

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

**(WT/DS381)**

**EXECUTIVE SUMMARY  
OF THE FIRST WRITTEN SUBMISSION  
OF THE UNITED STATES OF AMERICA**

**April 23, 2010**

## I. INTRODUCTION

1. The measures at issue in this dispute establish conditions under which the voluntary “dolphin safe” label may be used on tuna products. These conditions do not allow tuna products to be labeled dolphin safe if they contain tuna that was caught by intentionally encircling and deploying purse seine nets on dolphins. This fishing technique is commonly referred to as “setting on dolphins” and involves chasing, encircling and deploying purse seine nets on dolphins to catch tuna that swim beneath the dolphins. The U.S. measures apply to tuna caught in any fishery where there is a regular and significant association between tuna and dolphins and apply regardless of the origin of the tuna. The only known fishery where there is a regular and significant association between tuna and dolphins is the Eastern Tropical Pacific Ocean (ETP).

2. Setting on dolphins to catch tuna has well-documented adverse impacts on dolphins in the ETP. Not only are dolphins killed when encircled with purse seine nets to catch tuna (e.g., over 1000 dolphins were observed killed in sets with purse seine nets in 2009), but research indicates that setting on dolphins to catch tuna causes a number of other adverse effects on dolphins, including separation of mothers and their dependent calves and reduced reproductive success due to stress. Together these adverse effects have resulted in dolphin populations in the ETP that are small fractions of their “pre-fishery” levels. Today, the population level of two main species of dolphins impacted by dolphin fishing in the ETP – northeastern offshore spotted and eastern spinner dolphins – remain at only 19 and 29 percent, respectively, of the levels that existed before setting on dolphins became the predominate technique to fish for tuna in the ETP.

3. The U.S. dolphin safe labeling provisions ensure that when a dolphin safe label appears on tuna products in the United States it accurately conveys to consumers that the product does not contain tuna that was caught in a manner that adversely affects dolphins. Any tuna that is caught in the ETP – including Mexican tuna – during a trip using a technique other than setting on dolphins and in a set in which no dolphins were otherwise killed or seriously injured is eligible to bear the dolphin safe label. The fundamental premise of Mexico’s claims – that the U.S. measures prohibit use of the dolphin safe label on Mexican tuna – is simply incorrect.

4. Mexico is also incorrect that the U.S. measures deny Mexico access to the U.S. market. The U.S. measures set out a voluntary labeling scheme. Mexico can and does sell tuna in the U.S. market that is not labeled dolphin safe. Moreover, tuna caught by one-third of Mexican purse seine vessels that fish for tuna in the ETP is already eligible for the dolphin safe label; yet Mexican processors do not to use it. As detailed below, each of Mexico’s legal claims fail.

5. In addition, although not relevant to the legal claims in this dispute, Mexico is incorrect that the United States failed to abide by its “commitment ... to amend its law” to allow tuna products that contain tuna that was caught by setting on dolphins to be labeled dolphin safe. The United States agrees that the AIDCP has made an important contribution to dolphin conservation in the ETP, including that it has fostered the continued reduction in *observed* dolphin mortalities in the fishery. However, this tells only part of the story. Dolphins continue to die, or be seriously injured, in the ETP as a result of setting on dolphins to catch tuna. And, their populations remain depleted in the ETP. And this is true even though the parties to the AIDCP and their fleets are

generally adhering to their dolphin conservation obligations under the AIDCP. So, while the AIDCP has been successful in significantly reducing the number of observed dolphin mortalities in the ETP, dolphins continue to be adversely affected and dolphin populations have not yet demonstrated the recovery that would be expected if adverse effects of setting on dolphins to catch tuna had been completely alleviated. The United States has a right to ensure that consumers are not misled or deceived about whether tuna products contain tuna that was caught by a method that is “dolphin safe” - that is, a method that does not involve a fishing technique that adversely affects dolphins – and to ensure that the U.S. market is not used to encourage fishing fleets to use fishing techniques that adversely affect dolphins.

