Mexico – Definitive Anti-Dumping Measures on Beef and Rice

(Complaint with Respect to Rice)

(WT/DS295)

Response of the United States to the Request for a Preliminary Ruling Submitted by Mexico

May 7, 2004

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I. INTRODUCTION

1. Mexico offers no legitimate basis for its request for a preliminary ruling ("Mexico's Request") that the U.S. panel request in this dispute fails to meet the requirements of Article 6.2 of the *Understanding on the Rules and Procedures Governing the Settlement of Disputes* ("DSU"). To the contrary, as required by Article 6.2, the U.S. panel request properly "identif[ies] the specific measures at issue and provide[s] a brief summary of the legal basis of the complaint sufficient to present the problem clearly."

2. Mexico is seeking to have this Panel read into Article 6.2 a requirement that is not there and that the Appellate Body has specifically rejected: namely, that the United States summarize the specific legal arguments to be presented in the first U.S. submission. The Appellate Body in *EC Bananas*[1] has already rejected the suggestion that a complaining party must summarize its legal arguments in the panel request, and this Panel should do so as well.

3. Mexico is also seeking to have this Panel find that the U.S. panel request does not "identify the specific measure" with respect to one of the measures at issue in this dispute, Article 366 of Mexico's Federal Code of Civil Procedure ("FCCP"). Inasmuch as Article 366 is specifically identified in the panel request, there is no basis for such a finding.

4. Mexico has also failed to provide any legitimate basis for its argument that the U.S. panel request is inconsistent with Articles 4.5 and 4.7 of the DSU, or Articles 17.4 and 17.5 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"). The gist of Mexico's argument is that the U.S. panel request contains legal claims that were not the subject of consultations. Mexico fails to recognize that it is the panel request, and not the consultation request, that establishes the scope for this Panel's work.

II. STATEMENT OF FACTS

5. The United States requested formal dispute settlement consultations with Mexico on the definitive anti-dumping measures on beef and rice, and on various provisions of Mexico's Foreign Trade Act and Article 366 of the FCCP, on June 16, 2003.[2] The United States and Mexico held two days of consultations with respect to the measures in Mexico City, on July 31 and August 1, 2003, but failed to resolve the dispute.

6. Consequently, on September 19, 2003, the United States requested the establishment of a panel, specifically identifying the definitive anti-dumping measure on rice, Articles 53, 64, 68, 89D, 93V, and 97 of the Foreign Trade Act, and Article 366 of the FCCP as the specific

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[1] Appellate Body Report on *European Communities – Regime for the Importation, Sale and Distribution of Bananas*, WT/DS27/AB/R, adopted September 25, 1997, para. 141 ("*EC Bananas AB*").

[2] *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Request for Consultations by the United States*, WT/DS295/1, G/L/631, G/ADP/D50/1, G/SCM/D54/1, circulated June 23, 2003 ("U.S. Consultation Request").

measures at issue, and providing a brief summary of the legal basis of the complaint.[3] The Panel was established on November 7, 2003.[4]

III. THE REQUIREMENTS OF DSU ARTICLE 6.2

7. Article 6.2 of the DSU requires, in relevant part, that a request for the establishment of a panel "identify the specific measures at issue and provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly."

8. Mexico's Request contains a number of quotations from Appellate Body reports that explain this provision and emphasize its role and importance in dispute settlement. It has entirely missed, however, one aspect of these reports that is critical to the issue now before this Panel: the key distinction between *claims* – which must be included in the panel request – and the *arguments* in support of those claims – which need not be included. As the Appellate Body explained in *EC Bananas*:

> In our view, there is a significant difference between the *claims* identified in the request for the establishment of a panel, which establish the panel's terms of reference under Article 7 of the DSU, and the *arguments* supporting those claims, which are set out and progressively clarified in the first written submissions, the rebuttal submissions and the first and second panel meetings with the parties.[5]

9. Furthermore, the Appellate Body in *EC Bananas* made clear that a panel request may in some cases adequately state a claim if the request simply cites the pertinent provision of the WTO agreement:

> We accept the Panel's view that it was sufficient for the Complaining Parties to list the provisions of the specific agreements alleged to have been violated without setting out detailed arguments as to which specific aspects of the measures at issue relate to which specific provisions of those agreements.[6]

10. Mexico also fails to note that – according to the Appellate Body – even in cases where simply citing the pertinent provisions would *not* satisfy the requirements of Article 6.2, the Panel is not automatically deprived of jurisdiction over the matter. Rather, the Appellate Body has found that a panel must examine, based on the "particular circumstances of the case," whether the defect has prejudiced the ability of the responding party to defend itself given the actual

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[3] *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Request for the Establishment of a Panel by the United States*, WT/DS295/2, circulated September 22, 2003 ("U.S. Panel Request").

