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
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
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.
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 Devises (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.
"I TELL YOU. FOREIGN TRADE IS A CORPORATE PLOT TO ENSLAVE THE THIRD WORLD AND—ONE GUATEMALA ANTIGUA CAPPUCCINO, PLEASE—DESTROY OUR ENVIRONMENT!"
Turtle/Shrimp – Round 2

U.S. agreed to comply with 1998 ruling

- U.S began negotiation process in Indian Ocean 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.