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Ex-Rep. Jefferson Tied to Indictment of Ex-Im Employee

The indictment of former Export-Import Bank employee Maureen Edu was the result of a Justice investigation of ex-Rep. William Jefferson (D-La.), who is now facing separate criminal charges for corruption (see **WTTL**, March 2, page 4). The link between Jefferson and Edu, also known as Maureen Scurry, was first revealed by the New Orleans *Times Picayune*. Other court documents also tied Edu's alleged acceptance of a bribe to help some Nigerian businessmen get loan guarantees from Ex-Im to the charges against Jefferson without naming him.

Edu's indictment refers to a lawmaker called "Representative A" who was helping a firm in Louisville, Ky., obtain a \$44 million contract to sell television equipment to a Nigerian company. "In mid-July 2003, in Nigeria, Representative A met with executives of Nigerian Television Company, who were pursuing a telecommunications venture in Nigeria and elsewhere in Africa," the indictment states. "Representative A advised them that U.S. Technology Company could provide the goods and services desired by Nigerian Television Company," it adds.

"On or about July 23, 2003, in London, England, Representative A introduced U.S. Businessman to Nigerian Television Company executives, who preliminarily agreed to purchase U.S. Technology Company's products and services for Nigerian Television Company's use in Nigeria," the indictment recounts. "In early August 2003, Representative A arranged a meeting between Edu and U.S. Businessman, Nigerian Businessman A and Nigerian Businessman B to discuss the U.S. Technology Company-Nigerian Television business deal and possible financial support from Ex-Im Bank," it states.

A Justice motion to seal Edu's indictment until after her arrest on Feb. 24 justified the secrecy of the charges because of a separate ongoing criminal case. "The instant criminal charges arise from a corruption investigation into a former Member of Congress, who is presently facing separate criminal charges that are pending in the Eastern District of Virginia," the motion said.

Obama Walks Tightrope in Trade Policy Statement

President Obama has said so little on trade since his inauguration that every word he or his aides utter is scrutinized for some signal of his true trade policies now that he is no longer a presidential candidate. Thus, the 2009 Trade Policy Agenda and 2008 Annual Report that the U.S. Trade Representative's (USTR) office issued March 2 is being put under the microscope as though it were the Rosetta Stone of trade. Most of the 467-page document is a primer on the



status of scores of trade issues on the USTR's plate, including the Doha Round, bilateral trade talks and free trade agreements. On most of these topics, and especially Doha, the Obama administration is taking the same course as the Bush administration.

The introduction appears to be the only portion scripted by the White House and it contains enough ambiguity to keep trade watchers guessing. The statement continues to emphasize the importance of labor and environment provisions in trade deals, increased transparency in trade agreements, opposition to protectionism and support for a rules-based trading system under the World Trade Organization. It suggests Obama will seek renewal of "fast-track" trade negotiating authority, will try to find ways to bring pending FTAs with Colombia, Panama and Korea to Congress for a vote, and will work with Canada and Mexico on ways to "improve" NAFTA.

Among the key points in the trade policy agenda are:

- "We will only ask for renewed trade negotiating authority after engaging in extensive consultation with Congress to establish the proper constraints on that authority and after we have assessed our priorities and made clear to this body and the American people what we intend to do with it."
- "We are in the process of developing a plan of action to address the pending trade agreements in consultation with Congress. We hope to move on the Panama Free Trade Agreement (FTA) relatively quickly. And we plan to establish benchmarks for progress on the Colombian and South Korean FTAs."
- "Trade is more beneficial for the world, and fairer for everyone, if it respects the basic rights of workers. Our trade policies should build on the successful examples of labor provisions in some of our existing agreements."
- "Also, as we tackle the issues of equity, we need to ask how trade policy can respond to mounting global environmental challenges...We should aim to make trade a part of the tool kit of solutions for addressing international environmental challenges."
- "We shall continue this country's commitment to the World Trade Organization's (WTO) system of multilateral trading rules and dispute settlement."
- "A strong, market-opening agreement for both goods and services in the WTO's Doha Round negotiations would be an important contribution to addressing the global economic crisis, as part of the effort to restore trade's role in leading economic growth and development...However, it will be necessary to correct the imbalance in the current negotiations in which the value of what the United States would be expected to give is well-known and easily calculable, whereas the broad flexibilities available to others leaves unclear the value of new opportunities for our workers, farmers, ranchers, and businesses."
- "As the scope of trade policy expands to address non-tariff and other barriers to trade, we need trade policy to meet strong standards of social accountability and political transparency."
- "In addition to promoting social accountability, U.S. trade policy development needs to become more transparent. Many stakeholders are frustrated with the lack of consultation involved in the development and implementation of trade policy, but we can and should expand public participation in advising U.S. trade negotiators."
- "We will also work with Canada and Mexico to identify ways in which NAFTA could be improved without having an adverse effect on trade."