[4] *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Constitution of the Panel Established at the Request of the United States, Note by the Secretariat*, WT/DS295/3 (Feb. 19, 2004).

[5] *EC Bananas AB*, para. 141.

[6] *Id.* (emphasis added).

course of the panel proceedings. As the Appellate Body explained in *Korea Dairy*:

> In assessing whether the European Communities' request met the requirements of Article 6.2 of the DSU, we consider that, in view of the particular circumstances of this case and in line with the letter and spirit of Article 6.2, the European Communities' request should have been more detailed. However, Korea failed to demonstrate to us that the mere listing of the articles asserted to have been violated has prejudiced its ability to defend itself in the course of the Panel proceedings. Korea did assert that it had sustained prejudice, but offered no supporting particulars in its appellant's submission nor at the oral hearing. We, therefore, deny Korea's appeal relating to the consistency of the European Communities' request for the establishment of a panel with Article 6.2 of the DSU.[7]

11. Therefore, in evaluating claims that a panel request fails to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly, as required by DSU Article 6.2, the Panel may consider the particular circumstances of the dispute, including whether the responding party has been prejudiced.

12. Mexico asserts that the U.S. panel request (1) does not provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly; and (2) does not identify the "specific measure at issue" with respect to Article 366 of the FCCP, and that Mexico has thereby been prejudiced. As detailed in the sections that follow, Mexico's objections are wrong on both counts.

IV. CONTRARY TO MEXICO'S ALLEGATIONS, THE U.S. PANEL REQUEST PROVIDES A BRIEF SUMMARY OF THE LEGAL BASIS OF THE COMPLAINT SUFFICIENT TO PRESENT THE PROBLEM CLEARLY

13. The first of Mexico's complaints about the U.S. panel request is that the request is too vague, and that it allegedly does not provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly, as Article 6.2 requires. Mexico's complaint is groundless.

14. It is important to note at the outset that Mexico only challenges the sufficiency of the U.S. panel request with respect to a few of the U.S. claims.[8] Accordingly, the United States is proceeding under the assumption that Mexico considers the other claims that it did not challenge

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[7] *Korea – Definitive Safeguard Measure on Imports of Certain Dairy Products*, WT/DS98/AB/R, adopted Jan. 12, 2000, para 131 ("*Korea Dairy*") (emphasis added). The Appellate Body concluded in *Korea Dairy* that simply listing the articles of the agreement involved may not be sufficient if, for example, the articles listed established multiple obligations. *Id*., para. 124.

[8] Specifically, Mexico questions the listing of Article VI of GATT 1994 and Article 4.1 of the AD Agreement in subsection 1(a) of the panel request, and it questions the articles listed in subsections 1(f) and (g) of the panel request. *See* Mexico's Request, paras. 14-19.

in its preliminary ruling request as being sufficient for purposes of Article 6.2.[9]

15. With respect to the claims that Mexico does challenge, the U.S. panel request does provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly, as required by Article 6.2. It both lists the specific provisions of the AD Agreement and the *General Agreement on Tariffs and Trade 1994* ("GATT 1994") alleged to be violated, and provides, in addition, a brief textual explanation of the basis of the complaint.

16. Turning first to subsections 1(f) and (g) of the U.S. panel request, the United States lists 15 specific provisions of the AD Agreement (including five specific paragraphs of Annex II of the AD Agreement). Mexico has failed to provide any reason as to why citing these specific provisions was insufficient under DSU Article 6.2. For example, Mexico has made no effort to explain why it was unclear from the U.S. citation of Article 6.8 and Annex II (the "facts available" provisions) of the AD Agreement that the United States was challenging Mexico's use of the facts available in assigning antidumping margins to Producers Rice (in subsection 1(f)) and all of the rest of the exporters and producers in the United States that Mexico did not individually examine (in subsection 1(g).

