

- a Canadian challenge of a US embargo on imports of Canadian tuna justified as consistent with the requirements of article XX (g) relating to the conservation of an exhaustible natural resource;²²
- a US challenge first of Canadian export controls on salmon and herring and subsequently of landing requirements, both justified on the grounds that they were required to back up resource management practices;²³
- a Canadian challenge of US controls on the imports of lobsters below a minimum size, justified on the grounds that the trade measure was part of a resource management scheme;²⁴
- a challenge by the United States of a Thai ban on the importation of cigarettes;²⁵ and
- a Mexican challenge of US restrictions on imports of yellowfin tuna, justified on the grounds that the measure was necessary to reduce the slaughter of dolphins as a result of the fishing methods used by Mexican and other non-US fishermen.²⁶

²² GATT, *Basic Instruments and Selected Documents* (BISD), vol. 29 (1981-82), pp. 91ff. The panel ruled that the measure had discriminated against Canada and could not be justified under article XX (g) because there was insufficient evidence that the United States had taken steps to conserve tuna either through domestic production or consumption measures.

²³ The GATT panel ruled that Canada's export prohibition "could not be deemed to be primarily aimed at the conservation of salmon and herring stocks and rendering effective the restrictions on the harvesting of these fish... [and] were not justified by Article XX(g)." GATT, BISD, vol. 35 (1987-88), pp. 98ff. The FTA panel ruled that the landing requirement was similarly inconsistent because it also was not aimed primarily at conservation. The landing requirement could be made consistent if a certain percentage was made available for export at a level that would still allow the remaining catch to be landed and counted as part of a conservation management scheme. "In the Matter of Canada's Landing Requirement for Pacific Coast Salmon and Herring," Final Report of panel constituted under chapter 18 of the Canada-United States FTA, October 16, 1989.

²⁴ "In the Matter of United States Minimum Size Requirement for Atlantic Coast Lobster," Final Report of panel constituted under chapter 18 of the Canada-United States FTA, May 25, 1990. The panel ruled that the United States requirement was consistent with its GATT obligations because it applied equally to both imports and domestic production.

²⁵ GATT, BISD, vol. 37 (1989-90), pp. 200ff. The panel ruled that the import ban on cigarettes was inconsistent with article XX (b) because other means were available to Thailand to control the quantity and quality of cigarettes consumed consistent with its health objectives without discriminating against imported products.

²⁶ Gary Clyde Hufbauer and Jeffrey J. Schott, *North American Free Trade: Issues and Recommendations* (Washington: Institute for International Economics, 1992), p. 143. The panel report rejected the US claim that its measure was consistent with its GATT requirements, ruling that it could not extend a process requirement extraterritorially to products indistinguishable from those produced by domestic producers. In effect, it ruled that GATT applies to like products, not processes.