

## ANNEX D

### ORAL STATEMENTS, MEETING WITH THE PANEL

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## ANNEX D-1

### ORAL STATEMENT OF THE EUROPEAN COMMUNITIES

(30 June 2005)

Mr. Chairman, distinguished Members of the Panel,

1. The European Communities would first like to thank you all for agreeing to serve on this Panel. And we also thank the Secretariat for the assistance that it is providing to the Panel in this case.
2. Although this case is relatively straightforward and may appear to relate to a temporary and residual problem, it is nonetheless important.
3. It is important that adopted recommendations and findings in WTO dispute settlement proceedings are respected and implemented properly and promptly. Moreover, given their inherently distortive character, it is important that prohibited subsidies are withdrawn without delay. As will no doubt be clear to you, this has not happened in this case. Indeed, the continuing violations at issue in this proceeding are either identical or similar in all relevant respects to those that have already been condemned in the previous Article 21.5 proceeding. Long-standing non-compliance situations operate against the very credibility of the WTO system to the detriment of all Members.
4. The original Panel report in this case was circulated in 1999 and adopted by the DSB on 20 March 2000 after an unsuccessful appeal by the United States. The United States was given a generous period to withdraw the FSC scheme but simply replaced it with a partly identical scheme that was duly condemned in turn (as were the transitional and grandfathering provisions that the United States accorded itself for its original FSC scheme).
5. More than five years after the circulation of the original Panel Report, the United States finally adopted a measure (the JOBS Act) that, with effect from 1 January 2005, starts to *phase out* the export subsidies under the ETI scheme.
6. Of course, phasing out is not withdrawal. And the phasing out in this case occurs over an indefinite period of time. Although new users of this export subsidy scheme can only obtain 80 per cent of the previously available benefit for transactions occurring in 2005 and only 60 per cent of the benefit for transactions occurring in 2006, certain old users can continue to obtain the full benefit, potentially forever, where they can show that the transaction is “pursuant to” a “binding contract”, entered into on or before 30 September 2000 in the case of the FSC scheme, and 17 September 2003 in the case of the ETI scheme.
7. Thus, in practice, a US producer of widgets that has a 30 year distribution contract with a Japanese company to distribute its widgets in Japan, will continue to benefit from these illegal export subsidies for thirty years. And if the distribution contract has a renewal option, then, no doubt, the illegal subsidies will continue for even longer.
8. The United States does not appear to contest that it is still violating its WTO obligations by partially maintaining the FSC and ETI schemes. Rather, it confines itself to raising two exceedingly weak procedural arguments. First, the United States contends, that the Panel can make no finding that

the United States has failed to withdraw its prohibited subsidy as required by Article 4.7 of the *SCM Agreement* because in the previous Article 21.5 proceeding the Panel merely *found* that the ETI scheme was inconsistent with the obligations of the United States under the *SCM Agreement* and did not make a new recommendation under Article 4.7 of the *SCM Agreement*. Second, the United States contends that where there is *no* measure taken to comply (as in the case of the FSC grandfathering provisions contained in the ETI Act), the continuing violation is not within the Panel's terms of reference unless the WTO-inconsistent measure is again included in the Panel request under Article 21.5.

9. Mr. Chairman, distinguished Members of the Panel, one only needs to restate these procedural arguments to realise they are unfounded. The European Communities has set out in its rebuttal submission detailed reasons why they are without merit and should be dismissed accordingly. The European Communities does not wish to repeat the arguments it has made in writing but would stress two points:

- First, an Article 21.5 panel need not make new recommendations since its purpose is to rule on a disagreement as to whether previous recommendations and rulings have been complied with. In the first Article 21.5 proceeding, the Panel ruled that they had not been and the United States has not advanced any arguments in the present proceeding as to why they have been complied with (manifestly, there are none). In any event, the obligation to withdraw a prohibited subsidy is created by Art. 4.7 of the *SCM Agreement* as such, not by the panel recommendations foreseen in the same provision. This clearly results from the Appellate Body Report in the first Article 21.5 proceeding;<sup>1</sup>
- Second, where, as here, the Article 21.5 proceeding relates to the *failure* to remove previously found violations of the *WTO Agreement*, the provisions that give rise to these violations need not be repeated in the request for the establishment of a panel. In any case, the US measure of purported compliance (section 101 of the Jobs Act) fails to remove the FSC grandfathering provisions and is mentioned in the request for an Article 21.5 panel.