17. On the contrary, Mexico *concedes* that the U.S. request in fact asserts that Mexico's application of the facts available to those entities breached the listed provisions. What it objects to is that it believes the United States has not adequately explained <u>how</u> Mexico's application of the facts available breached each of the provisions (in other words, the United States did not in its panel request provide arguments to support its claims).[10] As noted above, previous panels and the Appellate Body have been very careful to distinguish between the claims that must be made in a panel request under Article 6.2 – *i.e.*, the brief summary of the legal *basis* for the complaint sufficient to present the problem clearly – and the *arguments* supporting those claims. The claims must be set forth in the panel request. The arguments need not be.[11]

18. Mexico's challenge to the U.S. claim that the injury and causation analyses breached Article 4.1 of the AD Agreement suffers from a similar flaw.[12] Mexico does not argue that the claim should have been more specific; the request cites clearly to the first paragraph of Article 4.

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[9] Specifically, Mexico does not question five of the seven articles listed in subsection 1(a), any of the articles listed in subsections 1(b)-(e), (h), or (i), or any portion of subsections 2 or 3.

[10] *Id.*, paras. 17-18.

[11] *See, e.g.*, *EC Bananas AB*, para. 141; Appellate Body Report on *Thailand – Anti-Dumping Duties on Angles, Shapes and Sections of Iron or Non-Alloy Steel and H-Beams from Poland*, WT/DS122/AB/R, adopted April 5, 2001, at para. 88, n.36 (noting that there is a "significant difference between the *claims* identified in the request for the establishment of a panel, which establish the panel's terms of reference . . . and the *arguments* supporting those claims," and that the arguments are clarified in the first written submission and in subsequent documents.) While Mexico cited paragraph 88 of the *Thai Steel AB* report, it omitted reference to footnote 36, which is appended to that paragraph. *See* Mexico's Request, para. 11.

[12] *Id.*, paras. 15-16.

Mexico even concedes that the United States included a narrative description that provided further information with respect to the claim. It objects, however, that it is unable to understand which of the statements in the narrative description results in a breach of Article 4.1. Thus, its concern is with the U.S. *arguments*, and not with the specificity of the claim itself.

19. Turning next to Mexico's objection to the U.S. claim under Article VI of GATT 1994, it is true that Article VI has several paragraphs.[13] However, Mexico cannot argue that it was unable to understand which paragraphs were relevant to the matters in dispute. In the U.S. panel request, the Article VI claim is accompanied by a lengthy narrative description that provides more than sufficient detail about the nature of the U.S. claims and demonstrates that the majority of Article VI is simply not relevant. The plain facts underlie this conclusion. For example, the narrative description does not address the imposition of countervailing duties (which is the topic of paragraphs 3 and 5 of Article VI), because there is no Mexican countervailing duty measure on U.S. rice. Similarly, the description does not mention either of the scenarios that are the subject of paragraphs 4 or 7 of Article VI, because the antidumping measure does not involve either issue. Rather, the narrative focuses on issues that are addressed by the only paragraphs of Article VI that are relevant to this dispute: paragraphs 2 and 6(a). As such, through the narrative description in the U.S. panel request, the United States provided Mexico a brief summary of the legal basis of the complaint with respect to Article VI that is sufficient to present the problem clearly.

20. Furthermore, it is worth noting that in Mexico's panel request in *United States – Antidumping Measures On Oil Country Tubular Goods From Mexico*, Mexico includes a claim under Article VI of GATT 1994, but fails to specify which paragraphs of Article VI are relevant.[14] Thus, it is apparent that Mexico itself believes a citation to Article VI as a whole is not inconsistent with Article 6.2 of the DSU.

21. In sum, Mexico has not presented any reasons why subsections 1(a), (f), and (g) of the U.S. panel request should be found inconsistent with the requirements of Article 6.2 of the DSU.

V. THE U.S. PANEL REQUEST DOES NOT PREJUDICE THE ABILITY OF MEXICO TO DEFEND ITSELF

22. Even if Mexico had succeeded in demonstrating that the U.S. panel request does not meet the requirements of DSU Article 6.2, which it has not, Mexico has offered nothing to suggest that it has been prejudiced.