While the agenda was welcomed by many trade groups, several of the phrases in the document raised concerns among free-trade supporters in Congress. In particular, they were uncertain about its call for "benchmarks" to move the FTAs with Colombia and Korea and the possibility that the administration might want to "build" on the May 2007 agreement on labor and environment and go further than that bipartisan deal went on those subjects. "I was glad to see that the president intends for trade policy to play an important part in our economic recovery. That statement is long overdue," said Sen Charles Grassley (R-Iowa) in a statement.

But the ranking member on the Finance Committee questioned parts of the agenda dealing with labor and environment issues and NAFTA. "I don't know what the president intends in saying that our trade policies should build on the labor provisions in our existing trade agreements, or in asking how trade policy can respond to global environmental challenges," Grassley said.

"The bipartisan compromise on these issues that was reached on May 10, 2007, was difficult for me to accept," he noted. Grassley also was worried about any changes to NAFTA. "I'm concerned that Mexico may seek increased tariffs on agricultural exports that are important to my home state of Iowa. I'm going to seek additional clarity from the President on that point,"

he said. Frank Vargo, vice president of the National Association of Manufacturers, praised the USTR's statement, particularly on the Doha Round. "The agenda takes a very pragmatic approach," he said in a statement. "We were pleased to see that the agenda calls for correcting the current imbalance in the Doha Round, and seeking a strong and balanced market-opening outcome," he said. "It is also very significant that the agenda calls for obtaining new fast-track type trade negotiating authority after consultations with the Congress," Vargo added.

Seizure of Drugs Raises Concerns about Counterfeit Crackdown

The seizure by Dutch authorities in December of a shipment of generic drugs en route from India to Brazil has raised concerns that border enforcement measures against counterfeiting and piracy are having unintended consequences. The incident, one of more than a dozen similar seizures in the Netherlands in 2008, has also highlighted the debate over proposals for an Anti-counterfeiting Trade Agreement (ACTA) (see WTTL, Sept. 29, page 2). The debate over the transit of drugs that are covered by patents surfaced at a March 3 meeting of the WTO's Trade-Related Intellectual Property Rights (TRIPS) Council.

European Union (EU) rules, which are mainly aimed at preventing counterfeit traffic, meet WTO obligations, an EU official said. "The rising threat of counterfeit medicines means that customs control, including in-transit goods, are justified," Luc Devigne, head of the intellectual property (IP) unit of the European Commission told the council. The December 4 shipment was detained because a company held a patent for the drugs in the Netherlands, officials said.

The rash of Dutch customs drug seizures, however, was a surprise to many in the public health community, argues James Love, director of Knowledge Ecology International (KEI), a group that has advocated for easing drug patent protections to make generics available to developing countries. From a policy point of view, the law is wrong, Love told reporters. "Goods in transit should not be subject to injunctions and search and seizure when they're bona fide legitimate drugs in both the exporting and importing market," Love said. No patents in India or Brazil were violated, he claimed. "Nothing that we have seen suggests that any of these cases involve counterfeits," Love said. According to EU rules, companies in the Netherlands can legally enforce a patent every time a plane lands, Love said.

Intense negotiations involving Japan, the U.S. and the EU on the ACTA are likely to result in border measures, Love said, complaining about the secrecy of the talks. The U.S. wants to limit ACTA talks to counterfeit trademark and copyright piracy issues, he said. The EU wants to introduce very tough provisions on patents and extend it to geographical indicators and other forms of intellectual property, Love noted.

