UNITED STATES – SUBSIDIES ON UPLAND COTTON:

Recourse to Article 21.5 of the DSU by Brazil

(WT/DS267)

Closing Statement of the United States of America
at the Meeting of the Panel with the Parties

February 28, 2007

1. Mr. Chairman, we will end in this meeting where we started, recalling that this is a compliance proceeding pursuant to Article 21.5 of the DSU. The question in this proceeding is whether Brazil has shown that U.S. measures taken to comply with the DSB's recommendations and rulings are inconsistent with the covered agreements cited by Brazil.

2. The United States has taken measures to comply with the recommendations and rulings of the DSB. Let us recall what they are:

- The longer term GSM-103 program is gone.
- The Supplier Credit Guarantee Program is gone.
- The old fee schedule that did not take into account relative risk is gone, replaced by a fee schedule graduated by both risk and tenor, comprised of 6 risk grades of ever-increasing fees. As a result, fees under the schedule have increased 46 percent.
- Obligors in countries that present a worse risk than permitted under the fee schedule are excluded entirely from the GSM-102 program. This is not a static determination simply to exclude certain countries on July 1, 2005. Rather, any country that falls to an unacceptable risk grade will be excluded from eligibility.

3. As a result of the reforms, total guarantees have declined over *63 percent* from $3.7 billion in FY 2004 to $1.36 billion in FY 2006.

4. Mr. Chairman, the United States is fully in compliance with item (j) of the SCM Agreement. Indeed, the data show that the United States was in compliance even before making all of these changes. Certainly, the imposition of these further disciplines only further confirms that.

5. Brazil urges this Panel to ignore the analytical basis for the Panel's original decision, and the clear textual guidance indicating that item (j) "illustrates" dispositively how the general definition of "export subsidy" in Articles 1.1 and 3.1(a) apply. The United States does not agree, but, nonetheless, has shown that – even under Article 14(c) of the SCM Agreement, which Brazil

has invoked as context in assessing "benefit" under Article 1.1 – Brazil, which bears the burden of proof in this case, has failed to identify any distinct benefit under Article 1.1.

6. The United States has supplied other real-world examples of commercial banks providing financing comparable to that under the GSM-102 program, but Brazil derides these examples as irrelevant because, despite the explicit language of Article 14(c) of the SCM Agreement, Brazil considers the proper comparison is not of the total costs of the guaranteed loan transaction, but whether only one component of all the elements of the transaction – fees – are on terms more favorable than those provided by a private commercial bank.

7. There is no basis for that interpretation. Brazil is urging the Panel to ignore *both* of te two provisions of the SCM Agreement that specifically talk about the conditions under which export credit guarantees may be considered subsidies – prohibited export subsidies in the case of item (j) and subsidies subject to CVD actions in the case of Article 14(c). Brazil would have the Panel overlook the fact that *neither* calls for a comparison to fees alone.

8. Mr. Chairman, the market for export credit guarantees is not – and has never been – one in which purely private banks – like Citibank, for example – operate. Indeed, against this background, one can understand why the drafters would – in both item (j) and Article 14(c) use a benchmark *other* than one looking to fees charged for purely private market-provided guarantees.

9. By insisting that the Panel simply ignore the provisions expressly agreed upon by the drafters in item (j) – and, indeed, in Article 14(c) – Brazil is effectively urging the Panel to find that *all* export credit guarantees are *per se* prohibited. Such an interpretation is simply untenable.

10. Returning to the issue of the U.S. measures taken to comply, the United States recalls that it also has eliminated the Step 2 program. This program was found to be a prohibited export subsidy, as well as a prohibited import substitution subsidy, and payments thereunder in MY 1999-2002 were found to cause adverse effects in the same period.

11. These measures – the measures in respect of the export credit guarantee programs and the Step 2 program – are the measures that the United States has taken to comply. Brazil has sought in this proceeding to diminish and dismiss each and every one of these measures while simultaneously attempting to broaden the scope of this proceeding so that the United States will be considered to have failed to have met its implementation obligations. For example, Brazil argues that the marketing loan and counter-cyclical payment programs are "measures taken to comply."

12. Mr. Chairman, this is just a fiction. The Appellate Body has recognized before that measures taken to comply are ordinarily changes made subsequent to the issuance of DSB recommendations and rulings. The marketing loan and counter-cyclical payment programs were in existence at the time of the original proceeding, were even challenged by Brazil in the original proceeding, and they remain the same now. These are not measures that the United States has taken to comply with any recommendations and rulings.

13. The question then is whether they were subject to the original panel's findings of "present" serious prejudice. The United States has submitted detailed arguments as to why they were not. In doing so, the United States has taken into account the fact that Brazil made no "present" serious prejudice claims against the marketing loan and counter-cyclical payment *programs*, that the only claims made by Brazil in respect of those measures were "threat" of

serious prejudice claims, and that the original panel expressly stated that it was declining to make even that finding.

14. Nonetheless, the United States has shown that even if one considers Brazil's arguments on the merits, it is without basis. The argument, in essence, is that elimination of the Step 2 program does not eliminate any adverse effects of the "package" of Step 2, market loan, and counter-cyclical payment programs. But, as we discussed yesterday, Brazil's arguments in that regard fail to address the actual market facts that have prevailed since termination of the Step 2 program and are not consistent with Brazil's own arguments in the original proceeding.

15. Like its shifting arguments regarding the impact of the Step 2 program, Brazil's counterpart argument – that the marketing loan and counter-cyclical payment programs continue to have adverse effects – continues to shift. Yesterday we heard – I believe for the first time in this proceeding – that it is *unsold stocks* and not exported surplus that is responsible for the alleged price suppression. The fact is, Mr. Chairman, it is too late in the day for Brazil to be altering such fundamental factors as its theory of price suppression. And, in any event, Brazil has submitted no evidence or argument to substantiate this new assertion.

16. Brazil's claims regarding the marketing loan and counter-cyclical payment programs fail for a single fundamental reason. They are not supported by the evidence. Much of Brazil's oral presentation again stressed its premise that large payments necessarily show large effects. As Brazil admitted before the Appellate Body, however, this is not correct. While the size of payments is undoubtedly a consideration – and likely an important one – the focus of an adverse *effects* claim is, not surprisingly, on *effects*.

17. We pointed out before that empirical evidence does not support Brazil's arguments regarding price effects (*i.e.*, that payments-cause-production-cause-exports-cause-price suppression). Presumably, in response to this, Brazil, in its presentation yesterday, supplied a slew of charts purporting to show that year-to-year decisions to plant upland cotton are economically irrational. As we discussed earlier, Brazil's analysis fails because it relies on an inappropriate measure of costs that is not relevant to U.S. farmers' planting decisions year-to-year.

18. Beyond this, the only real "evidence" that Brazil presents appears to highlight are the results of the *new* Sumner model, one that abandons most of the economic constructs that Brazil previously argued were accurate and superior. Brazil has offered an economic model without foundation or publication in any peer reviewed journal. Then, Brazil altered virtually every critical economic parameter used by that model to inflate its result. The United States has shown why the model is flawed and why its economic parameters are unreliable.

19. Using reasonable and realistic parameters, even Brazil's model shows small effects from the U.S. programs.

20. Indeed, this confirms what other evidence – recent studies of the empirical data, actual assessments of year-to-year planting decisions (taking into account proper variable costs), and evidence of the stable share of U.S. production and export market share – already shows; namely, that payments under the marketing loan and counter-cyclical payment programs are not having the kind of significant price effects that Brazil has alleged.