

GENERAL AGREEMENT ON

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TARIFFS AND TRADE

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UNITED STATES - RESTRICTIONS ON IMPORTS OF TUNA

Request for Consultations under Article XXIII:1 by the Kingdom of the Netherlands

The following communication, dated 3 July 1992, sent by the Permanent Mission of the Kingdom of the Netherlands in Geneva to the Office of the United States Trade Representative, is circulated in accordance with paragraph C.3 of the CONTRACTING PARTIES' 1989 Decision on Improvements to the GATT Dispute Settlement Rules and Procedures (BISD 36S/62).

The United States has applied, since 24 May 1991, an indirect embargo on the import of certain yellowfin tuna and yellowfin tuna products. These restrictions were linked to the direct embargoes applied by the United States to the same products originating from Mexico and Venezuela. Following an order of the District Court for the Northern District of California, the indirect embargoes were extended on 31 January 1992 to cover all imports of yellowfin tuna and yellowfin tuna products in the United States from so-called "intermediary nations" that import tuna products from the countries subject to the direct embargo. However, countries were identified by the US Department of Commerce solely on the basis of being an importer of yellowfin tuna from any source during 1991 and into 1992 and an exporter of yellowfin tuna to the United States at the same time.

On that basis, the Netherlands Antilles, one of the three countries that constitute the Kingdom of the Netherlands and as such an integral part of a GATT Contracting Party, was identified as an intermediary nation. Subsequently the Netherlands Antilles was confronted by an indirect embargo as from 31 January 1992, even though the exported yellowfin tuna from the Netherlands Antilles to the United States is caught in the Caribbean Sea and in the North Atlantic Ocean by the so-called long line fishing method and not harvested by the disputed purse seine or drift net fishing techniques. This message was conveyed to the Government of the Netherlands

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Antilles by a letter from the Consulate-General of the United States in Curaçao on 7 February 1992. Apparently only the passage of an import ban in the Netherlands Antilles of yellowfin tuna originating from the countries subject to the direct embargo would exonerate the tuna exports of the Netherlands Antilles from the indirect embargo. Furthermore, it is understood that in the view of the United States authorities, such legislation in the Netherlands Antilles should be so structured as to cover any changes in the direct embargo list of the United States.

The Kingdom of the Netherlands is of the opinion that the provisions of the US Marine Mammal Protection Act under which the direct and indirect 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 Kingdom of the Netherlands considers therefore that there is a prima facie case of nullification or impairment under Article XXIII of the General Agreement. The subject matter of this dispute has already been examined by a panel requested by Mexico (DS21/R). This panel concluded that both the direct and the indirect embargoes are contrary to the GATT obligations of the United States. This panel report, which has been discussed in three GATT Council sessions, has not yet been adopted by the GATT Council.

The Kingdom of the Netherlands fully share the objective of the United States of reducing incidental dolphin mortality in tuna fishing. The Kingdom of the Netherlands is prepared to participate in any serious international undertaking to tackle this particular issue and other environmental problems arising from the use of certain fishing techniques. The Kingdom of the Netherlands cannot, however, accept that a contracting party to the GATT applies unilateral trade restrictions contrary to GATT obligations. Furthermore, the Kingdom of the Netherlands cannot be expected to violate its own obligations under the GATT towards other contracting parties in order to comply with domestic legislation of a contracting party.

In accordance with the 12 April 1989 Decision on "improvements to the GATT dispute settlement rules" (BISD 36S/61), the Kingdom of the Netherlands therefore requests consultations with the United States under Article XXIII:1 of the General Agreement.