

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

(WT/DS381)

**CLOSING STATEMENT OF THE UNITED STATES OF AMERICA
AT THE FIRST SUBSTANTIVE MEETING OF THE PANEL**

October 20, 2010

1. As we've discussed these past days, it is clear that Mexico is able, and does sell, their tuna products in the United States. Moreover, Mexican tuna products can be labeled dolphin safe in the United States. The label is not barrier to the U.S. market.
2. The U.S. provisions establish a voluntary origin-neutral labeling scheme. These provisions apply the same conditions on use of the dolphin safe label for tuna products regardless of origin. In any fishery where there is a regular and significant association between tuna and dolphins, or regular and significant dolphin mortality, the documentation required to substantiate dolphin safe labels is the same: the observer and the captain must certify that no dolphins were killed or seriously injured in the set and no nets were set on dolphins during the fishing trip.
3. The purse-seine tuna fishery in the ETP is a fishery where not only is there a regular and significant tuna dolphin association, but one that is intentionally exploited on a wide-scale, commercial basis by setting on dolphins to catch tuna. Dolphin deaths are a foreseeable and expected consequence of this fishing technique, and this is why under AIDCP procedures each vessel that fishes for tuna in this way is assigned a set number of dolphins that each vessel may be observed killing each year.
4. And, observed dolphin mortalities only tell a small portion of the story. Setting on dolphins to catch tuna has other detrimental impacts on dolphins: separation of dependent calves

from their mothers, reduced reproductive success due to stress induced fetal mortality, acute cardiac and muscle damage, to name a few. The best available science tells us that setting on dolphins to catch tuna is the most probable reason why dolphin stocks in the ETP remain depleted, at less than 30 percent of their abundance levels before this fishing practice began, and is also why they are showing no clear signs of recovery. In this case, Mexico has not shown that any difference in documentation is in fact a means to afford different or less favorable treatment to Mexican imports.

5. In that regard, Mexico argues that the U.S. provisions use fishing method and location as a way to single out Mexican imports. The evidence however does not support that claim. At the time the U.S. provisions were adopted, 46 U.S. and 52 Mexican purse seine vessels were registered to fish for tuna in the ETP, and most of these vessels set on dolphins to catch tuna. Since then, U.S. vessels abandoned setting on dolphins to catch tuna to meet the conditions to label their tuna dolphin safe. On the other hand, the Mexican vessels that were setting on dolphins chose to continue that practice, and therefore not to meet the conditions to label their products dolphin safe. Mexico cannot rely on its vessels' choice not to meet the conditions to label their products dolphin safe – a choice the U.S. fleet equally had to make – as a basis to argue the U.S. provisions discriminate against Mexican products.

6. Further undermining Mexico's contentions are that one-third of its fleet does not set on dolphins to catch tuna, and therefore products containing its tuna are eligible to be labeled dolphin safe. Up until 2002, tuna caught by these vessels was sold to U.S. canneries and sold in the U.S. as dolphin safe.

7. We also draw attention to the maps in Exhibit MEX-65 that Mexico provided today.

That exhibit shows that Mexican vessels are fishing just off the coast of Mexico using methods other than setting on dolphins to catch tuna, and the Mexican representative said today that 20 percent of Mexico's catch is caught using methods other than setting on dolphins. Exhibit MEX-65 also appears to show that Mexican vessels are traveling just as far west to set on dolphins to catch tuna as it claims it would have to travel south to fish for tuna not in association with dolphins. This evidence supports the U.S. position that the U.S. provisions and the conditions they establish for use of the dolphin safe label are not singling out Mexican imports.

8. Mexico has also referenced the fact that there is dolphin by-catch and mortality in other fisheries. The United States does not deny that dolphins may sometimes interact with a fishery and dolphin mortality may occur outside the ETP. The United States is concerned about this, and as discussed these past days and in the U.S. first written submission, the United States works with other regional fisheries management organization to monitor and address these concerns. But other fisheries where dolphin mortality may occur do not involve the exploitation of a regular and significant association between the target species and dolphins, and there is no information indicating mortality levels on any similar order of magnitude to what has occurred in the ETP.

9. Finally, we would like to highlight a few of the key legal points discussed today.

10. First, the U.S. provisions are not technical regulations. They establish conditions under which tuna may be labeled dolphin safe, compliance with which is not mandatory.

11. Second, even if the U.S. provisions were technical regulations, they fulfil a legitimate objective. Those objectives are ensuring consumers have accurate information about whether tuna products were caught in a manner that adversely affects dolphins, and ensuring that the U.S. market is not used to encourage the setting on dolphins to catch tuna.

12. Third, the AIDCP definitions Mexico cites are not international standards. They were not adopted by a body within the meaning of that term under the TBT Agreement, and they were not adopted by a recognized body that is open to all WTO Members.

13. Fourth, as Mexico acknowledges, the U.S. provisions are origin-neutral on their face, and Mexico has not shown that those provisions in fact single out imports for less favorable treatment.

14. Mr. Chairman, this concludes my closing statement. We thank the Panel, members of the Secretariat, and the interpreters for their time and attention in these proceedings.