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Folder Title:
GATT [General Agreement on Tariffs and Trade] - Tuna

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Motion for a Resolution with request for
inclusion in the debate on Topical and Urgent
Subjects of Major Importance pursuant
to Rule 64 of the Rules of procedure

By DAVID MORRIS, TOM SPENCER, MARY BANOTTI and SOLANGE FERNEX, MEPS
concerning

<u>the implications for EC Environmental legislation
of the GATT PANEL ruling on the US import ban
of "dolphin deadly" tuna</u>

<u>The European Parliament</u>

- having regard to the GATT PANEL ruling on the Mexican complaint against the US government's Marine Mammal Protection Act for restricting the import of yellow fin tuna caught by fishing techniques that involve the killing and maiming of dolphins;

- whereas this decision appears to threaten legislation which limits trade in order to protect wildlife;

- mindful of the existence of EC and member state trade legislation to protect or improve the environment such as with baby seal furs, elephant ivory and tropical hard woods;

1. Considers that the GATT PANEL ruling, if established as a precedent, would represent a real threat to existing and potential beneficial environmental protection legislation in the European Community and throughout the world;

2. Urges the European Commission and the governments of Members States to vigorously oppose this ruling and to refer the Panel Judgement to the reconvened GATT Working Party on Trade and the Environment;

3. Calls on the European Commission and the governments of Members States, as GATT signatories, to seek a review of the GATT to ensure that the protection of the environment is an essential feature of trade policy.

4. Instructs its President to forward this resolution to Commission, Council and the GATT Secretariat.

GATT Panel

pls. make file - GATT/TUNA

United States Senate
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION
WASHINGTON, DC 20510-6125

October 3, 1991

The Honorable George Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

We were alarmed to learn that a General Agreement on Tariffs and Trade (GATT) dispute settlement panel recently determined that U.S. restrictions on imports of tuna under the Marine Mammal Protection Act (MMPA) were inconsistent with U.S. GATT obligations. That legislation, passed in 1972, has been a cornerstone of U.S. environmental policy and has been responsible for significantly reducing the needless destruction of dolphins, a widely recognized international goal.

We have serious misgivings about the conclusions of the GATT panel report. The United States appropriately argued before the panel that the restrictions were designed to protect animal life and to conserve exhaustible natural resources -- two policy objectives which justify import restrictions as long as they are not applied in a discriminatory manner. We have relied on this justification in passing legislation to protect the environment and conserve natural resources. The potential negative impact of the GATT panel decision on our ability to effectively address these issues is a matter of great concern to us.

We therefore urge you to take immediate action to demonstrate to the world that the United States remains serious about environmental protection. First, we urge you to fully exercise U.S. rights by blocking, for an appropriate time, the adoption of the GATT panel report. Second, we would be willing to consider binding bilateral or multilateral agreements necessary to achieve full compliance with the objectives of the MMPA. Third, we believe it is imperative for the United States to work with our trading partners to ensure that the GATT fully recognizes the legitimate objectives of protecting the environment and conserving natural resources.

Finally, we urge the Administration to refrain from entering into any agreements on this issue, with any country, until full consultations are made with the appropriate Committees of Congress. We appreciate your attention to this critical issue, and we look forward to receiving your response.

Sincerely,

Bob Packwood
BOB PACKWOOD

Fritz Hollings
ERNEST F. HOLLINGS

Ted Stevens
TED STEVENS

John F. Kerry
JOHN F. KERRY

United States Senate

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

WASHINGTON, DC 20510-6125

September 26, 1991

Dear Colleague:

Congress passed the Marine Mammal Protection Act of 1972 (MMPA) in response to public outcry over the deaths of millions of dolphins in tuna fishing operations in the eastern Pacific. Over the years, the MMPA has been amended to require foreign nations that export tuna to the United States to implement comparable dolphin protection programs. Earlier this year, the United States embargoed tuna imports from Mexico, Venezuela and Vanuatu for failure to comply with this MMPA requirement. On January 25, 1991, Mexico requested establishment of a dispute settlement panel under the General Agreement on Tariffs and Trade (GATT) for the purpose of determining whether the MMPA trade sanction provisions were consistent with that agreement.

On August 16, 1991, the three-member GATT panel ruled that the MMPA tuna embargo was inconsistent with U.S. obligations under the GATT. We are concerned about the implications the GATT panel report has on U.S. commitments to environmental protection and conservation of the world's natural resources. We are writing to invite you to join with us in a letter urging President Bush to make resolution of this issue a high priority. If you are interested or if you have any questions, please have your staff contact Penny Dalton or Loretta Dunn of the Majority Staff at 224-9325 or John Moran of the Minority Staff at 224-8170 by October 3, 1991.

Sincerely,

Bob Packwood

BOB PACKWOOD

Fritz Hollings

ERNEST F. HOLLINGS

Ted Stevens

TED STEVENS

John F. Kerry

JOHN F. KERRY

light of the Japan's recent petition to the U.N. challenging the ban." Earlier this week, Japan filed a petition with the United Nations challenging the proposed ban, claiming that it has not been backed up by adequate scientific study (release, 10/3).

*4 DOLPHIN DISPUTE: BUSH NEEDS TO "COME CLEAN," SAYS PAPER

JOURNAL OF COMMERCE editorial says that the Bush administration "should come clean" on details of negotiated settlement with Mexico on the dolphin-killing dispute. "Forging a separate agreement with Mexico was the best apparent course of action. The other options were to accept the GATT ruling on the tuna import ban, which would confirm environmentalist's worst fears about the administration, or to use the U.S. veto power within the GATT to block the panel's ruling. The second option would be perceived as an attempt by the United States to undermine GATT's authority." The deal struck between the U.S. and Mexico appears to involve reforms in Mexican fishing practices, some of which were announced last week, in exchange for the Administration seeking changes in the Marine Mammal Act. "The White House, apparently, intends to lobby environmental groups and Congress by arguing that lifting the tuna ban will provide an interim solution that will save more dolphins in the short term. It surely will be an uphill battle, but the administration's only chance of success is to give a full accounting of its deal with Mexico, and a detailed description of how it intends to raise the Mexican embargo, while preserving the integrity of the marine mammal law" (10/4).

file - GATT/TUNA
4 pl. get article.

*5 TUNA FISHING: RESEARCHERS REFLECT ON DOLPHINS

Researchers from Cambridge, Loughborough and Aberdeen universities have achieved some success in testing reflecting devices to keep dolphins from becoming entangled in fishing nets, reports Robert Reid of the TELEGRAPH. Tests off the coast of Scotland have found the most effective device found thus far is a five-inch, egg-shaped float fixed at intervals to a fishing net. Several hundred bottle-nose dolphins approached the net but swam quickly away before they touched it. The scientists said that when perfected and used on commercial nets, especially those used by tuna fishermen in the Pacific, "the devices could dramatically reduce the number of dolphins trapped" (10/2).

*6 JAMES BAY: QUEBEC "ABOUT FACE" MERGES ENVIRO REVIEWS

✓ file - James Bay

"Faced with growing international criticism over the environmental impact of the massive Great Whale hydroelectric project, the Quebec government has done an about-face and agreed to a single overall environmental review" (Rheal Seguin/Andre Picard, Toronto GLOBE & MAIL). For two years the Quebec government has argued that environmental assessment of the $12.7

Tight-Lipped About Tuna

THE BUSH ADMINISTRATION isn't talking. U.S. and Mexican officials cut a deal last week that could end a dolphin-killing dispute that is souring trade relations between the two countries. But the administration won't say what's in the delicate compromise. If U.S. trade officials hope to sell this deal to Congress and skeptical environmentalists, they should come clean now.

As part of the agreement, Mexico is preparing to announce new measures to reduce the number of dolphins killed by its tuna fishermen, which is at the heart of the dispute. Although Mexico's kill rate still would be somewhat higher than U.S. law allows, Mexico would be meeting the United States more than half-way on this issue. There is an environmental rationale for encouraging Mexico through a compromise agreement to restrict tuna fishing practices that kill dolphins. But the Bush administration has yet to explain the details or its reasons to wildlife protection groups, Congress and a suspicious public.

In August, a panel of the General Agreement on Tariffs and Trade found that a U.S. embargo on Mexican tuna — imposed to punish Mexico for killing too many dolphins — violated GATT rules. The ban was imposed under the Marine Mammal Protection Act, which limits the number of dolphins that can be killed in commercial fishing, and mandates an embargo when a country's fishing fleet kills 25% more dolphins than the U.S. fleet.

George Bush never has liked this law, and it took a federal judge to force him to impose the ban on a handful of countries last year. Most of those countries came to terms with the law — and overwhelming international opinion — and agreed to measures that will greatly reduce the number of dolphins that are killed in tuna fishing.

But Mexico objected, and appealed the ruling to the 102-nation GATT, which sets rules that govern most world merchandise trade. The GATT ruling has made Mexico appear insensitive to environmental concerns just when the Mexican government is trying to convince many Americans it is ready to improve environmental protection.

Many of those doubtful of Mexico's commitment to the environment also are skeptical that Mr. Bush will keep his word to defend U.S. environmental laws under a North American free-trade agreement. That's all the more reason to bring the details of this agreement out into the open.

Forging a separate agreement with Mexico was the best apparent course of action. The other options were to accept the GATT ruling on the tuna import ban, which would confirm environmentalists' worst fears about the administration, or to use the U.S. veto power within the GATT to block the panel's ruling. The second option would be perceived as an attempt by the United States to undermine the GATT's authority.

The Bush administration seems to have wisely averted a conflict with the GATT this time, but the panel's ruling suggests there will be more opportunities for such clashes in the future. The GATT could rule against a broad range of U.S. environmental laws that use trade sanctions to enforce compliance by other countries.

With all this in mind, members of Mr. Bush's cabinet went to Mexico for a previously scheduled bilateral meeting Sept. 9, intent on brokering a compromise that could avoid the unpleasant alternatives. Secretary of State James Baker, Commerce Secretary Robert Mosbacher and U.S. Trade Representative Carla Hills worked out a deal, but only the barest details have been released by the administration. Mrs. Hills general counsel, Joshua Bolten, told a House hearing that no decisions had been made about how to handle the GATT ruling, but did not provide a full account of what happened at the bargaining table in Mexico City.

What happened was that Mexico agreed to defer action on the GATT ruling for at least several months, and agreed to fishing reforms laid out in a State Department cable sent later to Mexico City. Some of those reforms were announced last week, and more substantive reforms are expected to be disclosed in the coming days. By one account, they could reduce dolphin deaths by more than 60%.

The United States, in turn, agreed to seek changes to the marine mammal act that would lift the embargo on Mexico. The White House, apparently, intends to lobby environmental groups and Congress by arguing that lifting the tuna ban will provide an interim solution that will save more dolphins in the short-term.

It surely will be an uphill battle, but the administration's only chance of success is to give a full accounting of its deal with Mexico, and a detailed description of how it intends to raise the Mexican embargo, while preserving the integrity of marine mammal law.

told me in an interview 11 months ago. "I want to continue to build solidarity. I have to be able to control the country in a democratic way. I have to hear the voice of the people first."

He listened. Since early February he had begun to take steps to distribute land, to improve literacy in a nation where three out of four people can't read and to introduce health programs in a country where 100 out every 1,000 babies die in their first year of life. He worked with his Parliament, shuffling ministers in and out of his cabinet. And he tried to control Haiti's 7,000-man army, which often was allied in the past five and a half years with Baby Doc's feared paramilitary Tontons Macoutes.

If the junta holds up, Mr. Aristide's work will have been in vain. For now, the seventh change in government since Baby Doc's ouster leaves the Western Hemisphere's poorest nation under yet another military dictatorship.

Though Haiti has been a full-blown democracy for eight

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junta that had taken over the i
after the murder of Marxist l
Maurice Bishop. Washington
this action was in response t
Cuban Communist "threat" the

Don't Dismantl

By JOE FARRELL

The International Trade Commission issued a report on Sept. 19 claiming the American consumer would benefit by somewhere between \$4.2 billion and \$10.4 billion annually if waterborne transportation between U.S. ports were opened up to foreign competition.

Under present U.S. law, only vessels that are owned by U.S. citizens, built in U.S. shipyards and manned by U.S. crews can carry passengers and freight between points in the United States. Foreign ships are prohibited from providing this service. This policy, known as cabotage, was created in the maritime industry by the 1920 Jones Act. The ITC report implies that everyone would be much better off if foreign vessels, crewed by foreign nationals, took over the waterborne domestic trade of the United States.

Just for starters, we as taxpayers must question the merits of a government study that cannot tie down the putative benefits to American consumers more precisely than the breathtaking range of \$6.2 billion. Such a range is like a real estate agent trying to sell a house that he describes as costing somewhere between \$150,000 and \$450,000. One would have to wonder about both the house and the agent.

The cabotage laws of the United States were not enacted in the first place to benefit the American consumer. In fact, the preamble to the Jones Act states that ". . . it is necessary for the national defense and for the proper growth of its foreign and domestic commerce that the United States shall have a merchant marine . . . as a naval or military auxiliary in time of war or national emergency, ultimately to be owned

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United States and to foster ben
for the U.S. economy. The ITC w
have some parties counting t
money at too great a risk to all

One need look no further t
this year's Persian Gulf war to
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very well, but never mind.) In
end, the U.S. government had sev
problems manning those ves
with trained seaman.

