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World Trade Organization Panel Determines that U.S. Restrictions on Tuna Imports from Mexico Violate Fair-Trade Rules

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In what appears to be a victory for Mexico in a 20-year trade dispute with the US regarding tuna, a World Trade Organization (WTO) panel has ruled that the practices of Mexican tuna fishing fleets do not endanger dolphins and that the US should allow them to export their product north of the border without having to adhere to the conditions imposed through the US "dolphin-safe" label.

The ruling brings Mexico closer to exporting yellowfin tuna to the US without restrictions, although the matter is not settled because the US has announced plans to file an appeal, which the WTO could take several months to consider.

The dispute between Mexico and the US stems from disagreements about adequate tuna-protection measures. Mexico contends that its tuna fleets follow environmentally sustainable practices that protect dolphins and are compatible with international standards.

The US government counters that the protections that Mexico has implemented are not sufficient and because of this has refused to apply the "dolphin-safe" label to Mexican imports since 1991 ([SourceMex, Feb. 20, 1991](#)).

Mexico, which views the US labeling requirements as a nontariff barrier, brought the dispute to the WTO in March 2009, requesting the creation of a special panel to look into the matter ([SourceMex, Aug. 16, 2000](#)). Mexico and the US attempted to negotiate a solution outside the WTO ([SourceMex, Feb. 10, 2010](#)), but the effort failed.

The panel deliberated for more than two years and finally reached a decision favorable to Mexico in July of this year, but the official announcement did not come until mid-September. The panel concluded the labels authorized by the US Commerce Department "are more trade-restrictive than necessary to achieve a legitimate objective" of letting consumers know whether dolphins were accidentally harmed in tuna fishing.

Definition of dolphin-safe tuna at center of dispute

The US labeling criteria are guided by standards created by the California-based environmental organization Earth Island Institute ([SourceMex, April 26, 2000](#)) and ([Aug. 15, 2001](#)). On its Web site, the organization offers the following guidelines it proposed for tuna to be "dolphin safe."

No intentional chasing, netting, or encirclement of dolphins during an entire tuna fishing trip;

No use of drift gill nets to catch tuna;

No accidental killing or serious injury to any dolphins during net sets;

No mixing of dolphin-safe and dolphin-deadly tuna in individual boat wells (for accidental kill of dolphins), or in processing or storage facilities; and

Each trip in the Eastern Tropical Pacific Ocean (ETP) by vessels 400 gross tons and above must have an independent observer on board attesting to the compliance with the above stipulations.

"Our standards prevent harm to dolphins and are adhered to by more than 90% of the world's tuna companies," said the organization.

But critics argue that these standards are overly restrictive. They point out that Mexico has committed to protecting dolphins by signing on to the Agreement on the International Dolphin Conservation Program (AIDPC), which offers an alternative labeling known as "Dolphin Safe AIDPC." The labeling certifies that the tuna catches result in almost no dolphin deaths.

Earth Island Institute disputes this assessment, pointing out that a fishing method employed by many tuna fleets in Mexico do result in dolphin deaths. The environmental organization singled out the Dolores brand of Mexican tuna, processed by Grupo Pinsa (Pescadores Industrializados SA). "Dolores tuna is caught by chasing and netting dolphins, in order to catch the tuna which swim beneath," said Earth Island Institute. "More than 7 million dolphins have died due to tuna fishing using this method."

Under the fishing methods employed in some parts of the world, including Mexico, fleets often find tuna by tracking a certain species of dolphin with the use of speedboats and helicopters. To capture the tuna, which often swim below the dolphins, the fishing crews encircle the entire area with nets. The dolphins are often caught in the nets.

There is disagreement on whether this strategy results in dolphin kills. Earth Island contends that many deaths occur, while Mexican officials deny that a problem exists. To back its position, the Mexican government points to data released by the Inter-American Tropical Tuna Commission (IATTC), which has certified that Mexican fishing methods do not result in dolphin deaths. It points out that the US-based IATTC, comprising 19 countries and the European Union (EU), issued a report indicating that 93% of dolphins that have been discovered in the vicinity of tuna catches did not suffer death or serious injury.

Environmental organizations in Mexico have also spoken out against tuna fishing, but for different reasons. Greenpeace Mexico and its parent organization Greenpeace International have warned against overfishing, especially of tuna. "The reality of modern fishing is that the industry is dominated by fishing vessels that far out-match nature's ability to replenish fish," said the environmental organization, which for now has focused its campaign on the depletion of tuna stocks in the western Pacific.

Greenpeace Mexico has not taken any direct position on the US-Mexico dispute other than to describe the conflict as a trade dispute. "It's more of a political and a trade issue than it is an environmental issue," said Alejandro Olivera, coordinator of the Oceans Campaign for Greenpeace Mexico.

Restrictions have hampered Mexican tuna exports to US

And Mexico has not denied that economics and trade are helping drive its position. "We can argue that this is a clear case of discrimination," said Beatriz Léccegui, deputy secretary for trade at the Secretaría de Economía (SE).

Because of US labeling restrictions, Mexico exported only about US\$7.6 billion worth of tuna to the US market. In contrast, Ecuador—whose catch is certified as "dolphin safe"—exported US\$82.5 million of tuna to the US, said the SE.

"If the restrictions imposed by the 'dolphin-safe' label were to be lifted, we would be able to export more than 1 million crates of tuna to the US in the first year," said Grupo Pinsa trade director Rubén Velázquez. At present, Pinsa exports about 5% of its production, primarily the Dolores brand, to all markets annually, or the equivalent of 30,000 crates. Each crate contains about 38 cans of tuna.

Therefore, it is no surprise that Mexican officials were elated with the WTO panel's decision. "The WTO ruling is a crushing blow to the 'dolphin-safe' label and opens the way for Mexican producers to enter the US market without restrictions, as is their right," Economy Secretary Bruno Ferrari said shortly after the WTO ruling was announced in September.

Despite the decision, WTO rules allow for the US to file an appeal, which led Ferrari to caution that there could be a delay in opening the US market to Mexican tuna. An appeal would have to be submitted by mid-November, and a final ruling would be issued late in the first quarter of 2012.

US officials left no doubt that an appeal would be forthcoming. "The United States will continue to vigorously pursue the objectives of the dolphin-safe labeling provisions," said Nkenge Harmon, a spokeswoman for the US Trade Representative's office (USTR).

Ferrari was confident that the WTO would turn down the appeal. He also warned that if the US did not comply at that time, Mexico would consider an appropriate response. "If such an appeal is again unfavorable and the country chooses not to abide by an adverse ruling, Mexico would have the right, under the rules of the organization, to impose trade retaliation," said the economy secretary.

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