

**CHILE – MEASURES AFFECTING THE TRANSIT AND
IMPORTATION OF SWORDFISH**

Arrangement between the European Communities and Chile

Communication from the European Communities

The following communication, dated 23 March 2001, from the Permanent Delegation of the European Commission to the Director-General, the Chairman of the Dispute Settlement Body and the Permanent Mission of Chile, is circulated at the request of that delegation.

The European Communities hereby would like to inform you that it has come to a provisional arrangement with Chile concerning the dispute regarding "Measures Affecting the Transit and Importation of Swordfish" (WT/DS193), which is attached hereto.

In accordance with this arrangement, the European Communities and Chile have agreed to suspend the process for the constitution of the Panel.

In line with the arrangement between the parties, the European Communities maintains the right to revive the proceedings at any time.

ARRANGEMENT
(relating to WTO case WT/DS193 and ITLOS case no. 7)

The purpose of this document is to contribute to an amicable settlement of the disputes concerning "Measures Affecting the Transit and Importation of Swordfish" and the "Conservation and Sustainable Exploitation of Swordfish Stocks in the South-eastern Pacific Ocean" between the EC and Chile in the WTO and before the International Tribunal for Law of the Sea (ITLOS). This document provides the basic framework for, and commitment to, a gradual process leading to a final agreement. It puts into place a provisional arrangement of a practical nature. The present arrangement is without prejudice to the legal position of the EC and Chile.

In order to foster bilateral cooperation between the Community and Chile on the swordfish stocks in the South East Pacific, in accordance with UNCLOS, the EC/Chile Bilateral Scientific and Technical Commission (BSTC) will resume its work in April 2001 in Chile.

The BSTC will remain the necessary point of contact in matters of common interest regarding conservation of swordfish and address the following objectives, *inter alia*:

- To serve as a forum for the exchange of information on the swordfish stocks and fishing activities of the Parties;
- To evaluate the state of the stocks and monitor the fishing trends;
- To identify research priorities and draw-up the necessary programmes, including on data collection;
- To exchange information on environmentally-safe and cost-effective fishing gear;
- To advise on possible conservation measures, including by-catch regulations;
- To consider further means of cooperation in the scientific, technical or administrative fields.

In order to promote this scientific/technical cooperation, catch and effort data covering all segments of their respective fleets in the South East Pacific will be exchanged in advance of the BSTC meeting.

To ensure the promotion of multilateral cooperation this issue will be considered at the next meeting of the BSTC, and other Fishing Parties targeting the same species in the South East Pacific may be invited to participate in the discussions of this agenda item.

Four Chilean and four Community vessels will participate, on a voluntary basis, in a joint research fisheries programme on swordfish in international waters in the South East Pacific.

For each fishing season, the Community and Chile shall designate the vessels participating in the fishery. This programme will be operational from 1 March 2001.

Vessels participating in the programme will be equipped with an operational VMS and shall have a scientific observer on board.

The catch allowed for each group of four Chilean and Community vessels will not exceed one thousand metric tonnes (1,000) per year.

The Community vessels participating in the above-mentioned programme will have access to the ports of Arica, Iquique and Punta Arenas for landing or transshipment purposes. Such operations shall be carried out in line with the conditions in Annex I.

This programme, carried out over a two year period, shall involve the collection of data on length, weight, sex characteristics of the catch, as well as location of fisheries and fishing effort. These parameters will be refined pursuant to the deliberations of the BSTC to include further methodologies and protocols for the exchange, processing, analysing and evaluating the data.

In order to ensure the needs of this programme, the requirement of minimum length of species exceptionally will not apply to the catches of these vessels. All other conservation measures applicable to the vessels by the Flag States remain in force.

The continuation of this programme shall be reviewed before the end of a two year period.

Bearing in mind their responsibility as significant participants in the harvest of the swordfish stocks in the South East Pacific and in the absence of a multilateral organization or arrangement presently regulating the swordfish stocks in this area, Chile and the EC shall launch a joint initiative through an International Consultation in Chile in Autumn 2001, to which all Parties having an interest in this fishery will be invited, in order to promote multilateral cooperation for the conservation and management of these stocks throughout their migratory range. This cooperation shall take the form of either the establishment of a new multilateral organization or arrangement, or working through the established regional fisheries organization.

Both Parties signalled their intention to participate in the next meeting of the IATTC Convention Working Group foreseen in April next, considering that it may provide the opportunity to harmonize in a constructive manner, through enhanced cooperation, the interests of Coastal States and Fishing States.

The objective of the Parties will be to finalize the new forms of multilateral cooperation through a Diplomatic Conference in 2002.

In the context of furthering the process of multilateral cooperation, scientific observers of one Party will be placed on the vessels of the other Party during the execution of the research programme on swordfish stocks outlined above.

The Parties will proceed to the parallel suspension of the dispute settlement procedures that have been instituted in the International Tribunal for the Law of the Sea (ITLOS) and in the WTO referred to above. To this end, the Parties will address the necessary notifications to the WTO and ITLOS in line with the document annexed. The Parties have the right to revive these procedures if this arrangement has not been developed or fulfilled. In this case, any procedural delays presently running shall begin anew on the date on which the request for the lifting of the suspension has been received by the other Party.

ANNEX I

- (i) The captain, or his representative, of a Community vessel, which wishes to enter to a designated Chilean port, shall notify the competent Chilean authorities of the port and date of landing or transshipment at least 72 hours in advance of the expected arrival in the port. This notification shall include the following information:
 - the hour of arrival to the port of landing or of transshipment,
 - the catches on board.
 - (ii) The competent Chilean authorities shall confirm by the same means, within 24 hours, that the landing or transshipment operation may take place. The landing or transshipment operation may not be initiated without the Chilean authorities' confirmation.
 - (iii) Vessels, notified as engaged in the joint fisheries programme, may not receive transshipments of swordfish catches from, nor tranship to, other fishing or reefer vessels. Vessels infringing this provision, except in case of *force majeure*, shall be excluded from the programme.
 - (iv) Within 48 hours of the completion of the landing or transshipment operation, the captain of the fishing vessel, or his representative, shall submit, to the competent Chilean authorities a statement declaring the quantities landed or transshipped.
 - (v) The Chilean competent authorities may inspect documents, logbook, fishing gear and catch on board during landing or transshipment operations. Such inspection shall be carried out in such a manner as not to unduly delay the landing or transshipment operations, which themselves should be carried out in the 24 hours following arrival in the port.
 - (vi) The captains of the vessels shall be free to decide how their vessel's catches will be disposed of.
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