

## SHRIMP EMBARGO AND TED IMPOSITION

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### 1. BACKGROUND

#### 1.1 How did it happen?

##### ***1.1.1 Shrimp Embargo for the 14 Caribbean countries in 1991***

Back in 1991, the U.S. government imposed Public Law 101-162 Section 609 to Caribbean countries, concerned that shrimp harvested with inadequate technology may adversely affect certain sea turtle species. Nations may not be allowed to export shrimp to the United States unless they can provide the evidence subjected to their criteria of the U.S. government as were to issue the U.S. congress by May 1991. The three criteria or guidelines are as follows:

- i) the harvesting nation has to have evidence of the adoption of a regulatory program governing the incidental catch of sea turtles in comparable to the U.S.;
- ii) the average rate of that incidental catch by the vessels of the harvesting nation is comparable to the average rate of incidental catch of sea turtles by the U.S.; and
- iii) the particular fishing environment of the harvesting nation does not pose a threat of the incidental catch of such sea turtles in the course of such a harvesting.

These guidelines were to provide the means to protect or reduce incidental catch of sea turtles. The most favorable means is to impose the use of Turtle Excluder Device or TED to the shrimp trawls and similar shrimp gears.

Such an imposition for the 14 Caribbean countries could not be valid immediately in the first year of the imposition in 1991. Some exceptions and/or flexibility were applied. There were considerations in many aspects such as the use of TED in various fishing gears and types of boat. It is noticeable that this imposed law was in an effect in 1994.

This allowed three-year delay, within the TEDs had to be equipped in all fishing vessels by May 1994 in the 14 Caribbean countries.

##### ***1.1.2 Shrimp Embargo for 56 countries in 1996***

After the TED imposition for the Caribbean countries, Earth Island took U.S. government to the Court of International Trade or CIT in 1995. It was regarding that the U.S. government did not take full action in performing the Public Law regarding the sea turtle conservation. At the same time, Earth Island claimed that such Public Law should be imposed to the 56 coastal countries where sea turtles inhabit along the same three guidelines being applied to the Caribbean region.

CIT complied the propose of the Earth Island which affect the 56 countries in having sea turtle conservation otherwise the exportation of wild caught shrimp to the U.S. was to be embargoed. The cultured shrimp and/or products were required to be certified by the

exporter together with the government. Such certification was in effect since May 1, 1996. However, the other 42 countries, excluding the 14 Caribbean countries, were required by the U.S. State Department to submit detail information or regulatory laws or programs of sea turtle conservation in their nations by April 1, 1996. Such submission, if compiled with the U.S. to appeal to the CIT. If the U.S. were to win in the court, such countries were to be delisted out from the U.S. shrimp embargoed countries.

Regarding the deadline for the shrimp embargo on May 1, 1996, applied to these additional 42 coastal countries including the ASEAN members, the notification by the U.S. government had been done only for a few months. This was considered relatively unfair when compared to those in the Caribbean region where the three years delay has been applied to impose the use of TEDs.

***The U.S. government appealed the CIT for one-year extension of the Shrimp Embargo***

However, there was an attempt by the U.S. government to appeal the court for a one-year extension of the deadline of shrimp embargo from May 1, 1996 to May 1, 1997. Such appeal for an extension was linked to the underlying reasons:

- i) The rush implementation of shrimp embargo may negatively affect to the U.S. shrimp importers as well as workers in related industries.
- ii) The rush imposition of TEDs use to the other 42 countries may affect such countries to surge against the use of TEDs, which, in turn, could bring to unsuccessful conservation or protection of sea turtle.
- iii) The rush implementation may also affect the State Department of the U.S. being unable to efficiently investigate.