## II. LEGAL ARGUMENT

6. Mexico has failed to establish a *prima facie* case that the U.S. measures are inconsistent with U.S. obligations under Articles I:1 and III:4 of the GATT 1994 and the TBT Agreement. First, the U.S. dolphin safe labeling provisions do not discriminate based on origin. Second, the U.S. dolphin safe labeling are voluntary and therefore do not constitute technical regulations falling within the scope of the TBT Agreement. Accordingly, Mexico cannot even establish that Articles 2.1, 2.2, and 2.4 of the TBT Agreement apply to the U.S. measures. Third, the dolphin safe labeling provisions serve legitimate objectives; allowing tuna to be labeled “dolphin safe” that is caught by setting on dolphins would not fulfill these objectives. Accordingly, Mexico cannot sustain its claims under Articles 2.2 and 2.4 of the TBT Agreement. (Although Mexico also included Article 2.3 of the TBT Agreement in its panel request, Mexico appears to have abandoned that claim as it is not addressed in its submission.)

### A. The U.S. dolphin safe labeling provisions are not inconsistent with GATT 1994 Article III:4

7. The U.S. dolphin safe labeling provisions do not discriminate based on origin and therefore do not afford less favorable treatment to Mexican tuna products as compared to like domestic products. Because U.S. dolphin safe labeling provisions do not afford less favorable treatment to Mexican tuna or tuna products, Mexico has failed to establish a *prima facie* case that the U.S. provisions are inconsistent with Article III:4 of the GATT 1994.

8. First, because the U.S. provisions do not condition eligibility to use the dolphin safe label on the origin of the tuna product, the U.S. provisions do not alter the conditions of competition to the detriment of Mexican tuna or tuna products. The U.S. provisions provide that any tuna products – regardless of origin – may use the dolphin safe label if they meet the criteria for the label. Second, one-third of the vessels in Mexico's tuna fleet is under 363 metric tons and tuna products containing tuna caught by these vessels are already eligible under the U.S. provisions to use the dolphin safe label. This in itself is evidence that the U.S. provisions do not afford less favorable treatment to Mexican tuna and tuna products based on origin. Third, the U.S. dolphin safe labeling provisions afford use of the dolphin safe label equally to all tuna products that meet the conditions set out in those provisions. It is that Mexican vessels have chosen and continue to

choose to catch tuna by setting on dolphins that makes tuna products containing tuna caught by these vessels ineligible for the dolphin safe label.

9. The United States would like to point out that Mexico overstates the cost and difficulty of using other techniques to catch tuna and in fact provides no evidence to support its claim that using other techniques would require Mexican vessels to “incur considerable financial and other costs.” The same boats and much of the same gear used to set on dolphins to catch tuna may be used to catch tuna using other techniques, specifically sets on floating objects and unassociated schools of tuna. Mexico also overstates that the ETP is its “traditional fishing grounds” and that fishing for tuna in another fishery would be too costly. While Mexican vessels have traditionally fished for tuna in the ETP, so too do vessels flagged to a number of other countries, including the United States. Mexico has provided no evidence to substantiate its contention that it would be too costly for Mexican vessels to fish for tuna in other fisheries. Mexico’s statements about the relative environmental impacts of setting on dolphins to catch tuna as compared to other techniques to catch tuna in the ETP are irrelevant and unfounded.

**B. The U.S. dolphin safe labeling provisions are not inconsistent with GATT 1994 Article I:1**

10. The U.S. measures at issue are consistent with Article I:1 of the GATT 1994. The U.S. measures do not accord any advantage to products of any other member that is not also immediately and unconditionally accorded to products of Mexico within the meaning of GATT 1994 Article I:1. Just as the U.S. measures do not discriminate against Mexico within the meaning of Article III:4, those measures are nondiscriminatory within the meaning of Article I:1.

11. First, the U.S. measures do not modify the conditions of competition because all tuna is subject to the same conditions on use of the dolphin safe label. The criteria for being eligible to use the dolphin safe label are origin neutral. Second, the U.S. measures do not afford less favorable treatment to Mexican tuna or tuna products. Tuna products containing tuna caught by some Mexican vessels are already eligible under the U.S. provisions to use the dolphin safe label. Third, while Mexican vessels have traditionally fished for tuna in the ETP, so too do vessels flagged to a number of other countries, and Mexico does not explain why the origin neutral rules disadvantage it. Mexico's arguments about the relative environmental impacts of various fishing techniques are irrelevant and unfounded. The Article I:1 analysis in *US – Tuna Dolphin I* could not be more relevant, as the panel, responding to essentially the same arguments from Mexico in that dispute, concluded that the dolphin safe labeling measures were not inconsistent with Article I:1. Finally, contrary to Mexico’s assertion, the advantage, favour, or privilege granted by the United States is the opportunity to use the dolphin safe label if the conditions on use of the dolphin safe label are met.

