UNITED STATES – SUBSIDIES ON UPLAND COTTON:

Recourse to Article 21.5 of the DSU by Brazil

(WT/DS267)

Executive Summary of the
Opening Statement of the United States of America
at the Meeting of the Panel with the Parties

March 8, 2007

1. This is a compliance proceeding. The question for this Panel is whether Brazil has established that the U.S. measures taken to comply with the DSB's recommendations and rulings are inconsistent with the covered agreements cited by Brazil.[1] The burden is on Brazil to prove its claims in this regard. The United States has taken numerous steps to comply: (a) the United States stopped operating the Supplier Credit Guarantee Program (or "SCGP"); (b) the United States ceased operating the GSM 103 program; (c) the United States overhauled GSM 102, the remaining export credit guarantee program; and (d) the United States eliminated the Step 2 program. As a result, the United States is in compliance with its WTO obligations.

I. CLAIMS IN RESPECT OF EXPORT CREDIT GUARANTEES FOR EXPORTS OF UNSCHEDULED PRODUCTS AND RICE

2. **– GSM 102 Guarantees Issued Subsequent to July 1, 2005 Are Provided Consistently with Item (j) of the Illustrative List.** Brazil argues that, notwithstanding any U.S. measures taken to comply, GSM 102 guarantees are inconsistent with Articles 10.1 and 8 of the *Agreement on Agriculture* and 3.1(a) and 3.2 of the *SCM Agreement*. These claims turn largely on a single question – whether the GSM 102 guarantees are "export subsidies" under the *SCM Agreement*.

3. There is only one definition of "export subsidy" in the *SCM Agreement* and its elements are set out in Articles 1.1 and 3.1(a) of the *SCM Agreement*. To show how *these* definitional elements apply in particular circumstances, Article 3.1(a) refers to the Illustrative List of Export Subsidies in Annex I of the *SCM Agreement*. In the case of export credit guarantees, it is item (j) that applies. Item (j) "illustrates" – or "clarifies" – those export credit guarantees that *are* export subsidies (*i.e.*, those that are provided under programs "at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes") from those that are not. This was how the original panel determined whether the GSM 102, GSM 103, and SCGP export credit guarantees were providing "export subsidies" in the original proceeding. This was also the basis for the DSB's recommendations and rulings regarding the guarantees. And this was the analysis that the United States observed in implementing the DSB's recommendations and rulings.

4. The United States has taken a number of measures to increase the premiums and lower the potential long-term operating costs and losses of the portfolio of export credit guarantee programs examined by the original panel. The financial data in the U.S. budget shows now that the export credit guarantee programs operate at entirely profitable levels, consistent with item (j).

5. **– Articles 1.1 and 3.1(a) Do Not Establish a "Different Benchmark" From the One in Item (j) For Establishing Whether Export Credit Guarantees Are Export Subsidies.** Brazil has provided no credible rebuttal to the U.S. evidence regarding item (j). It has concentrated its efforts, instead, on finding a "back-door" way to attack the guarantees. Toward this end, it has claimed an "entitlement" to challenge GSM 102 guarantees under the general definitional elements in Articles 1.1 and 3.1(a) and then, if it fails in that regard, to raise an

[1] DSU Article 21.5.

argument under item (j) "in the alternative."[2] Brazil's approach is based on an incorrect interpretation of the *SCM Agreement*. Contrary to Brazil's arguments, "Articles 1.1/3.1(a) and item (j)" do *not* "offer . . . *different benchmarks* to demonstrate that a measure is an export subsidy."[3] Indeed, such an interpretation leads to entirely untenable results.