As of the appeal of an extension, CIT did not accept the request of the one-year delay of the worldwide TED imposition according to the U.S. Public Law. However, on April 30, 1996 as of the requirements set by section 609 of P.L. 101-162, the U.S. State Department certified 36 nations for continued export of shrimp to the United States. These countries were as followings:

- a) The 13 nations meeting the U.S. standard requirement that commercial shrimp boats use TEDs to prevent the accidental catch of sea turtles in shrimp trawls. These nations were: Belize, Colombia, Costa Rica, Ecuador, El Salvador, Guatemala, Guyana, Mexico, Indonesia, Nicaragua, Panama, Trinidad and Tobago, and Venezuela.

- b) The 23 nations which were certified as having fishing environments that do not pose a danger to sea turtles.

b-1) 15 nations have shrimping grounds only in cold waters where there is no risk of taking sea turtles. They are: Argentina, Netherlands, New Zealand, Norway, Russia, Sweden, United Kingdom, and Uruguay.

b-2) 8 nations only harvest shrimp using manual rather than mechanical means to retrieve nets and thus do not adversely affect sea turtles: the Bahamas, Brunei, the Dominican Republic, Haiti, Jamaica, Oman, Peru, and Sri Lanka.

### ***U.S. Shrimp Embargo since May 1, 1996***

The remaining 20 nations were the countries being shrimp embargoed since May 1, 1996. Most of these countries were in the Asian region.

#### ***1.1.3 U.S. Shrimp Embargo and the Impacts to Asian Countries***

The values of shrimp trade for more than hundred thousands U.S. dollars had been lost as of the shrimp embargo since May 1, 1996.

- a) As the U.S. Public Law, 101 – 162, were imposed to be followed; very large numbers of shrimp trawlers or similar shrimping gears in ASEAN region were subjected to the imposition of the TED installation by May 1, 1996. Budget needed to be expended, which, in turn, affected the investment cost of fishermen.
- b) Earth Island won the Court of International on the TED imposition of the U.S. Public Law to other coastal countries. It was forecasted at that time that other issues concerning trade and environment could be easily raised and debate initiated by NGOs. This was true, as by the second quarter of 1996, another NGO group, led by Mangrove Action Project (MAP), ran a campaign against developing countries such as the ASEAN for the mismanagement of the mangrove converted into shrimp farms. They ran an aggressive campaign at the United Nations Commission on Sustainable Development Conference in New York City in April both in 1996 and 1997. Moreover, MAP together with other 30 NGOs, also focused their campaign against shrimp culture, focusing on ASEAN and Latin American countries at the World Aquaculture Conference 1977 at Seattle in the U.S.

## **1.2 ASEAN Action to the Shrimp Embargo**

### ***1.2.1 ASEAN Steps***

#### ***1.2.1.1 SEAFDEC Meeting on April 9, 1996 - Chiang Mai, Thailand***

From the Special Meeting in SEAFDEC Council at Chiang Mai on April 9, 1996, there was a consensus that all ASEAN countries, plus Japan, were to provide information concerning i) Sea Turtle Conservation , ii) The Use of TEDs, and iii) Shrimp Production and Export to the U.S.. Such information was sent to and gathered by Thailand and to be presented in the ASEAN Fisheries Working Group on April 23, 1996 in Singapore.

#### ***1.2.1.2 ASEAN Meeting on April 23, 1996 - Singapore***

ASEAN Information on Sea Turtle Conservation, TEDs, Use and Shrimp Production, and Trade of each country was presented at the ASEAN Fisheries Working Group on April 23, 1996. The summary of data of ASEAN countries such as Brunei, Indonesia, Philippines, Singapore and Thailand including Japan are identified as followed. (Remark: No information was sent by Vietnam).

a) *Existing Situation*

a-1) Sea Turtle Conservation Program

Six species of sea turtle are found in the ASEAN region; while all the ASEAN countries and Japan have many pieces of legislation applied on sea turtle conservation for six decades (see Table 1). Malaysia and Thailand had the laws since early 1937 and 1947, respectively. Japan started to have laws since early 1980's. Moreover, most nations signed as the party of CITES within which the sea turtles are already being protected.

