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BIS May Have Misled Extent of Shift to USXports

Contrary to the impression Bureau of Industry and Security (BIS) officials gave in statements at the agency's Update conference Nov. 2, BIS has not integrated its export licensing system into Defense's USXport system (see **WTTL**, Nov. 9, page 7). A report by Commerce's Office of Inspector General (OIG) obtained by WTTL says, "With the project now in its fifth year, BIS has not migrated to USXPORTS."

> At Update, BIS Under Secretary Eric Hirschhorn announced that as of Oct. 5, Defense, Commerce, State and Energy "completed installing an interagency referral module on the Department of Defense's USXports platform. As directed by President Obama, all four agencies now are reviewing and providing their positions on Commerce license applications on a single IT platform." This carefully hedged statement means all departments now see BIS export licenses, but BIS is not using USXports to process cases.

Under the "four singles" of export control reforms, BIS and other agencies were supposed to move all licensing into a single information technology (IT) system. That system was to be USXports, operated by the Defense Technology Security Agency (DTSA).

BIS was to decommission its export licensing system, Export Control Automated Support System (ECASS) and by 2012 migrate to USXports. "However, after project delays, in 2014 BIS determined that USXPORTS, in its current state of development, will not meet its operational needs," the Oct. 6 OIG report states. In 2014, BIS decommissioned ECASS and created the Commerce USXPORTS Exporter Support System (CUESS).

In May, BIS and DTSA agreed to develop an interagency Referral Sub-System. "The Interagency Referral Sub-System — while it will enable transfer of dual-use referral data and documents from CUESS to USXPORTS — does not fulfill BIS' original commitment to use USXPORTS as its system for processing export licenses," states the report, "Top Management Challenges Facing the Department of Commerce" (OIG-16-002).

In response to the OIG report, a BIS official told WTTL there was no conscious attempt at Update to mislead about what the agency was doing. He noted that USXports, which was built in the late 1990s and early 2000s, was a good system for its purpose but "wasn't meant to interact with other agencies." "We actually spent some time with DoD to see if USXports as it was built could be modified and after considerable effort, the

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answer was not without some major modernization work," he said. The goal of a single IT system as envisioned by the original export control reform plan remains far off. "We are not ready to go technically and turn off our computers at Commerce," the official said.

Attacks in Paris Add Complexity to Safe Harbor Talks

The tragic killings in Paris Nov. 13 and the subsequent police actions the following days throughout Europe and in the suburbs of Paris Nov. 18 have added new complexity to U.S.-European Union (EU) talks on revising the 2000 Safe Harbor Framework. While EU officials continue to insist on strengthening the privacy protection provisions of the accord, they also recognize in the wake of the terror attacks that law enforcement agencies on both sides of the Atlantic need the ability to conduct surveillance of potential terror groups (see **WTTL**, Oct. 26, page 1).

> European sources say Europe is divided over surveillance practices, with France, even before the attacks, more open to government's role in monitoring data and phone calls. On the other hand, countries like Germany, with East Germany's history under the Stasi, and other Eastern European members, with their experience during the communist era, are more sensitive about such surveillance.

In remarks in Washington Nov. 16, EU Justice Minister Vera Jourova stressed the need for strong privacy protections in a new Safe Harbor deal but also noted that the EU has been reconsidering its security agenda ever since the attacks in January on the Charlie Hebdo magazine and a kosher supermarket in Paris. "Last Friday's events sadly reminded us how relevant and urgent implementation of this security agenda is," she told a Brookings Institution program.

"This is a challenge for all of us," she said. Surveillance might not catch a lone fanatic, but in Paris "this was organized. There was communication between the groups," she said. "Hence, coming back to our topic of transatlantic data flows, allow me to first and underline that this is of the utmost importance both for effective law enforcement and our strong commercial relationship. In fact, I see this field as a triangle between the fundamental right to privacy and protection of personal data, our citizens' need for security and, third, our economic opportunities and business growth. All these need to go hand in hand. We cannot have a tradeoff between one and the other," Jourova said.

