

US - Tuna II (Mexico) (Article 21.5 - US) / US - Tuna II (Mexico) (Article 21.5 - Mexico II)

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

**Recourse to Article 21.5 of the DSU by the United States**

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

**Second Recourse to Article 21.5 of the DSU by Mexico**

**Report of the Appellate Body**

WT/DS381/AB/RW/USA and Add.1, WT/DS381/AB/RW2 and Add.1

*Adopted by the Dispute Settlement Body  
 on 11 January 2019*

**United States – Measures Concerning  
 the Importation, Marketing and Sale of  
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Second Recourse to Article 21.5 of the  
 DSU by Mexico

Mexico, *Appellant*

United States, *Appellee*

Australia, *Third Participant*

Brazil, *Third Participant*

Canada, *Third Participant*

China, *Third Participant*

Ecuador, *Third Participant*

European Union, *Third Participant*

Guatemala, *Third Participant*

India, *Third Participant*

Appellate Body Division:

Bhatia, Presiding Member

Graham, Member

Zhao, Member

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Japan, *Third Participant*  
 Korea, *Third Participant*  
 New Zealand, *Third Participant*  
 Norway, *Third Participant*

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\* The Notices of Appeal and Other Appeal and the executive summaries of written submissions contained in this Addendum are attached as they were received from the participants and third participants. The content has not been revised or edited by the Appellate Body, except that paragraph and footnote numbers that did not start at one in the original may have been re-numbered to do so, and the text may have been formatted in order to adhere to WTO style. The executive summaries do not serve as substitutes for the submissions of the participants and third participants in the Appellate Body's examination of the appeal.

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## ABBREVIATIONS USED IN THIS REPORT

Abbreviation	Description
2013 Rule	USDOC, NOAA, Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products, <i>United States Federal Register</i> , Vol. 78, No. 131 (9 July 2013), pp. 40997-41004
2013 Tuna Measure	DPCIA; <i>United States Code of Federal Regulations</i> , Title 50, Part 216, Subpart H (Dolphin Safe Tuna Labeling), as amended by the 2013 Rule; and the <i>Hogarth</i> ruling
2016 implementing regulations	<i>United States Code of Federal Regulations</i> , Title 50, Part 216, Subpart H (Dolphin Safe Tuna Labeling), as amended by the 2013 Rule and the 2016 Rule
2016 Rule	Enhanced Document Requirements and Captain Training Requirements to Support Use of the Dolphin Safe Label on Tuna Products, <i>United States Federal Register</i> , Vol. 81, No. 56 (23 March 2016)
2016 Tuna Measure	DPCIA; the 2016 implementing regulations; and the <i>Hogarth</i> ruling
AIDCP	Agreement on the International Dolphin Conservation Program
Assistant Administrator	United States Assistant Administrator for Fisheries, NMFS, NOAA, or his/her designee
Captain Training Course	NMFS Tuna Tracking and Verification Program dolphin-safe training course
CC	catch certificate
CDS	catch documentation scheme
CFR	<i>United States Code of Federal Regulations</i>
DML	dolphin mortality limit
DPCIA	Dolphin Protection Consumer Information Act of 1990, codified in <i>United States Code</i> , Title 16, Section 1385
DSB	Dispute Settlement Body
DSU	Understanding on Rules and Procedures Governing the Settlement of Disputes
ETAO	Eastern Tropical Atlantic Ocean
ETP	Eastern Tropical Pacific
FAD	fish aggregating device
FAO	Food and Agricultural Organization of the United Nations
First Compliance Panel Report	Panel Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by Mexico</i> , WT/DS381/RW, Add.1 and Corr.1
GATT 1994	General Agreement on Tariffs and Trade 1994
<i>Hogarth</i> ruling	United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute v. Hogarth</i> , 494 F.3d 757 (9th Cir. 2007); United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute v. Hogarth</i> , 494 F.3d 1123 (9th Cir. 2007)
IATTC	Inter-American Tropical Tuna Commission
IDCP	International Dolphin Conservation Program
IDCPA	International Dolphin Conservation Program Act