With their awareness of the environment issues, sea turtle conservation has been practiced by legislation and stocking programs conducted by most of the ASEAN countries. These focus on conservation but also sea turtle population replenishing.

a-2) TED Application

Most ASEAN countries comment that TED should not be used in ASEAN region as it is known that incidental catch of sea turtle by trawlers is significantly low and/or negligible. If it was to be imposed, the study and/or experiment should be a prime requirement. Indonesia is the only one country using similar device as TED, that so-called FED (Fish Excluder Device) since 1983. Concerning the acceptance of its application with the Indonesia fishing, FED/TED is very heavy and causes much difficulty in trawling operations, and Indonesia has been looking for the way to have less heavy and easier device to operate.

a-3) ASEAN Marine Shrimp Production

ASEAN countries are very well recognized as major shrimp producers in the world. Shrimp and the products from ASEAN and Japan are exported to all regions, where USA is one of the major importing countries. The average volume of shrimp export from ASEAN and Japan to the US during 1990-1995 was as high as 80,482 metric tons (excluding Vietnam and Indonesia) with the values of 859 million US dollars. (Table 2).

Considering ASEAN shrimp fisheries, small scale shrimp fisheries have been much greater operated than the larger scale. The shrimp producers of three major ASEAN countries as Indonesia, Philippines, and Thailand have small shrimp trawlers as high as 80-90% whereas the large scale are only 10-20 %. Shrimp Trawlers in Brunei are all small scale (see Table 3).

b) *Rationalization*

b-1) Sea Turtle Conservation vs. TED Imposition

As far as the Conservation is concerned, in the ASEAN region and Japan, tremendous amounts of effort have been carried out on the conservation since 1930s (i.e. Malaysia since 1937 and Thailand since 1947). In most of the ASEAN countries, at least 3 pieces of laws have been already in place (see Table 1). Malaysia has as many as 19 pieces of legislation being imposed for their sea turtle conservation or protection. The Philippines has applied 9 pieces of law. Thailand,

Indonesia and Brunei impose 3-4 pieces of law. Obviously, it is quite fair to say that ASEAN countries as well as Japan, for more than half of a century, have taken great awareness and concerns in the endanger species conservation. The effort in environmental concerns has been focused not only on the legislation but also on the replenishment of sea turtle population in the world. Multi-millions of baby turtles have been released back to the sea in the past three decades. Malaysia and Thailand, for instance have released million of sea turtles since the 1960s. Moreover, certain areas in ASEAN waters were also demarcated as sanctuary areas and/or nesting grounds. In addition, the CITES, the most respected international/global conservation law, have already been adopted by most ASEAN countries; therefore covering the conservation of any endangered species.

b-2) Is TED the Only Way?

By May 1996, US government was willing to aggressively impose another 42 countries (excluding 14 Caribbean countries) to use TED as a way to “protect or conserve” sea turtle by the US Public Law. Interestingly the alienate device is quickly imposed to be used in the countries where fishermen are not familiar and/or experienced with it before. It is interesting to note that this device was first imposed in the 14 Caribbean countries where there is far more important populations of sea turtles, compared to the ASEAN waters. The incidental catch in the two regions, in turn, is certainly much different. The rationalization of the TED imposition in the Caribbean region and in the ASEAN waters in particular is, thus, questionable.

The suitability of TED application is mostly related to the size of the shrimp fisheries in the Caribbean and ASEAN regions. Shrimp trawlers in the Caribbean are mainly large scale, whereas shrimp trawlers in ASEAN region are mostly small scale (see Table 3). With the two distinctive scales of shrimp fisheries, logistically, the TED application or installation to the Caribbean and ASEAN countries should not be different. However, the trawler sizes of the two regions have not been taken into account. In this regard, TED to be used in ASEAN region, thus, seems doubtful as of their effectiveness of the application with the shrimp trawlers. Questions can be asked whether is heavy, bulky, and costly. Investment cost also could be higher due to its additional weight on the trawls while operating which affect to the fuel cost. In technical point of view could also be determined that the size of TED (i.e. 1-1.5 meter in width) will not be suitable to the cod end of the trawl nets (i.e. 0.8 meter in width) of small scale shrimp fisheries for its operation. Unlike the Caribbean case, which had a three year delay before the imposition to experiment on the adequacy of TED use, the TED imposition in others countries, such as the ASEAN, will be applied after only few months' notification.

