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## Shrimp Trade and Sea Turtle Conservation

On 25 February 1997, the World Trade Organization agreed to establish a dispute settlement panel to rule on the legitimacy of a partial U.S. import ban on shrimp and shrimp products. The embargo concerns shrimp caught in the wild in countries without sea turtle conservation measures comparable to those in vigour in the United States. This paper provides background to the case.

In 1989, the United States passed Section 609 of its Endangered Species Act (Public Law 101-162), requiring the U.S. government to certify that all shrimp imported to the country were caught with methods that protected marine turtles from incidental drowning in shrimp trawling nets. Under the Act, shrimp-importing countries with sea turtles in their waters must demonstrate that mechanically-harvested marine shrimp are caught by means that allow sea turtles to escape as efficiently as the turtle excluder devices (TEDs) mandatory on all U.S. shrimp nets. According to the National Marine Fisheries Service of the U.S. Department of Commerce, proper use of TEDs reduces the number of turtles caught in shrimp nets by some 90%. Farm-harvested shrimp or shrimp caught by manually-hauled nets may be imported without restrictions.

While Section 609 applies to all countries, its enforcement was first (in 1993) limited to the Atlantic coasts of 14 Caribbean and Western Atlantic countries. Imports of wild-caught shrimp and shrimp products from these countries were prohibited unless the exporting country could prove that there were no sea turtles in its waters or that marine shrimp were caught with TED-equipped nets. Although the unilateral trade measure could have been considered as an attempt to extend U.S. legislation beyond national borders, it was not challenged under the GATT.

Dissatisfied with this partial application of Section 609, four conservation organizations sued the U.S. government for violating the Endangered Species Act. In December 1995, the U.S. Court of International Trade widened the trade measure to cover imports of shrimp or products of shrimp from all countries unable to prove that no endangered sea turtles lived in their waters or that they had adopted sea turtle conservation measures as efficient as the TEDs mandatory on U.S. vessels. The embargo, in effect since May 1996, affects some 40 nations.

Having failed to reach an understanding during mandatory WTO consultations, Malaysia and Thailand<sup>1</sup> jointly requested the establishment of a dispute settlement panel in early January 1997. The WTO Dispute Settlement Body (DSB) agreed to the panel on 25 February 1997. Since then, Pakistan and India, have joined the two countries as co-complainants. A single panel, consisting of Michael Cartland of Great Britain, Kilian Delbrück of Germany and Carlos Cozende of Brazil will examine the case. The panel report is expected in late October 1997.

### The Alternative

On 5 September, 1996, 15 countries concluded an agreement on the Inter-American Convention for the Protection and Conservation of Sea Turtles (twenty-four countries participated in at least some of the negotiations). The United States signed the treaty on 13 December 1996 and the governments of Mexico, Brazil, Venezuela and Costa Rica are expected to do so soon. The Convention, which prohibits the use of WTO-inconsistent trade measures, becomes legally binding 90 days after the parliaments of eight countries have ratified it. According to the U.S. State Department, the agreement requires the use of TEDs on "virtually all" shrimp trawling vessels operating in the Western Hemisphere. The United States has proposed to negotiate a similar pact with key Asian countries, on condition that these countries "indefinitely postpone" their pursuit of WTO cases on this issue. So far, there have been no formal responses to the proposal.

The complainants cite violations of several WTO provisions, including Article XI (prohibition of quantitative restrictions), Article I (the most-favoured-nation principle) and Article XIII (the non-discrimination principle). What has induced such a varied group of countries<sup>2</sup> to take an interest in the case is the application of a unilateral trade measure, involving the extension of domestic laws and standards beyond national borders (extra-territoriality). In addition, WTO rules do not allow discrimination on the basis of the methods of production.