6. Brazil argues that the U.S. approach would require what Brazil terms an "*a contrario*" reading of item (j). According to Brazil, footnote 5 of the *SCM Agreement* allegedly "definitively forecloses" such an interpretation.[4] This is incorrect, as Brazil itself has recognized in other disputes.[5] Contrary to Brazil's arguments, footnote 5 does not require an "affirmative statement" that a measure is *not* a prohibited export subsidy, and an "affirmative statement" is not required under the ordinary meaning of the term "refer." To the contrary, the ordinary meaning confirms that "referred to" can include measures that are either *expressly* or *implicitly* "referred to" as not constituting export subsidies.[6] Brazil explained to the Appellate Body, in *Brazil – Aircraft (21.5)* that item (j) contains just such an implicit reference.[7] Moreover, the Appellate Body indicated that it accepted Brazil's argument that the first paragraph of item (k) could be read *a contrario* to determine when measures are "justified."[8] That result is equally appropriate here.

7. Brazil's interpretation of footnote 5 is undermined also by the negotiating history, which shows that Members agreed to delete from an earlier draft language that would have required an *express* reference in order for the provisions of the footnote to apply.[9] Moreover, that interpretation would – if applied – nullify or render redundant a number of provisions of the *SCM Agreement*, including footnote 5 itself. As the Appellate Body has explained, "[a]n interpreter is not free to adopt a reading that would result in reducing whole clauses or paragraphs of a treaty to redundancy or inutility."[10]

8. **– Brazil Has Not Shown That GSM 102 Guarantees Provide a "Benefit."** The Panel's analysis properly ends with an assessment under item (j). Any further examination, however, would only confirm that the GSM 102 guarantees are not prohibited export subsidies, as Brazil fails to demonstrate any distinct "benefit" under Article 1.1(b). Indeed, Brazil attempts to show a "benefit" based on a theory that, if credited, would undermine not only item (j) and other provisions of the *SCM Agreement* – for the reasons noted above – but also the logic of Articles 1.1(a) and Article 14(c) of the *SCM Agreement*.

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[2] Brazil Rebuttal Submission, para.457.
[3] Brazil Rebuttal Submission, para.470 (emphasis in original).
[4] Brazil Rebuttal Submission, para.563.
[5] *See e.g., Brazil – Aircraft (AB)*, paras. 14 and 19.
[6] *See* Oxford English Dictionary, p. 2520 (Exhibit US-116).
[7] *Brazil – Aircraft (AB)*, para. 19.
[8] *Brazil – Aircraft (21.5) (AB)*, para. 80.
[9] *Compare* MTN.GNG/NG10/W/38/Rev. 2 (2 November 1990) and MTN.GNG/NG10/W/38/Rev. 3 (6 November 1990).
[10] *United States – Gasoline (AB)*, p. 23.

9. Article 14 does not apply directly in this context; it applies, instead, "for the purpose of Part V" of the *SCM Agreement*. Nonetheless, because it interprets and applies the definition of "benefit" set out in Article 1.1, it has been relied upon by the Appellate Body as important contextual guidance in interpreting "benefit,"[11] and, indeed, it has been invoked by Brazil to justify its approach here.[12] Article 14(c) provides that a government loan guarantee confers a benefit for countervailing duty purposes *only* where there is "a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee." The "benefit" is measured as "the difference between these two amounts adjusted for any differences in fees."

10. Article 14(c), thus, recognizes that the provision of a loan guarantee is fundamentally different from the provision of other government services. In the case of government services, Article 14(d) applies and provides that a "benefit" may be calculated only where "the provision [of the service] is made for less than adequate remuneration." Article 14(c) specifically *precludes* such an approach for loan guarantees. Instead, it recognizes that a loan guarantee is made for the sole purpose of *supporting a loan transaction*; the guarantee becomes an integral part of that transaction and has no value beyond it. An assessment of the total costs of the transaction is necessary to assess whether a "benefit" is actually conferred by the guarantee. A simple comparison of the fee charged for the issuance of one loan guarantee to the fee charged for another may provide an incomplete and distorted picture in this regard.