23. In *Korea Dairy*, the Appellate Body denied Korea's claim that the panel request had

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[13] Mexico's Request, para. 14.

[14] *See United States – Antidumping Measures On Oil Country Tubular Goods From Mexico, Request for the Establishment of a Panel by Mexico*, WT/DS282/2, circulated July 29, 2003.

failed to provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly, for the following reason: although Korea had asserted prejudice, it offered no supporting particulars and failed to demonstrate that the panel request had prejudiced its ability to defend itself during the panel proceedings.[15] Mexico categorically asserts that it is prejudiced by the U.S. panel request, but only in the vaguest and most conclusory manner.

24. Mexico's only explanation of how it has been prejudiced is its assertion that the alleged deficiencies in the panel request are impeding its ability to prepare a defense.[16] It has failed completely, however, to provide any supporting particulars as to why this is so. Moreover, its assertion is contradicted by the facts, since Mexico's first written submission contains a lengthy response to each of the challenged U.S. claims.[17]

25. In light of the Appellate Body's reasoning in *Korea Dairy*, Mexico's mere assertion of prejudice is plainly insufficient to establish prejudice. As was the case for Korea in that dispute, Mexico has "offered no supporting particulars" and has "failed to demonstrate" that its ability to defend itself in the panel proceedings has been prejudiced.

VI. MEXICO'S ASSERTION THAT THE U.S. PANEL REQUEST DOES NOT IDENTIFY ARTICLE 366 OF THE FEDERAL CODE OF CIVIL PROCEDURE AS A "SPECIFIC MEASURE AT ISSUE" IS INCORRECT

26. Mexico's second objection to the U.S. panel request under Article 6.2 of the DSU is that the request allegedly failed to identify Article 366 of the FCCP as a "specific measure at issue." Mexico first made this assertion at the DSB meeting where the United States first requested the formation of a panel in this dispute. As the United States explained at that time, and as it further explained at the DSB meeting that established the panel, Mexico's assertion is groundless.

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[15] *Korea – Dairy*, para 131.

[16] Mexico's Request, para. 38. Mexico's only other assertion of prejudice relates to the date on which it received an English-language translation of the U.S. first written submission. Mexico's Request, para. 5. It is not clear to the United States how the date that Mexico received the first written submission is relevant to determining whether Mexico was prejudiced by the panel request. The United States notes, however, that Mexico received five weeks to prepare its first written submission – which is two weeks longer than the maximum period proposed in Appendix 3 of the DSU. In addition, if any Party has been prejudiced by the "translation" issue, it is the United States, which has had to prepare and file this response to Mexico's Request before receiving the English-language translation. Although we have done our best to respond to Mexico's complaints in a comprehensive manner, we may need to supplement our response after we receive the English translation.

[17] In *United States – Lamb Meat*, the Panel found that the United States had not provided adequate "supporting particulars" in support of its claim of prejudice. It based its finding in part on the fact that the U.S. first written submission contained a detailed rebuttal to the challenged claims. *See* Panel Report on *United States – Safeguard Measures on Imports of Fresh, Chilled or Frozen Lamb Meat from New Zealand and Australia*, WT/DS177/R, WT/DS178/R, adopted May 16, 2001, para. 5.51.

27. Section 3 of the U.S. panel request states the following:

> Mexican officials have asserted that Article 366 of Mexico's Federal Code of Civil Procedure and Articles 68 and 97 of the Foreign Trade Act prevent Mexico from conducting reviews of antidumping or countervailing duty orders while a judicial review of the order is ongoing, including a "binational panel" review pursuant to Chapter Nineteen of the *North American Free Trade Agreement*. These provisions appear to be inconsistent with Articles 9.3, 9.5, and 11.2 of the AD Agreement, and Articles 19.3 and 21.2 of the SCM Agreement.[18]

28. Mexico focuses solely on the first sentence, which refers to the assertions made by the Mexican officials. It ignores completely, however, the second sentence, which plainly states that it is the "provisions" themselves – including Article 366 of the FCCP – that the United States is challenging, and not the assertions of the Mexican officials. While it is barely credible that Mexico would take from the first sentence the understanding that the United States was challenging assertions rather than the provision, when the paragraph is viewed in its entirety, it is plain that Mexico's claims are groundless.[19]

