

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

Joint Communication from the European Union and Chile

The following communication, dated 28 May 2010, from the delegations of the European Union and Chile to the Chairperson of the Dispute Settlement Body, is circulated at the request of those delegations.

Chile and the European Union hereby inform the Dispute Settlement Body and the Council for Trade in Goods that the International Tribunal for the Law of the Sea (ITLOS), in the *Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Union)*, by Order dated 16 December 2009, placed on record, pursuant to Article 105, paragraph 2, of the Rules of the Tribunal, the discontinuance, by agreement of the Parties, of the proceedings initiated on 20 December 2000 by Chile and the European Community, and ordered that the case be removed from the List of cases. A copy of the Order is attached for information.

Pursuant to Article 3.6 of the *DSU*, Chile and the European Union intend to notify to the Dispute Settlement Body and the Council for Trade in Goods any mutually agreed solution to the matters raised under the consultation and dispute settlement provisions of the covered agreements in *DS193 Chile-Measures Affecting the Transit and Importation of Swordfish* once any such mutually agreed solution has been ratified in accordance with their respective domestic law requirements.

In addition, Chile and the European Union hereby notify the Dispute Settlement Body and the Council for Trade in Goods that they have unconditionally agreed that neither party shall further exercise any procedural right accruing to it under the *DSU* in case *DS193 Chile-Measures Affecting the Transit and Importation of Swordfish*.

Save as otherwise provided herein, this information and notification is without prejudice to the rights and obligations of Chile and the European Union under the *WTO Agreement*.

For the European Union:

For Chile:

Mr. John Clarke
Chargé d'affaires a.i.

H.E. Mr. Mario Matus
Ambassador

List of Cases No. 7

Order 2009/1

INTERNATIONAL TRIBUNAL FOR THE LAW OF THE SEA

YEAR 2009

16 December 2009

**CASE CONCERNING THE CONSERVATION AND
SUSTAINABLE EXPLOITATION OF SWORDFISH STOCKS
IN THE SOUTH-EASTERN PACIFIC OCEAN**

(CHILE/EUROPEAN UNION)

ORDER

Present: Judge CHANDRASEKHARA RAO, *President of the Special Chamber;*
Judges CAMINOS, YANKOV, WOLFRUM; *Judge ad hoc* ORREGO
VICUÑA; *Registrar* GAUTIER.

The Special Chamber of the International Tribunal for the Law of the Sea formed to deal with the above-mentioned case,

composed as above,

after deliberation,

Having regard to article 27 of the Statute of the Tribunal (hereinafter "the Statute"),

Having regard to articles 45, 49, 105, and 107 of the Rules of the Tribunal (hereinafter "the Rules"),

Having regard to the Order of the Tribunal of 20 December 2000,

Having regard to the Orders of the President of the Special Chamber of 15 March 2001 and 16 December 2003,

Having regard to the Orders of the Special Chamber of 29 December 2005, 30 November 2007 and 11 December 2008,

Makes the following Order:

1. Whereas, pursuant to the request of Chile and the European Community the Tribunal, by its Order dated 20 December 2000, formed a special chamber of five judges to deal with the above-mentioned case;

2. Whereas, by the said Order, the Tribunal decided that:

if no preliminary objection is made in writing within 90 days from the institution of proceedings, or if the Special Chamber rejects the preliminary objection or objections, if any,

made, or in case of other issues not affected by the judgment of the Special Chamber on the preliminary objection or objections, the written proceedings shall consist of:

- a Memorial presented by each of the Parties within six months from the date of the judgment on the preliminary objection or, if no preliminary objection is made within the time-limit specified above, within six months after the expiry of the period of 90 days from the institution of proceedings;
- a Counter-Memorial presented by each of the Parties within three months after the date on which a certified copy of the last of the two Memorials sent by one Party has been received by the other Party;

3. Whereas the President of the Special Chamber, by his Order dated 15 March 2001 decided that for the words “the institution of proceedings”, wherever they occur in the decision contained in the Order dated 20 December 2000, the words “1 January 2004” shall be substituted, and reserved the subsequent procedure for further decision;

4. Whereas the President of the Special Chamber, by his Order dated 16 December 2003, decided that for the words “the institution of proceedings”, wherever they occur in the decision contained in the Order dated 20 December 2000, the words “1 January 2006” shall be substituted, and reserved the subsequent procedure for further decision;

5. Whereas, in the Order dated 29 December 2005, the Special Chamber decided that for the words “the institution of proceedings” wherever they occur, the words “1 January 2008” shall be substituted, and reserved the subsequent procedure for further decision;

6. Whereas, in the Order dated 30 November 2007, the Special Chamber decided that for the words “the institution of proceedings” wherever they occur the words “1 January 2009” shall be substituted, and reserved the subsequent procedure for further decision;

7. Whereas, in the Order dated 11 December 2008, the Special Chamber decided that for the words “the institution of proceedings” wherever they occur, the words “1 January 2010” shall be substituted, and reserved the subsequent procedure for further decision;