Putting trained people on m
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always be a major hurdle; in a c
flict more protracted than the P
sian Gulf war, U.S. tug and ba
operators can provide a rich natu
reserve of trained seaman. Wh
not trained for trans-oceanic co
merce, of course, they are expe
enced in applicable maritime ski
that have critical value in time
national emergency. And there a

LETTERS T

'Citizen Action' Got Gas Facts Wrong

In alleging that the major oil companies have engaged in unfair marketing and pricing practices that have harmed consumers ("Big Oil Squeeze Means Hike in Gas Prices, Consumers Say," Sept. 23, Page 13B), the self-styled watchdog organization, Citizen Action, conveniently chose to ignore a recent study that concludes the opposite is true: gasoline prices consumers pay in the United States "are near their cheapest levels since the Second World War."

According to the study's author, best-selling writer and energy analyst Daniel Yergin, "Gasoline in the United States is currently one of the great bargains of the Western world."

Here are some additional facts that demonstrate why charges leveled by Citizen Action are wrong:

• Gasoline today accounts for only 17% of consumers' annual automobile expenses compared to double that amount 15 year ago.

• The gasoline market share of non-major refiner-marketer and independent marketers have been growing, not shrinking. Non majors now account for almos 38% of gasoline sales, nearly double the 20% level of 1968. Large independent marketers, a group whose share overlaps with that of the non-major refiner group, supply about 20% of motor fuel sales in the United States, up from less than 13% in 1982.

• Retail gasoline prices respond to crude oil prices the same way when crude oil prices fall as when they rise. When crude prices rise, retail gasoline prices also rise but neither as much nor as fast as crude oil prices.

The same relationship holds when crude oil prices fall. During the Persian Gulf crisis period, retail prices for self-serve unleaded regular — the biggest segment of the market — rose by more than 25 cents per gallon and then fell by that same amount when crude oil prices fell.

"Journal of Commerce" p. 4A 10/4/91

No. ~~[illegible]~~ then file GATT/TUNA

United States Senate

COMMITTEE ON COMMERCE, SCIENCE,
AND TRANSPORTATION

WASHINGTON, DC 20510-6125

October 3, 1991

The Honorable George Bush
President of the United States
The White House
Washington, DC 20500

Dear Mr. President:

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Finally, we urge the Administration to refrain from entering into any agreements on this issue, with any country, until full consultations are made with the appropriate Committees of Congress. We appreciate your attention to this critical issue, and we look forward to receiving your response.

Sincerely,

BOB PACKWOOD

TED STEVENS

DENNIS DECONCINI

TIM WIRTH

HERB KOHL

SLADE GORTON

JAY ROCKEFELLER

DANIEL INOUYE

ERNEST F. HOLLINGS

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RICHARD BRYAN

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GATT/NUN

The Chattanooga Times

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ANTHONY

Fight GATT for the environment

The use of trade restrictions to promote saner environmental and ecological policies worldwide faces a severe test. A panel of the General Agreement on Tariffs and Trade — the GATT administration which rules on trade disputes among 108 member nations — has barred a U.S. law prohibiting tuna imports from nations whose tuna fishermen negligently kill huge numbers of dolphins. It's a retrograde ruling and should be reversed.

The ruling, to be published next month, rightly alarms environmentalists because it jeopardizes market restrictions as a lever for conservationist policies. The GATT panel found that the U.S. law on tuna imports violates GATT rules that prevent countries from dictating how other countries produce goods for export. The decision followed Mexico's appeal of the hard-won U.S. law aimed at protecting dolphins from indiscriminate tuna-fishing practices. But preservation of dolphins is only one effort that would be weakened.

Increasingly, environmentalists around the world are pressuring governments to outlaw practices that threaten the Earth's resources. On behalf of all mankind, they war against pollution of air, land and water and against destruction of species and biologicial diversity.

Environmental protection is obviously a global concern, but, unfortunately, an environmental ethic has not become universal. Too many nations still raze forest land indiscriminately, release pollutants without concern and pollute the seas or rape them with murderous, 30-mile-long drift nets.

Too few governments are prompted to use trade sanctions to promote progressive environmental policies, but a few have begun. The new U.S. law to protect dophins, for example, bars the import of tuna from countries whose tuna fishermen kill more dolphins than do American fishermen working under new regulations. It also bars tuna imports from other countries that buy tuna from the banned countries.

Just this a violation or ??
I'd think that the law must show that the particular product being banned came from the offending country.

Laws of this sort reflect significantly improved environmental awareness domestically and give a major boost to worldwide environmental protection efforts. They also would seem to fall within the domain of a sovereign nation.

If GATT views such new laws as unwarranted international meddling, however, it is time to raise GATT's environmental consciousness. The industrialized world, in which such progressive environmental policies are now beginning to take root, has the economic clout to reshape GATT.

But it is not clear, at least in this case, that the Bush administration wants to appeal the GATT ruling to help champion the environmental cause. The United States has criticized other countries for GATT violations and it is lobbying for GATT revisions to boost trade in Europe. The administration also doesn't want to jeopardize work toward a free-trade treaty with Mexico.

Moreover, a majority of GATT member countries are expected to uphold the GATT ruling against the dolphin preservation law if the United States appeals, so it would be an uphill fight.

But if economic powers such as the United States do not champion environmentalism, work for progressive policies will languish. The administration has ready allies in the European Community for advancing environmental preservation. It should seek their help in creating GATT policies to protect against rapacious and unsustainable consumption of the Earth's dwindling resources.

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Supporting Dolphins and GATT

By DAVID PALMETER

Environmentalists are fuming. A dispute settlement panel of the General Agreement on Tariffs and Trade, the body that regulates international trade, has concluded that a U.S. ban on imports of tuna from Mexico violates GATT rules. The United States imposed the ban because Mexican fishermen are permitted by their government to use techniques that, in the U.S. view, kill an unacceptably high number of dolphins. Outraged environmentalists say that if the choice is between dolphins and GATT, then GATT must go. The United States, they say, should refuse to comply with the ruling.

That would not be a good choice, even if it were the only choice. Fortunately for the dolphins and for the world trading system, it is not. It is possible to protect dolphins and comply with the rules of international trade — rules that contribute to the prosperity that makes increased environmental protection, including dolphin-safe tuna fishing, affordable.

This is a point likely to be overlooked by the alarmists. The panel did not say the United States could not protect the environment, including dolphins. It simply said Washington could not do so in the way it chose when it authorized the import ban.

The trouble for the United States began with its attempt to use an embargo to control the behavior of other governments. Under the Marine Mammal Protection Act, other countries must prove to U.S. satisfaction that their laws concerning marine mammals are comparable to ours. It not, their tuna is banned.

GATT, however, prohibits import (and export) bans unless they are justified by explicit, narrowly drawn, exceptions. The United States defended the ban on Mexican tuna imports by pointing to two of the exceptions authorized by GATT: First, the United States said, the ban is necessary to protect animal life or health; second, it relates to the conservation of an exhaustible natural resource.

The panel rejected both arguments. The first concerns the right of a country to protect animal life and health within its own territory — for example, laws that protect U.S. cattle from hoof and mouth disease by banning imports of diseased animals or animal products. The exception has nothing to do with protecting animals worldwide.

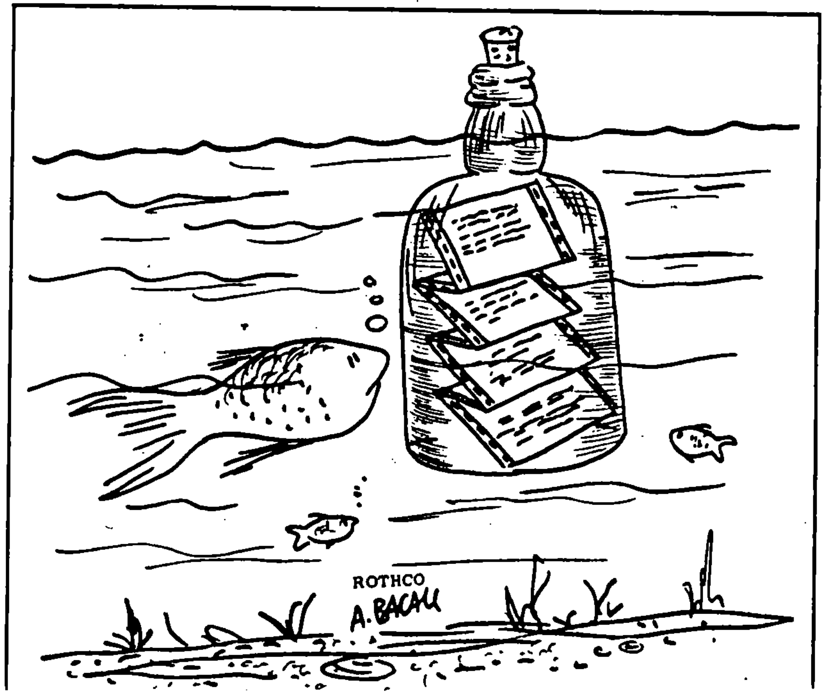
The second U.S. argument seemed more plausible. The exhaustible resource exception permits GATT members to limit foreign access to natural resources provided they limit domestic access as well. The United States argued that it did limit its own tuna fishermen.

But the panel disagreed. U.S. law differs in its treatment of U.S. and foreign fishermen, the panel said. More important, this exception to the rules of GATT merely permits countries to limit natural resource production within their own territory, and limit exports as well, provided comparable limits are placed on domestic consumption. It does not authorize countries to strong-arm others into enacting whatever legislation the would-be strong-armer thinks best.

If this view were adopted, every country could decide for itself not only its own environmental policies but those of other countries as well. The multilateral trading system, based on agreed rules, would be destroyed.

It would be ironic if the United States were to contribute to the destruction of GATT. The trade agreement, which dates from 1947, largely reflects positions on which the United States insisted when few of our war-ravaged trading partners were in a position to disagree. GATT is very largely a U.S.-sponsored set of rules.

So is the choice dolphins or GATT? No, it is not. In a rather unusual step, the panel itself suggested a way to avoid the dilemma.



GATT permits countries to tax imports within their own jurisdictions as long as they tax domestic products in the same way. Thus, an excise tax on all tuna sold in the United States that was not caught in a dolphin-safe way would be permitted. The tax could be as high as necessary to discourage anyone wishing to sell in the United States from killing dolphins.

How would this differ from the ban? In its effects, probably very little. But in terms of the international rules, it would be very different. First, it would be in the form of a permitted tax, not a prohibited embargo. Second, it would not dictate the laws of other countries but only the practices of those selling in the United States. Finally, and of crucial importance in terms of GATT principles, it would not discriminate. Tuna caught by U.S. fishermen would be treated the same as tuna caught by others. The U.S. law, as it stands, not only attempts to legislate for the world but does so in a way that discriminates.

An even better solution would be an international convention regulating the world tuna fishery. In the long run, degradation of a global resource can be halted only by effective international agreements. The Convention on International Trade in Endangered Species, or CITES,is one such agreement. But what is being limited in the tuna ban is trade in tuna, not trade in the endangered species — dolphins. A better agreement is needed.

Meanwhile, the ability of 4.7% of the world's population living in the United States to impose its own solutions on the other 95.3% has obvious limits. It is 1947 no longer. The process of reaching those much-needed international agreements is not advanced by disregarding an already existing one.

David Palmeter is an international trade lawyer with Mudge Rose Guthrie Alexander & Ferdon in Washington. He has no client inter-

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flaws in the vetoed bill,
unanswered. The proposal,

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BATT/TUNA

Dolphin Feeding Ban Challenged

The new prohibition on dolphin feeding cruises (see *Marine Conservation News*, Summer 1991) has already been challenged in federal court. Erv and Sonja Strong sued the National Marine Fisheries Service (NMFS) and obtained a temporary restraining order allowing them to continue their dolphin feeding cruises in Corpus Christi, Texas. Despite overwhelming scientific evidence of the dangers of dolphin feeding cruises, gathered by CMC and other well-known marine mammal researchers, the Strongs assert that their feeding cruises pose "no eminent harm to the dolphins." It is difficult for us to comprehend such a statement from individuals professing to have the dolphins' well-being at heart.

CMC has documented that dolphin feeding cruises can harm wild dolphin populations, putting them at increased risk of disease and injury. Photo: Nina M. Young/CMC

Because of our active role and expertise in this issue the Department of Justice requested that I, as CMC's marine mammalogist, submit an affidavit to the District Court in southern Texas, and if necessary, appear as an expert witness at the hearing in June.

As we go to press we are still awaiting the judge's ruling on this case. NMFS presented a convincing case in favor of upholding the ban, but a ruling in favor of the Strongs could cause a protracted court battle and allow the feeding cruise operators time to consolidate their efforts for additional attempts to overturn the ban on feeding wild marine mammals. As always we will keep you informed as to the progress of this court case.

—*Nina M. Young*

Foreign Tuna Embargoed!

The U.S. Department of Commerce has imposed an embargo on tuna products from Mexico, Venezuela, and the Pacific island nation of Vanuatu for those countries' failure to reduce the level of dolphin mortality in their tuna fishing operations.

The "comparability standards" of the Marine Mammal Protection Act require foreign tuna fleets to reduce dolphin mortality to levels approaching the U.S. rate or risk having their tuna embargoed.

Although the comparability standards allow a dolphin mortality rate 25 percent higher than the U.S. rate, these three countries had pleaded with U.S. officials to lift or alter the standards to avoid the sanctions. Mexico led the appeal, holding the pending free trade negotiations between Mexico and the United States hostage.

These countries are now trying to get the embargoes lifted. The State Department may attempt to negotiate a compromise with these nations and try to convince Congress to amend the MMPA and lift the sanctions.

CMC will urge the Department of Commerce and Congress not to succumb to the pressure, and to hold foreign tuna fleets to the same standards of responsible fishing as U.S. tuna fishermen.