**C. The U.S. dolphin safe labeling provisions are not technical regulations and therefore not subject to Article 2 of the TBT Agreement**

12. Measures that fall outside the definition of a technical regulation set out in Annex 1 of the TBT Agreement are not subject to the obligation set out in Article 2 of the TBT Agreement. Because the U.S. dolphin safe labeling provisions do not meet the definition of a technical regulation, Article 2 does not apply and the U.S. dolphin safe labeling provisions cannot be inconsistent with Articles 2.1, 2.2 or 2.4 of the TBT Agreement.

13. The definition of a technical regulation in Annex 1 of the TBT Agreement makes clear that technical regulations are documents with which compliance is mandatory and that “lay down product characteristics or their related processes and production methods” or “deal exclusively with terminology, symbols, packaging, marking or labelling requirements as they apply to a product, process or production method” or both. Article 4 and Annex 3 sets out Members' obligations with respect to documents with which compliance is voluntary, whereas Article 2 sets out Members' obligations with respect to documents with which compliance is mandatory. Notably, both the definition of standard and the definition of technical regulation encompass “labelling requirements”. Whether a “labelling requirement” falls within the scope of standard or technical regulation thus depends on whether compliance with that requirement is mandatory.

14. Mexico’s assertions that the U.S. dolphin safe labeling provisions set out product characteristics and are mandatory are incorrect. First, the U.S. provisions specify the conditions under which tuna products may be labeled dolphin safe. The U.S. provisions do not specify the product characteristics (or their related processes or production methods) that tuna products must meet (or not meet) to be sold on the U.S. market. Second, U.S. provisions are not mandatory. The U.S. provisions constitute a voluntary labeling measure and such voluntary labeling measures are not covered by the definition of a technical regulation. It is perfectly legal to sell tuna products in the United States that are not dolphin safe and that do not bear the dolphin safe label. In fact, the GATT 1947 panel reached the same conclusion when examining the DPCIA.

15. A voluntary labeling measure does not become a mandatory labeling requirement simply because the measure requires that what is stated on the label to be truthful. The definition of a standard makes clear that a standard, with which compliance is *not* mandatory, may address “labeling requirements.” The difference, then, between a standard that addresses labeling requirements and a technical regulation that addresses labeling requirements is that the former concerns voluntary labeling schemes while the latter concerns mandatory labeling schemes. Confirmation that the definition of a technical regulation only includes mandatory labeling requirements can be found in the decisions and recommendations of the TBT Committee.

**D. The U.S. measures are not inconsistent with Article 2.1 of the TBT Agreement**

16. The analysis under Article 2.1 of the TBT Agreement is similar to the analysis of national treatment and most favored nation provision of the GATT 1994. Mexico relies solely on the arguments it makes regarding the consistency of the U.S. measures with Articles I:1 and III:4 of the GATT 1994 for its arguments under TBT Agreement Article 2.1. The United States has

articulated above why Mexico's arguments under Articles I:1 and III:4 of the GATT 1994 fail, and Mexico's arguments under TBT Agreement Article 2.1 fail for the same reasons. Thus, Mexico has failed to establish that the U.S. measures are inconsistent with Article 2.1 of the TBT Agreement.

**E. The U.S. dolphin safe labeling provisions are not inconsistent with Article 2.2 of the TBT Agreement**

17. The first sentence of Article 2.2 of the TBT Agreement establishes the general rule that Members shall ensure that technical regulations do not create unnecessary obstacles to international trade, while the second sentence of Article 2.2 explains that "for this purpose" technical regulations shall not be more trade-restrictive than necessary to fulfill a legitimate objective." The preamble to the TBT Agreement makes clear that each Member has the right to decide for itself which legitimate objectives to pursue and to take measures to meet those objectives "at the levels it considers appropriate," including with respect to measures to protect animal life or health or the environment and to prevent deceptive practices.

