

**Mexico – Tax Measures on Soft Drinks and Other Beverages
WT/DS308**

**Closing Statement of the United States
First Meeting of the Panel**

December 3, 2004

1. Thank you Mr. Chairman. I want to thank you and the other members of the Panel for your attention and work on this dispute, as demonstrated over the past two days.
2. As we've had the chance to discuss in some detail, the United States has established a *prima facie* case that Mexico's tax on HFCS and soft drinks and syrups sweetened with HFCS is inconsistent with Mexico's obligations under Articles III:2 and III:4 of the GATT 1994. Mexico confirmed for the Panel yesterday that it has not rebutted that case, and does not intend to rebut that case in the context of these proceedings. While the Panel must itself confirm that the legal requirements for a breach of Article III exist, the United States is confident that the *prima facie* case established in our written submission and confirmed by our remarks yesterday will enable the Panel to do that.
3. This is in stark contract to the two bases on which Mexico has decided to defend its breach of Article III: its request for the Panel to decline jurisdiction and its Article XX(d) defense. Mexico has not met its burden of proof with respect to either of these bases. Rather than reiterate the points we discussed in this regard yesterday, I will focus my closing remarks on a couple of admissions made or clarified by Mexico's oral statement and responses to questions.
4. First, with regard to Mexico's request for the Panel to decline jurisdiction over this dispute, Mexico admits that its request finds no basis in the text of the DSU or elsewhere in the

WTO Agreement. Instead, Mexico asserts that some undefined principle of international law which “is not written down” overrides the explicit text of the DSU and the Panel’s terms of reference. This is simply not credible.

5. Second, with respect to Article XX(d), Mexico admits that it is not aware of any past panel or Appellate Body report nor any statements in the negotiating history to support its novel contention that the words “laws or regulations” as used in Article XX(d) actually mean – as you framed it yesterday Mr. Chairman – “another Member’s obligations under a non-WTO agreement.” This is in addition to the fact that Mexico is unable to point to any textual basis in the GATT or elsewhere in the WTO Agreement to support its contention. However, because Mexico as the party asserting this defense bears the burden of proving it, it is up to Mexico to come forward with the factual evidence and legal arguments in support of its claim. Such legal and factual support must arise from something more than the mere absence of a prior WTO finding or any negotiating history on the subject.

6. Having not established that another Member’s obligations under an international agreement are “laws or regulations” under Article XX(d), the Panel need not reach the issue of whether Mexico’s tax “secures compliance” or is “necessary.” Nevertheless, the United States would point out Mexico’s rather flexible use of the word “secure” in its responses to yesterday’s questions. Mexico repeatedly referred to the tax as aimed at “inducing” U.S. compliance with its alleged NAFTA obligations. This suggests to the United States that Mexico also implicitly admits that its tax cannot in fact secure U.S. compliance with alleged NAFTA obligations; the most that it can hope is that its tax encourages U.S. compliance with those obligations by

punishing the United States with a breach of the obligations Mexico owes the United States under the GATT.

7. In this connection, the United States also notes Mexico's candid response to the question posed by the United States as to whether Mexico's tax applies to imports of HFCS from just the United States or from other WTO Members as well. In that response, Mexico confirmed that the tax applies to HFCS imports from any WTO Member. The United States finds it difficult that Mexico's tax could be necessary to secure U.S. compliance with the NAFTA when the tax penalizes not just HFCS of U.S. origin, but HFCS from all other WTO Members.

8. Much more could be said about Mexico's incorrect claims with respect to its Article XX(d) defense as well as its request for the Panel to decline jurisdiction. However, in the interest of brevity, I will defer those points to our second submission.

9. Before closing, however, I would like to comment more broadly on the sweetener dispute with respect to the provisions of the NAFTA. The United States has made clear its view that that other matter is not relevant to this current proceeding. Let me also be clear that the U.S. firm view is that we have been acting in full conformity with our obligations regarding sugar under the NAFTA. We have a dispute with Mexico over the precise terms of those NAFTA obligations. Mexico has described its efforts to resolve that other matter and its frustration over the fact that, that issue has not been resolved to date. The Panel should understand that the United States is equally dedicated to resolving that other matter and shares Mexico's disappointment that we have not been able to reach a mutually satisfactory resolution. As Mexico noted yesterday, dialogue and negotiations on the NAFTA issue have continued, most

recently among sweetener producers in both countries. We are here before the WTO to resolve a WTO dispute over HFCS, but have no less interest in resolving the NAFTA sugar issue in the appropriate forum.

10. Mexico has presented the Panel with a narrative that describes some of the complexities in the sugar case. There are many more that could be presented and that would uphold the U.S. view of the matter. The point is that this is not the place where that issue can be resolved. This dispute before you, Mr. Chairman and other members of the Panel, is about Mexico's commitments to WTO Members under the covered agreements, and Mexico has pointed to nothing in the text of those covered agreements that bars the United States from recourse under WTO dispute settlement.

11. This concludes my closing remarks Mr. Chairman. We again thank you and the Members of the Panel for your efforts in this dispute, and we look forward to seeing you at the second panel meeting.