

WTO SHRIMP TURTLE CASE

Background

- Seven species of sea turtles: most all species are endangered
- Reproduction practices: nesting
- Many influences on decreasing populations
- 1970's: shrimp trawling identified as a major cause of sea turtle mortality
- Why do we care about them?
- They've been around for 100 million years
- Much is still unknown about sea turtles – not been thoroughly studied
- Populations in some locations have been reduced up to 90%
- 1989: U.S. bans imports of turtle unfriendly shrimp from some countries
- Turtle friendly: use of T.E.D.'s
- Screen that allows turtles to escape shrimp nets
- T.E.D.'s have 44% effectiveness

United States

- 1973 Endangered Species Act is approved. It aims to protect all endangered species from further threats of extinction. While working primarily through land conservation and protection, the ESA also affects harvesting techniques.
- 1987 Voluntary guidelines are issued for including turtle exclusionary devices.
- 1989 and 1991 Legislation is negotiated to protect all sea turtles in American waters, including Central America and the Caribbean.
- 1992 Various NGO's pressure the prohibition to cover international shrimp harvests.
- 1996 A full prohibition of all shrimp from any country that does not have sufficient precautions and regulatory agencies to ensure that the catch of sea turtles is lesser than or equal to that of United States.
- The United States justified this trade ban by the WTO's Preamble, which states its objective to, "protect and preserve the environment."
- Shrimp trawlers are a significant source of sea turtle mortality.
- TED's protect turtles, and international regulations are required because turtles are an international resource.
- Although the ban may breach Articles of the WTO, its environmental importance and permanence should allow its exemption.

“Other Countries:” India, Pakistan, Malaysia, Thailand

India:

- Submitted history of protecting endangered species, including sea turtles. Argued such third party legislation was unnecessary and duplicative.

Malaysia:

- Did not use TEDS, but had some form of conservation programs such as turtle trawling, banning of turtle-vulnerable fishing gear during nesting season, banning of fishing near nesting sites, demarcation of a turtle sanctuary.

Thailand:

- Not under United States' embargo but filed complaint because of potential for future trade sanctions regarding sustainable fishing practices.

Pakistan:

- The majority of fishing done by individual fishermen. Endangered species protection legislation passed in 1950 but loosely enforced and did not implement use of TEDs.

Focus:

- United States' contested legislature: Section 609 of United States' Public Law 101-162 ("Section 609")

Violated international trade legislature:

- GATT Article I.1: Most Favored Nation Principle

United States treated member states differently who had physically identical shrimp and shrimp products.

- GATT Article XI.1: Prohibition of Quantitative Trade Restrictions

United States employed an embargo, a quantitative trade restriction, on shrimp and shrimp products not produced by specific technologies.

- GATT Article XIII.1: Discriminatory Import Ban

Newly affected nations were given shorter time period to comply with technology requirements than nations initially affected.

Did not fall under exceptions GATT Article XX (b) and (g).

- GATT Article XXIII.1: nullified or impaired benefits accruing to plaintiff countries.

Proposal by contestants:

- India: Immediate retraction of embargo in order to comply with GATT.

- Malaysia, Pakistan, Thailand: Reformulate Section 609 in accordance with GATT.

Decision

- Sea turtles are considered "exhaustible natural resources under GATT Article XX(g).

- Examination of US Section 609(b)(1)

- Two basic exemptions:

- (i) if shrimp are harvested under conditions that don't affect sea turtles

- (ii) if nation is certified

- Conclude that 609 relates to the conservation of an exhaustible natural resource.

- Requirement for "even-handedness:" Met by 609.

- BUT! – Implementation of 609 is both unjustifiable and arbitrary discrimination.

- Fourteen Caribbean/Atlantic nations given three years to phase in TED program.

- Other nations only given four months.

- Contrary to Chapeau of Article XX of the GATT.

- Therefore, 609 is not justified under GATT Article XX.

Sources

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