

TUNA-DOLPHIN-CASE I (1991)	
GATT-Panel: United States – Restrictions on Imports of Tuna Report of the Panel, 30 ILM 1594 (1991)	
Parties	Mexico vs. United States (US)
Third Parties	Australia, Canada, Chile, Colombia, Costa Rica, the European Communities, India, Indonesia, Japan, Korea, New Zealand, Nicaragua, Norway, Peru, the Philippines, Senegal, Singapore, Tanzania, Thailand, Tunisia, Venezuela
Background	<ul style="list-style-type: none"> - In 1988, an amendment to the 1972 US Marine Mammal Protection Act (MMPA) banned imports of tuna harvested by a method called “purse-seining”, which results in killings of marine mammals in excess of US standards. - <i>Import ban</i>: the US banned imports of Mexican tuna because Mexico had not taken steps to reduce the number of Eastern Tropical Pacific (ETP) dolphins killed each year due to tuna fishing. Mexico appealed to the GATT arguing that the US ban violates Art. XI and Art. XIII GATT. - <i>Labelling</i>: the Dolphin Protection Consumer Information Act (DPCIA) stated that producers, importers, exporters, distributors, or sellers of tuna products could only include a “Dolphin Safe” label, if the tuna were harvested in a manner that was not harmful to dolphins. Therefore, tuna caught by purse-seine vessels in the ETP or tuna caught at sea using drift net fishing could not be labelled as dolphin safe.
Main Topics	Art. XI GATT, Art. III:4 GATT (“ <i>product</i> ” vs. “ <i>process</i> ” related measures), Art. XX(b) GATT (“ <i>necessary</i> ”), and Art. XX (g) GATT (“ <i>relating to</i> ” and “ <i>primarily aimed at</i> ” test), extrajurisdictional application, labelling
Main Findings	<ul style="list-style-type: none"> - <i>Art. XI GATT</i>: the Panel found that the US ban violates Art. XI GATT in adopting quantitative restrictions on imports. The United States in turn used GATT's Article III:4 to argue that the restrictions were internal regulations. This argument was rejected by the Panel on the grounds that Article III restrictions could only to be applied to “<i>products</i>” and not the “<i>processes</i>” in which products were produced. Thus, the Panel concluded that Article III:4 was not relevant. - <i>Art. XX (b) GATT</i>: the Panel concluded that Art. XX (b) GATT only applies to measures within the jurisdiction of the importing country (§ 5.26,). Furthermore the Panel stated that the US ban violates the “<i>necessary</i>” condition, there are other measures that protect dolphins and distort trade to a lesser extent.(§ 5.27, 5.28). - <i>Art. XX (g) GATT</i>: the Panel stated that the US ban violates the “<i>primarily aimed at such a conservation</i>” condition set out by a former Panel decision when interpreting the “<i>relating to</i>” condition in Art. XX (g) GATT, because of the discriminatory manner in which the United States implemented the measure. The US linked the maximum incidental-dolphin-taking rate which Mexico had to meet during a particular period to be able to export tuna to the US to the rate recorded for US fishermen during the same period. Conse-

	<p>quently, the Mexican authorities did not know whether, at a given point of time, their policies conformed to the United States' dolphin protection standards.</p> <ul style="list-style-type: none">- Furthermore, the panel found that the US labelling of "Dolphin Free" tuna did not conform to GATT standards. However, the case was solved bilaterally between the United States and Mexico.- The Panel ruling was never adopted by the General Council (mainly due to political reasons relating to NAFTA consultations).
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TUNA-DOLPHIN-CASE II (1994)	
GATT-Panel: United States – Restrictions on Imports of Tuna Report of the Panel, 33 ILM 839 (1994)	
Parties	European Economic Community (EEC) and the Netherlands vs. United States (US)
Third Parties	Australia, Canada, Colombia, Costa Rica , El Salvador, Japan, New Zealand, Thailand, Venezuela
Background	- While the <i>Tuna-Dolphin-Case I</i> dealt with a US primary embargo on Mexican tuna caught using purse-seine nets that accidentally trapped a large number of dolphins, the <i>Tuna-Dolphin-Case II</i> centred on a US secondary embargo against countries who re-exported tuna from nations under the US primary embargo.
Main Topics	Art. XI GATT, Art. III:4 GATT (“ <i>product</i> ” vs. “ <i>process</i> ” related measures), Art. XX(b) GATT (“ <i>necessary</i> ”), and Art. XX (g) GATT (“ <i>relating to</i> ” and “ <i>primarily aimed at</i> ” test), extrajurisdictional application, labelling
Main Findings	<ul style="list-style-type: none"> - <i>Art. III and XI GATT</i>: the Panel upheld the previous Panel’s conclusion in the <i>Tuna-Dolphin-Case I</i> and stated that Art. III was not applicable, because the embargo distinguishes between harvesting practices that do not have any impact on the “<i>inherent character of tuna as a product</i>” (§ 5.9). Hence, the US ban were found to be inconsistent with Art. XI:1. - <i>Art. XX (g) GATT</i>: the Panel noted that dolphins are an “<i>exhaustible resource</i>” as described in Art. XX (g) GATT (§ 5.13). Furthermore, the Panel reversed the finding of the Panel in the <i>Tuna-Dolphin-Case I</i> that Art. XX (g) GATT can only to be applied to natural resources located within its territory. Hence the Panel found that the measures fall within those covered by Art. XX (g) GATT (§ 5.20); therefore an extrajurisdictional application could be justified. However, the Panel upheld the finding of the previous Panel concerning the “<i>relating to</i>” condition (and the “<i>primarily aimed at</i>”-test), and stated that “<i>measures taken so as to force other countries to change their policies (...) could not be primarily aimed either at either the conservation of an exhaustible resource, or at rendering effective restrictions on domestic production or consumption</i>” (§ 5.27). - <i>Art. XX (b) GATT</i>: the Panel first stated that the protection of dolphins fell within the scope of Art. XX (b) GATT and that—in accordance with Art. XX (g)—this protection is not limited to domestic territory. However, as in the previous ruling, the Panel found that “<i>measures taken so as to force other countries to change their policies (...) could not be considered “necessary” for the protection of animal life or health in the sense of Article XX (b).</i>” (§ 5.39)