18. The U.S. dolphin safe labeling provisions are to fulfill a legitimate objective within the meaning of Article 2.2 of the TBT Agreement. The objectives of the U.S. dolphin safe labeling provisions are (1) ensuring that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphins; and (2) to the extent that consumers choose not to purchase tuna without the dolphin safe label, the U.S. provisions ensure that the U.S. market is not used to encourage fishing fleets to catch tuna in a manner that adversely affects dolphins.

19. Mexico does not address whether the U.S. provisions fulfill the objective of ensuring that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphin and therefore has not established a *prima facie* case that the U.S. dolphin safe labeling provisions are more trade-restrictive than necessary to fulfill that objective.

20. With respect to the objective of protecting dolphins, Mexico appears to believe that the objective of protecting dolphins is not legitimate because the United States should have another objective: preserving other marine species and the environment of the ETP as a whole. It is not for Mexico, however, to decide what policy objectives the United States should pursue. Mexico's argument also ignores the fact that the United States has in place a number of measures to protect other marine species and the environment generally. The U.S. dolphin safe labeling provisions, however, seek to protect dolphins; the U.S. provisions need not also protect every other marine species and the environment as a whole to serve a legitimate objective. Further, Mexico's argument ignores that Article 2.2 expressly includes "protection of ... animal ... life or health, or the environment" in its illustrative list of legitimate objectives.

21. The objective of ensuring that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphins is also one that falls within the illustrative list in Article 2.2, which refers to “prevention of deceptive practices.” By setting out conditions under which tuna products may be labeled dolphin safe, the U.S. provisions are intended to prevent deceptive practices by ensuring that tuna products are not falsely or misleadingly labeled dolphin safe when they are caught using a fishing practice that adversely affects dolphins.

22. Mexico argues, in the alternative, that even if the U.S. dolphin safe labeling provisions “could in principle be found to fulfill a legitimate objective,” the U.S. measures do not fulfill that objective. Mexico’s argument is without merit. First, by limiting use of the dolphin safe label to tuna products that contain tuna that was not caught in a manner that adversely affects dolphins, the U.S. dolphin safe labeling provisions ensure that when consumers purchase tuna products that are labeled dolphin safe they are not misled or deceived about the effect of the harvesting of that tuna on dolphins. Second, to the extent customers choose not to purchase tuna products without the dolphin safe label, the U.S. provisions help ensure that the U.S. market is not used to encourage fishing fleets to set on dolphins. As the practice of setting on dolphins to catch tuna in the ETP decreases in frequency, the associated adverse effects on dolphin populations decrease as well.

23. Mexico’s contention that the U.S. dolphin safe labeling provisions “will not influence or modify the conduct of the ETP fishery” is unfounded. In fact, the demand for tuna products that do not contain tuna that was caught by setting on dolphins is what prompted the U.S. fleet to abandon this fishing technique, as well as what may have prompted Ecuador’s fleet to abandon this technique in recent years. Ecuador’s fleet continues to fish in the ETP, employing techniques other than setting on dolphins to catch tuna, including yellowfin tuna.

24. Mexico also argues that the U.S. dolphin safe labeling provisions have the effect of “withdrawing the economic incentive for countries and fishing fleets to comply with the AIDCP” and undermine the AIDCP, thereby detracting from dolphin protection. This is not supported by the facts. First, the AIDCP was concluded two years after the 1997 amendments to the DCPIA were enacted. Second, the current U.S. dolphin safe labeling provisions have been in force since 1997, with all parties including Mexico generally acting in compliance with their obligations under the AIDCP.

25. Article 2.2 of the TBT Agreement provides that technical regulations shall not be “more trade-restrictive than necessary” to fulfill a legitimate objective. Based on the text of Article 2.2, two elements must be shown for a measure to be considered more trade-restrictive than necessary: (1) the measure must be trade-restrictive; and (2) the measure must restrict trade more than is necessary to fulfill the measure’s legitimate objective.

26. With respect to the first element, Mexico concludes that “measures that are ‘trade-restrictive’ include those that impose any form of limitation of imports, discriminate against

imports or deny competitive opportunities to imports.” The United States agrees that measures that impose limits on imports or discriminates against them would meet the definition of a measure that is “trade-restrictive.” With respect to the second element, the ordinary meaning of the word “necessary” is “that cannot be dispensed with or done without; requisite, essential, needful... requiring to be done; that must be done.” A measure that is “more” trade-restrictive than “necessary” is therefore a measure that restricts trade more than is needed or required to fulfill the measure’s objective. The word “more” implies a comparison. This comparison in turn implies that other reasonably available measures that fulfill the measure’s legitimate objective should be examined to determine whether the measure at issue is “more” than what is required or necessary to fulfill that measure’s objective.