While in Washington, Jourova had meetings with Justice and Homeland Security officials Nov. 13 and with Commerce Secretary Penny Pritzker Nov. 16. At the same time, staff-level talks continued on updating the Safe Harbor agreement, with the goal of completing negotiations by Jan. 31. In addition to the talks, the EU released promised guidance Nov. 6 on what companies can do to continue transferring data from the EU to the U.S. following the European Court of Justice ruling in the *Schrems* case that declared the Safe Harbor accord invalid (see related story below).

Bilateral talks so far "have already yielded results," Jourova said. "The U.S. has already committed to stronger oversight by the Department of Commerce, stronger cooperation between European data protection authorities and the Federal Trade Commission. This will transform the system from a purely self-regulating one to an oversight system that is more responsive as well as proactive," she reported. "We are also working with the

U.S. to put into place an annual joint review mechanism that will cover all aspects of the functioning of the new framework, including the use of exceptions for law enforcement and national security grounds, and that will include the relevant authorities from both sides," she added. Later, speaking to reporters, Jourova said one of the last issues being negotiated for a new Safe Harbor deal involved the EU demands for more transparency on access to personal data.

> It wants American partners to give DPAs and the public information about the "number of accesses to data and about the results of continuous monitoring from the sites of American bodies," she said. "This has already been sort of agreed but we want to double check on the sites of the companies to such reviews as well so we can compare the information," she said.

A second bigger remaining issue is the need to finalize the jurisdiction of EU data protection authorities (DPAs) to strengthen "the redress of individual EU citizens" who complain about data breaches. The DPAs already have that authority over human resource data. "We are now checking the possibility of what could be the way to strengthen the powers of DPAs for the rest of the data," she said. This would include "a bridge" between the DPAs and the Federal Trade Commission, Jourova said.

EU Provides Guidance for Interim Safe Harbor Transfers

There are still many ways U.S. companies can transfer personal data from the EU to the U.S. despite a European court ruling that invalidated the U.S.-EU Safe Harbor agreement on data transfer, new guidance from the EU Commission indicates. The 16-page advice, which the EU promised to issue after the European Court of Justice invalidated the accord in the *Schrems* decision, provides detailed explanations of alternative means that can be used to move data, including through use of standard contractual clauses (SCC) and intra-group transfers, as well as derogations from data protection restrictions.

> These alternatives will remain valid until the U.S. and EU are able to negotiate revisions to the Safe Harbor Framework by the end of January 2016. The guidance also makes clear that the data protection authorities (DPAs) of EU member states will be responsible for interpreting and enforcing this advice. "The present Communication is without prejudice to the powers and duty of the DPAs to examine the lawfulness of such transfers in full independence," the guidance issued Nov. 6 states.

"It does not lay down any binding rules and fully respects the powers of national courts to interpret the applicable law and, where necessary, to make a reference to the Court of Justice for a preliminary ruling. Nor can this Communication form the basis for any individual or collective legal entitlement or claim," it adds.

The commission notes that four model SCCs that it described in Commission Decision 2002/16/EC of December 2001 and modified in Commission Decision 2010/87/EU of February 2010 fulfill the requirements of the EU privacy directive. These models identify obligations of data exporters and importers, including required security measures, what individuals must be told in case of transfer of sensitive data, notification to the data exporter of access requests by third countries' law enforcement authorities or of any accidental or unauthorized access, as well as the rights of data subjects to the

access, rectification and erasure of their personal data, plus rules on compensation for the data subject in case of damage from a breach by either party to the SCCs.

> "The model clauses also require EU data subjects to have the possibility to invoke before a DPA and/or a court of the Member State in which the data exporter is established the rights they derive from the contractual clauses as a third party beneficiary. These rights and obligations are necessary in contractual clauses because, in contrast to the situation where the Commission has made an adequacy finding, it cannot be presumed that the data importer in the third country is subject to an adequate system of oversight and enforcement of data protection rules," it continues.

One alternative allows data transfers from the EU to affiliates located outside the EU through the adoption of binding corporate rules (BCRs). "This type of code of practice provides a basis only for transfers made within the corporate group," the guidance notes.