29. Furthermore, the U.S. representative specifically addressed this issue at the DSB meeting that established this Panel, after Mexico claimed not to understand which measure the United States was challenging:

> The United States wished to address briefly two erroneous statements that Mexico had made during [the first DSB meeting that considered the U.S. panel request]. First, Mexico had mistakenly asserted that the United States had abandoned its claim addressing Article 366 of Mexico's Federal Code of Civil Procedure. In actuality, this claim appeared in section 3 of the panel request. Second, Mexico had asserted that the United States was claiming that certain statements of Mexican officials were "measures". As the request itself made clear, the United States was making no such claim. Rather, it had cited statements of Mexican officials with respect to certain provisions that *are* measures – namely, Article 366 of the Federal Code of Civil Procedure, and Articles 68 and 97 of the Foreign Trade Act.[20]

30. Accordingly, there is no doubt that Article 366 is a "specific measure at issue."

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[18] U.S. Panel Request, Section (3).

[19] The notion that the United States would be challenging the statements of the Mexican officials about Article 366, rather than Article 366 itself, is even more difficult to credit given discussions on this topic at consultations. The United States provided Mexico with a list of questions during consultations that specifically addressed Article 366. As an introduction to the questions, the United States noted, as it did in the U.S. panel request, that Mexican officials had claimed in meetings with U.S. officials that Article 366 of the FCCP precluded Mexico from conducting reviews while judicial review proceedings were ongoing. The seven questions that followed, however, were addressed to Article 366 itself, and not to the assertions of the Mexican officials. Thus, it was abundantly clear to Mexico that the measure in question was Article 366, and not the statements by the Mexican officials *about* Article 366.

[20] *Minutes of Meeting, Held in the Centre William Rappard on 2 October 2003*, WT/DSB/M/156, November 10, 2003, para. 45.

Moreover, there is no need for the Panel to address Mexico's arguments that statements of Mexican officials cannot be considered "measures."[21] The United States has made no arguments to the contrary. It is Article 366 – and not statements about Article 366 – that is the measure at issue.

31. For the foregoing reasons, there are no grounds for Mexico's assertion that the United States failed to identify Article 366 of the FCCP as a "specific measure at issue" in this dispute, and therefore no grounds to conclude that the U.S. panel request does not meet the requirements of DSU Article 6.2 with respect to this measure.

VII. MEXICO'S CHALLENGES TO THE ADEQUACY OF CONSULTATIONS LACK MERIT

32. Mexico's final challenge to the U.S. panel request pertains to the adequacy of the consultations with respect to the claims at issue. Mexico argues that a Member cannot include a legal claim in a panel request unless that claim was discussed during consultations.[22] It also complains about the adequacy of the consultations with respect to Mexico's evaluation of the injury factors in the rice investigation.[23] Neither objection has merit.

33. First, there is no basis for Mexico's contention that a Member cannot include a claim in its panel request unless the claim was discussed during consultations. A consultation request must provide an "identification of the measures at issue and an indication of the legal basis for the complaint."[24] However, nothing in the DSU requires that a Member must have ascertained all of the possible legal claims and relevant provisions of the WTO agreements before the Member can even request consultations. One of the purposes of consultations is to foster a better understanding of the relevant measures and concerns of the various Members in order to promote a satisfactory adjustment of the matter. Consultations are often the first time that the Member maintaining the measure provides a detailed description of the measure and relevant facts and legal documents. Consultations are not a "dress rehearsal" or "moot court" for the panel process requiring Members to have worked out all of their claims and positions in advance and presenting them in the consultations for the other side to practice its prepared responses.

34. The DSU reflects the difference between requests for panels and requests for consultations by using different terms for each. With respect to panels, the DSU requires that a request for the establishment of a panel provide a "brief summary of the legal basis of the

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[21] Mexico's Request, paras. 22-26.

[22] Mexico's Request, paras. 33-34.

[23] *Id.*, para. 35.