In short, it is clear that the situation of the TED imposition for the 42 countries, including the ASEAN, has been treated unfairly and inappropriately. “Would TED be the only way?” is the big question! In addition, why should the ASEAN countries and their neighbors, such as Japan, to have TED imposed is such a short notice. Once again, TED use is originated from the west with long experimental task. To be fair for the use in the East, where environmental conditions are much different, appropriate experiment should be done in order to meet an acceptance technically, economically, and socially.

### b-3) Extent of Compliance

So far, most of the ASEAN countries have not agreed to comply with the US Public Law. Most countries do not want to use TED, except Indonesia who has already used similar device for more than 10 years and has already been certified. Brunei has also been certified since this country still operates shrimp harvesting manually. Though 36 out of 56 countries have already been certified for continued export of shrimp to the U.S., the other 20 countries that are main shrimp exporters are still being embargoed. The concern that the U.S. will face very soon is the decline of shrimp supply from the major 20 shrimp exporting countries banned to their markets.

#### ***1.2.2 ASEAN Common Stand***

The ASEAN meeting in Singapore at the SOM-AMAF on April 20, 1996, agreed that the U.S. shrimp embargo resulting from the requirement for the Turtle Excluder Device (TED) was a serious one. As such, there was a need for the ASEAN to adopt a common stand on the issue. The meeting requested the ASEAN secretariat to urgently make representation to the U.S. government, and bring the issue to the attention of the ASEAN Economic Ministers (AEM) and the ASEAN Committee in Geneva, as well as make representations at the appropriate forum as the embargo was inconsistent with the principles of the World Trade Organization.

The ASEAN Secretariat suggested that the ASEAN member countries should also concurrently inform their respective Ambassadors in Washington so that they could also make representation, either individually or as a group, to the U.S. Government on the shrimp embargo issue.

The meeting endorsed the following recommendations of the Sectoral Working Group on Fisheries concerning the shrimp embargo.

That the ASEAN Secretariat urgently appeal to the U.S. Government to Delist the ASEAN member countries from the impending shrimp embargo in view of the following:

- i) All ASEAN countries already have extensive sea turtle conservation programs.
- ii) Legislation had been enacted in ASEAN for more than a half of a century for the protection of sea turtle.
- iii) All ASEAN countries were signatories to CITES, under which there was provision for the protection and conservation of sea turtles.
- iv) The applicability of TED in ASEAN waters was questionable as it was relatively new in this region. The records of incidental catch of sea turtle by trawlers were found to be minimal.
- v) Most trawlers in the region were fish trawlers and shrimp were not the main target of such trawlers. As such the effect of such trawlers on sea turtle's life could be different from trawlers in the Caribbean region which were used solely for catching shrimp.

- 2) Those ASEAN member countries offered to carry out joint studies and programs with the U.S. on sea turtle conservation and management, with Thailand as the ASEAN coordinator. Such studies and programs could also involve non-government fisheries institutions and the private sectors.
- 3) That the ASEAN Secretariat makes representation at the appropriate for a regarding the U.S. shrimp embargo in view of the inconsistency with WTO principles.
- 4) That Thailand initiates discussion with other countries, which would be affected by the U.S. shrimp embargo to request them to make active representation to the U.S. Government on the issue.
- 5) That ASEAN member countries attending the upcoming APEC Fisheries Working Meeting in Chile in May 1996 state the ASEAN position on this matter.

### **1.3 APEC Forum Inputs**

During the 7<sup>th</sup> APEC Fisheries Working held in Chile between May 28-31, 1996, many countries brought up the issue on TED imposition and shrimp Embargo by the US in the special session.

