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

Closing Statement of the United States
Second Meeting of the Panel

August 3, 2004

1. Mr. Chairman, members of the Panel, I do not have a prepared statement, so my comments will be extremely brief. I will touch on points that arose today during the responses to the Panel's questions.

2. First, we would like to thank the Panel and the Secretariat for their hard work; we appreciate your efforts and the rigor of the questions thus far.

3. The United States has presented a *prima facie* case with respect to our claims. Mexico has not rebutted that case. And all of our claims are in our panel request, contrary to Mexico's assertions. For example, Mexico argued that we did not make a claim under Article 4.1 of the AD Agreement, but the claim is in the U.S. panel request, as part of the first set of claims. As is a claim under Article 1 of the AD Agreement. We urge the Panel to look to the papers filed in this dispute, and what they actually say, and not just to Mexico's arguments about them.

4. We had a long discussion today about the POIs that Mexico uses in its dumping cases. What seemed clear from the discussion is that Mexico normally lets the petitioners pick the POI and then puts the burden on the respondents to show why the suggested POI should not be used. We had some of the same questions as the Panel about Mexico's approach, so we did some research. We included information about eight or ten Mexican investigations in our previous responses to Panel questions. In all of those cases, in 2003, we found that Mexico accepted the petitioners' proposed POI. Moreover, the length of the POIs varied quite a bit – from six to eighteen months. The only reason we were able to find for this was that those were the lengths that the petitioners requested.

5. Regarding the *listados*, we believe Mexico could have done, and should have done, what the Panel put its finger on: *i.e.*, Mexico had the information before it on the importers' names and the *pedimento* numbers, and it should have looked at the information and used it to gather what it needed to be sure it had conducted a full, vigorous investigation with all of the facts. The authorities have an interest in a full investigation. They also could have sent injury questionnaires to the importers listed in the *listados* and obtained – and then used – better volume and value data than they did.

6. Regarding the Foreign Trade Act provisions, we are challenging these provisions of Mexico's law as such, not as applied, so the text is the relevant evidence. There is no need for us to provide examples of the application of the provisions, as Mexico suggested in its closing statement. If Mexico wishes to provide examples of the application of the provisions to disprove our reading of the text, it can provide them, but there is no obligation on the part of the United States to do so to meet our *prima facie* case in this dispute.

7. Finally, regarding Mexico's continued arguments that the challenged legal provisions are discretionary, Mexico is using an odd formulation of the mandatory/discretionary principle. For example, Mexico is not claiming that, while its laws are WTO-inconsistent, Article 2 of the FTA provides it the discretion to apply the laws in a WTO-consistent manner. Rather, Mexico holds steadfast to its argument that its laws on their face are WTO-consistent. Thus, there is no conflict, in its view, between what its laws require and what its WTO obligations require. Therefore, there is no issue of discretion here.

8. In that respect, the Appellate Body's dicta that the mandatory/discretionary principle cannot be mechanistically applied in every dispute is relevant, because this principle is not relevant in this dispute. Mexico's so-called "discretionary" argument, if taken to its logical end, would mean that any WTO Member with a domestic law that says that it shall apply its laws in a WTO-consistent manner is essentially shielded from any and all claims that its laws are "as such" inconsistent with WTO rules, regardless of what the laws say. This conclusion is untenable.

9. Mr. Chairman, members of the Panel, this concludes our closing statement. Thank you.