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Obama Administration Sides With Consumers and Stands Firm on ‘Dolphin-Safe’ Tuna Labels; Will the WTO Authorize Trade Sanctions Against the U.S.?

In Round 3 of Epic WTO v. Flipper Case, Mexico Hints That It Will Seek Trade Sanctions Against U.S. Over Response to Latest WTO Ruling Against Popular Dolphin-Safe Labels

WASHINGTON, D.C. – In a creative response to a [2012 World Trade Organization \(WTO\) ruling](#), the National Oceanic and Atmospheric Administration (NOAA) has issued a new regulation supported by Public Citizen that strengthens the criteria for dolphin-safe labeling. Mexico, which challenged the policy, sought a rollback of the labeling program and has indicated that it may challenge the new regulation and seek WTO authorization to impose trade sanctions against the United States.

NOAA’s welcome announcement puts the spotlight back on the WTO, which must decide if it will accept the policy as meeting WTO rules or continue its legacy of undermining dolphin protection.

A U.S. ban on the sale of tuna caught with dolphin-deadly purse seine nets was gutted 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 rollback triggered a new era of trade activism. [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.

“Public Citizen applauds NOAA’s approach, which breaks with years of the U.S. government weakening consumer and environmental policies attacked at the WTO,” said Lori Wallach, director of Public Citizen’s Global Trade Watch. “We are now left to wait and wonder if the WTO will continue its anti-environmental, anti-consumer rights legacy or finally side with Flipper and consumers’ right to make informed decisions about the food we purchase.”

In a controversial move, the WTO ruled in 2012 that the 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 (IATTC), 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 labeling program at the WTO. The WTO ruled against the policy even though the same standards applied to U.S. fishers, though the alleged discrimination resulted from Mexican fishers' decision not to meet the standard, and though Mexican tuna could be sold in the United States without the dolphin-safe label.

NOAA's new policy, supported by Public Citizen and other consumer and environmental groups, addresses 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.

Mexico has stated that it is "[analyzing all the available legal mechanisms](#)" to push the United States to alter its response, which includes requesting WTO authorization to impose trade sanctions against the United States. WTO approval of such sanctions would continue the saga of WTO interference with countries' environmental policies and reinforce the anti-WTO public sentiment spurred by last year's spate of anti-consumer WTO rulings. In April 2012, the WTO ruled against the [Obama administration's flavored cigarettes ban used to curb youth smoking](#), and in June 2012 it ruled against the popular [U.S. country-of-origin labeling \(COOL\) program used to inform consumers where their meat comes from](#).

If the WTO decides that the new policy does not meet its requirements, Mexico can impose trade sanctions against the United States until the policy is altered to the WTO's satisfaction. If sanctions are authorized, the administration may find the best response to be maintaining the new regulation and negotiating a settlement with Mexico. This was the European Union's approach after a WTO ruling against its ban on artificial beef hormones that is widely popular with consumers. U.S. environmentalists have won repeated court cases stopping attempts by the George W. Bush and Clinton administrations to weaken the regulations defining the criteria for obtaining a dolphin-safe label under the current law. Thus, absent a negotiated settlement, the administration would face the prospect of having to seek a congressional rollback of a widely popular law, effectively asking Congress to feed Flipper to the WTO.

"The troubling trend of repeated successful WTO attacks against America's dolphin protection and consumer information policies shows how the terms of our current 'trade' agreements can undermine core environmental and consumer safeguards," said Wallach. "As the Obama administration now seeks to expand the same sort of rules in new Trans-Atlantic and Trans-Pacific pacts it is negotiating, the public is taking note."

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