10. As already observed, the United States does not seek to defend itself on substance. In particular, it gives no arguments as to why the subsidies that it continues to provide are no longer inconsistent with Articles 3.1(a) and 3.2 of the *SCM Agreement*, Articles 10.1, 8 and 3.3 of the *Agreement on Agriculture* and Article III:4 of the GATT 1994. It also does not respond to the EC demonstration of violations of Articles 19.1 and 21.1 of the DSU.

Mr Chairman, Members of the Panel, thank you for your attention. We look forward to responding to any questions the Panel may have.

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<sup>1</sup> Art. 21.5 Appellate Body Report, para. 229.

## ANNEX D-2

### ORAL STATEMENT OF THE UNITED STATES

(30 June 2005)

Mr. Chairman, members of the Panel:

1. At the outset, on behalf of the United States, I would like to express our appreciation for your willingness to serve on this Panel. In particular, I would like to thank the Chairman for agreeing to step in at this stage in this dispute.

2. However, while we are grateful for your willingness to serve, it is unfortunate that you had to do so. In enacting the American Jobs Creation Act – or "AJCA" – US officials consulted closely with EC officials, and we believed the legislation addressed the EC's primary concerns. Unfortunately, the EC has chosen to prolong this dispute involving a subsidy that, if this were a countervailing duty proceeding, would be regarded as *de minimis*.

3. In light of the speculation in the press that the EC decision to prolong this dispute was linked to the US decision to challenge the massive subsidies provided to Airbus, the United States cannot help but note that in its counter-case against Boeing aircraft, the EC appears to have included a claim that the FSC tax exemption and the ETI Act tax exclusion have caused adverse effects within the meaning of Article 5 of the SCM Agreement.<sup>1</sup> While the United States continues to hope that the aircraft disputes can be resolved without recourse to litigation, we must confess that we find tantalizing the prospect of the EC being required for the first time to demonstrate how these *de minimis* tax exemptions and exclusions have caused harm to EC trade interests.

4. In any event, the EC has decided that we need to get together again, so here we are. Today, we will focus on two issues: (1) the EC's claims under Article 4.7 of the SCM Agreement; and (2) the EC's claims regarding the transition provisions for the FSC tax exemption contained in section 5 of the ETI Act.

#### **Article 4.7 of the SCM Agreement**

5. Starting with Article 4.7, the EC's claim that the transition provisions of the AJCA are inconsistent with Article 4.7 is premised on the notion that the ETI Act tax exclusion was found to be inconsistent with the DSB recommendation under Article 4.7 to withdraw the FSC subsidies. The US response to this claim is straightforward: no such finding was ever made, nor did the DSB make a recommendation under Article 4.7 that the ETI Act tax exclusion be withdrawn. Thus, the premise of the EC's claim is simply in error.

6. Insofar as the ETI Act tax exclusion is concerned, the only findings made were that the tax exclusion was inconsistent with Article 3.1(a) of the SCM Agreement, Articles 3.3, 8 and 10.1 of the Agriculture Agreement, and Article III:4 of the GATT 1994. The corresponding recommendations of the DSB were that the United States bring the ETI measure into conformity with its obligations under these provisions. There was no finding that the ETI Act tax exclusion was inconsistent with the

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<sup>1</sup> WT/DS317/2 (3 June 2005).

DSB's recommendation under SCM Article 4.7 to withdraw the FSC subsidies, nor was there a DSB recommendation under Article 4.7 to withdraw the ETI Act tax exclusion.

7. Contrary to what the EC asserts, this is not a mere "procedural" argument. No Member can be found to have failed to comply with a non-existent recommendation. The EC's assertion to the contrary raises important substantive and systemic issues.

8. In this regard, the EC errs when it suggests that the US argument regarding Article 4.7 leads to the conclusion that the repeal of the ETI Act was a gratuitous act on the part of the United States.<sup>2</sup> To the contrary, as we will discuss later, repeal was appropriate in order to comply with the findings and recommendations that the United States bring the ETI measure into conformity with provisions of the WTO agreements other than SCM Article 4.7. However, the fact that implementation obligations existed with respect to these other provisions does not mean that there was an obligation under Article 4.7.