11. Brazil purports to invoke Article 14(c) of the *SCM Agreement* to support its approach.[13] But under the guise of identifying a "severable benefit," Brazil actually attempts to conduct the kind of simple comparison of fees that *Article 14(d)* allows for assessing whether a government-provided service confers a benefit, but that *Article 14(c)* specifically *precludes* with respect to loan guarantees.

12. Brazil has not even attempted to make the kind of particularized showing contemplated under Article 14(c) of the *SCM Agreement*. Instead, Brazil relies on sweeping and erroneous assertions that obligors on loans guaranteed under the GSM-102 program can *never* obtain any other financing of any kind and that the United States could *never* provide an export credit guarantee without also providing an export subsidy. These arguments simply do not square with the evidence submitted by the United States showing that such obligors are, in fact, able to obtain financing even without GSM 102 guarantees and on terms better than those available *with* GSM 102 guarantees. The declining level of use of the GSM 102 program in recent years is even further evidence of this.

[11] *Canada – Aircraft (AB)*, para. 155.
[12] Brazil First Written Submission, paras. 371-375
[13] Brazil First Written Submission, paras. 371-375

13. Moreover, even though they are not part of the inquiry under Article 14(c), Brazil's other sweeping theories – including of GSM 102 guarantees being a unique financial instrument – have been shown to be factually unsupported. These arguments too are unavailing in the face of the evidence of financial products entirely comparable with those offered by the United States from private, profit-seeking entities that are not agencies or instrumentalities of any government. In short, Brazil has not demonstrated that GSM-102 guarantees presently confer export subsidies.

14. **– Measures Taken to Comply Exist With Respect to GSM 102, GSM 103, and SCGP Guarantees Issued Prior to July 1, 2005.** With respect to these measures, the U.S. obligation was to "cause to decrease or disappear" or "take away" the provision of "the service under the export credit guarantee programmes" at a "net cost to the government, as the service provider."[14] The United States has done so.

15. There is no merit to Brazil's attempts to call into question the fact that SCGP guarantees have expired on the basis that the United States is continuing to *recover* money on claims that it has paid out on SCGP guarantees in the past. Nor is there any basis for Brazil's argument that the United States is not permitted to make itself whole by collecting on claims paid out on export credit guarantees that were issued prior to July 1, 2005.

16. Moreover, nothing in the *SCM Agreement* provides that "withdrawing" a "subsidy" allegedly "taking the form of a program" "includes an obligation to abstain from performing on commitments outstanding under that program as of the deadline for implementation."[15] That argument improperly equates "performing on commitments under the program" with the "subsidy" itself. Such an equation was appropriate in *Brazil – Aircraft (21.5)*, where Brazil continued to issue new WTO-inconsistent bonds even after the period of implementation on the basis that it had pre-existing contractual obligations to do so.[16] However, it is not accurate here, where the guarantees are not themselves prohibited subsidies.

IV. ACTIONABLE SUBSIDY RELATED CLAIMS

17. A number of erroneous assumptions must be made even to get to the merits of Brazil's actionable subsidy related claims in this proceeding. The Panel must simply assume, despite the express statements to the contrary in the original panel report, that the original panel's "present" serious prejudice finding extends to the Step 2, marketing loan, and counter-cyclical payment *programs* and *all payments* authorized thereunder. Moreover, despite the fact that the original panel could not have known the *actual* market conditions – and did not examine the *likely* market conditions – in MY 2006, the Panel must also assume that the original panel made a finding that "present" serious prejudice would exist at this time as a result of the measures

[14] *Upland Cotton (Panel)*, para. 7.804.
[15] Brazil Rebuttal Submission, para. 396.
[16] *Brazil – Aircraft (AB)*, para. 45.

challenged in the original proceeding. As there is no basis on which to make any of these assumptions, Brazil's claims fail at the outset. There are also more flaws if one probes further.

18. – **Brazil Fails to Substantiate Its Arguments That Termination of the Step 2 Program Was Effectively Meaningless**. The evidence and arguments submitted by Brazil regarding the termination of the Step 2 program are difficult to credit. They are unsubstantiated, internally contradictory and inconsistent with arguments that Brazil made in the original proceeding on such fundamental issues as the effects of Step 2 payments on exports and world market prices.