—*Nina M. Young*

May I Have a Tuna Sandwich?

The question I am most frequently asked these days by CMC staff, members, and friends is, "Can I eat tuna yet?"

With the voluntary labeling of canned tuna as "dolphin safe" by major canners and the passage of the Dolphin Protection Consumer Information Act last year (see *News*, Spring 1991), many of us stand perplexed in our grocer's aisle, wondering which brand of tuna to purchase for that long-awaited tuna sandwich.

Before I answer that question please keep in mind that first, *CMC does not endorse any tuna product.* Second, the Department of Commerce has not yet fully developed and implemented the federal regulations that would verify whether a product is indeed "dolphin safe."

But for those of you craving tuna now, CMC's research indicates that the following brands of tuna—labeled "dolphin safe"—appear to comply with the federal standards: **Starkist Chunk Light and Albacore Tuna, Chicken of the Sea Chunk Light and Albacore Tuna, Bumble Bee Chunk Light and Albacore Tuna.**

—*Nina M. Young*

DOLLAR
VS. JAPANESE YEN (N.Y.)
132.95 YEN
− 0.20 YEN

GOLD
COMEX SPOT
$354 PER OUNCE
+ $4.90

BONDS
30-YEAR TREASURIES
7.80% YIELD
− 0.02

CRUDE OIL
NYMEX CURRENT CONTRACT
$22.23 PER BARREL
− $0.09

U.S. houses in August reached their most affordable level since early spring due to falling interest rates and lower prices, but buyers mostly stayed on the sidelines, the National Association of Realtors said.

Boeing prevailed over Computer Sciences Corp. to win a 10-year, $1.6 billion Army contract to develop, purchase and manage a computer system for the National Guard and Army Reserve. The work will involve more than 700 people in the Washington area.

Michel Camdessus was reappointed director of the International Monetary Fund for a five-year term.

Days Inns of America, the discount hotel chain, will sell its giant franchise network to Hospitality Franchise Systems, parent of the Ramada and Howard Johnson group, for about $250 million in a deal it said will create the world's largest hotel franchiser, with more than 2,300 hotels and 285,000 rooms.

The new firm, to be called Paramax Inc., would have annual sales of $2.1 billion. About 5,400 of Unisys's 17,500 employees already work for the defense operation locally.

The deal, involving the sale of the defense unit to public stockholders and other transactions, would give about $800 million in fresh cash to Blue Bell, Pa.-based Unisys, which is struggling under a $3.7 billion debt.

Unisys has foundered almost continuously since it was formed in 1986 with the merger of Sperry Corp. and Burroughs Corp. The company has lost more than $2 billion over the

manding and the degree of control that Carlyle wanted, according to sources.

Under the arrangement proposed by Carlyle, its vice chairman, Frank C. Carlucci, a former secretary of defense, would have become chairman of Paramax.

Instead, Paramax will be managed by its current crew of executives, who will have the option of buying up to 5 percent of the company at the initial offering price of $22 to $25 a share. The team is led by Frederick F. Jenny, who currently heads the division. Papers filed with the Securities and Exchange Commission indicate Jenny's annual salary and bonus could

Force, and systems fo The divisio fense contr coast-to-coa Weather Se far behind s budget.

Although the defense nal deal bec the compan counts as pa vestigation i

file GATT TUNA

Washington Post Oct 1, 91 D1

Raising a Roar Over A Ruling

Trade Pact Imperils Environmental Laws

By Stuart Auerbach
Washington Post Staff Writer

PHOTO BY SAM LaBUDDE PROVIDED BY EARTH ISLAND INSTITUTE AND GREENPEACE
Mexican fishing boat nets kill as many as 50,000 dolphins a year.

A ruling by an international trade panel has given new energy to American environmentalists worried that U.S. laws protecting whales, baby seals, dolphins, elephants and other endangered species are themselves endangered.

Administration officials and congressional experts said the ramifications of a decision last month by a panel of the General Agreement on Tariffs and Trade (GATT) go far beyond the actual finding. GATT ruled that the United States violated global trade rules when it banned imports of tuna caught by Mexican fishing boats because their nets kill as many as 50,000 dolphins a year.

Environmental groups said the GATT decision could be used as a precedent for trying to change a series of U.S. laws under which other countries must protect endangered species and the environment or face trade sanctions in trying to sell products in the United States.

Among them is a new regulation banning imports of fish caught with drift nets—the 30-mile-long "curtains of death" used by fishermen in Japan, South Korea and Taiwan to catch squid.

"This is a worst-case scenario come true—repeal of a vital environmental law because of conflict with a trade agreement," said Rep. Henry A. Waxman (D-Calif.), chairman of the House Energy and Commerce's subcommittee on health and the environment, during a hearing last week.

"The hearing is about the collision between domestic environmental and health laws and trade

See TRADE, D6, Col. 1

Lloyd's of London Is Facing Fraud Suits by U.S. Investors

SEC Conducting 'Informal Investigation'

By Glenn Frankel
Washington Post Foreign Service

come to many homes. It's a shameful and disgraceful situation."

In another suit filed in Canada, 70

*Objections Raised to GATT Rule

TRADE, From D1

agreements such as GATT," he said.

"The days when the trade debate was just about tariffs and prices is over," said Rep. Ron Wyden (D-Ore.). "We have to change GATT to deal with environmental and health concerns that our constituents have."

GATT is the main organization dedicated to setting rules for opening up international trade.

Many U.S. companies, in response to a vigorous campaign by environmentalists, have put special labels on cans of tuna to show that the fish are caught in a way that does not endanger dolphins. Environmental groups responded to the GATT ruling by reopening their attacks on a U.S.-Mexican free-trade agreement and on negotiations to strengthen global free-trade rules.

The environmentalists and a growing number of their supporters in Congress argued at the hearing last week that hard-won U.S. environmental protection laws could be weakened severely by the new trade agreements.

"This case is the smoking gun," said Lori Wallach, staff attorney at Public Citizen's Congress Watch. "We have seen GATT actually declaring that a U.S. environmental law must go. We have the Canadian [free-trade] agreement being used to challenge the U.S. ban on asbestos. And there is more. These [trade] agreements must be modified to allow for legitimate consumer and environmental protections."

Environmental groups have been fighting the current Uruguay Round of free-trade talks for years, arguing that new GATT rules could weaken U.S. health, safety and environmental protection laws by labeling them as trade barriers in much the same way Mexico characterized the law to save dolphins.

Further, environmentalists claim that a free-trade pact with Mexico would allow U.S. companies to move south of the border to take advantage of looser environmental laws and even more lax enforcement there, leaving American consumers prey to the effects of fruits, vegetables and meats produced under less sanitary conditions in Mexico.

Fearing that the decision on tuna puts the entire North American free-trade agreement at risk, the Mexican government took full-page advertisements in major American newspapers last week to trumpet changes it has made in its fishing laws.

As a result of the furor, administration officials said Mexico is unlikely to pursue the case further in GATT, and they hope that the changes in Mexico's tuna fishing practices will satisfy the U.S. law and allow Mexican tuna into the United States.

Environmental groups, though, called the changes "cosmetic" and said they were part of a deal with the Bush administration, which opposed the fish protection law in the first place. As evidence of this, they cited reports that Secretary of State James A. Baker III, Commerce Secretary Robert A. Mosbacher and U.S. Trade Representative Carla A. Hills agreed last month to ask Congress to weaken the Marine Mammal Protection Act in return for Mexico toughening its tuna fishing laws to bring them more closely in compliance with U.S. laws.

Key lawmakers on the Waxman subcommittee, which controls U.S. environmental laws, said the administration proposal is a nonstarter.

"Nothing short of GATT reform is acceptable. Its secretive dispute process, overseen by obscure trade bureaucrats sitting in Geneva, cannot be allowed to override the hard-won protections that American society has developed over past decades," said David Phillips of the Earth Island Institute, testifying on behalf of 15 other environmental groups.

To bring their point home, the environmentalists have personalized the dispute as one of Carla Hills against Flipper. A press release by Ralph Nader's Public Citizen organization promises to reveal "why Flipper hates Carla and other GATTastrophies."

Unisys to Sell Defense Divisio
In Major Public Stock Offeri

UNISYS, From D1

Its second-largest operation, in Great Neck, N.Y., will be affected by future decisions on the Trident II missile program at a time when the Bush administration is promising to reduce the U.S arsenal of big intercontinental nuclear missiles.

Analysts also noted that in an effort to pare costs, Unisys has cut the defense division's research budget—the source of future contracts—from $70 million five years ago to just more than $25 million today.

In the Washington area, the bulk of Paramax operations would be centered in McLean, where the software for the Air Force's command and control and air defense system was originally developed by Burroughs. Most of the operation's 4,500 employees continue to work on various computer software contracts.

At a smaller operation in Reston, about 700 employees work on systems that allow naval commanders to manage sea battles and advise the Navy on electronic warfare and mine detection.

According to investment bankers familiar with the deal, Unisys decided to sell its defense division to public shareholders after failing to attract a single big buyer, and
ing as inadequate offers from
defense firms for portions
business.

Ironically, Unisys three yea
turned down much more ge
offers for its defense divisio
time when defense firms we
ing at three times their book
according to several inves
bankers. The $800 million v
the deal proposed yesterday i
1.4 times the division's book

Elliott Rogers Jr., an analy
follows defense electronics fi
Cowen & Co. in New York, s
terday that although Unisy
fense division has a "solid st
... business from its existi
tracts, the key will be to fin
sources of revenue, proba
adapting military technology
ian government agencies.

Rogers also cautioned tha
the Unisys defense division
post a record profit of $150
this year, debt service on Pa
new $500 million in bank loa
eat away as much as $40
year from the bottom l

Even after the sale of its
unit, Unisys will continue to
jor supplier of mainframe a
top computers to the Pe
through its commercial com
vision.

M E M O R A N D U M

DATE:oct 9.

TO:agj

FROM:lsf

SUBJECT:recommendations.

You already have taken one step, though I am not sure how aware. Katie and I signed you on to a temperately worded letter to the President, with signatures from Hollings, Packwood, Stevens and others. The letter recommends that:

1. the US exericize its rights to block adoption of the GATT panel report.
2. the US consider binding bilageral or multilateral agreeements needed to achieve full compliance with the objectives of the MMPA.
3. Work to ensure the GATT fully recognizes the legitimate objectives of protecting the environment and conserving natural resources.
4. Refrain from any deal on this issue until after full consultations with appropriate committees of the Congress.

A letter to the GLOBE membership discussing the broad issues per preceding memoranda is another and I think urgent requirement for you. We talked about this earlier, but it seemed to me that you needed a full discussion of the problem before framing the letter. I will be preparing draft for discussion with Katie and Noel.

Plans to deal with this issue at the pending GLOBE meeting. These are in train.

Action will have to be taken right away as we get information on the GATT panel. That panel becomes as of now a major focus of attention both for your domestic activity and for GLOBE, it would seem to me. However, we need details about the GATT terms of reference (in the next day or so) to begin formulating specific ideas -- and that will certainly require a collective effort involving Katie, Gregg, and Noel.

The options of speeches and opeds are there for any and all of this.

To sum up the entire effort: first of all, do no harm. Try to isolate and define problems rather than universalize and blur them. Seek adjustments that preserve our objectives at the lowest level of disturbance. Take advances in substance in preference to stalemates over principle. Remember that the right to untrammeled unilateral action is essentially anarchistic. Test propositions not only in terms of their specific contribution to this or that environmental cause, but to their contribution to general principles of international behavior that support conflict resolution based on respect for law, rather than the principle of "might makes right." And ... remember that no matter what, Flipper loves you.

M E M O R A N D U M

DATE:oct 8

TO:agj

FROM:lsf

SUBJECT:tuna and dolphins

I don't know when the next interuption will come, so let's get to the point. This will be done in chunks designed to be free-standing, but inter-locking. The sequence will be to talk about the GATT conflict resolution in general terms so as to create a foundation for understanding what has happened; to talk about the GATT Panel Finding in the Mexican Tuna issue; to talk about the potential scope of a collision between the needs of the trading system and the needs of the environment, as may be either symbolized or actually initiated by this finding; and to talk about policy responses. amen. Below if first chunk. I hope to keep up a brisk tempo. But am asking patience, the end is not understandable without the beginning.

GATT conflict resolution

The GATT system for conflict resolution has evolved over time, rather than as the result of a sharply defined feature of the Charter. The Panel that was brought into existance to deal with Mexico's complaint against the US tuna embargo would, in keeping with those procedures, would have consisted of an ad-hoc group of perhaps five persons selected for their personal qualifications and knowledge of the GATT. It does not consist of persons representing the views of governments, although diplomats accredited to the GATT are often called upon to serve. The panel ceased to exist when it delivered its recommendations. The recommendations or findings were probably unanimous.These recommendations are NOT analogous to the findings of a court and the entire GATT process are at no point equivalent to a judicial proceeding.

Often, after panels issue their findings, parties to a dispute often settle by bilateral agreement, and, in fact, there are reports that the Administration and the Mexican government are trying to do just that. At any rate, the GATT Panel recommendation is first presented privately to the parties, who have a month or two to consider it. Ultimately, if the parties do not settle, the report is placed on the agenda of the GATT Council for adoption.

Panel

Council

retaliation

The GATT Contracting Parties (who comprise the Council) decide on the basis of concensus. If no one speaks out against it, the Council adopts the Panel finding. As one text puts it, " The parties to the dispute then have a special responsibility in the smooth functioning of the dispute settlement process. They can go alng with or effectively block a Council adoption of a panel report." In practice, the great majority of panel recommendations have been adopted.

