

Original: Spanish

UNITED STATES - MEASURES CONCERNING THE IMPORTATION, MARKETING AND SALE OF TUNA AND TUNA PRODUCTS

Request for Consultations by Mexico

The following communication, dated 24 October 2008, from the delegation of Mexico to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 14 of the Agreement on Technical Barriers to Trade (TBT Agreement), the Government of Mexico hereby requests consultations with the Government of the United States of America in relation to certain measures taken by the latter concerning the importation, marketing and sale of tuna and tuna products. The measures include:

- *United States Code*, Title 16, Section 1385 ("Dolphin Protection Consumer Information Act");
- *Code of Federal Regulations*, Title 50, Section 216.91 ("Dolphin-safe labeling standards") and Section 216.92 ("Dolphin-safe requirements for tuna harvested in the ETP [Eastern Tropical Pacific Ocean] by large purse seine vessels");
- The ruling in *Earth Island Institute v. Hogarth*, 494 F.3d 757 (9th Cir. 2007).

The US measures have the effect of prohibiting the labelling of Mexican tuna and tuna products as "dolphin-safe", even when the tuna has been harvested by means that comply with the multilaterally agreed "dolphin-safe" standard established by the Inter-American Tropical Tuna Commission, while tuna products from most other countries, including the United States, are allowed to be labelled as "dolphin-safe".

In this respect, it appears that:

1. Mexican products are accorded treatment less favourable than like products of national origin and like products originating in any other country;
2. Mexican products are not accorded immediately and unconditionally any advantage, favour, privilege or immunity granted to like products of any other Member;
3. the measures have the effect of creating unnecessary obstacles to trade;

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4. the measures do not use as their basis an existing international standard; and
5. the procedures for assessing conformity with the "dolphin-safe" technical regulation (i) do not grant access for suppliers of Mexican products under conditions no less favourable than those accorded to like products of national origin or originating in any other country, in a comparable situation, and (ii) create unnecessary obstacles to international trade.

These measures appear to be inconsistent with the obligations of the United States under the GATT 1994 and the TBT Agreement. The provisions of these Agreements with which the measures appear to be inconsistent include in particular, but not necessarily exclusively, the following:

- (i) Articles 2, 5, 6 and 8 of the TBT Agreement; and
- (ii) Articles I and III of the GATT 1994.

These violations nullify or impair the benefits accruing to Mexico under these Agreements and cannot be justified under any of the covered Agreements.

Mexico reserves the right to raise additional factual or legal claims or matters regarding the measures at issue during the course of consultations.

Mexico looks forward to receiving the response of the United States to this request in order to set a mutually convenient date for consultations.
