

PRESS RELEASE

World Trade Organization "Turtle" Decision Makes Progress

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Today, the Appellate Body of the World Trade Organization (WTO) issued a final decision in the long-running case against the U.S. law protecting sea turtles. The WTO sustains the judgment of the lower panel which ruled that the U.S. law violates international trade rules.

The current U.S. law halts imports of shrimp from countries permitting harvesting methods that kill endangered sea turtles. Although it rules against an important environmental law, the Appellate Body should be commended for its bold decision which reverses many of the ill-considered legal conclusions reached by the lower panel. In particular, the Appellate Body determines that the U.S. law potentially qualifies for the trade law exception for measures to conserve exhaustible natural resources.

Ultimately, the Appellate Body rules that the U.S. law does not qualify for the exception because its implementation is characterized by both "arbitrary discrimination" and "unjustifiable discrimination." The Appellate Body finds arbitrary discrimination in the rigid standards for country certification and in the lack of due process afforded after determinations to halt imports of shrimp. The Appellate Body finds unjustifiable discrimination in the alleged failure of the U.S. government to negotiate before imposing the import ban. Here the Appellate Body makes a number of good points that deserve careful study by the Clinton Administration and the U.S. Congress.

Compared to prior GATT and WTO adjudication on environment-related disputes, this judgment shows a much deeper appreciation of the need for an environmental exception to trade rules. The Appellate Body

1. Statement of Steve Charnovitz, Director, Global Environment & Trade Study, Yale University, Oct. 12, 1998.

appears to be reaching for synthesis of international trade law with other components of public international law, including environmental law. Many critics have been urging the WTO to do this for years, and so this decision clearly represents progress.

The Appellate Body decision is also noteworthy in declaring that WTO panels need not reject submissions from non-governmental organizations. This is a very positive step forward in making the WTO more nature-friendly and people-friendly. It is only by continuing to move in this direction that the WTO will gain the public support needed to promote the process of liberalizing trade.

The Appellate Body did not give any attention to whether the plaintiffs — India, Malaysia, Pakistan, and Thailand — were willing to engage in negotiations. Attention to this issue was omitted due to the procedural posture of the U.S. appeal.