Once a Panel recommendation has been adopted, comes the issue of compliance. The question of compliance is reviewed at successive Council meetings. The meaning of adoption of a recommendation is that the Council finds that the value to one party of its rights under the GATT have been nullified or impaired by the actions of another party. The aggrieved party is in a position to retaliate by finding ways to penalize the trade of the offending party in an amount commensurate with damages. This would occur, however, only in the event of non-compliance by the offending party. As a sovereign entity, the offending party may chose not to comply.

To summarize: the GATT finding is not enforceable against the will of a country. No one can force the US to suspend the operation of the Marine Mammal Protection Act in the case of Mexican tuna. But all nations who have any stake in the operation of the world trading system also have a stake in the GATT conflict resolution process to function. And the United States does have such an interest: because the international trading system is a vital part of global political stability, and because there are times when the shoe is on the other foot, and the United States approaches the GATT as an aggrieved party.

draft cable to head of GATT

Dear --

I note a Reuters dispatch according to which the GATT has decided to activate a special working group on environmental issues. In principle, that is a very good development, particularly in view of the range of uncertainty that now exists following a GATT Panel's recommendations in the matter of US efforts to protect dolphins. Obviously, however, important as that single problem is, the total range of issues is far broader and it is time to come to grips with them.

Hopefully, more details will soon be available concerning the exact terms of reference of the working group and of the principles according to which its chairperson and members will be selected. Pending that let me express some general concerns.

First of all, it seems essential to me that the working group be instructed not only to examine environmental actions in terms of their impact on the trading system, but to study the matter the other way around. That is, to take a good look at the effects of the trading system on the environment.

It follows from this that the members of this panel should represent not only persons who are expert and authoritative in their knowledge of the trading system, but also other people who will in effect speak for the environment as a primary concern.

Finally, I would urge that in contrast to the privacy typical of many other GATT procedures, this working party perform as much of its deliberations as possible in open session, and that it take the time to hear the views of a broad cross section of those concerned with these matters, including NGOs.

If done correctly, the working group's procedures and output will represent a major learning experience for two groups which have had little to do with each other, but whose activities are destined to be ever more tightly inter-woven: the community of trade specialists both in and out of the public sector, and the community of scientists and advocates for the environment. That outcome will immensely strengthen the GATT as an instrument capable of serving the world effectively into the next century.

Conversely, a narrow approach to this issue -- which approaches the environmental challenge defensively, and which treats such matters as the exlusive domain of governments to the exclusion of views from any other source -- will doom the effort and endanger the GATT itself.

<u>M E M O R A N D U M</u>

DATE:oct 9

TO:agj

FROM:lsf

SUBJECT:tuna and dolphins. part 3. implications of GATT Panel Recommendation.

The GATT Panel recommendation definitely represents a challenge to the Marine Mammals Protection Act, in the event that the US and Mexico do not now proceed to settle this matter by compromise, and thereby shut down the GATT process short of an action by the Council. There is a body of opinion, however, according to which the Panel finding challenges the entire class of national law -- whether US or foreign -- where the purpose is to unilaterally impose trade sanctions on behalf of environmental concerns.

According to this point of view, it is conceivable that action under CITES, the Pelly Amendment, the trade penalties section of the CFC Treaty or similar provisions in some future agreement on carbon dioxide emisions might be challenged, to illustrate the range. So too, might be possible bans on imports of tropical lumber, import fees designed to offset a perceived unfair trade advantage enjoyed by exporters with lax environmental standards of production. In addition there are concerns that subsidies of the exports or purchase of environmentally benign technology might be successfully challenged as a distortion of GATT rules.

Those who think the GATT Panel findings are that broad in scope believe that it is the "smoking gun"to prove that the international trading system is hostile to environmental concerns and needs to be altered in basic ways. Our own emeritus Rick Adcock has taken such a position in an oped recently published: "Since this decision flies in the face of what Daniel Yergin calls the Third Wave of environmental activism, whose watchword is sustainability -- a term meant to convey the notion of environmentally responsible production -- it makes GATT appear lartgely irrelevant but nevertheless an obstacle to a rapidly evolving new global security... GATT's ...decision was not an isolated event but the opening round of a battle between environmental leaders and laggards...."

Very little consideration appears to have been given however, either to the process of GATT amendment -- if that is the desired route -- or to the conceptual/international problems in finding new principles, or substantially altering the existing set.

GATT amendment prodedures are governed by Article XXX. It provides that amendments to Articles I, II and XXIX require unanimous agreement, and that has never occured. Amendments of any other GATT articles require a two thirds acceptance by all contracting parties, AND an ame~~ndment obli~~gates only contracting parties that accept it. Waivers may be granted, and the US tried to get its actions against Mexico handled in that way. However, granting a waiver -- though not nearly so steep a barrier to surmount as approving an amendment -- still requires two-thirds support of a group consisting of 50% of the Parties, plus one.

There are other ways to introduce new ideas or modify the GATT articles, but any of them requires concensus, an that means that one is looking for propositions that are unusually compelling. Unfortunately, in the area of the environment, it is a real question whether such principles exist. Developing countries view these issues through a different prism than do the developed countries, even assuming that the latter arrive at some internal concensus of their own. Any country, moreover, may find itself at the pointed end of some other country's legislation, and where today "A" is nobly punishing "B" for its environmental policies, tomorrow the tables can be turned. All nations have reason to fear exposure to the arbitrary actions of others. The GATT is designed to buffer against that. Anything that dilutes that quality of the GATT, in favor of strengthening the ability of nations to act unilaterally, will be viewed with deep suspicion. And all potential modifications of the GATT on behalf of environmental legislation at the national level would have that effect.

It is also very troubling to me that those who champion the right of the United States to act unilaterally in this area do not appear to be thinking consistently about the implications of their view. To the extent that we hope for an international system based on law, there is a very deep problem here. Typically, the same environmentalists who want to resist the ability of an international body such as the GATT Council to check the will of the US government,might have an altogether different view about the ability of some other international body -- say the UN or the OAS -- to check the will of the US government in the use of military force.

It seems to me that a decision by the US government to unilaterally block the exports of another country -- which is the impact of the MMPA, especially if you take into consideration its provisions for targeting secondary sources -- is comparable IN ITS EFFECT to a decision to mount a selective naval blocade of that country's ports. Of course, international law recognizes a difference between these two activities, viewing the latter as an act of war. But the CONSEQUENCES are quite similar, and the issue is whether we can have one set of principles for dealing with one set of priorities and a diametrically opposed set of principles for dealing with another.

Of course, sovereign states -- like individuals -- are not obliged to be consistent. But law demands consistency, and if nations want an international system where security depends increasingly on recourse to law as opposed to recourse to force, then the price that has to be paid is attention to these sticky issues of principle and theory. Typically, activists have little patience for that, especially to the extent that their own freedom of action might be constrained as a result.

Given the real scope of an undertaking to change the trading system, it seems to me that great care should be taken to establish whether the conflict between the system and enviromental concerns is really as epochal as some maintain. A good case can be made, in my opinion, that the GATT panel recommendation is narrowly focused on issues essentially localized within the MMPA and potentially resolvable by measures within our power to take.

OK.

As mentioned in memo #2, it is possible that the US could revise the MMPA and establish it on the footing of a tax or fee that would be GATT consistent, provided applied uniformly to all sources of tuna, domestic and foreign. The US could also change the standards provisions of the MMPA to address the complaint that they cannot be known in advance by other countries and represent a form of Catch 22. It is, in my view, a serious complaint that the US has chosen to act unilaterally under the MMPA, but is making no effort to create a multilateral agreement that would change the terms of the problem as far as GATT is concerned.

[illegible]

It has to be noted that there has been no challenge in the GATT of multilateral agreements impinging on trade, nor of actions taken unilaterally in protection of endangered species (dolphin are not an endangered species). As for the Pelly Amendment, the GATT Panel recommendation appears to establish that is consistent with GATT. I note, however, that as of August 13, 1991, the US moved to invoke the amendment against Korea and Taiwan. That means that the Secretary of Commerce has determined that nationals of these countries are fishing "in a manner that diminishes the effectivness of an international fishery conservation program."

Pelly only under intl agreements?

If the process goes to comletion and import restrictions on Korean and Taiwanese tuna are imposed, we could see another test case. However, it needs to be recognized that action under Pelly is action in support of a prior international agreement, and is buffered by that from GATT challenge. In this case, the issue is tuna caught by driftnets, as opposed to dolphins incidentally caught. Pelly, however, allows the President to target any element of an offending country's fish catch, not just tuna.

It seems clear that if dolphin were subject to an international agreement aimed at their conservation, then a decision to invoke the MMPA and aim it against tuna products would have been much less vulnerable to challenge. Arguably not vulnerable at all. Going a step further, MMPA would not be needed. Pelly would suffice. Of course, under Pelly, the President is not compelled to act, and that may not sit well with environmental groups. Would environmental groups rather have a frontal clash with the international trading system, so as to preserve a feature of our law that allows the President no discretion? Some presumably would. Others might note that the Administration is acting on its own in this instance, and that perhaps the better part of wisdom is to accept some uncertainty about how the law is used by a President, as opposed to insisting upon the much greater uncertainty of a major clash with GATT.

To sum up. In my view, the GATT panel decision focuses on speicfic problems in the MMPA and is not a frontal challenge to all environmental actions impinging upon trade, or even to the principle of national legislation of this sort. Given my strong view of the GATT as an essential element of global economic and political stability, I assert that it is much better to avoid rather than to seek a frontal collision on environmental issues if the choice exists. And I think it does exist. We should be looking for concrete and specific ways to deal with points of conflict when and as they arise.

The next and final memo will present some suggestions.

* Re. intl agreements - panel did not say they 'sanctioned' - only said have to pursue to full extent 'necessary' lang.

M E M O R A N D U M

DATE:Oct 8

TO:agj

FROM:lsf

SUBJECT:tuna and dolphins. part 2. GATT Panel Findings

As summarized by the Panel, " The Marine Mammal Protection Act (MMPA) requires that the US government ban the importation of commercial fish or products from fish caught with commercial fishing technolgy which results in the incidental killing or incidental serious injury of ocean mammals in excess of United States standards." US standards for licensed fishing of yellowfin tuna by US vessels in the ~~Eastern Tropical Pacific~~ (ETP) are set currently at a maximum of 20,500 dolphins. All other countries fishing for ~~tuna in the ETP must~~ certify and prove to US authorities that they comply with the US standard. Specifically, they must show that the average take of marine mammals by their tuna fleets in the ETP is not greater than 1.25 times the average US rate during the same period. The law provides that an import~~ant~~ ban SHALL be imposed if these standards are not met.

Ninety days after imports of yellowfin tuna and tuna products have been prohibited from a given country, importation of the same products can be prohibited from any "intermediary nation" SHALL be prohibited, unless the intermediary nation proves that it has also banned imports of tuna and tuna products from the country subject to the primary or original embargo.

Six months after either the direct or secondary embargo, the US MUST act under section 8 of the Fisherman's Protective Act (Pelly Amendment). The Pelly amendment gives the President discretion to prohibit imports of all fish or wildlife pro~~ducts from~~ the country or countries in question, for as long as he likes "to the extent that such prohibition is sanctioned by the GATT."

The Dolphin Protection Consumer Information Act (DPCIA) also requires that any tuan product bearing the optional lable "Dolphin Safe" may not contain tuna harvested by a vessel engaged in driftnet fishing.

The Panel examined the following questions relating to all these matters:

a) the US ban on Mexican tuna and the provisions of the MMPA on which that is based.

b) possible secondary embargos based on the MMPA.
c) possible secondary embargbos based on the section 8 of the Pelly Amendment.
d) labelling provisions of the DPCIA as applied to Mexico.

Mexico argued that these measures were quantitative restrictions on trade, contrary to article XI of the GATT. Article XI says that, subject to certain exemptions," No prohibitions or restrictions other than duties, taxes or other charges, whether made effective through quotas, import or export licenses or other measures, shall be instituted or maintained by any contracting party or on the exportation or sale for export of any product destined for the territory of any other contracting party."

The US argued that these measures were internal regulations to enforce the MMPA as it relates to the harvesting of domestic tuna by US ships, and as such is consistant with a section of Article III of the GATT which requires that "the products of the territory of any contracting party imported into the territory of any other contracting party shall be accorded treatment no less favorable than that accorded to like products of national origin," as modified by an understanding (Note ad Article III) according to which "any internal tax or charge or regulation which applies to any imported product and to the like domestic product and is collected or enforced in the case of the imported product at the time or point of importatin, is nevertheless to be regarded as an internal tax or other charge, and is accordingly subject to the provisions of Article III."

The United States also argued that the MMPA were also justified under Article XX of the GATT which allows exemptions from Article XI for purposes necessary to protect human, animal or plant life or health;" and "relating to the conservation ofexhaustible natural resources if such measurs aremade effective in conjunction with restrictions on domestic production or consumption."

The GATT Panel finding was that all the US reasoning regarding the right to regulate imported products, provided the regulation fell with equal weight on like domestic products (Art XI,etc.), failed, essentially because the US is attempting to regulate a process UNRELATED to the product -- i.e. the process by which the tuna is caught. Therefore, the US action becomes a quantitative restriction on an import of a sort not permitted.

As regards, the Pelly Amendment, the Panel found that because this amendment does not REQUIRE that action be taken, as compared to the MMPA which mandates action by the President, the Pelly Amendment IS NOT inconsistent with the General Agreement.

