Mexico – Definitive Anti-Dumping Measures on Rice and Beef
(Complaint with Respect to Rice)
WT/DS295

Closing Statement of the United States
First Meeting of the Panel

May 18, 2004

1. Thank you Mr. Chairman. We do have a short closing statement.

2. We've appreciated having the opportunity to spend these two days with you discussing the various measures at issue in this case, both the antidumping measure on long grain white rice and the provisions of the FTA and the FCCP that we are challenging.

3. As we noted yesterday in our oral statement, Mexico's submission had failed to rebut our *prima facie* case that Mexico has breached its WTO obligations in numerous ways. Mexico's oral statement yesterday was quite similar to its written submission, and also did not rebut our *prima facie* case.

4. Because our oral statement addressed the content of Mexico's written submission, and because Mexico's oral statement was quite similar to its written submission, I have only a few additional comments to make today.

5. Mr. Chairman, my first point pertains to Mexico's request for a preliminary ruling. We addressed all of the points that Mexico raised yesterday in our written response. We filed that response on May 7. I would like to make one additional point, however, pertaining to Mexico's argument that it was prejudiced because it only received the Spanish-language version of our written submission on April 16, a week before its written submission was due. If there were merit to this claim, one might have expected that Mexico's oral statement would have set out the new arguments that Mexico did not have time to include in its written submission. Mexico has

had the Spanish-language version of our submission for at least a month. The fact that Mexico's oral statement did not differ much from its written submission suggests that it was not prejudiced by the date it received the translation of our submission.

6. My second point pertains to Mexico's use of the facts available in assigning an antidumping margin to Producers Rice. Mexico argued yesterday that its application of the facts available was justified because Producers Rice had what Mexico described as an "obligation" to present the information that Mexico needed to conduct a margin. But Producers Rice demonstrated to Mexico that it had no shipments during the POI. There was nothing more that Producers Rice could have given to Mexico. It is not objective or unbiased for an authority to apply an adverse antidumping margin to a firm that was unable to provide information that does not exist.

7. Mr. Chairman, I would also like to address Mexico's comment yesterday that Articles 68 and 89D of the FTA do not require firms seeking reviews to demonstrate that the volume of their sales was representative. We are confused by Mexico's argument. Article 68 reads, and I quote, "[t]he Party requesting a review shall satisfy the Ministry that the volume of exports to Mexico during the review period is representative." Article 89D contains virtually identical text. The provisions speak for themselves.

8. On the issue of Article 93V of the FTA, Mexico argued that the application of fines is discretionary, and that proof of this fact is that it has never, in fact, applied such a fine. This proves nothing, because Mexico has not pointed to any case where it found that the conditions for imposing a fine were met, and yet it decided not to impose one. The text of the provision itself is mandatory.

9. Finally, as I previously stated, we will comment further on your questions about the

mandatory/discretionary issue, and the relevance of that issue to Mexico's laws, in our response to your questions and in our second written submission.

10. Mr. Chairman, this concludes the closing statement of the United States. Thank you for your attention.