19. Indeed, Brazil's submissions are almost devoid of any acknowledgment that Brazil argued and, indeed, convinced the original panel to declare the Step 2 program to be a prohibited export subsidy. Export subsidies are prohibited because they are "dependent for [their] existence on export performance" and are specifically "'tied to' the export performance."[17] They are, thus, by definition expected to induce exports and deemed so likely to distort trade that no examination of their actual trade effects is required under the *SCM Agreement* in order for a finding against them.

20. Having convinced the original panel to make an export subsidy finding against the Step 2 program – in response to which the United States eliminated the program completely – how can Brazil now allege that termination of the program has "no impact on the level of U.S. . . . exports"? Moreover, given that Brazil's theory of price suppression centers on whether U.S. upland cotton is exported, how can Brazil now allege that elimination of that allegedly *export-contingent* subsidy has "little positive impact on the world price for cotton in the long term"?[18] These are questions to which Brazil has yet to provide a credible answer.

21. Moreover, while Brazil may now consider termination of the Step 2 program to be inconsequential, the loss of the program has not been meaningless to U.S. producers and exporters. Since the termination of the program, U.S. exports are at exceptionally low levels – the United States discussed some of these statistics at start of this presentation – and the forecasts for this marketing year and the next continue to be poor. It is simply too early to know precisely how much of this decline is attributable to the loss of the Step 2 program. Undoubtedly some of it is not. But what is clear is that Brazil's assertion that termination of the Step 2 program has "no impact on the level of U.S. production or exports" and "little positive impact on the world price for cotton" finds little basis in the empirical evidence. The evidence, in fact, supports exactly the opposite conclusion.

22. – **Brazil Does Not Demonstrate That Marketing Loan and Counter-Cyclical Payments Are Causing "Present" Significant Price Suppression.** Nor are marketing loan and

[17] *Canada – Aircraft (21.5 – Brazil) (AB)*, para. 47.

[18] Brazil First Written Submission, para. 206 (quoting Brazil First Written Submission, Annex II, paras. 41-43).

counter-cyclical payments presently significantly "suppressing" world market prices within the meaning of Articles 5(c) and 6.3(c) of the *SCM Agreement*. Brazil's theory, in general terms, is that "payments-cause-overproduction-cause--price-suppression." To support its theory, though, Brazil would have to: (a) submit persuasive evidence showing that marketing loan payments and counter-cyclical payments are *actually* inducing U.S. farmers to plant more cotton than they otherwise would; (b) show that the *degree* of effect on U.S. farmers' planting decisions, production, and export is such as to have impacts on world market prices; and (c) submit evidence to show that the *degree* of effect on world market prices is "significant" within the meaning of Article 6.3(c). Brazil has not done so.

23. **Evidence Regarding *Actual* Production Decisions and Effects of Payments Undermines Brazil's Claims.** In assessing the evidence and arguments submitted by Brazil, it is important to bear in mind that a claim of "present" serious prejudice under Articles 5(c) and 6.3(c) requires a showing that significant price suppression *actually* exists under the prevailing market conditions. Brazil cannot simply allege – or attempt to show – that marketing loan and counter-cyclical payments have the *potential* to induce production. It is also important to note that Articles 5(c) and 6.3(c) are concerned with the *effects* of subsidies, not their form. Thus, Brazil's efforts to show that marketing loan and counter-cyclical payment programs provide income support in times of low prices do not go far. Nothing in the *SCM Agreement* or any other agreement prohibits income support categorically.

