*United States – Subsidies on Upland Cotton*
**(WT/DS267)**

**Closing Statement of the United States of America at the Second Session of the First Meeting of the Panel with the Parties**

October 9, 2003

1. Mr. Chairman, as we will have other opportunities to comment in writing, I will try to keep my remarks today brief. My comments speak to Brazil's allegations regarding "the effect" of U.S. subsidies. Brazil has not shown causation between the U.S. subsidies and the effects Brazil attributes to those subsidies. The United States has pointed out the failure of Brazil to separate and distinguish evidence on the effect of other factors from the alleged effect of the challenged U.S. subsidies. Ultimately, this issue goes to the quality of the evidence before the Panel and whether Brazil has established a *prima facie* case on its claims.

2. I would like to address what we see as the three main elements of Brazil's argument.

3. First is the "temporal proximity" argument – that is, that low world prices correspond in time with high U.S. subsidies.[1] Mr. Chairman, there are subsidies and there are subsidies. For example, there is a difference if I give you a $10 subsidy to produce versus $10 whether you produce or not. Depending on the nature of the payment, one would estimate different effects.

[1] The United States has addressed the disconnect between low world prices and the level of subsidy in Exhibit US-44.

Therefore, one cannot merely aggregate the value of all U.S. payments and claim that those subsidies have had "an effect" on production and prices.

4. In this part of its argument, Brazil misuses the data on production by making comparisons using marketing years 1998 and 2001. In 1998, production was driven downward by drought and record crop abandonment. In 2001, production was driven upward by record yields. To use 1998 and 2001 as the beginning and end of a comparison therefore distorts a proper analysis.

5. Brazil stated yesterday that the increase in U.S. production in marketing year 2001 was solely due to yields but also to an increase in acreage. That is true – there was some increase in acreage in 2001, but Brazil has failed to make the proper comparison to put that information in context. Brazil should have compared the U.S. acreage increase between marketing years 2000 and 2001 with that in the rest of the world. I invite the Panel's attention to Exhibit US-63 circulated today. This exhibit reflects, for marketing years 1996-2002, the percentage change in harvested acreage over the previous marketing year in the United States and the rest of the world.

6. In marketing year 1996, when the programs challenged by Brazil were introduced, you see a large decrease in U.S. acreage compared to the rest of the world. I draw your attention to marketing year 1998, in which there is a large decline in U.S. harvested acreage due to drought, followed by a large increase in marketing year 1999, which largely cancel each other out. In marketing year 2001, we see that the increase in acreage in the United States corresponds to the increase in acreage for the rest of the world. In marketing year 2002, the percent decline in

harvested acreage in the United States is *greater* than that observed in the rest of the world. Thus, the data do not support Brazil's contention that U.S. producers are insulated from market forces. In fact, U.S. harvested acreage largely increases and decreases in line with the rest of the world.

7. (Yesterday Mr. Moulis asked about the data in the upland cotton fact sheet. The data in Exhibit US-63 does not come from that fact sheet but from the most recent U.S. Department of Agriculture data base – the specific source is indicated on the second page of the exhibit. Brazil has used this same source for numerous exhibits in its submissions.)

8. The second element of Brazil's arguments that I would like to address is its reliance on Mr. Sumner's model. I would first like to comment on something Mr. Sumner said today in his statement to the effect that the United States does not object to the use of the FAPRI baseline model. In fact, as reflected in the portion of the U.S. opening statement delivered by Dr. Glauber, we do criticize as inappropriate the use of a baseline simulation model for retrospective analysis, a type of analysis for which it is not designed and is poorly suited.

9. Mr. Sumner's analysis also uses an inappropriately low baseline for his prospective analysis of future years. I noted with interest Mr. Sumner's statement that he used the November 2002 preliminary FAPRI baseline because this was available when he ran his model and that the results would have been even more extreme had he used FAPRI's published 2002 baseline "released the previous winter." I realize it would have been inconvenient for Mr.

Sumner to re-run his model, but FAPRI released a more recent baseline in January 2003 (published in March 2003[2]), many months before Brazil submitted the results of its model to the Panel and the United States. We believe this more recent FAPRI baseline would have been a more appropriate baseline with which to do calculations, but Brazil has chosen not to do so, instead presenting to the Panel results based on more out-of-date and inaccurate data. We wonder what would arise from a prospective analysis using such more recent data.

10. The third issue concerns the allegations of high U.S. costs, an issue we have touched on only briefly in this hearing and will return to in more detail in our submissions. Brazil asks without subsidies how could high-cost U.S. producers have stayed in business? It is important first to point out that all of the cost projections by the U.S. Department of Agriculture cited by Brazil are merely updates of a 1997 cost survey. In every year subsequent to 1997, the Department simply takes the results of the 1997 cost survey and updates it to reflect the general increase in prices according to the producer price index.

11. This approach assumes that the mix of inputs remains the same in 1997 as in subsequent years. However, this causes a presentation of inaccurate data on what costs are now. Brazil has several times in this hearing stated that it is not denying that factors reducing costs have occurred – for example, pest eradication bringing new, low-cost areas of the United States into production or the adoption of biotech cotton which requires fewer pesticide applications. Brazil, however,

[2] Exhibit US-52.

has not updated the cost information it presents to the Panel to account for such new developments and information.

12. The United States also notes Brazil's repeated references to a so-called cost/revenue gap. In fact, Brazil presents another such comparison for marketing year 2002 at page 5 to the annex to its Closing Statement. However, Brazil's so-called "gap" is the difference between an inaccurate average total cost per pound and the average marketing year farm price. Mr. Chairman, this is a faulty comparison. Total costs are relevant over the long-term, but Brazil uses this (inaccurate) number to compare to revenue in the short term – that is, the market price for one year. Such a comparison tells you nothing and does not establish that it is only the effect of U.S. subsidies to keep U.S. cotton farmers in business.

13. In fact, Brazil has apparently not listened to the testimony of its own farmer witness, Mr. Christopher Ward. In his statement during the first day of this hearing, he said the following (and I quote from paragraph 6 of his statement):

> But even with these high yields and the excellent quality of our land, *we were not able to fully recover all of our variable costs of production during the 2000/01* ***and*** *2001/02 seasons*. These variable costs included depreciation and maintenance of equipment, seed and fertilizer, labor, insurance, and fuel. ***Nor were we able to meet our total costs*** *which include the additional fixed costs.*[3]

[3] Statement of Mr. Christopher Ward at the Second Session of the First Panel Meeting, para. 6 (emphasis added). Mr. Ward goes on to state: "Based on my discussions with many producers relating to Mato Grosso cotton production and revenue, *I know that most other producers in State of Mato Grosso were in the same situation as we were during the 1999-2002 period*." *Id.* (emphasis added).

That is, Mr. Ward says he has not been able to cover *either* his variable costs *or* his total costs for a period of two marketing years, and yet he continues producing. Under Brazil's analysis, he should be out of the business of producing cotton. He is not, and Brazil claims he is not subsidized, so how can Brazil claim that it is "the effect of the subsidy" to keep U.S. farmers in business when they allegedly were not able to cover their total costs in marketing year 2002? What's true for Brazil should also be true for the United States.

14. Mr. Chairman, members of the Panel, on the basis of these arguments and the evidence presented to date, the United States does not believe that Brazil has established a *prima facie* case that the challenged U.S. subsidies have caused the effects complained of. We will continue to develop and provide our response to the voluminous submissions of Brazil in our answers to your questions and in our rebuttal submission. Thank you.