As for Article XX, the GATT Panel separately examined each of the proposed grounds for exemption. With respect to Article XX (b)"necessary to protect human, animal or plant life or health," they reasoned that the US approach involves an extra-territorial application of the article, which, though not clearly inconsistent with the language of section (b), was not borne out by the negotiating history behind it. In the panel's view, the negotiating history "indicates that the concerns of the drafters focussed on the use of sanitary measures to safeguard life or health of humans, animals or plants WITHIN THE JURISDICTION OF THE IMPORTING COUNTRY.

The Panel further considered that " if the broad intepretation of article XX(b) suggested by the United States were accepted, each contracting party could unilaterally determine the life or health protection policies from which other contracting parties could not deviate without jeopardizing their rights under the General Agreement. The General Agreement would then no longer constitute a multilateral framework for trade among all contracting parties but would provide legal security only in respect of trade between a limited number of contracting parties with identical internal regulations."

Going a step further, the Panel looked at the US position regarding Article XX(b) even if the foregoing logic did not apply -- that is even if the broad interpretation were deemed acceptable. It concluded that the US argument would fail a second test based on the language of the exemption -- the test of "necessity" -- on grounds that the US had not "exhausted all options reasonably available to it to pursue its dolphin protection objectives ...in particular through the negotiation of international cooperative arrangements."

Further, the GATT Panel agreed with Mexico that the standards imposed by the MMPA did not meet the test of transparency. In their view "Mexican authorities could not know whether, at a given point of time, their policies conformed to the United States' dolphin protection standards."

As for Article XX(g) -- " relating to the conservation of exhaustible natural resoures if such measures are made efffective in conjunction with restrictions on domestic production or consumption" -- the Panel rejected the US position on grounds of extra-territoriality. "The Panel considered that if the extrajurisdictional interpretation of Article XX(g) suggested by the United States were accepted, each contracting party could unilaterally determine the conservation policies from which other contracting parties could not deviatge without jeopardising their rights under the General Agreement."

The Panel, for parallel reasons held that the use of secondary action against "intermediary nations" as provided by the MMPA is contrary to the ban on quantitative restrictions found in Article XI.

As regards, the Dolphin Protection Consumer Information Act, the Panel disagreed with Mexico on grounds that the the use of the Dolphin Safe label is voluntary.

In a final section called Concluding Remarks (there is a further section called Conclusions) the Panel may have offered some free advice:

> "The Panel wished to note the fact, that the provisions of the General Agreement impose few constraints on a contracting party's implementation of domestic environmental policie...A contracting Party is free to tax or regulate imported produces and like domestic products as long s its taxes or regulations do not discriminate against imported products or afford protection to domestic producers, and a contracting party is also free to tax or regulate domestic production for environmental purposes."

One reading of this language is that it is a broad hint the US should levy an excise tax on all tuna sold in the US that is not caught by dolphin-safe methods. This would be a permitted tax. I have made many efforts to get a reading on this proposal with mixed results. I am inclined to think that it so. Unfortunately, one cannot go back and ask the GATT Panel for an elaboration but it does not now exist. I will return to this question later.

M E M O R A N D U M

DATE:oct 9

TO:agj

FROM:lsf

SUBJECT:Tuna/GATT/Dolphins/ Specific Proposals #4.

This is the last of the intended series. While going through all the research and writing, I have thought at times that the dolphins have perhaps an unfair advantage. Were they ugly to look at instead of sweet-faced, were their behavior around people appalling instead of winning, were they dumb as posts instead of precocious, if they were -- Heaven forbid -- good to eat, if they were ....sharks, for example, I don't know that we would be going through quite the same exercise.

After all, there is a point of view according to which it is essential to challenge the GATT at its foundations in order to protect our ability to protect the dolphins. The GATT, after all, is merely the basis of the open trading system that surplanted imperialism as the prefered mode of economic competition among nations. Its collapse would only expose the world to precisely the same kind of beggar-thy-neighbor policies that lead repeatedly to war. So place all that on one scale. And on the other, put a mammal at the top of the food chain, rather than at some crucial lower point -- a mammal whose value, let's face it, is ethical more than ecological, and which might soon be in danger, but is not now. And call the resulting balance not equal, but heavily in favor of the dolphin. Am I exaggerating very much?

Obviously, we want to be able to take national action for environmental purposes, including actions that can influence international trade. We should also be able to take action in advance of critical situations, rather than only after the crisis breaks: why should we not act to prevent species from becoming endangered, if that is a foreseeable prospect, rather than wait until they already are at the brink of extinction? But to the extent that we can accomplish these purposes while still avoiding fundamental challenge to the trading system, I think we should. Our strategy should be to find practical solutions, rather than to look for and even welcome test-cases for winner-take-all combat.

So the balance of this memo is an effort to present responses to the GATT panel recommendations beginning from those with the least potential for a disruptive clash and working their way up the scale to those that are more sweeping.

o At the lowest rung, the United States could simply do a deal with the Mexicans whereby they substantially clean up their tuna fishing procedures, and we both forget about further action in the GATT. There are indications that the Sec of Commerce is exploring this route. Of course, the result might be less than full compliance with US standards, but the savings might include a strategic battle within GATT.

o Not far above (or below) that rung, the United States could simply block final action on the Panel recommendation in the GATT Council, or it could refuse to comply with a Council action adopting the recommendations. The embargo continues until we are satisfied. The cost, on the other hand, is damage to the GATT conflict resolution process that will diminish the value of GATT in ways we might later regret at several levels of misery.

the risk of retaliatory actions

o The United States might change the MMPA in an effort to make it GATT compatible. Suggestions for this were provided in memos 2 and 3. We could base our action on fees for all tuna sold in the US with a strong penalty in the case of tuna not caught by methods of which we approve; we could improve the standards process to make it more transparent; we could give the President some discretion; and we could urgently begin to work on some international covenant regarding protection of dolphins. The down side is that when all that had been done, some other country might still challenge us in the GATT, and another panel might still rule against us. But we would still be protecting the dolphins while all this went on, and we would be visibly demonstrating that we go out of our way to respect the GATT.

would we maintain the embargo til new leg. went thru?

o The United States could take up the issue of environmental protection and its impact on trade in a special GATT Panel. Actually, we are going to have that opportunity. Reuters says that the GATT decided yesterday to activate a Working Party on trade and the environment (see computer note on this matter). The up-side is that such a group could operate very usefully at the level of broad concept, but the down-side is that it would not in and of itself settle anything even if it reached concensus.

I assume that the terms of reference are otherwise well drafted and that the composition of the panel is well balanced in terms of those who understand the trading system and those who understand environmental issues relating to international trade. If these assumptions are not granted, the whole exericize might only make things worse. NOTE: USTR IS SENDING ME DETAILS. I MIGHT HAVE TO SUBSTANTIALLY CHANGE EVALUATION GIVEN ABOVE.

o The US could push for a "Green Round" of GATT talks after the Uruguay Round is completed. I know that some would delay the Uruguay Round UNTIL completion of a Green Round, but believe that to be completely irresponsible. A Green Round would feature the active negotiation of environmentally related issues in specialized fora, just as there were specialized fora for specific Uruguay Round issues.

I have a chart from a pending book on Trade and the Environment, in preparation for the Institute for International Economics. A copy of the chart is being inputed and will be distributed as an addendum to this memo. It shows the corrolation between GATT articles and issues for a possible environmental code. In linking Article I (Most Favored Nation) to an issue such as the "Rights to discriminate against imports from environmentally lax countries," the chart also suggests how to parse out the negotiations. On the up-side, this approach makes it possible for experts to slug out the details, pending political agreement. On the down-side, it is a very nitty-gritty approach and could take as long and be as perilous as the present GATT round.

o The US could try to jump-start the detailed process described above, by attempting to gain approval of some broad but effective principles or emendations of existing GATT articles. Some of these emendations could be worked into article XXV, on waivers. Examples are:

-- Waivers are considered to be in place automatically for all multilateral agreements impinging upon trade for environmental purposes. impact on difficulty of future negs?

-- Waivers are considered to be in place automatically in the case of national legislation in support of multilateral agreements impinging upon trade for environmental purposes.

Other emendations would be at more general levels. For example:

-- Certain developing states could be entered into a special category, for which subsidization of environmentally advanced technology is deemed not to be in contradiction of GATT.

-- A principle, according to which, if the means used to produce a product that is interanationally traded/have environmental consequences that are international in scope, then it is legitimate to consider the means of production as a factor contributing to the quality of the finished product. (in other words, it would be all right to penalize a country's tuna exports if the tuna were caught by means that contributed to the depletion of the world population of dolphins.)

Obviously, the more sweeping the principle, the less likely agreement will be.

Unfortunately, I believe there needs to be a fifth memo, involving some specific recommendations for you. It will follow, but I need a break. a sandwich break. tuna fish?

yfile GATT/NAA

CNI
Community Nutrition Institute 2001 S Street, N.W., Suite 530 Washington, D.C. 20009 (202)462-4700

August 29, 1991

MEMORANDUM

RE: GATT Must Be Reformed to Protect the Environment

GATT is the most important international instrument influencing international trade policy. Because international trade has grown exponentially in recent years, GATT has an enormous and increasing impact on worldwide resource use and, therefore, on environmental degradation associated with that resource use. Unfortunately, GATT still reflects the thinking of the time is was written, just after World War II: not only is no measure included in GATT for environmental protection, the word "environment" does not even appear in the agreement's text. This anachronism is in urgent need of reform. As the World Commission on Environment and Development stated, GATT must

> reflect concern for the impacts of trading patterns on the environment, and the need for more effective instruments to integrate environment and development concerns into international trading arrangements.

This reform process has not yet begun.

Environmental Dumping

Ideally, the international system should encourage industries to reduce the environmental impacts of their operations to the greatest extent possible. However, as currently carried out, international trade promotes exactly the opposite result: those industries that invest in pollution control are placed at a competitive disadvantage compared to industries that are allowed to externalize environmental costs.

GATT should therefore be amended to recognize that industries that are allowed to degrade the environment receive an unfair and inadmissible subsidy. A mechanism should be created in GATT that would encourage internalization of pollution costs. For instance, importing countries should be allowed to impose a duty upon imported products equal to the costs avoided when the manufacturer failed to comply with pollution control laws. Such a mechanism would violate GATT Article III as currently written. Similarly, exporting countries could be allowed to subsidize their industries to the extent that strict pollution control laws put those industries at a competitive disadvantage with uncontrolled industries in other countries. This provision would violate GATT Article XVI.

Quantitative Restrictions

Article XI of GATT outlaws quantitative restrictions on either imports or exports. A limited exception is provided to allow restrictions to prevent critical shortages of food or other products essential to a particular country. A second exception should be added allowing quantitative restrictions to prevent depletion of critical global or national natural resources.

Exceptions

GATT Article XX provides limited exceptions to the Agreement's prohibitions on trade restrictions. Unfortunately, none of these exceptions are broad enough to incorporate environmental concerns, especially those related to global resources such as the oceans and atmosphere.

Article XX(b) allows trade restrictions "necessary to protect human, animal, or plant life or health." This provision was originally intended to exempt quarantine and sanitary restrictions from GATT requirements. There was some hope, given the relatively broad language of the exception, that it could be used to exempt environmental regulations, as well. Unfortunately, two recent GATT panel rulings have dashed this hope.

First, the Thai Cigarette panel held that the "necessary to" language requires the government adopting the trade-restrictive measure to demonstrate that no less-trade-restrictive alternative measures are available to achieve the desired end. Under this very restrictive interpretation, it will be difficult or impossible in many cases for governments to demonstrate definitively that they have adopted the least restrictive environmental measure available.

Second, in the recent Mexican tuna case, the GATT panel ruled that Article XX(b) allows trade restrictions only if they are designed to protect human, animal or plant life or health within the boundaries of the country enacting the restrictions. Thus, the U.S. import ban on tuna caught with methods that kill large numbers of dolphins does not fit under this exception because it is aimed at protecting dolphins in the open ocean, outside of U.S. borders.

There was also some hope that environmental measures would be protected under Article XX(g), which allows "measures relating to the conservation of exhaustible natural resources if such measures are to be made in conjunction with restrictions on domestic production and consumption." Unfortunately, the GATT Mexican tuna panel ruled that Article XX(g), like Article XX(b), only covers measures designed to conserve resources within the boundaries of a country. Measures to protect global resources like dolphins do not fall within its ambit.

This narrow interpretation of the Article XX exceptions dangerously undercuts many measures that have been taken to protect global resources such as endangered species, international fisheries, tropical forests, marine mammals, the atmosphere and the oceans.

Therefore, Article XX must be amended. First, Article XX(h), which allows GATT exceptions where required by an "inter-governmental commodity agreement," should be expanded so that it also allows "measures taken pursuant to international conservation or environmental protection agreements." This language would protect the trade sanctions provided for under international agreements like to Montreal Protocol, under which ozone-depleting chemicals are being phased out, and conservation agreements designed to conserve international wildlife and fisheries, such as the Convention on International Trade in Endangered Species. The use of trade sanctions to enforce agreements like these are, at best, suspect under GATT in its current form.

In addition, a new exception must be added to Article XX, which would allow trade sanctions "imposed for the protection of the environment, ecological or biological resources, consumers, or animal welfare." Only the addition of such language will unequivocally protect the many trade-related mechanisms used to prevent the destruction of global resources and the degradation of the global environment.

Community Nutrition Institute 2001 S Street, N.W., Suite 530 Washington, D.C. 20009 (202)462-4700

September 5, 1991

Katie McGinty
Office of the Hon. Albert Gore
393 Russell Senate Office Building
U.S. Senate
Washington, DC 20510

Dear Katie,

As promised in our telephone conversation this afternoon, I am enclosing a short fact sheet and clippings concerning the recent GATT panel decision on imports of dolphin-unsafe tuna. Also, I am enclosing a short memorandum on possible amendments to GATT to take into account environmental concerns.