24. Given Brazil's particular theory of planting effects leading to price effects, it is necessary to examine the actual planting decisions made by U.S. farmers. At a minimum, any assessment must be grounded in the understanding that in each year when a farmer sits down to decide whether to plant cotton, he does not *know* with certainty (a) what prices will be for cotton at the time of harvest, (b) what prices will be for competing crops at that time, (c) what his yields will ultimately be, (d) whether he might ultimately get a marketing loan payment on cotton or other crops, and (e) whether the season-average farm price for the upcoming marketing year will ultimately be below the threshold at which he might receive a counter-cyclical payment with respect to any upland cotton *base acres* that he holds. The farmer's planting decision *must* be made on the basis of *expectations*.

25. While Brazil has acknowledged (at least some) of these basic facts of upland cotton production,[19] little of the evidence and arguments submitted by Brazil actually take these facts into account and show – on the basis thereof – significant production effects under the market conditions prevailing at present. By contrast, the United States has submitted evidence that takes into account the actual operation of the marketing loan and counter-cyclical payment programs and shows *minimal* effects on production, including (a) recent studies, (b) a nationwide survey of farmers' planting considerations, (c) evidence that much of counter-cyclical payments is passed through to non-operator landowners in the form of higher rents and land values, data showing that substantially less upland cotton (40 percent less) is planted by holders of upland cotton base

[19] *See e.g.,* Brazil First Written Submission, Annex I, para. 36 (emphasis added).

acres today than at the time base acres were set, (d) data showing that a significant and growing portion of U.S. upland cotton planted acreage is on farms with cotton planted acreage that exceeds cotton base acres, or, indeed, on farms with no cotton base acres, and (e) evidence showing that futures prices for harvest-time contracts were above the marketing loan rate in MY 2006 and that, even in earlier years when they were not, the evidence shows that U.S. farmers' planting decisions were driven by market factors, not expectation of payments under the marketing loan program. This evidence contradicts Brazil's theory that marketing loan and counter-cyclical payments have significant effects on planting.

26. Brazil purports to demonstrate *indirect* production effects through its claim that U.S. planting, production, and exports are not responsive to prices. However, Brazil's comparisons are flawed in that they ignore basic facts of upland cotton production; for example, by comparing planting decisions in a marketing year to the *actual* prices that develop many months later[20] or to the futures prices of upland cotton *alone*.[21] Moreover, the theory that Brazil advances of alleged market insulation is at variance with the empirical evidence. Indeed, Brazil's theory depends on the notion that the income support provided by marketing loan and counter-cyclical payments causes U.S. farmers to produce and U.S. exporters to export when anticipated low prices cause producers and exporters elsewhere to pull back. If that were true, one would expect to see U.S. share of world production and world exports increase. But that is not what one finds. Rather, U.S. share of world production and exports has been stable over the entire period of the FSRI Act and, indeed – in terms of production – for many years before that as well. This shows that, contrary to Brazil's arguments, U.S. producers and exporters have reacted to market signals in their production and exports in a similar way to their foreign counterparts.

27. Brazil has argued that U.S. producers cannot meet their total costs without marketing loan and counter-cyclical payments. Brazil asserts that this shows that without marketing loan and counter-cyclical payments, many U.S. producers would not have remained in business and continued planting upland cotton. **Table A.1**[22] shows, however, that the overwhelming majority of U.S. production (*92 percent*) takes place on low- and mid-cost farms that meet both their variable (or operating) costs and also their total costs of production. This means that, for *92 percent of U.S. production* of upland cotton, Brazil's theory of a cost-revenue gap fails as a matter of fact. In other words, with respect to 92 percent of U.S. production, it is not necessary even to reach the arguments regarding the other flaws in Brazil's reasoning regarding the alleged cost-revenue gap. That gap simply does not exist.

28. There *are* other problems in Brazil's analysis as well, including the fact that Brazil incorrectly assumes that total costs of producing upland cotton are determinative for both year-to-year planting decisions and for longer-term decisions, such as whether to continue or exit upland cotton farming. In the former case, it is variable costs that are relevant and, in the latter,

[20]*See e.g.,* Brazil First Written Submission, paras. 144-145.
[21]*See e.g.,* Brazil First Written Submission, paras. 142-143 and Brazil Rebuttal Submission. paras. 221-224.
[22]Exhibit US-119.

it is the *total* cost/revenue balance of the farm – of which costs and revenues for upland cotton is one factor – that is relevant. Moreover, the evidence shows that U.S. producers not only meet their variable costs with market revenue from sales of upland cotton, but also their total costs.