[24] DSU Art. 4.4.

complaint sufficient to present the problem clearly."[25] However, with respect to consultations, the DSU merely requires that requests for consultations give "an indication" of the legal basis for the complaint.[26] Moreover, previous panels have rejected the approach that Mexico is urging here – for example, the panel in *Japan – Agricultural Products* rejected Japan's argument that the U.S. panel request could not include a claim under Article 7 of the *Agreement on the Application of Sanitary and Phytosanitary Measures* if the claim was not included in the consultation request and no consultations were held on it.[27]

35. Second, Mexico's complaint about the alleged inadequacy of the consultations with respect to Mexico's evaluation of the injury factors is equally without merit. Contrary to Mexico's assertion, the consultations did address Mexico's evaluation of the injury factors in the rice investigation. More fundamentally, precisely to avoid litigation over what the parties did or did not say during consultations, the DSU only requires that the consultation request identify the measure that is the subject of the consultations; there is no requirement as to the adequacy of the consultations themselves. As the panel noted in *Korea – Taxes on Alcoholic Beverages*:

> The only requirement under the DSU is that consultations were in fact held, or were at least requested, and that a period of sixty days has elapsed from the time consultations were requested to the time a request for a panel was made. What takes place in those consultations is not the concern of a panel.[28]

36. In addition, the panel in *Bananas III* specifically rejected the contention that consultations must lead to an adequate explanation of the complainants' case:

> As to the EC argument that consultations must lead to an adequate explanation of the Complainants' case, we cannot agree. Consultations are the first step in the dispute settlement process. While one function of the consultations may be to clarify what the case is about, there is nothing in the DSU that provides that a complainant cannot request a panel unless its case is adequately explained in the consultations. The fulfilment of such a requirement would be difficult, if not impossible, for a complainant to demonstrate if a respondent chose to claim a lack of understanding of the case, a result which would undermine the automatic nature of panel establishment under the DSU. The only prerequisite for requesting a panel is that the consultations have "fail[ed] to settle a dispute within 60 days of receipt of the request for consultations ...". Ultimately, the function of providing notice to a respondent of a complainant's claims and arguments is served by the request for establishment of a panel and by the

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[25] *Id.*, Art. 6.2.

[26] *Id.*, Art. 4.4.

[27] Panel Report on *Japan – Measures Affecting Agricultural Products*, WT/DS76/R, adopted March 19, 1999, para. 8.4(i).

[28] Panel Report on *Korea – Taxes on Alcoholic Beverages*, WT/DS75/R, WT/DS84/R, adopted February 17, 1999, para. 10.19 (*citing* Panel Report on *European Communities – Regime for the Importation, Sale and Distribution of Bananas, Complaint by the United States*, WT/DS27/R/USA, adopted September 25, 1997, para. 7.19 ("*Bananas III*")).

complainant's submissions to that panel.[29]

37. In the present case, the United States and Mexico spent two full days in Mexico City consulting at length on each of the specific measures at issue in this dispute. In addition, more than sixty days elapsed from the time the United States requested consultations to the time the request for the panel was made.[30] Therefore, there is no basis for Mexico's assertion that the United States has acted inconsistently with Articles 4.5 and 4.7 of the DSU with respect to consultations over the disputed measures.

38. Finally, Mexico also claims that the U.S. panel request is inconsistent with Articles 17.4 and 17.5 of the AD Agreement. Neither claim has merit. First, to the extent that Article 17.4 creates any obligation with respect to consultations, it is that the requesting Member "consider" that the consultations have failed to achieve a mutually agreed solution. The United States so considered in this dispute. In the view of the United States, the consultations in this case have, in fact, failed to achieve a mutually satisfactory solution. Therefore, Mexico's Article 17.4 claim is groundless.

39. Second, Mexico's claim under Article 17.5 of the AD Agreement must fail because Article 17.5 imposes no obligation on the complaining party; rather, it establishes that the DSB shall, upon the request of the complaining party, establish a panel to examine the matter based on the panel request and the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

VIII. CONCLUSION

40. For the reasons stated above, Mexico's arguments in support of its request for a preliminary ruling that the U.S. panel request does not meet the requirements of Article 4.5, 4.7, and 6.2 of the DSU or Articles 17.4 or 17.5 of the AD Agreement are without merit. Accordingly, the Panel should reject that request.

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[29] *Bananas III*, para. 7.20 (footnote omitted).

[30] *Compare* U.S. Consultation Request (demonstrating that the United States requested consultations on June 16, 2003) *to* U.S. Panel Request (demonstrating that the United States requested the Panel on September 19, 2003).