#### ***1.3.1 Thailand as the ASEAN representation presented that***

- The appropriateness of the TED use in ASEAN waters has not been scientifically proved. Also, in a technical point of view, legal imposition of TED will not be practical since there is a lack of scientific data to support such use.
- The ASEAN viewed that TEDs are not the only way or the most efficient device to conserve sea turtle. Besides incidental catches in ASEAN countries are very minimal.
- There should be the study on the efficiency between the U.S. and the ASEAN and/or Asia Pacific Countries where U.S. embargo shrimps exists.

#### ***1.3.2 Eleven out of the eighteen countries in APEC forum, namely Japan, China, Indonesia, Malaysia, Taiwan, the Philippines, Australia, Mexico, Brunei, Hong Kong, and Thailand, concurrently commented the U.S.'s action that:***

- Technical data on the TED use has not been adequate for the shrimp embargoed countries.
- The approach being taken by the U.S. is considered as non-tariff barrier and Unilateral. The imposition of TED stems from "US Public Law" to "other countries".
- It is not a normal international embargo, which usually allows negotiation and/or bargaining to such affected countries.

**1.3.3 U.S. representative expressed their concerns and stated that this matter is complicate issue, which they are in the difficult situation.**

**1.3.4 Chile, as the host country for APEC forum, stated that WTO should be an appropriate forum for the case.**

**1.3.5 Thai representative was unofficially informed by Canadian representative that some U.S. representatives would like Thailand and other ASEAN member countries bring this issue to WTO. It is because the outcome from WTO will have the U.S. administrative make consultation with the congress and/or the court in more careful manner.**

**1.3.6 The 7<sup>th</sup> APEC Meeting report concluded the case as follows:**

“ASEAN strong opposition against TEDs as the only conservation measure for as turtles. Many members expressed their disapproval over the embargo on wild caught shrimp product entering the U.S. market”.

## **1.4 Other Affected Countries Inputs**

Some affect countries from the impact of the US shrimp embargo express their interest to Thailand, as ASEAN representative, on the possibility of action in WTO. The first two countries are as follows:

### **1.4.1 Australia**

Following the APEC Fisheries Meeting in May 1996, Australia, by the representative from Commonwealth Department of Primary Industries and Energy, Canberra, has contacted Thailand and expressed their interest to join Thailand in exploring the possibility of action in WTO as well as seeking the view of other countries. Australia stated as:

“...If other affected countries intend to take WTO action, Australia would give serious consideration to joining such action.”

In this regard, Australian representatives are discussing options with their Department of Foreign Affairs and Trades (DFAT).

### **1.4.2 Taiwan**

In early July 1996, Taiwan representative from Taipei Economic and Trade Office, Bangkok showed the intention to explore Thailand and/or ASEAN action towards the US shrimp embargo issue. Taiwan has also shared their information of sea turtle conservation program as:

- i) Trawlers both for fish and shrimp do not occur in the area of sea turtle habitat.
- ii) In Taiwan, trawlers primarily aim to catch fish and shrimp are only taken by catch. Moreover, in fishing areas where the number of fish and shrimp is this proportional, many fishes will escape along with the sea turtles once the TEDs are installed.
- iii) Taiwan considers that the installment of TED is not necessary, they are making considerable effort to ensue that sea turtles are properly protected. Moreover, Taiwan expressed that the core issue of the US to protect sea turtle habitats through international cooperation, rather than to “the mandatory set-up of TEDs”.



- iv) In traditional Chinese culture, the sea turtle is valued as a symbol of long life and good fortune. Thus, traditionally Chinese fishermen have helped out sea turtles to return to the ocean and the release of them on this way is thought to be blessed.

