WORLD TRADE ORGANIZATION

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

Request for the Establishment of a Panel by Mexico

The following communication, dated 9 March 2009, from the delegation of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 24 October 2008, Mexico requested consultations with the United States 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), in relation to certain measures taken by the latter concerning the importation, marketing and sale of tuna and tuna products. Mexico held consultations with the United States on 17 December 2008. Unfortunately, these consultations failed to resolve the dispute.

In view of the foregoing, Mexico respectfully requests the establishment of a panel in conformity with Articles 4 and 6 of the DSU, Article XXIII of the GATT 1994 and Article 14 of the TBT Agreement.

The measures adopted by the United States concerning the importation, marketing and sale of tuna and tuna products include the following:

- *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).

Mexico holds that 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".

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Mexico considers the aforementioned measures to be inconsistent with the obligations of the United States under Article 2 of the TBT Agreement and Articles I and III of the GATT 1994, for the following reasons:

1. Mexican products are not accorded immediately and unconditionally any advantage, favour, privilege or immunity granted to like products of any other Member, contrary to Article I.1 of the GATT 1994;

2. Mexican products are accorded treatment less favourable than like products of US origin, contrary to Article III.4 of the GATT 1994;

3. Mexican products are accorded treatment less favourable than like products of US origin and like products originating in any other country, contrary to Article 2.1 of the TBT Agreement;

4. The measures have the effect of creating unnecessary obstacles to trade, contrary to Article 2.2 of the TBT Agreement;

5. The measures are maintained although their objectives can be addressed in a less trade-restrictive manner, contrary to Article 2.3 of the TBT Agreement; and

6. The measures do not use as their basis an existing international standard, contrary to Article 2.4 of the TBT Agreement.

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

For the aforementioned reasons, Mexico respectfully requests the establishment of a panel with standard terms of reference as set out in Article 7 of the DSU.

I therefore request that this matter be included in the agenda for the next regular meeting of the Dispute Settlement Body on 20 March 2009.

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