8. Whereas the European Community, by a letter dated 13 October 2009, and Chile, by an e-mail of 25 November 2009, informed the Special Chamber that the parties had held bilateral consultations on 5 and 6 October 2009 and agreed to report to the Special Chamber the following:

[b]oth the European Community and Chile are committed to the signature, ratification or approval, and implementation of and compliance with the Understanding agreed between negotiators for both Parties on 16 October 2008. As a consequence, in accordance with the provisions of the said Understanding, Parties will not seek a further extension of the suspension of the Proceedings of Case No. 7, but will request the Special Chamber to issue an order for discontinuance of the case. The Parties are ready to provide the Special Chamber with further particulars on the occasion of the forthcoming consultations between the President of the Special Chamber and the Agents of the Parties.

9. Whereas the European Commission, by its letter dated 7 December 2009, informed the President of the Special Chamber as follows:

In preparation for the forthcoming hearing of 15 and 16 December 2009 of the Special Chamber in Case No 7, we have the honour to advise you that the Treaty of Lisbon

amending the Treaty on European Union and the Treaty establishing the European Community has entered into force on 1 December 2009.

As a consequence, from that date the European Union has replaced and succeeds the European Community (Article 1, third paragraph, of the Treaty on European Union as it results from the amendments introduced by the Treaty of Lisbon). Consequently, since 1 December 2009 the European Union exercises all rights and assumes all obligations of the European Community, whilst continuing to exercise existing rights and assume obligations of the European Union. In particular, the European Union has succeeded to all agreements concluded and all commitments made by the European Community with International Organisations, including the United Nations, and to all agreements or commitments binding on the European Community.

As a consequence, from 1 December 2009 the European Commission, of which the undersigned are agents, represents the interests of the European Union in Case No 7, currently pending with the Special Chamber. However, the succession of the European Community by the European Union has no consequences for this case. The European Commission will on behalf of the European Union, and jointly with the agents for Chile, ask for a discontinuance of Case No 7.

10. Whereas the Agent of Chile has expressed no objection to treating the European Union as a party to this case in place of the European Community;

11. Whereas, in response to a request made by the Special Chamber on 30 November 2009, the Agents of the Parties provided additional information in a joint communication dated 15 December 2009;

12. Whereas, in the joint communication referred to in the preceding paragraph the Agent of the European Union and the Agent of Chile informed the Special Chamber as follows:

The European Union and Chile have informed the Special Chamber that they are committed to the signature, ratification or approval, and implementation of and compliance with the new Understanding agreed between negotiators for both Parties on 16 October 2008.

The terms of the settlement agreed between negotiators comprise the following elements:

- 1) a more structured framework of fisheries cooperation to replace and transform the 2001 bilateral Provisional Arrangement into a definitive commitment to cooperate for the long-term conservation and management of the swordfish stocks in the South Eastern Pacific.
- 2) conducting their respective swordfish fisheries to catch levels commensurate with the objective of ensuring the sustainability of these resources as well as safeguarding the marine ecosystem.
- 3) freezing of the fishing effort by both Parties at the 2008 level or at the maximum historical peak.
- 4) establishment of a Bilateral Scientific and Technical Committee (BSTC), with the following tasks: exchange of information and data on catch and fishing effort, as well as on stock status; providing scientifically-based advice to fisheries stocks managers to assist them in ensuring the sustainability of the fishing

activities of both Parties; advising Parties on the adoption of further conservation measures if needed.

5) the multilateral consultation currently in place should include all the relevant participants in the South Eastern Pacific Ocean swordfish fishery and invited observers from existing organizations with a legitimate interest in the swordfish fishery.

6) agreement that EU vessels fishing for swordfish in the high seas in accordance with the objectives contained in the new Understanding shall be granted access to designated Chilean ports for landings, transshipments, replenishing or repairs.

As a consequence, in accordance with the provisions of the said Understanding, Parties request that the Special Chamber issue an Order for discontinuance of the Case No 7 (Case concerning the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean (Chile/European Community)).

13. Whereas, on 15 and 16 December 2009, the President of the Special Chamber held consultations with the Agents of the Parties, in accordance with article 45 of the Rules;

14. Whereas the Special Chamber held deliberations on 15 and 16 December 2009 in regard to the communications of the Parties referred to in paragraphs 9, 11 and 12;

THE SPECIAL CHAMBER,

Places on record, pursuant to article 105, paragraph 2, of the Rules, the discontinuance, by agreement of the Parties, of the proceedings initiated on 20 December 2000 by Chile and the European Community; and

Orders that the case be removed from the List of cases,

Done in English and in French, both texts being authoritative, in the Free and Hanseatic City of Hamburg, this sixteenth day of December, two thousand and nine, in three copies, one of which will be placed in the archives of the Tribunal and the others transmitted to the Government of Chile and to the European Union, respectively.

(signed)
P. CHANDRASEKHARA RAO,
President of the Special Chamber.

(signed)
PHILIPPE GAUTIER,
Registrar.