The EU Article 29 Working Party, which is made up of representatives of member DPAs, also suggested ways that BCRs can identify their limitations, provide security, give information to data subjects, restrict onward transfers outside the group, offer individual rights of access, rectify problems, conduct audits, monitor compliance, handle complaints, cooperate with DPAs, address liability and deal with jurisdiction. "These rules are not only binding on the members of the corporate group but, similarly to the SCCs, they are also enforceable in the EU," the guidance advises.

In addition, there are certain derogations that will allow data transfers. These include transfers where the data subject has unambiguously given his/her consent to the proposed transfer; when necessary for the performance of a contract between the data subject and the controller or the implementation of pre-contractual measures taken in response to the data subject's request; when necessary for the conclusion or performance of a contract concluded in the interest of the data subject between the controller and a third party; when necessary or legally required on important public interest grounds such as in legal cases; when necessary to protect the vital interests of the data subject; and when intended to provide information to the public.

These derogations could apply to such transactions as hotel reservations and airline flight information made by an EU citizen, certain international bank transfers or information required in a court case. Under these exceptions, a data exporter "does not have to ensure that the data importer will provide adequate protection," the guidance states.

TPP Country Leaders Promote Deal But Admit Difficulties

The leaders of the 12 countries that just concluded talks on a Trans-Pacific Partnership (TPP) are promoting their achievement, while acknowledging the fight some may have in convincing domestic critics to back the deal. On the sidelines of the Asia-Pacific Economic Cooperation (APEC) meeting in Manila Nov. 18, the leaders also welcomed potential future entries, including the host of the meeting, the Philippines.

"We are pleased that the negotiated text of the TPP agreement is now available in full for review and consideration before it is signed. We look forward following signature to the expeditious consideration and approval of the TPP, consistent with each of our

domestic processes. We will then focus on fully implementing it," said a joint statement from 12 TPP leaders. The TPP leaders acknowledged the newcomer status of Canadian Prime Minister Justin Trudeau, who took office just two weeks prior to the meeting, and the fact that he hasn't taken a stand yet on the pact. They said they "welcome his commitment to have his new government review the agreement and engage in a consultation process," the joint statement noted.

> Trudeau and President Obama also discussed the accord in a bilateral meeting. "I know Justin has to review what's happened, but we think that after that process has taken place that Canada and the United States and the other countries that are here can establish the kind of high-standards agreement that protects labor, protects the environment, protects the kind of high-value-added goods and services that we both excel at," Obama said later.

The leaders also repeated their desire eventually to welcome new members. "While our focus is on approval and implementation of the results of negotiations with our current partners, we have also seen interest from a number of economies throughout the region. This interest affirms that through TPP we are creating a new and compelling model for trade in one of the world's fastest growing and most dynamic regions," they said.

One of those potential entrants is the Philippines, where an election will be held in 2016. "We are both facing elections come next year. We recognize the pressure to make populous statements at this point in time," Philippine President Aquino said after his own bilateral meeting with Obama. "At the end of the election period, there will be sobriety, and the argument that not opening ourselves up to a bigger market and freer access to that bigger market cannot be made. Therefore, we think that once elections are over, that current voice will die down and there will be new champions of increased free trade amongst all countries," Aquino added.

Obama conceded that U.S. elections in 2016 also add complexity to the deal's future. "There is not a trade deal that has been done in modern American politics that's not occasionally challenging, but we get it done. And I'm confident we're going to be able to get it done," he said.

GOP Concerns About TPP Add to Pact's Hurdles

While President Obama was promoting the TPP at APEC, the deal may face bleeding if not death from a thousand cuts at home from lawmakers who are complaining about its specific provisions. Even Republicans, who have been relied upon in the past to support trade deals, are raising objections to portions of the 6,351 pages of text, tariff schedules and side deals. These objections, along with those of Democrats, including presidential candidates Hillary Clinton and Bernie Sanders, could delay a congressional vote on approving the accord late into 2016 and some say beyond that.

