

EU/Chile Agreement: conservation of swordfish stocks in the South-Eastern Pacific Ocean

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PURPOSE: to conclude the Agreement in the form of an Exchange of Letters on the conclusion of the Understanding between the EU and Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean.

PROPOSED ACT: Council Decision.

LEGAL BASES: Article 43, in conjunction with Article 218(6)(a) of the Treaty on the Functioning of the European Union.

IMPACT ASSESSMENT: no impact assessment was carried out.

BACKGROUND: following a complaint brought by ANAPA (Spanish National Association of Owners of Deep-sea Longliners), the Commission initiated an investigation under Council Regulation No. 3286/94 (Trade Barriers Regulation) (notice of initiation published on 10 July 1998). On 23 March 1999, the Commission issued its investigation report, according to which Chilean practices denying access to Chilean ports to vessels fishing swordfish in the South-Eastern Pacific were inconsistent with Article V of the General Agreement on Tariffs and Trade of 1994 (GATT).

Following Commission Decision 2000/296/EC concerning the Chilean prohibition on unloading of swordfish catches of Community vessels in Chilean ports, the Commission initiated a WTO dispute settlement procedure against Chile. In reaction to this WTO case, Chile asked that certain questions be submitted to compulsory dispute settlement under the UN Law of the Sea Convention. Subsequently, Chile and the Community submitted on 19 December 2000 a dispute regarding the Conservation and Sustainable Exploitation of Swordfish Stocks in the South-Eastern Pacific Ocean to a Special Chamber of the International Tribunal of the Law of the Sea (ITLOS).

On 25 January 2001, the Commission and Chile reached a provisional arrangement as a consequence of which Parties agreed to the parallel suspension of the WTO and ITLOS procedures. In April 2008 the Council adopted a decision authorising the Commission to conduct negotiations with Chile on behalf of the EC to reach a definitive agreement on a new fisheries cooperation framework. On 30 October 2008 the Commission presented to the Council's Working Party on Internal and External Fisheries the text of the Understanding agreed between negotiators concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean.

On 3 December 2009 the Commission presented to the Council's Working Party on Internal and External Fisheries the outcome of the bilateral technical talks with Chile that took place in October 2009 in New York.

In the meantime, both Parties have already jointly withdrawn the ITLOS case. Preparations are also underway for a joint withdrawal of the WTO Case (WT/DS/193 -Measures Affecting the Transit and Importation of Swordfish). However, the Commission will not, at this stage propose a closure of the Trade Barriers Regulation case. The Commission intends to make proposal for the withdrawal only after the formal conclusion of the Agreement by the respective EU and Chilean authorities and provided that the provisions on access to Chilean ports of EU vessels fishing for swordfish on the high seas in the South-Eastern Pacific have been implemented in a satisfactory manner during a reasonable period of time.

CONTENT: this proposal deals with the conclusion of the Agreement in the form of an Exchange of Letters on the conclusion of the Understanding between the EU and Chile concerning the conservation of swordfish stocks in the South-Eastern Pacific Ocean. The new Understanding will ensure access to designated Chilean ports for **transshipments and landings operations, as well as for logistical purposes**, for fishing vessels flying the flags of Member States operating in the South-Eastern Pacific waters. The new Understanding does not call into question the respective competences of existing regional fisheries management organisations currently established (Inter-American Tropical Tunas Commission – IATTC) nor of those that are in the course of being established (South Pacific Regional Fisheries Management Organisation – SPRFMO).

The Parties initialled a technical Annex I to the Understanding that contains detailed procedures to be followed by the EU vessels fishing for swordfish seeking access the designated Chilean ports. These procedures are in keeping with modern FAO Port State measures.

Member States and the European Parliament should be invited by the Commission to start the relevant procedure for conclusion. In the meantime, in order to ensure that access for EU vessels fishing for swordfish to the designated Chilean ports is not delayed any further, it is necessary to provisionally apply the Understanding, for which a simultaneous but separate Council decision has been proposed.

The text of this agreement under the form of an exchange of letters between the European Union and Chile is attached this decision.

FINANCIAL IMPLICATIONS: this proposal has no implication for the Community budget.