29. **Brazil Has Not Submitted Reliable Evidence Regarding the Degree of Any Price Effect.** The *only* evidence that Brazil has submitted purporting to examine the price effects of marketing loan and counter-cyclical payments specifically are the results of the modeling exercise that it has conducted for purposes of this proceeding. That exercise is conducted using a model that is entirely different from the one advanced by Brazil in the original proceeding, but that is virtually identical to one that was published in 2005, in a CATO institute publication, by Dr. Sumner, Brazil's economist. In the CATO publication, Dr. Sumner warned that his model "abstract[s] from many complexities that would be important to get more precise estimates" and that "[t]he simple model laid out here does not represent the depth of analysis that would be appropriate to support a trade remedy proceeding or a serious prejudice claim before a WTO panel."[23] The United States agrees.

30. We have identified a number of the key problems with Brazil's new model. These include that the model: (a) lacks cross-commodity impacts and cross-price elasticities, potentially leading to biased price effects; (b) is static with no explicit relationships for changes in cotton stock levels and no stocks equation; (c) contains foreign supply elasticities that are different from FAPRI that underestimate the response of foreign producers to changes in world prices; (d) treats production flexibility payments and direct payments differently even though they operate in the same way; (e) incorporates Step 2 payments directly into the producer revenue function as fully coupled payments, and (f) appears to ignore statutory parameters, for example by including counter-cyclical payment rates in each of the various price expectations that sometimes exceed the statutory maximum. These are just some of the problems that stem from the structure of the model itself, and the simplified, reduced nature of the assessment it attempts to conduct.

31. Even more significant biases result from the flawed econometric parameters used by the Sumner II model. Although Brazil has indicated that its new model "employs many of the same parameters used in the model and analysis submitted to the original panel, as well as parameters commonly used by USDA and Food and Agricultural Policy Research Institute ("FAPRI") economists,"[24] this is untrue. As shown in Table A-2 (Exhibit US-120), the elasticity estimates used by the Sumner I model (which were purported to be "FAPRI-based") and the Sumner II model differ in each case except for the estimate of the U.S. mill demand elasticity.

32. These differences matter because they can – and do – have dramatic effects on the estimated outcomes. As shown in Table A.2, not only does the Sumner II model use different

[23] Daniel A. Sumner. "Boxed In: Conflicts Between U.S. Farm Policies and WTO Obligations." Center for Trade Policy Studies, The Cato Institute, December 2005. (Exhibit US-108)

[24] Brazil First Written Submission, para. 168.

elasticities than the Sumner I model, but, in each case, the Sumner II model elasticity results in a greater effect on world price due to an elimination of marketing loans and counter-cyclical payments. Moreover, the Sumner II model simply ignores the demand for US and world cotton stocks. Yet, as Brazil has acknowledged, year-to-year fluctuations in stock levels are important factors in any credible analysis of world cotton markets.[25] The modifications made by Brazil exaggerate the effects of the elimination of marketing loans and counter-cyclical payments on world cotton price.

33. Brazil has not provided any valid basis for discarding the generally-accepted economic parameters that it recognized, itself, as being appropriate in the original proceeding. As Brazil argued at that time, the FAPRI econometric model is well-established, well-known and widely used.[26] It is also valuable inasmuch as its calculations and parameters have not been developed in conjunction with any specific dispute or on behalf of any specific party. The FAPRI model has a strong foundation within economic circles and is well-respected. The Sumner II model, by contrast, has no foundation within economic circles. Although Dr. Sumner argues that the departures from FAPRI-based parameters indicate "improvements based on . . . continued research," Brazil has not identified that "research" and has provided no citation to any independent literature or other established or accepted bases for the new parameters.

