

GENERAL AGREEMENT ON

TARIFFS AND TRADE

RESTRICTED

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UNITED STATES - RESTRICTIONS ON IMPORTS OF TUNA

Communication from Venezuela

The following communication, dated 10 February 1992 has been received from the Permanent Mission of Venezuela with the request that it be distributed to contracting parties in connection with Agenda Item No. 9 of the Council meeting on 18 February.

1. Recent events have dramatically increased the need for action to end the current United States embargo on imports of tuna. On 31 January 1992, the United States extended the embargo to cover imports of all yellowfin tuna and yellowfin tuna products, regardless of origin, from twenty "intermediary nations". This action has distorted trade throughout the world, with severe repercussions not only for the embargoed nations but also for the United States tuna industry.
2. Eleven nations, including Venezuela, supported Mexico last year in its complaint to GATT against the tuna embargo imposed on it. As was widely reported at the time, the GATT panel that examined the complaint found that the embargo is inconsistent with GATT Article XI and cannot be justified under any of the exceptions provided for in the General Agreement. Although adoption of the panel report (DS21/R) has stalled for procedural reasons, it is now clear that the Council must immediately adopt the panel report.
3. The United States Congress is resisting any change to the Act requiring the embargo on the ground that the Act is necessary to protect the dolphin population in the eastern tropical Pacific. But dolphins are neither an endangered nor a threatened species, and the United States Act does not even serve to protect them effectively. Instead, the law merely distorts world trade and encourages tuna fleets to leave the eastern tropical Pacific.
4. Protection of the dolphin population, as of all ocean species, is indeed an important goal. Venezuela fully supports this goal, and to this end is ready to suggest to Mexico and the United States a possible framework for a multilateral agreement on tuna stock management and dolphin protection. This agreement would establish a set of standards for the complete elimination of dolphin mortality in connection with tuna fishing. Meanwhile the embargo persists and, together with the imposition and

broadening of GATT-illegal secondary embargoes, is causing increasing harm to the world trading system and industries dependent on that system. Those worst affected include the 30,000 residents of Cumana, a Venezuelan city that depends on the tuna trade, who have felt the full impact of the embargo.

5. Frustrated by the lack of multilateral action on this issue, Venezuela has called for a Working Group under the United States-Venezuelan Trade and Investment Council to address the embargo. In the Working Group, Venezuela will press for the initiation of negotiations with the United States and Mexico in order to establish a tuna stock management and dolphin protection programme which could be embraced by a wide group of nations and induce the United States Congress to amend the embargo provisions of the Marine Mammal Protection Act.

6. While pursuing the elimination of the embargo through these channels, Venezuela also reserves its right to request consultations under Article XXIII:1 if multilateral negotiations do not rapidly lead to an agreement. If it is necessary to call for another GATT panel to rule on the embargo, there is not the slightest doubt that the second panel's conclusions would be the same as those of the first panel. Indeed, since the imposition of the secondary embargo, it has become ever more evident that the embargo blatantly violates the GATT rules. According to the United States Act, all "intermediary nations" are required to take official legal action banning imports of tuna and tuna products from Venezuela and Mexico in order to avoid the secondary embargo. Thus, not only does the Act require the United States to violate the GATT rules, but it also requires other nations either to do the same or to relinquish their rights to export tuna to the United States.

7. It is hard to imagine a greater affront to the international trading system and the principles of national sovereignty than this United States Act. The evils of this law even surpass those of Section 301 by dictating the precise content of foreign laws. Ironically, the Act punishes nations that have done more to reduce incidental dolphin mortality than the United States itself, whose tuna fishing fleet has almost entirely escaped being covered by the Act simply by leaving the eastern tropical Pacific. In 1972, when approximately 100 United States tuna fishing boats were in the area, their incidental kill of dolphin was approximately 500,000 per year. Today, Venezuela and Mexico together have about 120 boats in the area and yet last year managed to reduce their dolphin mortality to only 5 per cent of the former kill of the United States fleet.

8. These facts underline the need for immediate action by the Council to protest the tuna embargo and send a strong message to the United States Congress. The multilateral trading system must not be corrupted by a single nation's mandate purportedly aimed at dolphin protection but which cannot effectively further that end. In our view, more can and should be done to avoid incidental dolphin mortality by means of joint action by the world community, without resorting to unilateral trade barriers. Much can and should be done for the environment worldwide in order to find a

reasonable balance between environment and development needs, without imposing on other nations the facile absolutist solutions which respond solely to the concerns of domestic pressure groups with narrow interests. While strict dolphin protection rules are desirable to ensure further mortality reductions, the United States embargo, by disrupting free trade, is frustrating the chances of obtaining the necessary multilateral consensus on such rules.

9. The Council must no longer hesitate; the contracting parties will not tolerate the United States embargo's continued violation of the fundamental principles of the General Agreement.