

International Trade and Wildlife

GATT/WTO Regime

Goals:

- ❖ Liberalization of trade
- ❖ Removal of trade barriers

Growth:

- ❖ 1947 – 23 members
- ❖ 1999 – 135 members

- Since 1960 – Tariffs reduced by 60 percent
- World trade has increased by over 1500 percent to \$6.5 trillion per year

Key Provisions

Article I – Most Favored Nation Treatment

- All “like” *products* from member nations must be treated identically

Article III – National Treatment Principle

- Taxes and regulations on imported *products* treated the same as domestic *products*

Article XI –

- Limits trade measures to tariffs and duties and prohibits embargos

Article XX Exceptions

Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination where the same conditions prevail, or as disguised restriction on international trade, nothing in the Agreement [GATT 1994], shall be construed to prevent the adoption or enforcement by any contracting party of measures:

- (b) necessary to protect human, animal, or plant life or health;
- (g) relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restrictions on domestic production or consumption.

Tuna/Dolphin Controversy

Dolphin Mortality:

- ❖ Unique relationship between tuna and dolphins in Eastern Tropical Pacific
- ❖ Encirclement with purse-seine nets



Marine Mammal Protection Act Amendments:

- ❖ Prohibited the US to import tuna harvested with purse-seine nets unless the foreign government could demonstrate a “comparable” regulatory program or “comparable” rate of incidental take





GATT Challenge

- Earth Island sued to compel US to enforce trade restrictions
 - Court enjoined Executive Branch from allowing further imports until comparability findings made
 - Order affected tuna imports from Mexico, Venezuela, Vanuatu, Panama and Ecuador.
 - Ban on Mexican tuna took effect in 1991.
 - Mexico launched a successful challenge through GATT's dispute resolution mechanisms.

GATT Decision

- The US ban was inconsistent with GATT
 - Violated National Treatment Principle
 - Did not fall within Article XX exceptions
 - Exceptions do not apply extrajurisdictionally

US Response to GATT Ruling

- International Dolphin Conservation Act
 - Amended MMPA to authorize State Department to enter into bilateral agreements to implement a 5-year moratorium on encirclement.
 - Eliminated ban on imports from countries agreeing to the ban.

International Dolphin Conservation Program Act

- Lifted embargoes and implemented Panama Declaration.
 - Adopted under auspices of IATTC to reduce dolphin deaths through international quotas, large-scale research, and international observer program.
- Dolphin mortality has been reduced by more than 98%.