Although Treasury's currency manipulation side deal with other TPP countries won the endorsement of currency critic Fred Bergsten, director emeritus of the Peterson Institute for International Economics, his views haven't satisfied many lawmakers who consider the declaration inadequate (see **WTTL**, Nov. 16, page 5). "I respect Fred. He's smart but there are no teeth" in the side agreement, Sen. Rob Portman (R-Ohio) told WTTL. "I was very hopeful that there would be more on currency manipulation," he said. "We're

not happy with the side agreement on currency," he added. "It does have reporting requirements but it doesn't have any teeth. So a country can continue to violate the provisions that are now agreed to internationally under the IMF [International Monetary Fund] and yet not under trade rules," said Portman, who served as U.S. Trade Representative under President George W. Bush. He tried but failed to get a dispute-settlement provision on currency added to the fast-track trade promotion authority (TPA) bill.

> Portman said he was uncertain about how Congress would vote on TPP. "Hillary Clinton coming out against it probably creates some interesting challenges for some of my colleagues on the Democratic side," he said. As far as Republicans are concerned, "a lot of us have concerns," he added. "I have concerns also about the way the rules of origin work. The auto companies in Ohio have deep concerns about the percentage that can be foreign. The percentage that can be from outside TPP countries is higher than the percentage in NAFTA," he explained.

"What we don't want to do is create an opportunity to have cars coming in from other countries through their parts, taking advantage of TPP without the reciprocal advantage that we get," he said. This particularly applies to China but others as well, he added.

On the House side, Rep. Tom Reed (R-N.Y.), a member of the Ways and Means Committee who voted for TPA, came out against the pact Nov. 16. "This agreement leaves too many questions about the way forward and has been rushed in order to advance President Obama's legacy, rather than being thoroughly hashed out to ensure America has a fair trade platform upon which to make it here to sell it there. Creating such a far reaching trade agreement without properly addressing all the details just isn't right," Reed said in a statement.

House Democrats Start Delving into TPP Issues

Now that the final TPP text has been released, Democrats on the House Ways and Means committee aren't waiting for the full committee debate on the merits of the deal. While Ways and Means Democrats traditionally have voted against free trade agreements, they claimed at their own Nov. 17 hearing to be reserving judgment on the accord.

> Without waiting for the full committee to act, the Democrats' hearing focused on the TPP environment chapter. The hearing heard from four witnesses, who were either neutral or against the pact. Witnesses didn't buy the U.S. Trade Representative's (USTR) public relations campaign for the agreement in the days since it was concluded (see **WTTL**, Nov. 16, page 4).

The hearing will be the "first of what will be a series of forums, in an effort during this very critical 90-day period for us to really grab a hold of these issues to understand them, and then each member will decide for himself or herself," Ranking Member Sander Levin (D-Mich.) said at the session. Levin played coy on how he would vote on the deal. "At this point I'm very much leaning in favor of looking into the pros and cons of each of these provisions," he told reporters after the hearing.

Joshua Meltzer, senior fellow in global economy and development at the Brookings Institution, argued against the perfect being the enemy of the good. "The TPP

environment chapter is a good chapter that warrants support. As with all parts of the TPP, consideration needs to be given to the merits of the chapter as well as towards the overall agreement," he added. "The U.S. is clearly better off with the TPP environment than without it," he said. "It is also the case when assessing the TPP environment chapter to keep in mind the living nature of this agreement. This is not an empty platitude. The TPP includes a range of mechanisms such as mandated reviews, regular meetings of officials and commitments by each TPP government to transparency in their regulatory making process," Meltzer said.

> Environmental groups have long argued that the deal may address environmental issues, but its enforcement mechanisms are weak. In response, several committee members questioned whether lack of enforcement was an argument for not having the agreement in the first place. "There's not necessarily a perfect correlation between the strength of the agreement and the strength of enforcement," Rep. David Price (D-N.C.) said, citing labor cases against Guatemala under CAFTA, which is seen as a weak agreement.

Ilana Solomon, responsible trade program director at the Sierra Club, argued that trade agreements themselves set up a flawed model of enforcement. "It might seem that these are separate questions of 'is the language in the pact the right language,' and then whether it will be enforced," she said. "One of the key problems is that it relies on the USTR to take enforcement action, and we've seen that the USTR has been unwilling to do that. In part, it might be because the USTR is quite often engaging in new trade agreements with other countries. So it's not in their interest of fulfilling their mission to be negotiating new agreements and bringing new cases," Solomon added.