If you have any questions or suggestions about appropriate strategies, please give me a call at 462-4700.

Sincerely,

Eric

Eric Christensen
Consulting Attorney for
Community Nutrition Institute and
Institute for Agriculture and
Trade Policy

CNI
Community Nutrition Institute
2001 S Street, N.W., Suite 530 Washington, D.C. 20009 (202)462-4700

September 4, 1991

Information Alert

GATT PANEL STRIKES DOWN DOLPHIN PROTECTION LAWS

Ruling Threatens Broad Range of Environmental Legislation

Key U.S. legislation aimed at protecting the world's dolphins from slaughter in the nets of tuna fishermen was struck down this week by a panel of the General Agreement on Tariffs and Trade (GATT). The law prohibits the import into the United States of tuna caught by setting upon dolphins, which associate with schools of tuna in certain parts of the Pacific Ocean. Large numbers of dolphins are killed or injured in tuna nets when they are set upon. Mexico, whose tuna fleet continues to kill large numbers of dolphins, attacked the law, arguing that it is an unfair trade barrier and therefore is illegal under GATT.

What is GATT? GATT is the international body that establishes rules for international trade, such as limits on tariffs and import quotas. GATT rules are observed by more than 100 nations. GATT was created just after World War II and, because environmental concerns were not of great concern at that time, GATT nowhere even mentions the word "environment," making it a dangerous anachronism in this respect.

What did the panel hold? Although the GATT panel's ruling is not available to the public and will not be until it is officially approved by all GATT member governments, informed sources have explained that the panel broadly restricted the use of trade sanctions to protect international resources such as the oceans and marine mammals. The panel held that, while the GATT agreement allows governments to restrict trade to support domestic conservation efforts or to protect human or animal health, such measures can only be taken to protect resources within a country's borders. Thus, the U.S. law, which aimed to protect dolphins residing outside U.S. borders in international waters, could not be allowed under GATT.

What happens to the dolphins? For unknown reasons, schools of tuna swim just below schools of dolphins in the eastern tropical Pacific Ocean, but nowhere else. About 25 years ago, tuna fishermen began setting nets around dolphin schools in order to capture the tuna schools underneath. The dolphins become caught in the nets and drown or are injured. As a result of this practice, more than 7 million dolphins have been killed, sending several dolphin species to the brink of extinction. After international actions had failed to remedy the situation, Congress added language to the Marine Mammals Protection Act (MMPA) requiring that countries that import tuna into the United States not be allowed to kill more dolphins than are killed by the U.S. fleet.

What are the implications of the GATT panel ruling? This ruling threatens not only dolphin conservation, but a wide range of international environmental legislation. Trade sanctions may no longer be available to enforce agreements to protect vital global resources such as the atmosphere and the oceans. For instance, the Montreal Protocol, the international agreement under which ozone-depleting chemicals are being phased out, provides for trade sanctions against non-complying governments. The panel ruling suggests that this violates GATT. Similarly, laws restricting the international trade in endangered species products could be outlawed. Without trade sanctions, international agreements designed to protect vital global resources are toothless, lacking any effective measure to punish violators. The GATT panel ruling effectively throws the global commons open to a new era of unchecked and potentially ruinous exploitation.

What can be done: The immediate task is to block official adoption of the panel decision by the GATT Council. The GATT Council, comprising representatives of GATT member governments, meets on October 8, 1991 to consider the decision. The United States may block the decision by refusing to agree to its adoption at that meeting. Pressure must be brought to bear upon the Bush Administration by Congress and the public to ensure that this disastrous decision is not adopted.

A worldwide campaign to reform GATT also must be launched. New language must be inserted into the GATT treaty to ensure that trade sanctions can be used against countries that abuse the environment or refuse to abide by international conservation treaties. GATT procedures must also be reformed, so that the public can participate in decisions such as this one, that have enormous implications for public policy, and so that information about the decision is available to the public before the decision is officially adopted.

For more information: contact Eric Christensen or Rod Leonard at the Community Nutrition Institute (202) 462-4700.

NEW YORK TIMES, August 23, 1991, p.D1

U.S. Ban on Mexico Tuna Is Overruled

By KEITH BRADSHER

Special to The New York Times

WASHINGTON, Aug. 22 — In a setback for the world environmental movement, an international trade panel has ruled that environmental concerns about a foreign industry cannot be a factor in barring imports.

A panel of the General Agreement on Tariffs and Trade ruled that the United States may not ban imports of tuna caught by Mexican boats, which kill more dolphins than the United States tuna fleet, Administration officials and environmentalists said.

The decision by GATT, based in Geneva, has been awaited for months by trade experts and environmentalists around the world as the first big test of whether environmental concerns can be a factor in restricting imports. Environmentalists in the United States and Europe have been trying to promote conservation elsewhere by putting their concerns into trade laws and negotiations.

Awkward Position for U.S.

where in the world?

The United States is bound by treaty to comply with the decision if it is approved by a majority of the 108 member nations of GATT, which seems likely. The decision puts the Administration in an awkward position, because it has criticized other countries for defying GATT rulings, but faces a tough task if it tries to persuade Congress to repeal the law authorizing the prohibitions on tuna imports.

The law bans the importing of tuna from countries that kill more dolphins than the American fleet. It also prohibits the importing of tuna products from countries that buy tuna

Continued on Page D3

GATT Overrules U.S. Ban On Mexico Tuna Imports

Continued From First Business Page

from the banned countries.

The panel found that the law violates GATT rules that prevent countries from dictating how other countries produce goods for export. Mexico's protest to GATT was joined by a half dozen other countries, which also criticized the American law as an assertion of extraterritorial powers.

Talks Have Begun

The ruling could also intensify criticism of the United States-Mexico free trade agreement by environmentalists, whose concerns nearly prevented the Administration from winning Congressional permission this spring to negotiate the pact. Talks between the two countries and Canada have now begun, but the final pact requires approval by Congress.

Copies of the panel's decision were distributed to the Mexican and United States Governments on Aug. 16, but will not be made public until next month. The Journal of Commerce reported from Geneva this morning that the panel had ruled against the United States.

Environmentalists reacted with alarm to the decision. "This really is quite a blow to the conservation of wildlife," said Nina M. Young, the marine mammalogist at the Center for Marine Conservation, a Washington environmental group. "It really undermines everything the United States has done."

The Office of the United States Trade Representative declined to comment on the ruling. "We have received the GATT report and we're studying it," said Robert Bork, a spokesman for the department.

Dolphins at Risk

Javier Trevino, the minister for press and public affairs at the Mexican Embassy in Washington, also declined to discuss the panel's ruling. "Regardless of the GATT's decision, Mexico remains firmly committed to an extensive program of marine conservation and preservation," he said.

The Mexican tuna fleet has reduced the number of dolphins it kills annually by 70 percent in the last five years, and plans by 1995 to cut the current total in half, Mr. Trevino added.

Early this year, the United States barred Mexico, Venezuela and the Pacific island nation of Vanuatu from selling tuna to the United States because their tuna fleets were killing too many dolphins. Tuna imports from Costa Rica, France, Italy, Japan and Panama were also barred because these countries buy tuna from the banned countries.

Reliance on Restrictions

Japan and other countries have supported the Mexican position. A Japanese official who insisted on anonymity said today that he was glad to hear of the GATT panel's ruling.

"We have been telling the American officials that this regulation is GATT-illegal. And it's against international law that internal regulations are applied to foreign countries," he said.

A growing number of United States laws and international agreements on fisheries management and the protection of endangered species rely on trade restrictions similar to those rejected by the GATT panel.

The Administration is in a difficult position because only Congress can repeal the law on tuna imports and because a court in California has ruled that the Administration must enforce the law against the Mexican imports.

The Administration could postpone a vote by the GATT membership on whether to adopt the panel's decision, but only for a few months.

Ban on Tuna Imports Held to Violate Treaty

In Blow to Conservationists, GATT Panel Rejects U.S. Rules Designed to Protect Dolphins

Associated Press

U.S. import restrictions designed to protect dolphins from the tuna fleets of other nations have been ruled in violation of the world's principal international trade treaty.

In a major blow to conservationists around the globe, a tribunal of trade experts from Hungary, Uruguay and Switzerland held that the 108-nation General Agreement on Tariffs and Trade (GATT) prohibits its members from imposing import restrictions based on environmental concerns.

At issue is the U.S. ban on tuna from Mexico, Venezuela and the Pacific island nation of Vanuatu, whose fishing fleets kill more dolphins through indiscriminate netting than do their U.S. counterparts, according to Bush administration officials. The ban also applies to tuna shipped by Costa Rica, France, Italy, Japan and Panama, because they buy and re-export tuna from the three others.

The GATT panel's decision was forwarded to the U.S. and Mexican governments a week ago, but was not publicly announced. U.S. officials confirmed the ruling after the Journal of Commerce reported it on Thursday from Geneva, where the GATT bureaucracy is headquartered.

The United States is bound by the treaty to comply with the ruling, provided it is upheld by a majority of the 108 nations, which trade experts deem likely in the coming months.

That could put the Bush administration in a sticky position. First, it has severely criticized other nations for alleged violations of the GATT treaty; yet, if it complies with the ruling, it faces the difficult if not impossible task of persuading Congress to repeal the law that decreed the tuna restrictions.

Moreover, the United States is in the midst of negotiating a free trade treaty with Mexico after having assured Congress that the pact would observe environmental safeguards. The agreement, once reached, must be approved by Congress.

Meanwhile, "the GATT decision declares open season on allowing dolphin-deadly tuna into the United States," according to Patricia Forkan, senior vice president of the Humane Society of the United States.

"How many of these gentle creatures will have to die in the name of free trade?" she asked.

The GATT panel held that the U.S. ban ran counter to treaty principles designed to prevent countries from dictating how other nations produce goods for export.

The panel's ruling may be taken up at a meeting of GATT's member governments on Oct. 8.

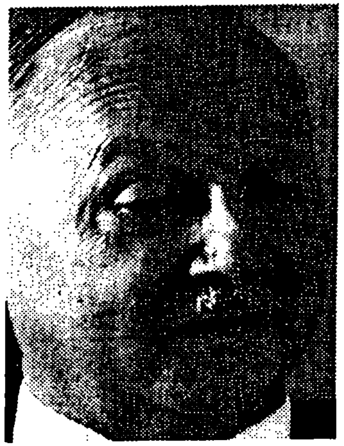
A spokesman at the office of U.S. Trade Representative Carla A. Hills said administration experts are studying the decision.

Javier Trevino, press spokesman for the Mexican Embassy, said "Mexico remains firmly committed to an extensive program of marine conservation" despite the GATT ruling and has reduced dolphin kills by its tuna fleets by 70 percent over the last five years and intends to cut the current rate in half by 1995.

Financial Times, Sept. 5 '91, p. 5

Greens and free traders head for clash

John Hunt on how tougher environmental rules are running into trouble with Gatt



Strong: environmental issues should not be used for restricting trade

THE danger that tougher regulations to protect the environment may be used as artificial barriers to international trade is under increasing attention in the run-up to the UN Conference on Environment and Development – the Earth Summit – next June.

There is concern too that the General Agreement on Tariffs and Trade (Gatt) could hamper the growth of international agreements to curb industrial pollution and counter global warming.

In recent weeks, these problems have come to the fore in discussions by officials from 150 countries in Geneva preparing for the summit in Rio de Janeiro. These talks ended yesterday with further discussions due in New York in March.

"The possibility of using environmental measures as a unilateral restraint on world trade is in my view a very dangerous and negative tendency," says Mr Maurice Strong, the Canadian former businessman who is secretary-general of the conference.

There is concern that industrialised countries could use strict "green" regulations as a pretext for banning imports from less-developed countries which cannot afford high standards of environmental protection.

Third World countries are calling for more aid from the developed countries to improve their pollution control standards.

The UN Conference on Trade and Development (Unctad) told the Geneva meeting that exports from developing countries could be hit by environmental barriers. It called for a big increase in aid to these countries, including access to technology and support for benign environmental practices.

"Without appropriate incentives to enhance the efficiency of resource use there is scant hope of achieving sustainable environmental conditions," it warns.

Unctad says exports of food from developing countries are likely to be affected by tighter rules on pesticide residues and the use of chemical additives in food processing in the developed world.

An important segment of developing countries' export markets consists of textiles, leather, metal and wood products produced by traditional methods which cause pollution.

"The export of such manufactures may be affected because of further restrictions in the chemical compounds and heavy metals contained in them," it states.

The dispute between the US and Mexico over the catching of tuna fish shows how the environmental concerns of a wealthy country can interfere with the economy of a poorer one.

The US has banned imports of tuna from Mexico on the grounds that the fishing nets employed also kill large numbers of dolphins. Mexico complained to Gatt that this was an unfair restraint on trade.

The Gatt panel which examined the case upheld Mexico's complaint and declared the ban illegal because the US was using domestic measures to protect dolphins outside its territorial jurisdiction.

Environmentalists see this as a dangerous precedent which could prevent countries taking action to protect the global environment.

The World Wide Fund for Nature (WWF) is urging the council of Gatt to overturn "the narrow interpretation" of the panel. One WWF policy analyst says the ruling could mean that national bans on imports of tropical timber – intended to protect the rainforests – could be deemed to violate Gatt rules.

It is hoped that the Earth Summit will agree an international convention to combat global warming. Under the convention some countries may take strong measures to reduce carbon dioxide – the main greenhouse gas – thus adding to their industrial costs. Those who do not follow suit would be at a competitive advantage. Gatt rules prohibit countries discriminating between "like products on the basis of their method of production."