27. Article 5.6 of the SPS Agreement includes a provision similar to Article 2.2 of the TBT Agreement. Article 5.6 provides relevant context for the interpretation of Article 2.2 of the TBT Agreement within the meaning of Article 31(2) of the Vienna Convention and confirms that determining whether a measure is “more trade-restrictive than necessary” within the meaning of Article 2.2 of the TBT Agreement involves determining whether there is an alternative measure that could fulfill the measure’s objective that is significantly less trade-restrictive. This interpretation is confirmed by a December 15, 1993, letter from the Director-General of the GATT to the Chief U.S. Negotiator concerning the application of Article 2.2 of the TBT Agreement.

28. Thus, to establish that the U.S. dolphin safe labeling provisions are more trade-restrictive than necessary, Mexico must establish that there is a reasonably available alternative measure that fulfils the provisions’ objectives that is significantly less trade-restrictive. Mexico has failed to do so.

29. First, contrary to Mexico’s contentions, neither the AIDCP itself nor measures implemented pursuant to it constitute a “reasonably available alternative” that could fulfill the legitimate objectives of the U.S. dolphin safe labeling provisions. While the United States agrees that the AIDCP has made an important contribution to dolphin protection in the ETP, despite the conservation measures called for under the AIDCP, dolphin populations remain depleted and have not recovered. The U.S. dolphin safe labeling provisions together with the measures called for under the AIDCP and other provisions of U.S. law form part of a comprehensive U.S. strategy to protect dolphins. Were the United States to substitute one aspect of this comprehensive strategy for another – for example forgo the dolphin safe labeling provisions in lieu of measures called for under the AIDCP – this would reduce the overall ability of the United States to protect dolphins. In addition, eliminating the U.S. dolphin safe labeling provisions in lieu of the AIDCP would not fulfill the objective of ensuring that consumers are not misled or deceived about whether or not tuna products contain tuna that was caught in a manner that adversely affects dolphins.

30. Second, the U.S. dolphin safe labeling provisions have a minimal impact on trade. As a voluntary labeling scheme, the U.S. provisions do not require tuna or tuna products exported to,



or sold in, the United States to be dolphin safe or to be labeled dolphin safe. And, nothing in the U.S. provisions prohibits tuna products that are not dolphin safe and that are not labeled as such from being exported to, or sold in, the United States. In fact, the United States imported US\$ 13 million worth of tuna and tuna products from Mexico 2009. Nor do the U.S. provisions discriminate against imports. To the extent the U.S. dolphin safe labeling provisions have had an impact on trade, it is not because those measures themselves prohibit or otherwise impose limitations on imports. It is because consumers have a preference for tuna products that contain tuna that is not caught by setting on dolphins.

31. In sum, Mexico has not established that the objectives of the U.S. provisions are not legitimate nor are more trade-restrictive than necessary. For these reasons, Mexico has failed to establish that the U.S. dolphin safe labeling provisions are more trade-restrictive than necessary to fulfill a legitimate objective and therefore has failed to establish that the U.S. provisions are inconsistent with Article 2.2.

**F. The U.S. dolphin safe labeling provisions are not inconsistent with Article 2.4 of the TBT Agreement**

32. As the “relevant international standard” for purpose of its claims under Article 2.4, Mexico cites the definition of “dolphin safe” in an AIDCP resolution: “Resolution to Adopt the Modified System for Tracking and Verification of Tuna.” The definition of “dolphin safe” in the AIDCP tuna tracking resolution does not constitute a relevant international standard within the meaning of Article 2.4 of the TBT Agreement as it is not (1) a standard; (2) international; or (3) relevant.

33. The definition in the AIDCP tuna tracking resolution does not meet the definition of a “standard” in Annex 1 of the TBT Agreement. First, it does not set out “rules, guidelines or characteristics for products or related processes and production methods;” it sets out a definition for purposes of an intergovernmental agreement. This definition does not itself establish any rules regarding the characterization of tuna; it simply defines a term. Second, the definition of “dolphin safe” in the tuna tracking resolution is not contained in a “document approved by a ... body.” The AIDCP tuna tracking resolution is a document approved by the parties to the AIDCP, and neither the AIDCP nor the parties to it constitute a “body” (i.e. a “legal or administrative entity that has specific tasks and composition”). Third, assuming *arguendo* that the AIDCP was a “body” it does not have recognized activities in standardization and, therefore, would not constitute a “recognized” body.