ITC Hearing Reflects Old Divisions on Trade

As the debate over the final TPP text heats up, a hearing at the International Trade Commission (ITC) Nov. 17 reflected the entrenched opposite sides of the trade debate. At the hearing on the economic impact of previous trade agreements implemented under trade promotion authority (TPA), the ITC heard from 15 witnesses, including Rep. Sander Levin (D-Mich.). The witnesses ranged from unions to manufacturers and from nonprofit organizations to agricultural industry representatives. The ITC will hold a hearing on TPP itself in January as required under TPA.

> Levin noted that many argue that trade agreements lead to increased jobs, but the commission's report should "go farther than just analyzing whether U.S. GDP has risen – we need to understand how these agreements have affected wages in the United States, income inequality, and a number of other incredibly important issues." Later that day, Levin as ranking member of the House Ways and Means Committee convened a hearing of his own on the environmental chapter of the TPP (see related story, page 6).

Levin urged the ITC to look at the effect of the omission of enforceable provisions on labor and environment as well as currency manipulation. He also said the ITC should examine non-tariff measures. "What result do the intellectual property standards have on the U.S. economy? Does the extension of patent terms in foreign countries enhance U.S. competitiveness and, if so, who gets those benefits? And what result have the rules of origin in each of our trade agreements played regarding the economic impact of the

agreement?" Levin asked. Linda Dempsey, on the other hand, from the National Association of Manufacturers, expressed support for all previous trade agreements and hoped TPP would bring more of the same success. "In sum, trade agreements negotiated pursuant to TPA, particularly those that comprehensively open markets and set in place high standards that are effectively enforced, have boosted manufacturing output and the competitiveness of manufacturing in the United States. To grow U.S. manufacturing, the U.S. should continue such trade negotiations with even stronger and more market-opening results," she said.

> Thomas Earley of the Sweetener Users Association argued that trade agreements brought potential positive economic impacts but that U.S. sugar policy reduced those benefits. "The sugar industry has consistently urged the administration and U.S. trade negotiators to hold fast against any significant concessions on foreign access to the domestic sugar market," he testified.

"Unfortunately, once the United States tells other countries in trade negotiations that the sugar program is sacrosanct, those countries are then free to hold out against market access concessions on their own sensitive agricultural sectors," Earley added. "The failure of most recent FTAs to increase U.S. access to foreign sugar as consumption has risen has tended to worsen the supply situation for cane refiners," he said.

Some Democrats Join Call for Action on ITAR Gun Rules

It isn't just Republicans who are calling on the Obama administration to complete export control reforms with the transfer of certain guns and ammunition from U.S. Munitions List (USML) categories I, II and III to the Commerce Control List (CCL). Six Democrats from rural states wrote to President Obama Nov. 17, applauding reform progress to date but urging the administration to "begin work immediately" to propose rules for those three categories.

> The letter from Democratic Sens. Jon Tester (Mont.), Heidi Heitkamp (N.D.), Amy Klobuchar (Minn.), Martin Heinrich (N.M.), Joe Donnelly (Ind.) and Joe Manchin (W.Va.) noted that the reform effort has been going on since 2011 (although it really started in 2009.) "It is now time that your administration completes the job," they wrote.

The letter is the latest in a series of almost identical letters sent to Obama as well as to Commerce Secretary Penny Pritzker and Secretary of State John Kerry pressing for action on the three categories that cover firearms and shotguns, guns and armaments and ammunition. The letters appear to respond to a gun industry campaign to show the White House that there is political support for proposing transfers for these categories. Six GOPers previously sent similar letters (see **WTTL**, Oct. 12, page 1).