### **1.5 U.S. Requested ASEAN Countries to have the Convention for the Protection and Conservation of Sea Turtle signed with the U.S.**

In 1996, each ASEAN country had been approached by the U.S. Embassy in the country to consider the draft of an Inter-American Convention for the Protection and Conservation of Sea Turtle. This draft was suggested by the US Embassy to be a model for the Convention to be signed with the U.S. However, none of the ASEAN countries agreed to sign such Convention on Sea Turtle Protection and Conservation with the U.S.

### **1.6 MOU on ASEAN Sea turtle Conservation and Protection**

All ASEAN countries have their own sea turtle conservation programs for more than six decades. However, due to problems facing ASEAN from the U.S. shrimp embargo related to sea turtle conservation, the ASEAN has realized that a joint ASEAN unified approach to management, protection and conservation of all species of sea turtle and their habitats is important. Nine ASEAN countries, therefore, have agreed on signing a Memorandum of Understanding (MOU) on ASEAN Sea Turtle Conservation and Protection. This agreement was made on September 12, 1997 in Bangkok during the SOM-AMF Meeting. The objectives of the MOU are to promote the protection, conservation, replenishing and recovery of sea turtles and of the habitats based on the best available scientific evidence, taking into account the environmental, socio-economic and cultural characteristics of all the ASEAN countries. In the MOU, proposed mechanism, coordinators, a technical expert working group, co-ordination, and linkages among the ASEAN. Malaysia has been assigned to be the lead country to implement the program.

## **2. THAILAND APPROACH**

### **2.1 Bilateral Negotiation**

Prior to May 1, 1996, Thailand Department of Fisheries had negotiated with the U.S. Embassy regarding to the shrimp embargo in term of the reason and delay of the embargo. During June-July, 1996, Thailand made a negotiation to the U.S. government that:

- (i) The gill net can be considered as non-mechanical device in shrimp fisheries which it has been accepted. Therefore, shrimp harvested by gillnet could be exported to the U.S.
- (ii) Though TED has not been imposed in Thailand, voluntary TED use was proposed to the U.S., the request having also been accepted. Therefore, shrimp harvested by voluntary TED use with the shrimp trawlers can be exported to the U.S.
- (iii) Some U.S. fishing gears such as Barred Beam Trawl, Pusher-head Trawl, and Wing Net are identified to be fishing gears that are not harmful to sea turtle. In this regard, Thailand has proposed three small fishing gears used for shrimp fisheries i.e. Beam Trawl, and Push Net which are similar to those gears of the US for the consideration. The result was that Push Net had been accepted as fishing gears not harmful to the sea turtle.

Moreover, Thailand had a Technical Mission to the U.S. and Mexico in August 1996 to discuss with TED specialists of the U.S. government as well as to see how various kinds of TED work. Moreover, the Thai Mission went to visit Mexico to see how the Mexican TEDs work.

## **2.2 Experiment on the TED Use in ASEAN Waters**

As clearly stated that without experiment on TEDs use in ASEAN, the suitability and application of TED in the region is still questionable. Thailand, as the ASEAN representative, initiates the experiment on TED use in ASEAN waters. Such task involves the cooperation between the Thailand Department of Fisheries and the Southeast Asian Fisheries Development Center (SEAFDEC).

In June – July, 1996, TED prototypes were purchased and shipped from the US TED manufacturer. These prototypes are Super shooter, Anthony Weedless. Hooped TED is assembled by Thai fisheries officers since it is no longer used and/or produced in the US. At present, the experiment has been conducted by using these various TED types starting in Thai waters and being scheduled for other ASEAN water as well.

In addition to the experiment on those U.S. TED prototypes, the Thai Department of Fisheries in cooperation with Kasetsart University, has developed the “Thai TED” with the purpose for a better suitability and applicability to the local use. This Thai TED, called Thai Turtle Free Device or TTFD has also been used in the experiment.

The preliminary result shows that though the most efficient TED types have been used in the experiment, the escapement rate of aquatic species is still high. It is also important to note that not any single sea turtle was found through the course of the experiment.