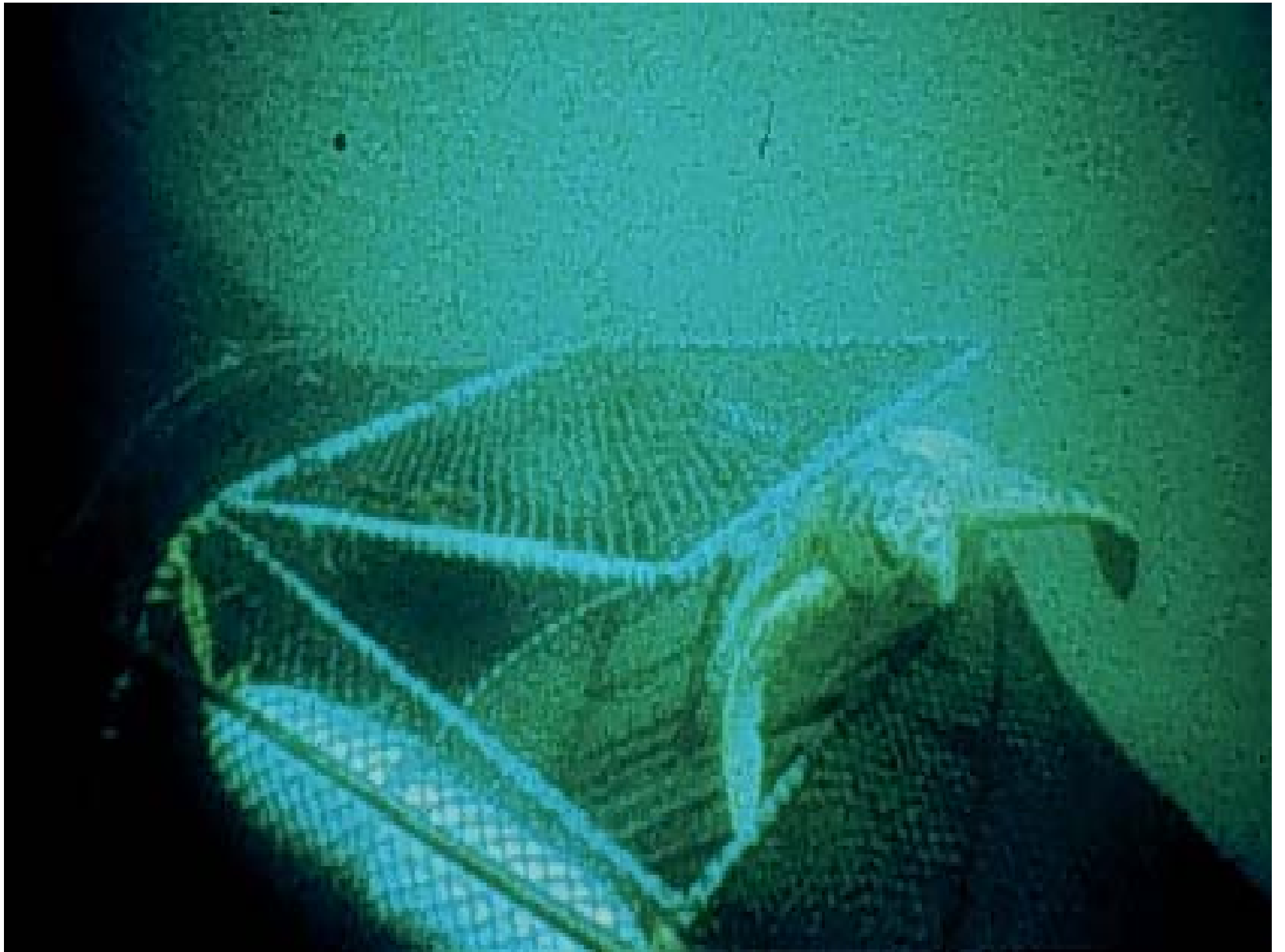
Dolphin-Safe Label

- In 1992, Congress passed the Dolphin Protection Consumer Information Act, creating the “dolphin-safe” label for tuna caught without netting dolphins.
- In 1997, the International Dolphin Conservation Program Act (IDCPA) authorized the “dolphin-safe” label to be applied to tuna caught in nets when shipboard observers found that no dolphins were harmed or killed.
- Secretary concluded that encirclement does not harm dolphins and label could now be applied to tuna caught by encirclement.

Earth Island v. Evans

- On August 9, 2004, the U.S. District Court for the Northern District of California rejected the Commerce Department's efforts to weaken the "dolphin-safe" tuna labeling program.
- The best scientific evidence indicates that
 - (1) dolphin stocks are still severely depleted and are not recovering despite extremely low reported mortality rates,
 - (2) recovery is being delayed,
 - (3) changes to the ecosystem are unlikely to explain this,
 - (4) indirect effects from the fishery can plausibly account for the lack of recovery.





Turtle/Shrimp – Round 1

ESA Amendment

- ❖ Importation of shrimp was prohibited except from certified countries
 - Comparable regulatory program
 - Comparable level of incidental take
 - Basically required all countries to use Turtle Excluder Devices (TEDs)

GATT/WTO Challenge

- ❖ Earth Island Institute again filed suit and won
- ❖ Countries affected by ban successfully challenged