WWF proposes that the Gatt should be amended to prevent "ecological dumping." Where an industry has failed to pay the full costs of dealing with its own pollution and emissions to the atmosphere – "externalised" the environmental costs in the current jargon – it would be regarded as an inadmissible subsidy.

A country whose industry has met these costs – "internalised" them – would be entitled to impose a tariff against the product of the offending country or provide a countervailing subsidy to its own industry.

The Canadian Environmental Law Association, says the terms of Gatt may accelerate environmental degradation and undermine national and international efforts to address ecological problems.

"The situation has grown worse in the past decade," it states. "Trade agreements must incorporate environmentally sustainable economic development as a fundamental goal. They also must explicitly recognise the legitimacy of environmental protection measures taken by nations."

Gatt has no specific mechanism or programme for dealing with trade and environment. It has only a limited exemption permitting a ban on imports where it is necessary "to protect human, animal and plant life and health."

But things are beginning to move, if only slowly. The Gatt Council, the organisation's ruling body, has been holding informal and comprehensive discussions on these problems since the beginning of the year but no consensus has been reached.

It has a working group on trade and environment set up in 1971 in response to a UN conference in Stockholm on the environment but it has never been convened. The countries of the European Free Trade Association (Efta) countries have been pressing for this group to meet and this is now likely.

Meanwhile Gatt is expected to deliver a report to its Council meeting next month concentrating on trade and the environment.

file -
GATTITUNA

EMBASSY OF MEXICO

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90/91 (I)

September 24, 1991

National Program for the Protection of Dolphins

The government of Mexico announced today an ambitious *National Program for the Protection of Dolphins*, through which it reaffirms its commitment to seek by all means the conservation of the environment. This *Program* will count with the participation, besides that of the Mexican government, of the National Chamber of Fishing Industries, the National Section of Cooperatives, the Scientific Community and the Cousteau Society of Mexico.

The following measures will be taken immediately under this Program:

1.- To reaffirm the compliance with the international commitments of Mexico to have, by December, a 100% coverage of IATC- trained and certified observers in the Mexican Tuna boat fleet.

With this, Mexico will have the necessary information in order to enforce a strict control over the behavior of the national tuna fishing fleet and will provide the necessary elements to do the research that will allow the maximum reduction in the incidental mortality of dolphins while fishing tuna.

2.- To issue, this week, a regulatory agreement by the Fisheries Ministry with the goal of providing a precise definition of the rules of behavior that will have to be followed by all captains, fishing technicians, crews and owners of the national tuna fishing boats; as well as the penalties that the Fisheries Ministry will take when the respective dispositions are not complied with. This same Ministry will also inspect and verify, every three months, each and every tuna boat and its fishing practices.

3.- To submit a legislative initiative to the Mexican Congress to reform the *Federal Law for Fisheries*, in order to have the legal authority to take penal actions against those who commit acts which attempt against marine ecology, the protection of species and who kill dolphins.

4.- To extend an invitation to the governmental fisheries authorities of other countries, as well as to the scientific community, to attend the *International Conference of Responsible Fishing* next year, whose goal will be to lay the groundwork to have, in the short term, an international code of conduct of national application that allows the best commercial exploitation of sea species and, at the same time, preserves and strengthens marine ecology. This will be done together with FAO.

5.-To make a Mexican government donation, during the next three months, of one million dollars to the Autonomous Universities of Nuevo León and Nayarit for them to make, in coordination with the Nation Fishing Institute, the National Council of Science and Technology, the Education Ministry and the national tuna fishing industry, a program of applied research which renders better practices and equipments for tuna fishing, that reduce even further the incidental capture of dolphins and that seek commercially efficient alternatives of tuna fishing techniques that dissociate dolphins.

6.-To make a Mexican government donation to the Cousteau Society of Mexico of 250,000 dollars for the creation of the Institute of Oceanography and Ecology Studies.

The project of constructing a natural dolphins habitat for marine biology research in the coast of the state of Nayarit.

7.- The Mexican tuna fishing industry commits itself, not only to a full compliance with the dispositions of the Fisheries Ministry and to participate in the research programs above mentioned, but to make public the expulsion and penalties towards those fishing technicians who have not behaved in a proper way regarding tuna fishing and have therefore increased the Mexican fleet's average of incidental deaths of dolphins.

8.- Mexico's scientific community commits itself to support, not only the efforts mentioned regarding the protection of dolphins, but all those that are currently being made or are necessary for the better conservation of our species and marine ecology.

These efforts will be made seeking the collaboration and participation of research institutions from other countries.

9.- The " Turtle Museum" will be created in the shore of Oaxaca.

10.- The administration of President Carlos Salinas de Gortari reaffirms its commitment to seek, through all means, the protection of the environment, the conservation of species and of undertaking an economic development which does not attempt against the ecology of the nation. For this reason, Mexico has decided to postpone the presentation in the GATT forum of the resolution in its favor by the panel in the case of tuna fishing, so as to seek a satisfactory bilateral solution.

These goals will be underscored on Friday the 27th, during a ceremony that will take place in Ensenada, Baja California.

# # # # #

CALYPSO

The Cousteau Society

2 October 1991

Setting the Record Straight on Dolphin Protection in Mexico

This communique responds to the full-page advertisement taken out by the Government of Mexico in major newspapers in the United States with regard to the government's efforts in the field of marine resource management and, particularly, the protection of dolphins. Since this advertisement contains some errors, we feel it is important to set the record straight: (1) There is no official relationship between the Mexican government and The Cousteau Society on the above issues. (2) There is no involvement on our part in "a dolphin sanctuary run by the Cousteau Society of Mexico." (3) There is no "Cousteau Society of Mexico."

Regarding a "National Program for the Protection of Dolphins," The Cousteau Society is pleased to see that the Government of Mexico is addressing the serious problem of dolphin mortality resulting from tuna fishing and is willing to work with the international scientific community to seek realistic solutions to the problem.

We note, however, that there is no mention of the single most effective approach to eliminating dolphin mortality associated with tuna fishing, which is, of course, not setting purse seine nets around dolphins. There are other methods of locating and catching tuna which have proven feasible and do not involve dolphins. In addition, there is now a growing market for tuna which has not been caught in association with dolphins. Consequently, any serious "Program for the Protection of Dolphins" ought to prohibit fishing methods which involve dolphins.

Regarding the ten measures in the proposed "National Program for the Protection of Dolphins," issued by the Embassy of Mexico in Washington, D.C. (24 September, 1991), we would like to offer the following recommendations:

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1. Observers on Mexico's tuna fleet - We suggest that the team of observers be international, trained by and under the direct control of the InterAmerican Tropical Tuna Commission (IATTC). We also encourage Mexican officials involved in the tuna-dolphin issue to work very closely with the InterAmerican Tropical Tuna Commission.

2. Rules of behavior for the national tuna-fishing fleet - We are pleased to see that there has been a reduction in dolphin mortality associated with Mexico's tuna fishery, as reported by IATTC, and we hope that efforts to reduce dolphin mortality further will be intensified. We have observed that guidelines implemented in conjunction with the Marine Mammal Protection Act in the United States to reduce dolphin mortality associated with tuna fishing has resulted in dramatic reduction of the number of mammals killed. We suggest Mexico apply these same rules, including the zero-mortality goal, to its fishery since they have proved to be so successful.

3. Federal Law for Fisheries - We believe of equal importance to laws are enforcement programs that are sufficiently funded, equipped and organized to be effective. Consequently, we support any reform of fisheries legislation which includes an effective enforcement component.

4. International Conference of Responsible Fishing - We suggest that this conference define an international scientific advisory committee to work with Mexican fisheries and policy officials to guide and oversee the implementation in Mexico of whatever "code of conduct" is ultimately defined at the conference. In addition, we recommend that a meeting of United States and Mexican nongovernmental ogranizations be held in conjunction with this conference to facilitate the development of workable solutions.

5. Support for research on tuna-fishing practices and dolphin mortality - We suggest that Mexican Government officials and Mexican Universities, particularly those that already have experience with marine mammals (UNAM, Instituto Technologico de Monterey at Guayamas, and Universidad Autonoma de Baja California

Sur) take advantage of the already substantial amount of information, accumulated since the early 1970s, on the questions of tuna-fishing practices and the incidental mortality of dolphins by supporting and collaborating with the InterAmerican Tropical Tuna Commission.

6. A monetary donation to The Cousteau Society - We are pleased that Mexico feels the need for an expanded commitment to "Oceanography and Ecology Studies" and will be happy to offer our thoughts on such an institute at an appropriate time.

We are particularly gratified to see that Mexico appreciates the need for a "dolphin sanctuary" since the Gulf of California vaquita, a species of porpoise found nowhere else in the world, is presently on the verge of becoming extinct. Our expedition to this region showed that efforts to protect this species have been ineffective and that something drastic must be done to save the vaquita. We suggest that the upper Gulf be set aside as a dolphin/marine mammal sanctuary and that the money offered to The Cousteau Society be redirected to protecting the vaquita. More specifically, we propose the creation of a two-part program:

1. To develop an enforcement strategy to make sure the already illegal totoaba fishery (the totoaba is also an endangered species) and the gillnet shark fisheries are terminated since they are the greatest threat to the vaquita's survival.

2. To develop viable alternatives for the fishermen who would be affected by this program, including an educational component that focuses on the concept of sustainable fisheries management.

In addition, we suggest that serious consideration be given to developing a marine mammal sanctuary program for the entire Gulf of California which would regulate any fishery in which marine mammals are directly or indirectly killed.

7. Compliance of Mexico's tuna-fishing industry with fisheries laws
We applaud Mexico's stated commitment to enforcement of fisheries

laws and suggest that any fisherman and boat owner found guilty of breaking these laws have their fishing licenses revoked.

8. Mexico's scientific community involvement in protecting marine mammals - We encourage a greater economic commitment from the Mexican Government to support ocean-related scientific research so as to understand better the organisms and ecosystems, including the ecological processes, which create the natural resources on which the people of Mexico depend for their well-being.

9. A turtle museum - In addition to a museum, we suggest a nationwide commitment to environmental education to provide future generations with a better appreciation of the need to protect and wisely manage natural resources in a sustainable manner.

10. President Carlos Salinas de Gortari's commitment to the protection of the environment - We applaud President Carlos Salinas' concern for protecting dolphins and the environment. The Cousteau Society will be pleased to offer whatever guidance may be appropriate in helping Mexico achieve the protection of its natural resources.

In conclusion, The Cousteau Society reiterates its conviction that there is only one realistic way, at this time, to reduce dolphin mortality associated with tuna fishing and that is not to set purse seine nets around dolphins as a means of catching tuna. We suggest that Mexico consider banning this practice since prohibition has proven to be the most effective means to protect dolphins.

CALYPSO

The Cousteau Society

2 October 1991

We at The Cousteau Society were surprised at a recent paid advertisement taken out in several major newspapers by the Government of Mexico which implied involvement of The Cousteau Society in the tuna-dolphin issue in Mexico.

Since there is no official relationship between the Government of Mexico and The Cousteau Society on this issue (and no Cousteau Society of Mexico), we hope that the attached statement will set the record straight.

Also included are recommendations which have been submitted by The Cousteau Society to the Government of Mexico on the ten measures it proposes to take under its "National Program for the Protection of Dolphins."

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JOINT LETTER FROM 26 ENVIRONMENTAL, CONSERVATION AND ANIMAL PROTECTION ORGANIZATIONS

MEXICO'S CONTINUED KILLING OF DOLPHINS

October 7, 1991

Dear Senator:

Attempting to defuse outrage over the recent GATT decision targeting the U.S. Marine Mammal Protection Act (MMPA) as an unfair trade barrier, the Mexican government has launched a public relations campaign in the U.S., including the announcement on September 26th of a plan "to protect dolphins and strictly enforce responsible fishing practices". We have examined the Mexican plan. Further, several of the organizations signing this letter recently met with the Mexican Fisheries Minister to more fully understand their intentions. We must report to you that we find the "plan" totally lacking in substance.

We are writing to you today to share our analysis and to update you on recent developments in this issue. As with our previous letter, we request that you oppose any weakening amendments to the MMPA and that you fight for much-needed changes to the GATT to make it compatible with environmental protections.

The Mexican Plan

1. Unfortunately, the 10-point plan is mainly window dressing. It does not mandate any reduction in the Mexican dolphin mortality, which is estimated to average more than 40,000 dolphins killed annually during the past five years.

2. The plan would not bring Mexico into compliance with the Marine Mammal Protection Act. It contains no phase-out or even reduction of the practice of setting nets on dolphins.

Thus, the court-ordered embargo on tuna imports from Mexico will therefore remain in place.

3. One provision of the plan is a promise to place observers on every tuna vessel. However, this practice will not end dolphin mortality. It will simply allow for a more accurate body count of the dead and injured dolphins. The placement of observers is not a conservation measure in and of itself.

Further, observers under the Mexican plan will not be entirely comprised of independent international observers from the InterAmerican Tropical Tuna Commission (IATTC). Instead they will be largely made up of Mexican nationals who have been through some form of training conducted by the IATTC. We feel this compromises the reliability of information derived from this observation program.

4. The Mexican government's pledge to postpone consideration of the GATT panel ruling does not solve either the problem associated with the environmentally calamitous August 16th tuna/dolphin panel ruling, or the problem of the failure of GATT to accommodate environmental considerations. The interpretation of the present GATT must be rejected. The GATT itself must be amended. Mexico's present pledge to postpone simply pushes the date of GATT General Council consideration until November 12, 1991.

