



7 August 2013

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Page: 1/3

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

**UNDERSTANDING BETWEEN THE UNITED STATES AND MEXICO
REGARDING PROCEDURES UNDER ARTICLES 21 AND 22 OF THE DSU**

The following communication, dated 2 August 2013, from the delegation of the United States and the delegation of Mexico to the Chairperson of the Dispute Settlement Body, is circulated at the request of these delegations.

Mexico and the United States would like to inform the Dispute Settlement Body of the attached "Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding" between Mexico and the United States with respect to the above captioned dispute.

We respectfully request that you circulate the attached agreement to Members of the Dispute Settlement Body.

Agreed Procedures under Articles 21 and 22 of the Dispute Settlement Understanding

*United States — Measures Concerning the Importation, Marketing and Sale
of Tuna and Tuna Products*
(WT/DS381)

The Dispute Settlement Body ("DSB") adopted its recommendations and rulings in the dispute *United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products* (WT/DS381) on 13 June 2012.

Pursuant to Article 21.3(b) of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Mexico and the United States agreed that the reasonable period of time ("RPT") for the United States to implement the recommendations and rulings of the DSB would be 13 months from 13 June 2012 (WT/DS381/17). The RPT expired on 13 July 2013. On 9 July 2013, the U.S. National Oceanic and Atmospheric Administration published in the *Federal Register* a final rule modifying the U.S. dolphin-safe labeling requirements. 78 Fed. Reg. 40,997 (9 July 2013).

Mexico and the United States (the "Parties") have agreed on the following procedures for the exclusive purposes of this dispute. They are designed to facilitate the resolution of the dispute and reduce the scope for procedural disputes and are without prejudice to either Party's views on the correct interpretation of the DSU:

1. If Mexico considers that the United States has taken a measure to comply with the recommendations and rulings of the DSB that is inconsistent with the covered agreements or there is disagreement between the Parties as to the existence of a measure taken to comply, Mexico may request the establishment of a panel pursuant to DSU Article 21.5 at any time.
2. Mexico is not required to hold consultations with the United States prior to requesting the establishment of an Article 21.5 panel.
3. The Parties shall cooperate to enable the DSU Article 21.5 panel to circulate its report within 90 days of the panel's establishment, excluding such time during which the panel's work may be suspended pursuant to DSU Article 12.12.
4. Either Party may request the DSB to adopt the report of the DSU Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report unless either Party appeals the report to the Appellate Body.
5. In the event of an appeal of the DSU Article 21.5 panel report, the Parties shall cooperate to enable the Appellate Body to circulate its report within 90 days from the date of notification of the appeal to the DSB. Further, either Party may request the DSB to adopt the reports of the Appellate Body and of the DSU Article 21.5 panel (as modified or upheld by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report.
6. In the event that the DSB, following a proceeding under DSU Article 21.5, rules that measure taken to comply does not exist or is inconsistent with a covered agreement, Mexico may request authorization to suspend the application of concessions or other obligations under the covered agreements to the United States pursuant to DSU Article 22. The United States shall not assert that Mexico is precluded from obtaining such DSB authorization on the ground that the request was made outside the 30-day time-period specified in DSU Article 22.6.
7. If Mexico requests authorization to suspend the application of concessions or other obligations under the covered agreements to the United States pursuant to DSU Article 22, the United States may object under DSU Article 22.6 to the level of suspension of concessions or other obligations and/or claim that the principles and procedures set forth in DSU Article 22.3 have not been followed, thereby referring the matter to arbitration pursuant to DSU Article 22.6.

8. The Parties will cooperate to enable the arbitrator under DSU Article 22.6 to circulate its decision within 60 days of the referral to arbitration.
9. If any of the original panelists is not available for either the DSU Article 21.5 panel or the DSU Article 22.6 arbitration (or both), the Parties will promptly consult on a replacement, and either Party may request the Director-General of the WTO to appoint, within ten days of being so requested, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the Parties will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
10. The Parties will continue to cooperate in all matters related to these agreed procedures and agree not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties consider that a procedural aspect has not been properly addressed in these procedures, they will endeavour to find a solution within the shortest time possible that will not affect the other aspects and steps agreed herein.
11. These agreed procedures in no way prejudice other rights of either Party to take any action or procedural step to protect its rights and interests, including recourse to the DSU.

Signed in Geneva, 2 August 2013.

For the United States of America

For the United Mexican States

(Signed)
Mr David P. Shark
Chargé d'affaires

(Signed)
H.E. Mr Fernando De Mateo
Ambassador