After the TTFD experiment, Thailand had reproduced 100 pieces of TTFD given to Thai shrimp fishermen at the same time of the workshop being held on the TTFD experimental use in Songkhla, Thailand at the end of September 1996. At that workshop, ASEAN representative were invited to join.

## **2.3 Application of TTFD and Thailand being delisted out from the shrimp embargoed countries**

As a result the first set of TTFD use in Thai waters for 100 pieces and more in later date. Though some difficulties and inefficiency occur during the shrimp-trawling operation, the U.S. government has sent representative from the Embassy to certify the use of TTFD. Thailand thus has been delisted from the countries being shrimp-embargoed since November 9, 1996.

## **3. THAILAND AND THE CO-COMPLIANCE COUNTRIES TOOK THE U.S. TO THE WTO DISPUTE**

### **3.1 The Dispute**

Though Thailand has already been certified to continue the export of captured shrimp to the U.S., the effort to take the US to the World Trade Organization was supported by Thailand.

Thailand and the co-complainants (i.e. India, Pakistan, and Malaysia) claim that the embargo on import of shrimps and shrimp products imposed by the U.S. pursuant to section 609 of Public Law 101-162 and the “Guidelines of Determining Comparability of Foreign Programs for the Protection of Turtles in Shrimp Trawl Fishing Operations” issued thereunder is inconsistent with U.S. obligations under the 1994 General Agreement on Tariffs and Trade (“GATT”). Specially, the embargo is inconsistent with U.S. obligations under GATT Article I: 1, XI: 1 and XIII: 1. Such claims mentioned above could be elaborated as follows:

**Article XI: 1** provides for general elimination of quantitative restrictions on imports and exports. The scope of Article XI: 1 is comprehensive applying to all measures instituted or maintained by a contracting party prohibiting or restricting the import, export or sale for export of products other than measures that take the form of duties, taxes or other charges.

The U.S. embargo on imports of shrimps and shrimp products pursuant to section 609 violates Article XI: 1 of the GATT. The embargo constitutes a prohibition or restriction on the import of shrimps and shrimp products from Thailand. Furthermore, the embargo clearly is not in the nature of “duties, taxes or other charges”.

**Article XIII: 1** provides that no prohibition or restriction shall be applied by any contracting party on the import of any product of the territory of any other contracting party or on the export of any product destined for the territory of any other contracting party, unless the import of the like product of all third countries is similarly prohibited or restricted.

The shrimp embargo is inconsistent with Article XIII: 1 of the GATT. The embargo restricts the import of shrimps and shrimp products from countries such as Thailand, which have not been certified, while like product from other countries, which have been certified, may be imported freely into the U.S.

**Article I: 1** of the GATT provides in pertinent part that, with respect to all rules and formalities in connection with import and export, any advantages, favor, privilege or immunity granted by any contracting party to any product originating in or destined for any other country shall be accorded in immediately and unconditionally to the like product originating in or destined for the territories of all other contracting parties.

The shrimp embargo is inconsistent with the most-favored-nation (“MFN”) principle embodied by Article I: 1 for the same reasons, that the shrimp embargo is a violation of Article XIII: 1 – physically identical shrimps and shrimps products from different nations are being treated differently by the US upon import based solely on the method of harvest and the policies of the foreign government, under whose jurisdiction the shrimps are harvested. Shrimps and shrimp products from some shrimp harvesting nations are denied entry into the US, while similar products from other nations are permitted.

### **3.2 The Result**

The dispute of this case was conducted for 14 months by having consultations first, and secondly, panel discussions. Thailand and the co-complainant countries finally were ruled by WTO to win the case in April 1998. However, the U.S. appealed the case to WTO, and it lost the case to Thailand and the Co-complainant in October 1998. The U.S. had to improve the practice of the TED imposition using U.S. Public Law. The U.S. also had to announce

the condition of enforcement worldwide. So far, there was public hearing in this regard. The Convention on Sea Turtle Conservation Protection between U.S. and ASEAN Countries has been taken into consideration.