Update on this Fast-Moving Issue

Despite President Bush's May 1 "Action Plan" pledge not to lower U.S. environmental standards through trade negotiations, the Administration revealed at a Congressional hearing September 27th its plan to bring amendments to Congress aimed at eliminating dolphin protection provisions of the MMPA. The Mexican government's request for postponement of the GATT panel ruling and announcement of its so-called dolphin conservation plan is being offered by the Commerce Department and USTR as a reason to accept weakening amendments to the Marine Mammal Protection Act so that Mexican dolphin-unsafe tuna is allowed back into the U.S. We strongly oppose these moves and view them as a breach of the Administration's May 1st promises.

Additionally, at the Hearing held by the House Energy and Commerce Subcommittee on Health and the Environment, the Administration was pressed into admitting that the GATT decision not only affected many U.S. environmental laws, but also could compromise the U.S. ability to use trade sanctions such as the Cuban sugar embargo and the anti-apartheid embargo for human rights and other policy purposes. The Administration also admitted that the upcoming "Uruguay Round" would not correct GATT's power failure to address environmental protection, but would vastly increase the GATT's power over U.S. health and safety law. The Uruguay Round includes food safety and broad environmental "technical standards."

We believe that the only acceptable means of lifting the embargo provisions of the MMPA would be for Mexico to follow the lead of Ecuador and Panama and pass a national law prohibiting the practice of setting nets on dolphins, and by placing IATTC observers -- rather than Mexican nationals -- on each tuna boat to verify that the law is fully enforced.

We feel that an amendment to the MMPA, either in response to the GATT panel ruling, or in response to the Mexican dolphin plan, other than simply reducing the dolphin quota to "0" for US and foreign fleets, would be a tragic mistake. It would frustrate the strongly supported conservation goals of the Act. It sets a damaging precedent of willingness to subordinate U.S. environmental laws to the whims of GATT. Further, it would consign tens of thousands of dolphins every year to needless slaughter.

We conclude with news of the nationwide media campaign in support of the new Mexican plan, coordinated by the giant public relations firm of Burson-Marsteller. Reports in the Los Angeles Times (October 1, 1991) indicate that Mexico is planning to spend $100 million on several U.S. publicity and lobbying firms to promote the NAFTA agreement and counter criticism. The response to the tuna/dolphin decision casts doubt on both the U.S. and Mexican Administration's sincerity on environmental protections. It also demonstrates that free trade agreements pose a threat not only to dolphins, but to a whole host of hard-won environmental and public health laws.

The undersigned organizations, with combined membership in the U.S. of more than 2 million households, are committed to working with you to prevent this assault from succeeding. We thank you for your attention to the critical matter.

MARINE MAMMAL FUND
MASSACHUSETTS SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
NATIONAL TOXICS CAMPAIGN
PUBLIC CITIZEN
SEA SHEPHERD CONSERVATION SOCIETY
SIERRA CLUB
SOCIETY FOR ANIMAL PROTECTIVE LEGISLATION
WHALE AND DOLPHIN CONSERVATION SOCIETY
AMERICAN HUMANE ASSOCIATION
AMERICAN CETACEAN SOCIETY
AMERICAN SOCIETY FOR THE PREVENTION OF CRUELTY TO ANIMALS
ANIMAL PROTECTION INSTITUTE
COMMUNITY NUTRITION INSTITUTE
CETACEAN SOCIETY INTERNATIONAL
DEFENDERS OF WILDLIFE
DOLPHIN CONNECTION
EARTH ISLAND INSTITUTE
EARTHTRUST
ENVIRONMENTAL INVESTIGATION AGENCY
HUMANE SOCIETY OF THE U.S.
FRIENDS OF THE EARTH
FUND FOR ANIMALS
FRIENDS OF ANIMALS
INTERNATIONAL FUND FOR ANIMAL WELFARE
INTERNATIONAL WILDLIFE COALITION

Raising a Roar Over A Ruling

Trade Pact Imperils Environmental Laws

By Stuart Auerbach
Washington Post Staff Writer

PHOTO BY SAM LaBUDDE PROVIDED BY EARTH ISLAND INSTITUTE AND GREENPEACE

Mexican fishing boat nets kill as many as 50,000 dolphins a year.

A ruling by an international trade panel has given new energy to American environmentalists worried that U.S. laws protecting whales, baby seals, dolphins, elephants and other endangered species are themselves endangered.

Administration officials and congressional experts said the ramifications of a decision last month by a panel of the General Agreement on Tariffs and Trade (GATT) go far beyond the actual finding. GATT ruled that the United States violated global trade rules when it banned imports of tuna caught by Mexican fishing boats because their nets kill as many as 50,000 dolphins a year.

Environmental groups said the GATT decision could be used as a precedent for trying to change a series of U.S. laws under which other countries must protect endangered species and the environment or face trade sanctions in trying to sell products in the United States.

Among them is a new regulation banning imports of fish caught with drift nets—the 30-mile-long "curtains of death" used by fishermen in Japan, South Korea and Taiwan to catch squid.

"This is a worst-case scenario come true—repeal of a vital environmental law because of conflict with a trade agreement," said Rep. Henry A. Waxman (D-Calif.), chairman of the House Energy and Commerce's subcommittee on health and the environment, during a hearing last week.

"The hearing is about the collision between domestic environmental and health laws and trade

Objections Raised to GATT Rule

agreements such as GATT," he said.

"The days when the trade debate was just about tariffs and prices is over," said Rep. Ron Wyden (D-Ore.). "We have to change GATT to deal with environmental and health concerns that our constituents have."

GATT is the main organization dedicated to setting rules for opening up international trade.

Many U.S. companies, in response to a vigorous campaign by environmentalists, have put special labels on cans of tuna to show that the fish are caught in a way that does not endanger dolphins. Environmental groups responded to the GATT ruling by reopening their attacks on a U.S.-Mexican free-trade agreement and on negotiations to strengthen global free-trade rules.

The environmentalists and a growing number of their supporters in Congress argued at the hearing last week that hard-won U.S. environmental protection laws could be weakened severely by the new trade agreements.

"This case is the smoking gun," said Lori Wallach, staff attorney at Public Citizen's Congress Watch. "We have seen GATT actually declaring that a U.S. environmental law must go. We have the Canadian [free-trade] agreement being used to challenge the U.S. ban on asbestos. And there is more. These [trade] agreements must be modified to allow for legitimate consumer and environmental protections."

Environmental groups have been fighting the current Uruguay Round of free-trade talks for years, arguing that new GATT rules could weaken U.S. health, safety and environmental protection laws by labeling them as trade barriers in much the same way Mexico characterized the law to save dolphins.

Further, environmentalists claim that a free-trade pact with Mexico would allow U.S. companies to move south of the border to take advantage of looser environmental laws and even more lax enforcement there, leaving American consumers prey to the effects of fruits, vegetables and meats produced under less sanitary conditions in Mexico.

Fearing that the decision on tuna puts the entire North American free-trade agreement at risk, the Mexican government took full-page advertisements in major American newspapers last week to trumpet changes it has made in its fishing laws.

As a result of the furor, administration officials said Mexico is unlikely to pursue the case further in GATT, and they hope that the changes in Mexico's tuna fishing practices will satisfy the U.S. law and allow Mexican tuna into the United States.

Environmental groups, though, called the changes "cosmetic" and said they were part of a deal with the Bush administration, which opposed the fish protection law in the first place. As evidence of this, they cited reports that Secretary of State James A. Baker III, Commerce Secretary Robert A. Mosbacher and U.S. Trade Representative Carla A. Hills agreed last month to ask Congress to weaken the Marine Mammal Protection Act in return for Mexico toughening its tuna fishing laws to bring them more closely in compliance with U.S. laws.

Key lawmakers on the Waxman subcommittee, which controls U.S. environmental laws, said the administration proposal is a nonstarter.

"Nothing short of GATT reform is acceptable. Its secretive dispute process, overseen by obscure trade bureaucrats sitting in Geneva, cannot be allowed to override the hard-won protections that American society has developed over past decades," said David Phillips of the Earth Island Institute, testifying on behalf of 15 other environmental groups.

To bring their point home, the environmentalists have personalized the dispute as one of Carla Hills against Flipper. A press release by Ralph Nader's Public Citizen organization promises to reveal "why Flipper hates Carla and other GATTastrophies."

GATT Ruling on the Marine Mammal Protection Act (MMPA)

On August 16, 1991, a three-member GATT dispute settlement panel (Panel) ruled on a Mexican challenge to the MMPA, finding that its tuna embargo provisions were inconsistent with the GATT. The ruling has ramifications not only for the tuna-dolphin issue, but also for the use of trade sanctions and the ability of nations to protect and conserve resources outside their own jurisdictions.

The Administration has taken no formal position on the ruling, but the United States must decide how to respond if the report outlining the Panel's findings is on the agenda of the GATT Council (comprised of the 102 member nations) meeting on October 8. The Bush Administration has the following options when the Panel report is considered: (1) block its adoption (all GATT decisions must be unanimous); (2) allow adoption of the report but say that the United States will, with other nations' support, seek changes in the GATT's treatment of environmental issues; or (3) allow adoption of the report and request Congress to change the statute.

In addition, State Department officials indicate that Secretaries Baker and Mosbacher and USTR Hills have reached informal agreement with Mexican cabinet officials on a three-part proposal: (1) Mexico will continue to work to reduce dolphin mortalities; (2) the Bush Administration will request Congressional action to lift the Mexican embargo (the Administration has made this request before and transmitted legislation to amend the MMPA, but the Commerce Committee has taken no action); and (3) the two nations together will request that consideration of the Panel report be deferred.

The environmental community has expressed grave concerns with the Panel ruling, and will be pressing to block the report, at least for now. They have requested that members of the Senate send a joint letter to the President recommending that he block the report. They also have requested that the Committee schedule a hearing.

The U.S. tuna industry has taken no position on the panel report. However, they are very interested in the Administration's efforts to resolve the issue through international negotiations. They have suggested that any negotiated agreement should provide for a comprehensive plan to conserve and manage all the marine resources involved in the fishery, including tuna. They also would like to see agreement on a regional licensing system that would provide the U.S. fleet with access to tuna resources within the exclusive economic zones of the Latin nations.

Mexican MMPA challenge - As you will recall, the 1988 MMPA reauthorization amended and strengthened trade sanction provisions to protect dolphins from the tuna fleets of foreign nations. These provisions of the MMPA require: (1) a ban on tuna products from any nation that fails to meet U.S. dolphin protection criteria; and (2) compliance with any U.S. tuna ban by intermediary nations which buy tuna from other nations for export to the United States. The 1988 amendments have been credited with 75% reductions in the number of dolphins killed by the foreign tuna fleets, from over 100,000 mortalities in 1987 to a projected 27,000 mortalities in 1991. However, despite the overall improvement, some nations have failed to meet the MMPA criteria and earlier this year the United States embargoed tuna imports from Mexico, Venezuela and Vanuatu.

On January 25, 1991, Mexico requested establishment of the Panel for the purpose of determining whether the MMPA trade sanction provisions were consistent with GATT. In addition, Mexico requested that the Panel look at the Dolphin Protection Consumer Information Act, the bill setting labeling standards for "dolphin-safe" tuna that we enacted last fall. Several other nations (including Japan, Canada, and the European Economic Community) submitted briefs on behalf of the Mexican position. On August 16, the Panel report was made available to the United States and Mexico. It was released to other member nations on September 3. Under GATT rules, the Panel report will not be released to the public, unless and until it is adopted by the GATT Council. However, the report findings became public when they appeared in a trade publication last week.

The Panel ruled that the U.S. ban on tuna imports was in violation of the GATT (although the Dolphin Protection Consumer Information Act was not found to be GATT-inconsistent). The Panel found that the MMPA mandatory embargo provisions were quantitative restrictions on imports forbidden under Article XI of the GATT and did not provide equal treatment for imported and domestic products required by Article III. In addition, the applicability of the GATT Article XX exceptions for living resource conservation was addressed, and the Panel construed it <u>very</u> narrowly. In its analysis of these exceptions, the Panel found that the exceptions may not be used to protect animals or conserve natural resources outside the jurisdiction of the importing country. This decision would effectively prohibit the use of trade sanctions to enforce environmental policies and may have severe implications for the use of trade sanctions as international enforcement mechanisms. In addition, the Panel report calls into question the legality of instituting embargoes under the Pelly Amendment (which gives the President dicretionary authority to ban products from nations that violate international fisheries or conservation agreements). Finally, the report indicates that any extra-territorial environmental exceptions to the GATT prohibition on import restrictions must be negotiated among the GATT parties.

Congressional response to GATT panel reports - Even when a panel report ruling against the United States has been adopted, the Congress has taken 2 years and longer to amend the offending statute. The last three statutes passed by Congress and held GATT-inconsistent came out of the Senate Finance and House Ways and Means Committees. The first was a Superfund tax on imported oil -- the panel report was adopted in June 1987 -- the statute was amended in December 1989. The second was a Customs user fee on imports -- the panel report was adopted in February 1988 -- and the fee was modified by statute in October 1990. The third was protection of intellectual property -- the panel report was adopted in November 1989 -- and the Administration said it would request changes in the statute when the Uruguay Round was complete, contingent on the outcome of The Trade Related Intellectual Property negotiations.

In the case of one Commerce Committee statute that was found to be inconsistent with GATT, the law was never changed. In 1979, Canada asked for a ruling on a U.S. ban on albacore tuna under the Magnuson Fishery Conservation and Management Act. The ban was a result of a fishery access dispute in which the Canadians seized a number of U.S. vessels. The GATT panel report ruled that the Magnuson Act provision violated GATT. However, there was no pressure to change the statute because agreement on a treaty was reached and the ban had already been lifted.