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For Immediate Release:
April 14, 2015

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Flipper vs. Fast Track: World Trade Organization Again Rules Against ‘Dolphin-Safe’ Labels, Says U.S. Policy Still Violates WTO Rules, Must Go

Latest Attack on Environmental Measure Comes Weeks Before Expected Final WTO Edict on U.S. Country-of-Origin Meat Labeling, Further Burdening Obama Fast Track Push

WASHINGTON, D.C. – Today’s ruling by a World Trade Organization (WTO) compliance panel against the U.S. “dolphin-safe” labeling program spotlights the conflict between basic environmental objectives and the status quo trade rules that the Obama administration seeks to expand. Rather than roll back the labeling program, which has contributed to a dramatic decline in tuna fishing-related dolphin deaths, the U.S. government should appeal the ruling, said Public Citizen.

The ruling further complicates the Obama administration’s controversial bid to obtain Fast Track trade authority for two major agreements, the Trans-Pacific Partnership and the Trans-Atlantic Free Trade Agreement. Both of these pacts would expose the United States to more such challenges against U.S. consumer, environmental and other policies.

“That a so-called ‘trade’ pact can be used to attack a voluntary food label allowing Americans to avoid dolphin-deadly tuna just spotlights why so many Americans oppose Fast Tracking more of the same deals that go way beyond trade and expose commonsense environmental and consumer safeguards to challenge,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “Today’s ruling against a basic dolphin protection sends a clear message to the environmental community: supporting Flipper means opposing Fast Track.”

The WTO compliance panel decided that changes made to the U.S. dolphin-safe labeling program in 2013 in an effort to make it comply with a 2012 WTO ruling are not acceptable and that the modified policy still constitutes a “technical barrier to trade.” The panel decided that the amended program “accord[s] less favorable treatment to Mexican tuna” in violation of WTO rules. The U.S. attempt to defend the dolphin-safe labeling program as “relating to the conservation of exhaustible natural resources” failed because the panel deemed the program’s terms to be “unjustifiably and arbitrarily discriminatory.”

The United States has one chance to appeal this decision before the WTO issues a final ruling. Under WTO rules, if the U.S. appeal fails, Mexico, which brought the WTO case against the United States, would be authorized to impose indefinite trade sanctions against the United States unless or until the U.S. government changes or eliminates the dolphin-safe labeling program.

Background:

The U.S. ban on the sale of tuna caught with dolphin-deadly purse seine nets was eliminated in 1997 after 1991 and 1994 trade challenges by Mexico and other nations. The ban was enacted after six million dolphins were killed by the nets. Outrage over the initial 1991 tuna-dolphin ruling and subsequent elimination of the embargo on dolphin-deadly tuna launched environmental activism on trade issues.

[Mexico's latest challenge](#) targeted the voluntary labeling policy that replaced the ban on dolphin-deadly tuna. This market-oriented approach provides consumers with information so they can decide if they prefer dolphin-safe tuna. In a controversial move, the WTO ruled in 2012 that this U.S. labeling program, for which many countries' tuna qualifies, violated WTO non-discrimination rules because tuna caught in the Eastern Tropical Pacific (ETP) had to meet additional criteria to qualify for the label. The ETP is the only region where dolphins are known to congregate above schools of tuna. Thus, dolphin-safe criteria for that region are set by the Inter-American Tropical Tuna Commission, an international body that includes Mexico, and apply to all fishers operating there.

The U.S. labeling regime is voluntary. If U.S. or Mexican fishers choose to use the dolphin-safe methods stipulated by the regime, their tuna qualifies for U.S. dolphin-safe labels. Tuna not meeting the standard can be sold in the United States without the label. U.S., Ecuadorean and other tuna fleets chose to meet the dolphin-safe standard. After decades of refusing to transition to more dolphin-safe fishing methods, Mexico challenged the voluntary labeling program at the WTO. The WTO ruled against the policy even though the same standards applied to U.S. fishers and though the alleged discrimination resulted from Mexican fishers' decision not to meet the standard.

The improvements to the labeling policy, made in July 2013 by the National Oceanic and Atmospheric Administration and supported by Public Citizen and other consumer and environmental groups, addressed the discrimination claim by strengthening the criteria used to assure that tuna caught in other regions and sold under the dolphin-safe label is caught without injuring or killing dolphins. Even before this improvement, the labels [contributed to a more than 97 percent reduction](#) in tuna-fishing-related dolphin deaths in the past 25 years. The labels allow consumers to "vote with their dollars" for dolphin-safe methods.

Today's WTO ruling against the improved dolphin-safe labels continues a saga of WTO interference with countries' environmental policies and reinforces an anti-WTO public sentiment spurred by a spate of recent anti-consumer WTO rulings. In October 2014, another WTO compliance panel ruled against the popular [U.S. country-of-origin labeling \(COOL\) program used to inform consumers where their meat comes from](#). In April 2012, the WTO ruled against the [Obama administration's flavored cigarettes ban used to curb youth smoking](#). The ruling against COOL is still under appeal and a final ruling is expected by May 18.

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