34. Brazil has also attempted to justify a number of its flawed econometric parameters on the basis that it is looking to assess the impact of eliminating the marketing loan and counter-cyclical payment programs in the short-run, while leaving all else equal.[27] However, under Article 6.3(c) the question is what, if any, degree of price suppression exists *presently* as a result of the marketing loan and counter-cyclical payment programs and whether this degree of price suppression is "significant." To the extent a counterfactual assessment is undertaken, it is only to assess what the price equilibrium would be at present if marketing loan and counter-cyclical payments had been lower, different, or did not exist. Article 6.3(c) does not ask what prices will look like in the short-run adjustment period if the marketing loan and counter-cyclical payments are suddenly eliminated. Indeed, Members are not even required to eliminate measures found to be actionable subsidies; they are given a choice between "withdrawing" the subsidy or removing its adverse effects. Thus, in addition to the fact that the economic literature supports a long-term assessment, Brazil's argument that it is necessary to look at the short-run effects of total elimination of the programs cannot be accurate as a textual matter.

35. Second, it is not credible for Brazil to argue for a disproportionately small rest-of-world supply response on the basis that "there is imperfect transmission of price changes" because "market institutions, centralized crop marketing, government policies, limited information, and high per-unit transportation costs partially insulate producers in certain regions of the world"

[25] Brazil Oral Statement, 27 February 2007, para. 160.
[26] Brazil Further Submission to the Panel, 9 September 2003, para 214.
[27] *See e.g.,* Brazil First Written Submission, Annex I, 25-26.

from any alleged price changes.[28] The United States recalls that Brazil insisted in the original proceeding that different domestic prices were intimately connected and that a change in U.S. prices would be reflected fairly immediately in the prices of all major cotton producers. Moreover, even Brazil has recognized that, in the mid to long run, there is price transmission. It is that response that is properly captured here.

36. To capture the long run effects of removal of marketing loans and counter-cyclical payments, the United States has also applied parameter estimates taken from the UNCTAD-FAO Agricultural Trade Policy Simulation Model. The summary results are presented in table A.4 (Exhibit US-122) for the periods MY 2002-2005 and MY 2006-2008. These conservative results – in the range of 0.96 to 2.26 percent – which obtain from some very basic changes to the parameters of Brazil's new model illustrate that the estimates provided by Brazil of price effects in the range of 9-11 percent substantially overstate any possible impact on world market price.

37. **– Brazil Has Not Shown That the Degree of Effect on World Market Prices Is "Significant" Within the Meaning of Article 6.3(c).** In Brazil's first submission, Brazil simply referred back to the same evidence it had submitted purporting to show price suppression and argued that "even a fraction of the effects found by Professor Sumner would constitute price suppression, based on its effect on [the] large volume of sales in the world market."[29] In its rebuttal submission, Brazil did not address the issue at all.

38. There is no textual basis for Brazil's lone theory of "significant" price suppression – that, effectively, any amount of price suppression is "significant" because the world upland cotton market is a high volume market. Brazil's approach would effectively create a *per se* rule of "significant" price suppression for certain markets involving large volumes of sales. Such a rule is not found in Articles 5(c) or 6.3(c) of the *SCM Agreement* or any other provision.

39. Contrary to Brazil's assertions, it is necessary to make a *showing* on the facts of a dispute that any proven price suppression is "significant." Brazil has not attempted to make such a showing here. And, in any event, a finding of "significant" price suppression is not justified under the circumstances. Brazil has provided no basis for its claims that this degree of price suppression – even less than a cent per pound, in conservative terms – constitutes "significant" price suppression. If such unfounded assertions were to prevail, they would effectively write "significant" out of Article 6.3(c) entirely.

[28] Brazil First Written Submission, Annex I, para. 28.
[29] Brazil First Written Submission, para. 190.