Proposals for the categories were drafted and ready for publication three years ago but have been on the shelf due to administration concerns that any changes to these rules would appear to run counter to its drive for gun control legislation. Administration officials have indicated that any changes or transfers to the CCL would probably be minor but would likely include the move of some rifles and shotguns that are used for hunting and sports activities, which is what the gun industry wants. Changes to the USML lists also would likely change import rules under U.S. Munitions Import List

administered by the Alcohol, Tobacco and Firearms Bureau. "We strongly encourage you to take up USML Categories I-III and review these lists for items that can be migrated to the Commerce Control List," the Democrats wrote. "This would allow exporters of items listed under Categories I-III to enjoy the same streamlined export licensing procedures enjoyed by exporters of items under the previously reviewed categories," they added.

New Justice Enforcement Rules Emphasize Voluntary Disclosures

U.S. firms have an extra reason for making voluntary disclosures of trade law violations under changes Justice announced Nov. 16 to the United States Attorney's Manual (USAM), its staff guidance on all criminal and civil prosecutions. The changes implement new policy directions that Deputy Attorney General Sally Quillian Yates outlined in a memo in September.

> Justice revised USAM provisions in the section called the "Principles of Federal Prosecution of Business Organizations," commonly known as "Filip factors." The revised factors "now emphasize the primacy in any corporate case of holding individual wrongdoers accountable and list a variety of steps that prosecutors are expected to take to maximize the opportunity to achieve that goal," Yates said in a speech Nov. 16.

"A little more than two months ago, we issued a new policy designed to ensure that individual accountability is at the heart of our corporate enforcement strategy. In announcing the policy, we emphasized the importance of holding accountable the individuals who commit corporate wrongs for reasons that are fairly obvious – crime is crime and lawbreakers must be held responsible regardless of whether they violate the law on the street corner or in the corner office," Yates told a conference sponsored by the American Banking Association and American Bar Association.

The Filip factors can determine when a company might get mitigating credit in any prosecution for cooperating with Justice. "If a company wants credit for cooperating – any credit at all – it must provide all non-privileged information about individual wrongdoing. Companies seeking cooperation credit are expected to do investigations that are timely, appropriately thorough and independent and report to the government all relevant facts about all individuals involved, no matter where they fall in the corporate hierarchy," Yates explained.

"What is new is the consequence of not doing it. In the past, cooperation credit was a sliding scale of sorts and companies could still receive at least some credit for cooperation, even if they failed to fully disclose all facts about individuals. That's changed now. As the policy makes clear, providing complete information about individuals' involvement in wrongdoing is a threshold hurdle that must be crossed before we'll consider any cooperation credit," she added.

Yates also said timing is of the essence. "A company should come in as early as it possibly can, even if it doesn't quite have all the facts yet. The new USAM language makes plain that a company won't be disqualified from receiving cooperation credit simply because it didn't have all the facts lined up on the first day it began talking with us," she stated. In changing the USAM, Justice also separated what used to be a single factor that covered both a corporation's voluntary disclosure and its willingness to

cooperate into two separate factors – one focused solely on the company's timely and voluntary disclosure and the second on its cooperation. "We made this change to emphasize that while the concepts of voluntary disclosure and cooperation are related, they are distinct factors to be given separate consideration in charging decisions," Yates noted. "In recognition of the significant value early reporting holds for us, prompt voluntary disclosure by a company will be treated as an independent factor weighing in the company's favor," she added.

> USAM Section 9-28.000 now states that "if a corporation wishes to receive credit for such cooperation, which then can be considered with all other cooperative efforts and circumstances in evaluating how fairly to proceed, then the corporation, like any person, must disclose the relevant facts of which it has knowledge."

A company "may be eligible for cooperation credit regardless of whether it chooses to waive privilege or work product protection in the process, if it provides all relevant facts about the individuals who were involved in the misconduct. But if the corporation does not disclose such facts, it will not be entitled to receive any credit for cooperation," the section says.

It also adds two points: "First, the government cannot compel, and the corporation has no obligation to make, such disclosures (although the government can obviously compel the disclosure of certain records and witness testimony through subpoenas). Second, a corporation's failure to provide relevant information about individual misconduct alone does not mean the corporation will be indicted. It simply means that the corporation will not be entitled to mitigating credit for that cooperation."