The case resembles the tuna-dolphin disputes which opposed the United States to Mexico and the European Community in 1991 and 1994. At the time, U.S. law on fishing methods in the East Tropical Pacific and the consequent U.S. embargo on "non-dolphin-friendly" tuna were found inconsistent with GATT rules. However, Mexico dropped the case before the panel report was adopted, and the US blocked the adoption of the second report by withholding consensus. Under the WTO's dispute settlement procedure, panel

decisions are much more easily adopted. In case of a ruling against the United States, the shrimp embargo must be lifted or compensation for the value of lost trade will have to be paid to the complainants.

<sup>1</sup> The import ban was lifted for Thailand in November 1996, after it was certified to meet U.S. requirements. However, Thailand remains a co-complainant in the dispute to uphold the principle that national laws cannot be applied outside a country's borders.

<sup>2</sup> The following countries have reserved third party rights in the dispute: Australia, Colombia, Costa Rica, Ecuador, El Salvador, the European Communities, Guatemala, Hong Kong, India, Japan, Mexico, Nigeria, the Philippines, Senegal, Singapore, Sri Lanka and Venezuela.

# FACTS AND FIGURES

## Shrimp Trade:

- Although the United States is the world's largest shrimp consumer, Japan is the greatest importer. In 1993, U.S. frozen shrimp imports amounted to US\$2.07 billion (or 28% of the world total). Japan counted for 40% with imports worth US\$2.95 billion.
- The largest exporters of shrimp to the U.S. in 1996 were: Thailand (160 million pounds), Ecuador (97 million), Mexico (68 million) and India (42 million). Indonesia, Bangladesh, Canada, Honduras, Panama and China each supplied between 17 and 20 million pounds in 1996.
- There is no data on U.S. shrimp imports according to species or mode of production (wild-caught versus farm-raised shrimp). The Marine Fisheries Service of the U.S. Department of Commerce "guesimates" that some 40% of U.S. shrimp imports in 1995 were from wild-stock fisheries. Countries supplying wild-caught shrimp included Mexico, India and Thailand, as well as "a number of other states."

Worldwide Shrimp Trade			U.S. Shrimp Consumption			Thailand's Annual Shrimp Exports to the U.S.		
Harvests & Exports	%	In US\$ billions	Consumption & Imports	%	In US\$ billions	Market Shares	%	In US\$ millions
1994 <sup>1</sup> trade in frozen shrimp	100	8.2	1995 <sup>1</sup> total consumption	100	3	1996 U.S. share of total Thai exports	N.A.	888
						1994 <sup>1</sup> U.S. share of total Thai exports	51.2	981
Estimated harvest share of wild-caught shrimp <sup>2</sup>	70	N.A.	1995 share of imports	85	2.6	1996 share of the U.S. import market	27.5	888
						1994 share of the U.S. import market	28.7	981
Estimated export share of wild-caught shrimp <sup>2</sup>	50	4.1	Annual estimated imports of wild-caught shrimp <sup>2</sup>	40	1.2	Annual estimated export share of wild-caught shrimp <sup>2</sup>	10	N.A.

<sup>1</sup> Latest year for which figures are available.

<sup>2</sup> These figures are best estimates (see notes above). They have indicative value only.

## Sea Turtles:

- All marine turtles are included in Annex I (international trade banned) of the Convention on International Trade in Endangered Species (CITES).
- All marine turtles are covered by both Annex I and Annex II of the Convention on Migratory Species (CMS).
- All species of marine turtles are on the IUCN-World Conservation Union Red List of Threatened Species: two are "critically endangered", one is "vulnerable", all others are "endangered".
- All marine turtles but the Australian flatback are on the U.S. Endangered Species Act list.

## Turtle Excluder Devices:

- The costs of turtle excluder devices vary. In the U.S, depending on the option, they cost between US\$150 and US\$400; where labour is cheap, the range is between US\$100 and US\$150.
- U.S. regulations require a TED on each net on a shrimp trawler. Tests conducted by the Marine Fisheries Service of the U.S. Department of Commerce show that TEDs allow between 90-97% of turtles caught in nets to escape.