34. The definition in the AIDCP tuna tracking resolution also does not qualify as “international.” Only a limited number of countries participated in the adoption of the AIDCP resolutions, and the AIDCP by its terms limits those who were eligible to do so. These facts preclude the AIDCP resolutions from qualifying as an “international standard” under the TBT Agreement. The TBT Agreement read together with ISO/IEC Guide 2: 1991 mean that an international standard is one that is adopted by a body whose membership is open to the relevant

bodies of at least all Members. (Consensus is also required for a standard to qualify as an "international standard" under the TBT Agreement.)

35. The definition in the AIDCP tuna tracking resolution is not “relevant.” First, the definition does not set out any rules, guidelines or characteristics for the *labeling* of tuna products. It, therefore, does not bear upon, relate to or pertain to the U.S. dolphin safe *labeling* provisions. It is also clear from the text of the tuna tracking resolution that the relevance of its definition of “dolphin safe” is limited to defining that term for purposes of the resolution. Second, the definition of “dolphin safe” in the tuna tracking resolution defines “dolphin safe” as tuna caught in a set in which no dolphins were observed killed or seriously injured. The U.S. dolphin safe labeling provisions, however, seek to ensure that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphins, which includes not only whether the tuna was caught in a set in which dolphins were observed killed or seriously injured but whether dolphins were otherwise adversely affected. The definition of “dolphin safe” in the tuna tracking resolution does not relate or pertain to the objective of the U.S. dolphin safe labeling provisions.

36. Use of the definition of “dolphin safe in the AIDCP tuna tracking resolution would not be effective or appropriate to ensure that consumers are not misled or deceived about whether the tuna products contain tuna that was caught in a manner that adversely affects dolphins or to protect dolphins at the level the United States considers appropriate.

37. Mexico does not advance any arguments that, that definition is an effective or appropriate means to meet the objective of the U.S. provisions to ensure that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphins. For this reason alone, Mexico has failed to establish a *prima facie* case that the U.S. dolphin safe labeling provisions are an effective and appropriate means to fulfill the objectives of those provisions.

38. With respect to protecting dolphins, while the United States agrees that the AIDCP has made an important contribution to protecting dolphins in the ETP, it only addresses part of the problem - that is how to reduce dolphin mortality when setting on dolphins to catch tuna. Because it does not prohibit setting on dolphins to catch tuna, it does not ensure that no dolphins are in fact killed or seriously injured when dolphins are used to catch tuna (in fact, the AIDCP contemplates that up to 5000 dolphins may be killed using this technique per year) and it does not address other adverse effects of setting on dolphins to catch tuna. The same is true for the AIDCP resolutions Mexico cites.

39. The U.S. dolphin safe labeling provisions have as their objective to protect dolphins in ways that go beyond the protections provided for under the AIDCP. Thus, relying solely on the AIDCP or its resolutions would not be an effective means of fulfilling the objective of the U.S. dolphin safe labeling provisions to protect dolphins above and beyond minimizing observed mortalities and serious injuries as a consequence of setting on dolphins to catch tuna.

40. Relying on the AIDCP or the AIDCP resolutions would also not be effective to fulfill the other objective of the U.S. dolphin safe labeling provisions to ensure that consumers are not misled or deceived about whether tuna products contain tuna that was caught in a manner that adversely affects dolphins because tuna caught in accordance with the AIDCP may be caught by setting on dolphins. The AIDCP and the resolution on tuna tracking would also not be appropriate to fulfill the objective of the U.S. provisions as neither the AIDCP nor the resolution on tuna tracking addresses the labeling of tuna - that is, they are not suited for the purpose of ensuring that labels on tuna products contain accurate information about the dolphin safe status of those products.

### **III. Conclusion**

41. For the reasons stated above, the panel should reject Mexico's claims that the U.S. dolphin safe labeling provisions are inconsistent with Articles I:1 and III:4 of the GATT 1994 and Articles 2.1, 2.2 and 2.4 of the TBT Agreement.