

## Facts of the *US - Shrimp Turtle* case WT/DS58

Prepared by Brett Williams, 30 August 2016

Based on the information in

WT/DS58/AB/R paras 1-5

WT/DS58/RW, paras 2.22 to 2.32 and the 1999 Guidelines annexed to that report.

WT/DS58/AB/RW paras 1-7.

Prepared for the use of University of Sydney students in LAWS3439 International Economic Law, LAWS6063 WTO LAW I and LAWS 6249 WTO Law II.

If you find any errors, I would be grateful if you would advise me.

S609(a)	Requires S of State to initiate negotiations for bilateral / multilateral treaties to protect sea turtles.
S609(b)(1)	Imposed a ban on shrimp harvested with commercial fishing technology which may adversely affect sea turtles.
S609(b)(2)	Provides that the import ban will not apply to nations that are certified.

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**2 ways to be Certified under s609 and as set out in the Guidelines**

		<b><u>1996 Guidelines</u></b>
Section 609(b)(2)(C)	A country may be certified as having a fishing environment that does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting	Certification will be given if: (a) The nation has no sea turtles within its waters;
		(b) The nation harvests shrimp exclusively by methods that do not pose a threat to sea turtles
		(c) The nations commercial shrimp trawling operations occur exclusively in waters in which there are no sea turtles
Section 609(b)(2)(A) & (B)	A country may be certified if the country provides documentary evidence of the adoption of a regulatory program governing the incidental taking of sea turtles , that is	
	(i) Comparable to the US programme	Certification will be given if the program: (i) Requires use of TEDs (with any exceptions being comparable to the US program)
		(ii) Has a credible enforcement effort that includes monitoring for compliance and appropriate sanctions
	AND	AND Dept of State will take into account other measures in making the comparability determination
	AND (ii) where the average rate of incidental taking of sea turtles is comparable to that of the US.	Guidelines provide: The average rate of incidental taking of sea turtles will be deemed comparable if the harvesting nation requires the use of TEDs in a manner comparable to that of the US program.

**In 1999 – s609 was not amended but 1999 Guidelines indicate:**

That the prohibition in Section 609 does not apply to:

- (a) ...
- (b) shrimp harvested by trawlers using TEDs comparable in effectiveness to those required in the United States
- (c) ...
- (d) Shrimp harvested in ... circumstances that the Department of State may determine ... does not pose a threat of the incidental taking of sea turtles.

And in relation to the 2 ways to be Certified

		<b><u>1999 Guidelines</u></b>
Section 609(b)(2)(C)	A country may be certified as having a fishing environment that does not pose a threat of incidental taking of sea turtles in the course of commercial shrimp trawl harvesting	Certification will be given if: <b><u>(UNCHANGED)</u></b> (a) The nation has no sea turtles within its waters;
		(b) The nation harvests shrimp exclusively by methods that do not pose a threat to sea turtles
		(c) The nations commercial shrimp trawling operations occur exclusively in waters in which there are no sea turtles
Section 609(b)(2)(A) & (B)	A country may be certified if the country provides documentary evidence of the adoption of a regulatory program governing the incidental taking of sea turtles , that is	
	(iii) Comparable to the US programme	Certification will be given if the program: <b><u>(UNCHANGED)</u></b> (i) Requires use of TEDs (with any exceptions being comparable to the US program)
		(ii) Has a credible enforcement effort that includes monitoring for compliance and appropriate sanctions
	AND	<b><u>OR Certification can also be given if the program: (NEW)</u></b>

		(i) <b><u>Does not use TEDs but is still a comparably effective program (taking into account any differences between the shrimp fishing conditions in the US and those in other nations).</u></b>
	AND (iii) where the average rate of incidental taking of sea turtles is comparable to that of the US.	Guidelines provide: The average rate of incidental taking of sea turtles will be deemed comparable if: the harvesting nation requires the use of TEDs in a manner comparable to that of the US program. <b><u>(UNCHANGED)</u></b> <b><u>OR</u></b> <b><u>The harvesting nation demonstrates it has implemented a comparably effective programme to protect sea turtles in the course of shrimp trawl fishing without the use of TEDs. (NEW)</u></b>