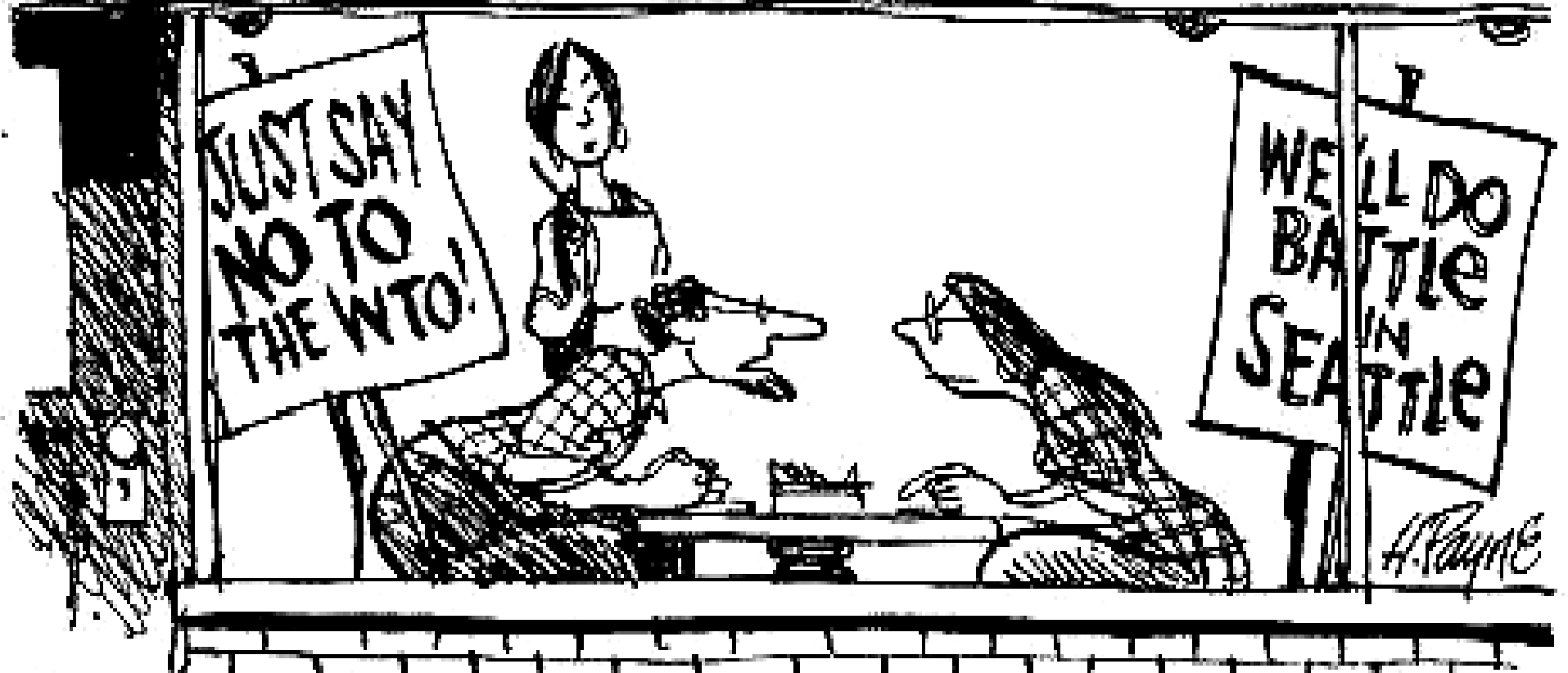
WTO Appellate Body Decision

U.S. trade measures to protect sea turtles extraterritorially *qualify* under Article XX (g) as relating to conservation of exhaustible resources

However, U.S. trade measures violate chapeau

- ❖ All nations are required to adopt conservation measures identical to U.S.
- ❖ U.S failed to engage in meaningful negotiations
- ❖ U.S provided few procedural safeguards

STARBUCKS



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• EMAIL: hpayne@detroitnews.com

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Turtle/Shrimp – Round 2

U.S. agreed to comply with 1998 ruling

- ❖ Ocean U.S began negotiation process in Indian and South-East Asia Region
- ❖ Amended certification process
 - Exporting countries implementing and enforcing a comparatively effective regulatory program to protect sea turtles may be certified even if TEDs not use

WTO Decision

- ❖ U.S Implementation consistent with WTO
 - U.S. made good faith effort to negotiate
 - Countries no longer have to adopt a regulatory program identical to U.S.