are supposed to cut trade barriers to agriculture trade, officials said after the informal meeting. The proposed addition of a request-offer approach to the talks is still dividing members, sources reported. Developed countries support the approach, but smaller countries want negotiations to stay aligned with the modalities approach, one official said (see **WTTL**, June 1, page 3).

Outcome testing won’t be part of the formal negotiations but will be up to members to conduct either bilaterally or pluralaterally, Walker told the meeting. One former ambassador, however, said such an approach is inevitable. “You can never finish a negotiation without a request and offer because at the end” each country wants to see what’s in it for them, he told WTTL.

The U.S. and other agriculture exporting countries want to know what the end result will be for various products in certain markets, a trade official said. But developing countries are pushing back. An outcome test is a contradiction, one developing country agriculture negotiator said. He said the landing zones in the agriculture texts are well known and changing the equilibrium means the whole package will have to be recalibrated. A country with concerns should come forward with what they want “and be prepared to pay” if they want to renegotiate, he said.

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

RIFLES: DDTC has posted notice that it has been informed by Thai Interior Ministry that Thailand is prohibiting import of rifles to firearms shops or individuals from June 1 to Nov. 30. Permits already issued will be honored. DDTC “will return without action to applicants any license applications currently under review for proposed exports to Thailand of rifles meeting the criteria above,” DDTC said. “Applicants can reapply after November 30, 2009, but should check the website prior to resubmission to ensure that ban has not been extended,” it said.

CUBA: BIS and OFAC rules implementing President Obama’s orders on travel and trade are at OMB. Chance for Cuba legislation this year, however, is unlikely, congressional sources say.