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Abbreviation	Description
ISSF	International Seafood Sustainability Foundation
IUU	illegal, unreported, and unregulated
Mexico's panel request	Request for the Establishment of a Panel by Mexico pursuant to Article 21.5 of the DSU, WT/DS381/38
NMFS	National Marine Fisheries Service
NOAA	National Oceanic and Atmospheric Administration
Original Panel Report	Panel Report, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products</i> , WT/DS381/R
Original Tuna Measure	DPCIA; <i>United States Code of Federal Regulations</i> , Title 50, Sections 216.91 and 216.92 (Dolphin Safe Tuna Labeling), as of 13 September 2004; and the <i>Hogarth</i> ruling
Panel Reports	Panel Reports, <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Recourse to Article 21.5 of the DSU by the United States</i> , WT/DS381/RW/USA and Add.1 / <i>United States – Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products – Second Recourse to Article 21.5 of the DSU by Mexico</i> , WT/DS381/RW2 and Add.1
PBR	Potential Biological Removal
RFMO	Regional Fishery Management Organization
TBT Agreement	Agreement on Technical Barriers to Trade
TTF	Tuna Tracking Form
United States' panel request	Request for the Establishment of a Panel by the United States pursuant to Article 21.5 of the DSU, WT/DS381/32
USDOC	United States Department of Commerce
WCPO	Western and Central Pacific Ocean
Working Procedures	Working Procedures for Appellate Review, WT/AB/WP/6, 16 August 2010
WTO	World Trade Organization
WTO Agreement	Marrakesh Agreement Establishing the World Trade Organization

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## PANEL EXHIBITS CITED IN THIS REPORT

Exhibit Number	Short Title (if applicable)	Description
<b>Original Panel Record</b>		
Original Panel Exhibit MEX-11	AIDCP	Agreement on the International Dolphin Conservation Program (Annexes I, IV(1)(3)(c), and VII(6))
Original Panel Exhibit MEX-29		United States District Court for the Northern District of California, <i>Earth Island Institute et al. v. Donald Evans et al.</i> , 34 ELR 20069 (N.D. Cal. 2004)
Original Panel Exhibit MEX-30		United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute et al. v. William T. Hogarth</i> , 484 F.3d 1123 (9th Cir. 2007)
Original Panel Exhibit MEX-31		United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute et al. v. William T. Hogarth</i> , 494 F.3d 757 (9th Cir. 2007)
Original Panel Exhibit MEX-55		AIDCP, Resolution to Adopt the Modified System for Tracking and Verification of Tuna (20 June 2001)
Original Panel Exhibit US-5	DPCIA	Dolphin Protection Consumer Information Act of 1990, codified in <i>United States Code</i> , Title 16, Section 1385
Original Panel Exhibit US-6		<i>United States Code of Federal Regulations</i> , Title 50, Sections 216.91 and 216.92
Original Panel Exhibit US-58		<i>United States Code of Federal Regulations</i> , Title 50, Sections 216.91-216.95
<b>First Compliance Panel Record</b>		
First Compliance Panel Exhibit MEX-7	2013 Rule	USDOC, NOAA, Enhanced Document Requirements to Support Use of the Dolphin Safe Label on Tuna Products, <i>United States Federal Register</i> , Vol. 78, No. 131 (9 July 2013), pp. 40997-41004
First Compliance Panel Exhibit MEX-8	DPCIA	Dolphin Protection Consumer Information Act of 1990, codified in <i>United States Code</i> , Title 16, Section 1385
First Compliance Panel Exhibit MEX-20		<i>United States Code of Federal Regulations</i> , Title 50, Section 216
First Compliance Panel Exhibit MEX-30		AIDCP, as amended October 2009, Article I:8 and Annex II, paras. 1-3
First Compliance Panel Exhibit MEX-36		AIDCP, Resolution to Adopt the Modified System for Tracking and Verification of Tuna (20 June 2001)
First Compliance Panel Exhibit US-2	2013 implementing regulations	USDOC, NMFS/NOAA, Dolphin Safe Tuna Labeling, <i>United States Code of Federal Regulations</i> , Title 50, Part 216, Subpart H (Sections 216.90-216.95)
First Compliance Panel Exhibit US-113		Determination of Observer Programs as Qualified and Authorized by the Assistant Administrator for Fisheries, <i>United States Federal Register</i> , Vol. 79, No. 134 (14 July 2014), pp. 40718-40720