9. In its first written submission, the United States described the scope of the findings of the Article 21.5 Panel and the Appellate Body under Article 4.7, and explained how those findings were limited to the transition provisions in section 5 of the ETI Act that allowed for the continued use of the FSC tax exemption. Unfortunately, in its rebuttal submission, the EC presents an inaccurate version of the prior history of this dispute. According to the EC, the Appellate Body made a finding in the first Article 21.5 proceeding that the ETI Act tax exclusion resulted in non-compliance with the recommendation of the original Panel under Article 4.7 to withdraw the FSC subsidies.

10. The EC assertion is incorrect. In order to set the record straight, it is necessary to go over the prior history of this dispute one more time.

#### **The Recommendations of the Article 21.5 Panel and the Appellate Body Under Article 4.7 Were Limited to Section 5 of the ETI Act**

11. In its rebuttal submission, the EC refers to "[t]he Appellate Body's recognition that, by passing the ETI Act, the United States had not withdrawn its prohibited subsidy, and thus had not complied with the recommendations and rulings under Article 4.7 of the *SCM Agreement* contained in the original Panel Report ...".<sup>3</sup> However, the Appellate Body recognized no such thing, because its finding and recommendation under Article 4.7 were limited to the transition provisions of the ETI Act that allowed for the continued use by taxpayers of the FSC tax exemption. The Appellate Body did *not* find that the ETI Act tax exclusion itself constituted a failure to comply with the recommendation under Article 4.7. Indeed, the EC did not even argue that the enactment of the ETI Act tax exclusion was inconsistent with that recommendation.

12. In the EC's first recourse to Article 21.5 of the DSU, the EC challenged various provisions of the ETI Act, alleging that they were inconsistent with one or more provisions of the WTO agreements. However, with respect to the issue of compliance with the DSB's recommendation under Article 4.7 of the SCM Agreement to withdraw the subsidy, the EC's claims were limited to section 5 of the ETI Act.

13. This can be seen from the first written submission of the EC in the first Article 21.5 proceeding. In the "Legal Analysis" section of the EC submission, the only reference by the EC to an alleged failure to withdraw the subsidy under Article 4.7 was made in connection with the transition

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<sup>2</sup> *Rebuttal Submission of the European Communities*, 16 June 2005, para. 15 (hereinafter "EC Rebuttal").

<sup>3</sup> EC Rebuttal, para. 15.

provisions of section 5 of the ETI Act.<sup>4</sup> Likewise, in the "Conclusion" section, wherein the EC laid out the specific findings that it wanted the Article 21.5 Panel to make, the only finding sought by the EC with respect to Article 4.7 related to the transition provisions of section 5 of the ETI Act.<sup>5</sup>

14. Not surprisingly, the Article 21.5 Panel took the EC at its word. The Article 21.5 Panel's finding of a failure to comply with the DSB recommendation under Article 4.7 to withdraw the FSC subsidies was limited to section 5 of the ETI Act. In paragraph 8.170 of the Article 21.5 Panel Report, which was contained in the section entitled "Transitional Issues", the Article 21.5 Panel found that the United States had not "*fully* withdrawn the FSC subsidies . . . and has therefore failed to implement the recommendations and rulings of the DSB made pursuant to Article 4.7 of the *SCM Agreement*."<sup>6</sup> This finding was repeated in paragraph 9.1(e) of the Article 21.5 Panel Report.<sup>7</sup> This was the only finding by the Article 21.5 Panel under Article 4.7. The Panel did not find that any other portion of the ETI Act constituted a failure to withdraw the FSC subsidies within the meaning of Article 4.7.

15. Neither party appealed the fact that the Article 21.5 Panel limited its findings under Article 4.7 to the transition provisions of section 5 of the ETI Act. In the case of the EC, how could it appeal? The Article 21.5 Panel had done exactly what the EC requested.

16. The lack of an appeal of this issue is relevant, because the EC makes the extraordinary assertion that the Appellate Body's findings regarding the ETI Act in general were closely linked to the original recommendations under SCM Article 4.7.<sup>8</sup> However, this assertion is belied by the fact that the Appellate Body upheld, rather than modified, the findings of the Article 21.5 Panel under Article 4.7. In paragraph 256(f) of its report, the Appellate Body stated that it

upholds the Panel's finding, in paragraphs 8.170 and 9.1(e) of the Panel Report, that the United States has not *fully* withdrawn the subsidies . . . and that the United States has, therefore, failed *fully* to implement the recommendations and rulings of the DSB made pursuant to Article 4.7 of the *SCM Agreement* ...<sup>9</sup>

As previously noted, paragraphs 8.170 and 9.1(e) of the Article 21.5 Panel Report pertained to section 5 of the ETI Act.

