Office of the Attorney General
Washington, D. C. 20530

April 27, 2012

The Honorable John A. Boehner
Speaker
United States House of Representatives
Washington, DC 20515

Re: United States v. Zhen Zhou Wu, et al., No. 08:10386-PBS, 2011 Westlaw 31345 (D. Mass. Jan. 4, 2011)

Dear Mr. Speaker:

Consistent with 28 U.S.C. 530D, I write to advise you that on March 14, 2012, the Department of Justice determined not to appeal the decision of the district court in the above-referenced case. A copy of the decision is enclosed.

Zhen Zhou Wu and Yufeng Wei are citizens of China. Acting through a Massachusetts company controlled by Wu, they exported millions of dollars worth of electronics from the United States to China. A federal grand jury in the District of Massachusetts returned a 34-count indictment charging Wu, Wei, and their company with conspiracy to violate export laws, including the Arms Export Control Act (AECA), 22 U.S.C. 2778(c), and with committing numerous export violations. A jury found the defendants guilty on most of the counts, including several counts that charged the unlawful export of defense articles on the United States Munitions List (USML), see 22 U.S.C. 2778(a)(1), between 2004 and 2006.

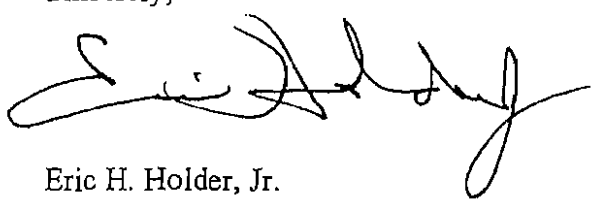
The defendants filed motions for judgments of acquittal under Federal Rule of Criminal Procedure 29, claiming that the statute was unconstitutionally vague as applied to them because they did not have fair notice that the items they were exporting were on the USML. The district court denied the motions in most respects, but granted them with respect to two AECA counts that were based on the export of certain electronic devices. As to those counts, the court found that the defendants had lacked clear notice that the items at issue were on the USML. In reaching that conclusion, the court emphasized that the State Department did not determine that the items were on the USML until after the defendants had exported them. The court reasoned "that it is fundamentally unfair to find an exporter guilty of failing to obtain a license from the Department of State, where there was no actual notice from the manufacturer or distributor that the part in question would be designated a defense article on the USML, and where it was not self-evident that the part was on the USML at the time of export." 2011 WL 31345, at *12. It therefore concluded that the application of the statute to the defendants violated the Due Process Clause and the Ex Post Facto Clause.

The Department defended the constitutionality of Section 2778(c) in this case, and it will continue to do so in future cases. Although we disagree with the district court's decision that Section 2778(c) is unconstitutional as applied to a portion of the defendants' conduct, that decision is limited to the specific facts of this case. The district court's opinion lacks precedential value, and it is unlikely to have a significant effect on effective enforcement of the statute.

In addition, an appeal is not necessary to secure satisfactory sentences in this case (one defendant received a sentence of eight years imprisonment, and the other received a sentence of three years). The defendants were convicted on two other AECA counts that the court left standing, two counts of conspiracy to violate 18 U.S.C. 1001, and multiple counts of unlawful export under 50 U.S.C. 1705. Although the defendants have appealed, the Department intends to defend the convictions vigorously. Taking a cross-appeal on the two counts that the district court set aside would add new complexity to the appeal, and would require the investment of additional resources.

The Department filed a protective notice of cross-appeal on January 27, 2011. The government's opening brief is due May 25, 2012, and the Department intends to dismiss the cross-appeal in advance of that date. Please let me know if we can be of further assistance in this matter.

Sincerely,



Eric H. Holder, Jr.
Attorney General

Enclosure