

INTER-AMERICAN TROPICAL TUNA COMMISSION
COMISIÓN INTERAMERICANA DEL ATÚN TROPICAL

PERMANENT WORKING GROUP ON COMPLIANCE

6TH MEETING

LANZAROTE (SPAIN)
17 JUNE 2005

DOCUMENT COM-6-05

**CRITERIA AND PROCEDURES TO ADOPT TRADE MEASURES TO
PROMOTE COMPLIANCE**

A proposal for a resolution on trade measures to promote compliance was introduced by the European Union at the 5th Meeting of the Working Group in June 2004. After discussing and amending the proposal, the Working Group agreed to forward it to the Commission for consideration. At the Commission meeting, the EU explained that the recommendation is similar to those of other tuna organizations, and that it is designed primarily to promote compliance with conservation measures. It noted that the proposal is multilateral, encourages an open system to increase cooperation, gives enough time to potential offenders, and was drafted with the participation of many delegations. Many participants expressed interest in the proposal, stressing the importance of multilateral measures, as opposed to unilateral actions, for promoting compliance. It was suggested that any such measures should also include incentives that promote compliance. Some delegations noted that they needed to consult other government agencies before taking a position on the proposal. The text, presented below, was discussed by the Commission plenary and by a smaller working group. However, no final agreement was reached, and it was agreed that the proposal would be discussed again at the next Commission meeting.

The Inter-American Tropical Tuna Commission (IATTC), meeting in Lima, Peru, on the occasion of its 72nd Meeting;

Noting that the objective of the IATTC is to maintain the populations of species covered by the IATTC Convention in the eastern Pacific Ocean (EPO) at the level which will permit maximum sustainable catches;

Considering the need for action to ensure the effectiveness of the measures to achieve the objectives of the IATTC;

Considering the obligation of all Parties, co-operating non-parties, co-operating fishing entities or regional economic integration organizations (collectively "CPCs") to respect IATTC conservation and management measures;

Aware of the need for sustained efforts by CPCs to ensure the enforcement of IATTC's conservation and management measures, and the need to encourage non-parties to abide by these measures;

Noting that trade restrictive measures should be implemented only as a last resort, where other measures have proven unsuccessful to prevent, deter and eliminate any act or omission that diminishes the effectiveness of IATTC conservation and management measures;

Noting that trade restrictive measures should be implemented in accordance with the FAO International Plan of Action to prevent, deter and eliminate illegal, unreported and unregulated fishing (IPOA-IUU);

Also noting that trade restrictive measures should be adopted and implemented in accordance with international law, including principles, rights and obligations established in the World Trade Organization (WTO) Agreements, and implemented in a fair, transparent and non-discriminatory manner;

Resolves as follows:

1. CPCs that import products of species covered by the IATTC Convention, or in whose ports those products are landed, should collect and examine as much import or landing data and associated information as possible on such products, and submit the following information to the Commission each year:
 - a. names and flags of the vessels that caught and produced such products;
 - b. species of the products;
 - c. areas of catch (inside or outside the EPO);
 - d. product weight by product type;
 - e. points of export;
 - f. names and addresses of owners of the vessels;
 - g. registration.
2.
 - a. The Commission, through the Permanent Working Group on Compliance (Compliance Working Group) or the Joint Working Group on Fishing by Non-Parties (Joint Working Group), as appropriate, should identify each year:
 - i. CPCs that have failed to fulfil their obligations under the IATTC Convention in respect of IATTC conservation and management measures, in particular, by not taking measures or exercising effective control to ensure compliance with IATTC conservation and management measures by vessels flying their flags; and/or
 - ii. Non-parties that have failed to discharge their obligations under international law to cooperate with IATTC in the conservation and management of species covered by the IATTC Convention, in particular, by not taking measures or exercising effective control to ensure that vessels flying the flags do not engage in any activity that undermines the effectiveness of IATTC conservation and management measures.
 - b. These identifications should be based on a review of all information provided in accordance with paragraph 1 or, as appropriate, any other relevant information, such as: the catch data compiled by the Commission; trade information on these species obtained from national statistics; any IATTC statistical document program; the IATTC IUU Vessel List; as well as any other information obtained in ports and on fishing grounds.
 - c. In deciding whether to make such an identification, the Compliance Working Group or the Joint Working Group should consider all relevant matters, including the history, nature, circumstances, extent, and gravity of the act or omission that may have diminished the effectiveness of IATTC conservation and management measures.
3. The Commission should ask the CPCs and non-parties identified under paragraph 2 to rectify the act or omission that led to their identification, and notify them of the following:
 - a. the reason(s) for the identification, with all available supporting evidence;
 - b. the opportunity to respond to the Commission in writing, at least 30 days prior to the Annual Meeting of the Commission with regard to the identification decision and other relevant information, for example, evidence refuting the identification or, where appropriate, a plan of action for improvement and the steps they have taken to rectify the situation; and
 - c. in the case of a non-party, invite it to participate as an observer at the annual meeting where the issue will be considered.

4. CPCs are encouraged, jointly and individually, to ask the CPCs or non-parties identified pursuant to paragraph 2 to rectify the act or omission that led to their identification ified under paragraph 2 so as not to diminish the effectiveness of IATTC conservation and management measures.
5. The Commission, through the Director, should, by more than one means of communication, transmit the Commission's request to the identified CPC or non-party, and seek to obtain confirmation from the CPC or the non-party that it received the notification.
6. The Compliance Working Group or the Joint Working Group should evaluate the response of each CPC or non-party, together with any new information, and recommend that the Commission decide on one of the following actions to be applied to each CPC and non-party:
 - a. revoke its identification made pursuant to paragraph 2;
 - b. continue its identification made pursuant to paragraph 2; or
 - c. adopt non-discriminatory trade restrictive measures.

In the case of CPCs, trade measures should be considered only when any such actions as the Commission may take to promote compliance[, such as the reduction of catch limits,] either have proven unsuccessful or would not be effective.

7. If the Commission decides on the action described in paragraph 6.c, it should recommend to the Parties, pursuant to Articles I.2 and II.5 of the IATTC Convention, to take specific non-discriminatory trade restrictive measures, consistent with their international obligations. The Commission should notify the CPCs and non-parties concerned of the decision and the underlying reasons, in accordance with the procedures specified in paragraph 5.
8. CPCs should notify the Commission of any measures that they have taken for the implementation of the non-discriminatory trade restrictive measures adopted in accordance with paragraph 7.
9. In order for the Commission to recommend the lifting of trade restrictive measures, the Compliance Working Group and/or the Joint Working Group should review each year all trade restrictive measures adopted in accordance with paragraph 7. Should this review show that the situation has been rectified, the Compliance Working Group or the Joint Working Group, as appropriate, should recommend to the Commission the lifting of the non-discriminatory trade restrictive measures. Such decisions should also take into consideration whether the CPCs and/or non-parties concerned have taken concrete measures capable of achieving a lasting improvement of the situation.
10. Where exceptional circumstances so warrant or where the available information clearly shows that, despite the lifting of trade restrictive measures, a CPC or non-party continues to diminish the effectiveness of IATTC conservation and management measures, the Commission may decide on immediate action regarding that CPC or non-party, including, as appropriate, the imposition of trade restrictive measures in accordance with paragraph 7. Before making such a decision, the Commission should ask the CPC or non-party concerned to discontinue its wrongful conduct and should provide the CPC or non-party with a reasonable opportunity to respond.
11. The Commission should establish annually a list of CPCs and non-parties that are subject to a trade restrictive measure pursuant to paragraph 7 and, with respect to non-parties, are considered non-cooperating non-parties to IATTC.