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Exhibit Number	Short Title (if applicable)	Description
First Compliance Panel Exhibit US-114		NMFS, <i>National Observer Program FY 2012 Annual Report</i> (2013)
<b>Panel Record in these Compliance Proceedings</b>		
Panel Exhibit MEX-1	DPCIA	Dolphin Protection Consumer Information Act of 1990, codified in <i>United States Code</i> , Title 16, Section 1385
Panel Exhibit MEX-2	2016 implementing regulations	USDOC, NMFS/NOAA, Dolphin Safe Tuna Labeling, <i>United States Code of Federal Regulations</i> , Title 50, Part 216, Subpart H, Sections 216.90-216.95
Panel Exhibit MEX-3	<i>Hogarth</i> ruling	United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute et al. v. William T. Hogarth</i> , 484 F.3d 1123 (9th Cir. 2007) and United States Court of Appeals for the Ninth Circuit, <i>Earth Island Institute et al. v. William T. Hogarth</i> , 494 F.3d 757 (9th Cir. 2007)
Panel Exhibit MEX-8		AIDCP, <i>Report on the International Dolphin Conservation Program</i> , Doc. MOP-28-05, 18 October 2013
Panel Exhibit MEX-15		Food and Agricultural Organization of the United Nations, "Tuna Drifting Gillnet", <a href="http://www.fao.org/fishery/fishtech/1011/en">http://www.fao.org/fishery/fishtech/1011/en</a> , accessed 17 March 2014
Panel Exhibit MEX-18		Natural Resources Defense Council, <i>Net Loss: The Killing of Marine Mammals in Foreign Fisheries</i> (New York, January 2014)
Panel Exhibit MEX-26		Food and Agricultural Organization of the United Nations, "Industrial Tuna Longlining", <a href="http://www.fao.org/fishery/fishtech/1010/en">http://www.fao.org/fishery/fishtech/1010/en</a> , accessed 17 March 2014
Panel Exhibit MEX-37		Food and Agricultural Organization of the United Nations, "Trawl Nets", <a href="http://www.fao.org/fishery/geartype/103/en">http://www.fao.org/fishery/geartype/103/en</a> , accessed 23 March 2014
Panel Exhibit MEX-38		Food and Agricultural Organization of the United Nations, "Tuna Handlining", <a href="http://www.fao.org/fishery/fishtech/1012/en">http://www.fao.org/fishery/fishtech/1012/en</a> , accessed 5 September 2016
Panel Exhibit MEX-47		Enhanced Document Requirements and Captain Training Requirements to Support Use of the Dolphin Safe Label on Tuna Products, <i>United States Federal Register</i> , Vol. 81, No. 56 (23 March 2016), pp. 15444-15449
Panel Exhibit MEX-104		National Oceanic and Atmospheric Administration, 2015 NOAA Marine Debris Program Report, <i>Impact of "Ghost Fishing" via Derelict Fishing Gear</i> (Charleston, March 2015)
Panel Exhibit MEX-127		ISSF, <i>RFMO Catch Documentation Schemes: A Summary</i> (Washington, DC, 14 September 2016)

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Exhibit Number	Short Title (if applicable)	Description
Panel Exhibit USA-1	DPCIA	Dolphin Protection Consumer Information Act of 1990, codified in <i>United States Code</i> , Title 16, Section 1385
Panel Exhibit USA-2	2016 implementing regulations	USDOC, NMFS/NOAA, Dolphin Safe Tuna Labeling, <i>United States Code of Federal Regulations</i> , Title 50, Part 216, Subpart H, Sections 216.90-216.95
Panel Exhibit USA-3		Taking and Related Acts Incidental to Commercial Fishing Operations by Tuna Purse Seine Vessels in the Eastern Tropical Pacific Ocean, <i>United States Code of Federal Regulations</i> , Title 50, Section 216.24 (2016)
Panel Exhibit USA-4	NOAA Form 370	NOAA, Form 370: Fisheries Certificate of Origin (2016)
Panel Exhibit USA-12		T. Gerrodette, "The Tuna-Dolphin Issue", in Perrin, Wursig, and Thewissen (eds.), <i>Encyclopedia of Marine Mammals</i> , 2nd edn (Elsevier, 2009), pp. 1192-1195
Panel Exhibit USA-15		AIDCP, <i>Report on the International Dolphin Conservation Program</i> , Doc. MOP-32-05, 20 October 2015
Panel Exhibit USA-60		Food and Agriculture Organization of the United Nations, FAO Fisheries and Aquaculture Technical Paper 568, <i>Bycatch and Non-Tuna Catch in the Tropical Purse Seine Fisheries of the World</i> (Rome, 2013)
Panel Exhibit USA-90		International Dolphin Conservation Program, System for Tracking and Verifying Tuna, as amended (2015)
Panel Exhibit USA-111		Dolphin Mortalities Per Set Due to ETP Dolphin Sets and in Other Fisheries
Panel Exhibit USA-166		<i>United States Code</i> , Title 18, Section 545
Panel Exhibit USA-167		<i>United States Code</i> , Title 18, Section 3571
Panel Exhibit USA-169		<i>United States Code</i> , Title 16, Section 3372
Panel Exhibit USA-170		Civil Monetary Penalty Adjustments for Inflation, <i>United States Federal Register</i> , Vol. 81, No. 109 (7 June 2016), pp. 36454-36458
Panel Exhibit USA-171		<i>United States Code</i> , Title 16, Section 3373
Panel Exhibit USA-172		<i>United States Code</i> , Title 16, Section 3374
Panel Exhibit USA-173		<i>United States Code</i> , Title 18, Section 1001
Panel Exhibit USA-174		<i>United States Code</i> , Title 16, Section 1375