Meanwhile, some developing countries are fighting the World Customs Organization (WCO) secretariat's attempts to push through an enforcement agenda, according to an official familiar with the matter. "Behind the enforcement screen, they are actually increasing IP rights, awarding rights that currently do not exist," a trade diplomat to the WTO told WTTL. He said Brazil supports WCO efforts to combat counterfeit medicines, but has a major concern that countries claiming to combat counterfeit medicines are overshooting that goal and negatively affecting legitimate trade in generic medicines. Countries need to find ways to target the exact enemy without hitting legal generic medicines, the diplomat said.

Kirk Faces Questions on Taxes But Likely to Get Confirmed

USTR-nominee Ronald Kirk will face tough questioning on his errant income tax filings at his March 9 confirmation hearing and will have to beat his chest with several *mea culpas*, but the former Dallas mayor will get Senate approval easily for the trade post, congressional sources say. Kirk became the latest Obama Cabinet nominee to be accused of underpaying taxes when the Senate Finance Committee released a report March 2 detailing his incorrect direction of

certain speaking honoraria, which should have been declared as income, to his college alma mater and the claim of a deduction for Dallas Mavericks' tickets as business entertainment. The committee staff estimated that he underpaid his taxes over several years by \$9,975. Kirk has agreed to file amended tax returns and pay the shortfall.

More than answering questions on his taxes, Kirk will have a tougher job trying to steer between the Scylla and Charybdis of trade, assuring committee Republicans that the Obama administration supports open trade and is against protectionism, while not offending Democrats who want stricter enforcement of trade laws and oppose free trade agreements. Congressional sources who have met Kirk say he can be very charming and persuasive, so they expect him to glide through the hearing by attempting to make everyone happy.

Mercifully for him, the Finance hearing may be very short. The hearing was originally scheduled for March 5 but was postponed to March 9 because of the White House conference on health care on March 5 and to give members a chance to review the committee report on Kirk's tax problems. The hearing on March 9 is scheduled for 5:00 P.M. Due to delays in Senate action on pending appropriations legislation, the Senate is tentatively scheduled to start voting on several spending amendments at 5:30 P.M. This may reduce the number of committee members attending his hearing, and many of the questions they would have asked in person will be submitted to Kirk for him to respond in writing, congressional source say.

* * * Briefs * * *

TRADE PEOPLE: Former BIS Assistant Secretary for Export Enforcement Darryl Jackson has joined export compliance group at DC law firm of Kelley, Drye & Warren. He can be reached at 202-342-8400....Tim Keeler, former chief of staff for USTR Susan Schwab, has become counsel with the DC law firm of Mayer Brown. He is at 202-263-3774.

BIS: Bill Kessler reportedly will take over as acting chairman of Operating Committee (OC) which is supposed to resolve differences over licensing decisions among export control agencies. Previous OC chair Dave Flynn has left Commerce to work at NASA.

MEXICO: Provisions in pending Senate version of 2009 appropriations bill that would block opening of cross-border trucking for Mexican trucks has some farm state lawmakers worried about rumors that Mexico is planning to retaliate under NAFTA rules. They are concerned that Mexico might target agriculture goods in retaliation, including wheat, corn, pork and beef (see WTTL, March 2, page 5).

ITAR: DDTC has updated its licensing policy for foreign persons employed by U.S. person. Agency has changed its policy of requiring both technical assistance agreement (TAA) and DSP-5 to authorize transfer of controlled technology to foreign national. "After close review, DDTC has determined this 'double' licensing to be redundant. Therefore, all requests for the licensing of a foreign person employed by a U.S. person must be made through the use of a DSP-5 to cover all levels of requested technical data and defense services," it stated in policy posted on its website. "DDTC recommends that only one DSP-5 be obtained for each foreign person employee to cover all activities," it advised.

FCPA: Government investigation that led to FCPA charges against Halliburton and KBR, Inc., and \$579 million in fines and penalties for those two firms has snagged two more individuals who have been charged with paying illegal bribes to Nigerian officials. Justice Department March 5 announced Feb. 17 indictments in Houston U.S. District Court of two citizens of United Kingdom, Jeffrey Tesler and Wojciech Chodan. Tesler was arrested by London Metropolitan Police March 5, and there is outstanding arrest warrant for Chodan. "The Justice Department is seeking the defendants' extradition from the United Kingdom to the United States to stand trial," department said.

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