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

RECOURSE TO ARTICLE 22.7 OF THE DSU BY MEXICO

The following communication, dated 11 May 2017, from the delegation of Mexico to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 22.7 of the DSU.

Upon instruction from my authorities, I hereby request that the following item be included in the agenda of the regular meeting of the Dispute Settlement Body (DSB) of 22 May 2017:

*United States – Measures Concerning the Importation, Marketing
and Sale of Tuna and Tuna Products (DS381).*

*– Request by Mexico to suspend obligations in conformity with
Article 22.7 of the DSU.*

On 13 June 2012, the DSB adopted the Appellate Body Report and the modified Panel Report. In those reports, it was found that the US "dolphin safe" labelling provisions were inconsistent with Article 2.1 of the Agreement on Technical Barriers to Trade (TBT Agreement). The DSB recommended that the United States bring the measure into conformity with its obligations.

In this connection, the United States informed the DSB that it intended to implement the DSB recommendations and rulings. On 9 July 2013, the United States published in its Federal Register a Final Rule entitled "Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products" (2013 Final Rule). In Mexico's view, that rule did not bring the United States into compliance with the recommendations and rulings of the DSB, and Mexico therefore initiated a proceeding under Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU). In its panel request, Mexico indicated that the "measure taken to comply with the recommendations and rulings" of the DSB, hereinafter referred to as the "amended tuna measure", comprises: (i) Section 1385 ("Dolphin Protection Consumer Information Act"), as contained in Subchapter II ("Conservation and Protection of Marine Mammals") of Chapter 31 ("Marine Mammal Protection"), in Title 16 of the US Code; (ii) US Code of Federal Regulations, Title 50, Part 216, Subpart H ("Dolphin Safe Tuna Labeling"), as amended by the 2013 Final Rule; (iii) The ruling in *Earth Island Institute v. Hogarth*, 494 F.3d 757 (9th Cir. 2007); (iv) Any implementing guidance, directives, policy announcements or any other document issued in relation to instruments (i) through (iii) above, including any modifications or amendments in relation to those instruments.¹

On 14 April 2015, the Compliance Panel found that the amended tuna measure was inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and that it was not justified under Article XX of the GATT 1994. The Appellate Body Report circulated to WTO Members on 20 November 2015 upheld the Panel's findings that the measure was inconsistent with Article 2.1 of the TBT Agreement and Articles I:1 and III:4 of the GATT 1994, and that it was not justified under Article XX of

¹ WT/DS381/20.

the GATT 1994. On 3 December 2015, the DSB adopted the Article 21.5 Appellate Body Report and the Compliance Panel Report, as modified by the Appellate Body Report.

On 10 March 2016, in accordance with Article 22 of the DSU and the "Understanding between the United States and Mexico Regarding Procedures under Articles 21 and 22 of the DSU"², Mexico requested authorization from the DSB to suspend the application to the United States of tariff concessions and other related obligations in the goods sector under the GATT 1994.³

On 22 March 2016, the United States objected to the level of suspension of concessions or other obligations under the GATT 1994 proposed by Mexico.⁴

Consequently, in accordance with the provisions of Article 22.6 of the DSU, the matter was referred to arbitration.

The Arbitrator issued its decision of 25 April 2017⁵, in which it determined the level of nullification or impairment caused to Mexico by the 2013 Tuna Measure.

In accordance with Article 22.7, Mexico requests authorization from the DSB to suspend the application to the United States of tariff concessions and other related obligations in the goods sector under the GATT 1994 in an amount of US\$163.23 million per annum.

Mexico will implement the suspension of tariff concessions and other related obligations by increasing import tariffs on goods from the United States in a manner consistent with Article 22.3 of the DSU.

Mexico will submit the details of this measure at the earliest possible date.

Finally, I request that this communication be circulated to all Members.

² WT/DS381/19.

³ WT/DS381/29.

⁴ WT/DS381/30.

⁵ WT/DS381/ARB.