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## **World Trade Organization Rules that U.S. Discriminates Against Mexico in Applying "Dolphin-Safe" Label**

by Carlos Navarro

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Mexico scored a small victory in an ongoing trade dispute with the US when a panel of the World Trade Organization (WTO) ruled that the US government was employing discriminatory practices when forcing Mexican and other foreign fleets to adhere to its definition of "dolphin safe." The WTO panel said the US has not been applying the same treatment to its own fishing fleets that it required from the Mexican tuna industry, which is a violation of the global rules of fair trade.

The WTO panel concluded that the US should improve the labeling system because it is "incompatible" with various WTO agreements. "We recommend that the dispute settlement body request the United States bring its measure, which we have found to be inconsistent with [the WTO rules] ... into conformity with its obligations," the WTO panel said.

### ***Ruling also reiterates opposition to Mexican fishing practices***

The WTO, however, did not let Mexico off the hook, repeating its criticism of the country's fishing methods, which target the dolphins that accompany yellowfin tuna.

The US responded to the WTO verdict by affirming the body's decision to question Mexico's fishing methods but also disputed the conclusion that its process to apply the "dolphin-safe" label was discriminatory. The Office of the US Trade Representative (USTR) said the US believes it is reasonable to make distinctions between products based on fishing methods. "The United States plans on appealing the report in the coming months," said USTR spokesperson Andrew Bates.

In case the appeal is denied, Mexico would have the right to take retaliatory measures until the discriminatory aspects of US tuna labeling are eliminated. Francisco de Rosenzweig, deputy economy secretary for international trade, said President Enrique Peña Nieto's administration would examine the impact on the Mexican fishing industry before deciding the extent of retaliatory measures.

The Mexican fishing industry says the inability to sell tuna in the US that has not been certified "dolphin safe" cost the industry about US\$680 million in potential sales north of the border in 2014.

This is the second time that the WTO has ruled against the US "dolphin-safe" designation. In 2011 and 2012, the WTO ruled that US provisions against Mexican tuna were discriminatory, which led the US to make some changes to the criteria used to determine whether fishing fleets are employing fishing methods to protect dolphins ([SourceMex, Sept. 21, 2011](#)).

The dispute goes back 26 years, when the US imposed an embargo on Mexican tuna in response to practices used by Mexican fishing fleets to capture fish by targeting the dolphins that frequently swam alongside the tuna ([NotiSur, Nov. 6, 1990](#)). The fishing fleets would use speedboats to round up the dolphins, making it easier to catch tuna swimming beneath them. The process killed millions of dolphins, prompting international pressure and restrictions from the US.

The US-based environmental organization Earth Island Institute developed the "dolphin-safe" label in 1990, in conjunction with several tuna-canning companies, to certify tuna caught under conditions that protect dolphins. The US Congress incorporated the label into the Marine Mammal Protection Act, which made it part of US policy.

The Mexican government responded to the embargo by asking fishing fleets to make adjustments, including developing nets that allowed dolphins to escape but still caught large numbers of tuna. These adjustments were apparently sufficient for the US government to lift the embargo ([SourceMex, Aug. 6, 1997](#)).

Even though the US lifted the embargo on Mexican tuna that year, authorities continued to apply the "dolphin-safe" label, which has kept a large amount of tuna from the US. The 2011 and 2012 WTO rulings directed the US to change the label. The latest ruling questioned the US policy of applying the "dolphin-safe" restrictions to Mexico and other countries in Latin America and not to its own domestic fishing fleets.

The recent WTO ruling points out that Mexican fishing methods remain a threat to dolphins. "The different harms caused by setting on dolphins on the one hand and other tuna fishing methods on the other hand justified the United States' decision to treat those fishing methods differently."

### *Dueling campaigns*

The dispute between Mexico and the US has spawned a battle of campaigns between Earth Island Institute and the Campaign for an Eco-Safe Tuna, which is funded by the owners of Mexico's tuna fleet and the Organización Latinoamericana de Desarrollo Pesquero (OLDEPESCA). OLDEPESCA comprises the fisheries ministers or state ministries with responsibility for fisheries in the twelve member fishing nations: Belize, Bolivia, Cuba, Costa Rica, Ecuador, El Salvador, Guyana, Honduras, Mexico, Nicaragua, Panama, Peru, and Venezuela.

The principal argument of the campaign is that the "dolphin-safe" label is flawed. "We advocate for new labeling rules in the United States and around the world to ensure an eco-friendly approach to tuna fishing," said the Campaign for Eco-Safe Tuna. "By educating consumers about the true nature of current tuna labeling practices, the Campaign seeks to ensure that not only dolphins, but sharks, marine turtles, seabirds, juvenile tuna and other vulnerable species, are not unnecessarily harmed during the fishing process. The fishing fleets that support the Campaign have repeatedly demonstrated their commitment to sustainable and eco-safe tuna fishing over the past twenty years by adhering to the La Jolla Agreement and the Agreement on the International Dolphin Conservation Program (AIDCP)."

The campaign also attacks Earth Island Institute. "The United States' 'dolphin-safe' label is backed by a single economically self-interested animal rights group through a combination of greenwashing and bullying tactics," the Campaign for Eco-Safe Tuna said on its Web site. "It is an unregulated, unverified, non-existent tracking system that allows companies to 'self-certify' that their fishing practices do not harm dolphins despite scientific proof that they do."

"The US [labeling system] relies on canneries, but we see no evidence that canneries do such checks, nor are they legally required," said the organizers of the Campaign for Eco-Safe Tuna. "The truth, which is apparent to anyone who is willing to do minimal research, is that the 'dolphin-safe' labeling scheme promotes unsustainable fishing practices that harm the ecosystem as a whole, kills massive

amounts of marine life and do virtually nothing to ensure that dolphins outside of the ETP (Eastern Tropical Pacific) are protected. What it does do is line Earth Island's coffers."

"It's difficult for us to understand why the United States upholds this misleading 'dolphin-safe' labeling scheme and has pursued appeal after appeal against the original 2011 WTO decision that found in Mexico's favor. The three main tuna brands in the United States are no longer American companies, they don't fish in US waters nor do they provide a significant number of American jobs," said the alternate campaign.

Earth Island institute does not respond directly to the attacks from the Campaign for Eco-Safe Tuna but directs its criticisms to the Mexican government.

"The Mexican government is trying to spin this mixed decision into a win for their continuing to chase and net dolphins in pursuit of tuna," said David Phillips, executive director of Earth Island Institute. "This is far from the truth. The WTO panel expressly stated that Mexico's method does not meet the US's legitimate objectives to ensure that tuna caught by methods that harm dolphins is not falsely labeled for consumers as 'dolphin safe.'"

"Earth Island and the tuna industry have set global standards for 'Dolphin Safe' tuna that requires that fishermen do not chase or net dolphins," the organization added. "More than 90% of the world's tuna industry (more than 450 companies) adheres to Earth Island's Dolphin Safe standards, which were adopted by the US Congress in 1990."

"Dolphins often swim with tuna in the Eastern Tropical Pacific Ocean (ETP), a large area running from Southern California to Peru and extending out into the Pacific Ocean almost to Hawaii. Mexico and several other countries allow their tuna industry to deliberate target, chase and surround the dolphins with nets. More than 7 million dolphins have been killed by this fishing method," said Earth Island Institute. "By contrast, Earth Island's standards require tuna, in order to be labeled as 'dolphin safe,' to be caught by other methods, such as using nets to encircle schools of tuna or floating objects unaccompanied by dolphins or using the old bait-boat method of chumming for tuna and catching them on hooks and lines."

-- End --