

GENERAL AGREEMENT ON

RESTRICTED

DS29/2

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TARIFFS AND TRADE

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UNITED STATES - RESTRICTIONS ON IMPORTS OF TUNA

Recourse to Article XXIII:2 by the European Economic Community

The following communication, dated 5 June 1992, has been received from the Permanent Delegation of the Commission of the European Communities with the request that it be circulated to contracting parties and inscribed on the Agenda for the Council meeting of 19 June.

The United States has applied, since 24 May 1991, a secondary embargo on the import of certain tuna products from the European Community. These restrictions are linked to the direct embargoes applied by the United States to the same products originating from Mexico and Venezuela. Following an order from the US District Court for the Northern District of California, the secondary embargoes were extended on 31 January 1992 to cover all imports of yellowfin tuna and yellowfin tuna products from sixteen nations, including four member States of the European Community (France, Italy, Spain, United Kingdom). Secondary embargoes are mandatorily required under the provisions of Section 101 (a)(2)(c) of the US Marine Mammal Protection Act of 1972, as subsequently amended, if the government from an "intermediary nation" has not acted to prohibit the importation of such tuna and tuna products from any nation subject to a direct embargo.

The subject matter of the present dispute has already been examined by a Panel requested by Mexico¹, which considered that both the direct and indirect embargoes were contrary to GATT obligations. This Panel report is still under discussion in the Council and has not yet been adopted.

The European Community considers that the provisions of the US Marine Mammal Protection Act under which embargoes are applied are contrary to the obligations of the United States under Article XI of the General Agreement and cannot be justified under any of the exceptions provided for in the General Agreement. The European Community considers therefore that there is a prima facie case of nullification or impairment under Article XXIII of the General Agreement.

¹DS21/R.

The European Community has entered into consultations under Article XXIII:1. Since the time-limit for the holding of consultations has expired without having reached a mutually satisfactory solution, the European Community requests the prompt establishment of a panel in accordance with the 12 April 1989 Decision on "improvements to the GATT dispute settlement rules and procedures" (BISD 36S/61).

The request for a panel is without prejudice to the willingness of the European Community to conduct further consultations on this matter with the Government of the United States. The European Community also wishes to underline its full support for the conclusion of international cooperative arrangements, which would ensure the protection of the dolphin population, while respecting GATT obligations.