

Shrimp, Turtles, and the WTO

Shrimp Fishing and Sea Turtles

- 7 species identified
 - CITES
 - ESA
- Human impact
 - Shrimp trawling
 - TEDs
- Section 609 (1989)
- Application of 609
 - Provide assistance and technology to Caribbean fishermen
 - Did not allow for importation of shrimp from SE Asia

Trade Dispute – Major Issues

- Turtle conservation policies
- Migration and global resources
- Threat of shrimp trawlers to turtles
- Effectiveness of TEDs
- US legislation and conservation
- Discriminatory practices

Trade Dispute – Complainant's Arguments

- Is conservation policy effective?
- Jurisdiction issues
- Shrimp trawlers as main cause of turtle mortality
- Are TEDs effective?
- Ability to dictate environmental policy of other WTO members

Trade Disputes – USA's Arguments

- Need to change complainant's policies
- Turtles as a shared global resource

- Shrimp trawlers are important cause of sea turtle mortality
- TEDs are effective
- Embargo's primary aim is sea turtle conservation

Appellate Ruling

- November 6, 1998
- US can enforce environmental protection
- Right to enact trade restrictions to raise environmental protection standards
- Discriminatory behavior

Major Decisions

- Discriminatory behavior and the chapeau
- Rejection of 'traditional' approach to exhaustible natural resources
- Article XX exemptions
- Jurisdiction issues

Discriminatory Behavior

- Different time frames to implement measures
- Implementation costs
- Different conditions of different countries
- Lack of "transparent, predictable certification process"
- Multilateral negotiations
- US . measures had applied in a way that violated the article by treating certain Asian countries differently

Exhaustible Natural Resources

- "Exhaustible natural resources" in light of evolving international legal instruments and policies to promote "sustainable development"
- Endangered species considered "exhaustible"
- Threat of extinction falls within Article XX(g)
- Article XX exemptions
 - Lack of comparable programs in other countries fit Article XX(g) exemption
 - Section 609 "even-handed measure" to protect turtles

Jurisdiction

- US does not need to prove every sea turtle will migrate to US waters
 - Sea turtles as highly migratory
 - All species found in US waters
- Unclear in defining ability of countries to implement measures protection natural

resources clearly outside jurisdiction

Impacts

- Only legally binding decision on use of unilateral trade restrictions on foreign non-product related PPMs
- Acknowledge need to protect sea turtles
- Conflicting interests of Article XX and chapeau
 - Narrow to pass Article XX(g) standard
 - Flexibility to allow for unique conditions of different countries to pass chapeau
- Future cases