U.S. Loses on Dolphin-Safe Tuna Rules at WTO Again

The U.S. could face trade retaliation by Mexico for U.S. dolphin-safe tuna labeling requirements despite changes it made to the regulations in July 2013. A World Trade Organization (WTO) Appellate Body Nov. 20 largely sided with Mexico and did not overturn a dispute-settlement panel report that found U.S. dolphin-safe labeling rules are inconsistent with several WTO provisions, including the Agreement on Technical Barriers to Trade (TBT) (see **WTTL**, June 8, page 9).

> The appellate body found that "the amended tuna measure modifies the conditions of competition to the detriment of Mexican tuna products in the US market; that such detrimental impact does not stem exclusively from a legitimate regulatory distinction; and, thus, that the amended tuna measure accords less favorable treatment to Mexican tuna products as compared to like tuna products from the United States and other countries and is therefore inconsistent with Article 2.1 of the TBT Agreement."

But it also reversed the panel's finding on Article XX of the GATT 1994. The appellate body found that "the Panel erred in the application of the chapeau of Article XX in its analyses of whether the eligibility criteria, the different certification requirements, and the different tracking and verification requirements, are each applied in a manner that constitutes a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail," it wrote. In sum, "the Appellate Body concludes that the

United States has not brought its dolphin-safe labelling regime for tuna products into conformity with the recommendations and rulings of the DSB." It recommended that the DSB ask the U.S. to change its rule "to be inconsistent with the TBT Agreement and the GATT 1994" and "into conformity with its obligations under those agreements."

> Environmental groups linked the ruling to other ongoing trade deals. "Today's WTO decision limits environmentally friendly choices for Americans, puts dolphins at risk, and opens the door to further trade deal limits on consumer protections and environmental safeguards," Ilana Solomon, director of the Sierra Club's Responsible Trade Program, said in a statement. "This should serve as a warning against expansive trade deals like the Trans-Pacific Partnership that would replicate rules that undermine safeguards for wildlife, clean air, and clean water," she said.

* * * Briefs * * *

WAYS AND MEANS: Dave Reichert (R-Wash.) Nov. 18 was named chairman of House Ways and Means trade subcommittee. Reichert is co-chair of Friends of TPP Caucus and member of President's Export Council, "With the release of the text of the Trans-Pacific Partnership and our ongoing negotiations with the EU, this is a critical time for trade. As a long-time advocate of expanding trade opportunities, I will continue fighting on behalf of our workers, farmers, and businesses across the country, because I firmly believe through high-standard trade agreements we see expanded opportunities for all," Reichert said in statement. He replaces Rep. Pat Tiberi (R-Ohio), who became chair of health subcommittee.

PAPER: In 5-0 final vote Nov. 18, ITC found U.S. industry is materially injured by imports of subsidized supercalendered paper from Canada. Commissioner F. Scott Kieff did not participate in this investigation. On same day, Canada requested binational panel review under NAFTA Chapter 19 of Commerce's countervailing duty determination. "Canada believes that the U.S. Department of Commerce erred in calculating subsidy rates on Canadian exports of supercalendered paper. Canada is exercising its rights under NAFTA Chapter 19 and requesting a panel review in order to defend the Canadian industry," Canadian Minister of International Trade Chrystia Freeland said in statement.

POTASSIUM PHOSPHATE: In 6-0 "sunset" vote Nov. 18, ITC said revoking antidumping and countervailing duty orders on certain potassium phosphate salts from China would renew injury to U.S. industry.

EXPORT-IMPORT BANK: Renewal of charter has been put off again as House and Senate Conference Committee continues to debate surface transportation legislation (H.R. 22), which includes bank reauthorization (see **WTTL**, Nov. 9, page 9). To keep highway funding alive, House and Senate passed H.R. 3996, short-term extension of current transportation spending authorization until Dec. 4.

CUBA: OFAC Nov. 19 removed 21 individuals in Spain, Panama, UK and Switzerland from Specially Designated Nationals (SDN) list that had been sanctioned under Cuban regulations. List includes officials of Havana International Bank and Banco Nacional de Cuba.