17. In paragraph 257 of the Appellate Body report, the Appellate Body drew upon the language in paragraph 256 to recommend "that the DSB request the United States to implement *fully* the recommendations and rulings of the DSB in *US – FSC*, made pursuant to Article 4.7 of the *SCM Agreement*".<sup>10</sup> Contrary to the EC's assertions<sup>11</sup>, this recommendation has nothing to do with the ETI Act tax exclusion. Instead, the Appellate Body referenced the recommendations and rulings in *US – FSC*, which were made before the ETI Act tax exclusion even existed.

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<sup>4</sup> Panel Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/RW, adopted 29 January 2002, as modified by the Appellate Body Report, WT/DS108/AB/RW, Annex A-1, para. 241 (hereinafter "*US – FSC (Article 21.5) (Panel)*").

<sup>5</sup> *US – FSC (Article 21.5) (Panel)*, Annex A-1, para. 259, sixth bullet.

<sup>6</sup> *US – FSC (Article 21.5) (Panel)*, paras 8.170 (emphasis added).

<sup>7</sup> *US – FSC (Article 21.5) (Panel)*, para. 9.1(e).

<sup>8</sup> EC Rebuttal, para. 13; *see also id.*, para. 15.

<sup>9</sup> Appellate Body Report, *United States – Tax Treatment for "Foreign Sales Corporations" – Recourse to Article 21.5 of the DSU by the European Communities*, WT/DS108/AB/RW, adopted 29 January 2002, para. 256(f) (emphasis added) (hereinafter "*US – FSC (Article 21.5) (AB)*").

<sup>10</sup> *US – FSC (Article 21.5) (AB)*, para. 257 (emphasis added).

<sup>11</sup> EC Rebuttal, para. 13.

18. In summary, the original Article 21.5 process resulted in two different sets of findings and recommendations. One set pertained to section 5 of the ETI Act and the transition provisions for the FSC tax exemption and involved a finding and recommendation under Article 4.7. The other set pertained to the ETI Act tax exclusion. With respect to the tax exclusion, there was no finding or recommendation under Article 4.7. Thus, the EC is simply incorrect when it asserts that the Appellate Body made a finding that the enactment of the ETI Act tax exclusion resulted in non-compliance with the DSB's recommendation under Article 4.7 to withdraw the FSC subsidies.

#### **The Panel Should Reject the EC's Claims Under Article 4.7 of the SCM Agreement**

19. To sum up, the EC's claim under Article 4.7 is based on the notion that the United States had an obligation under Article 4.7 to withdraw the ETI Act tax exclusion. According to the EC, the transition provisions of sections 101(d) and (f) of the AJCA are inconsistent with this obligation because they permit the continued use of the tax exclusion.

20. Insofar as the ETI Act tax exclusion itself is concerned, the United States had an obligation to bring the measure into conformity with Article 3.1(a) of the SCM Agreement, Articles 3.3, 8 and 10.1 of the Agriculture Agreement, and Article III:4 of the GATT 1994. However, the United States did not have an obligation under Article 4.7 of the SCM Agreement with respect to the ETI Act tax exclusion. As the United States has demonstrated, the first Article 21.5 proceeding did not result in any findings that the ETI Act tax exclusion resulted in a failure to comply with Article 4.7.

#### **Section 5 of the ETI Act Is Not Within the Panel's Terms of Reference**

21. The United States now would like to turn to the EC's claims regarding section 5 of the ETI Act. Section 5, as the Panel will recall, is the transition provision in the ETI Act that allowed for the continued use of the FSC tax exemption for a period of time. As previously explained by the United States, section 5 is not within the Panel's terms of reference for several reasons. First, the only provisions of the AJCA identified by the EC in its panel request were sections 101(d) and (f), which are the transition provisions for the ETI Act tax exclusion and which do not concern the FSC tax exemption. Second, section 5 of the ETI Act was not mentioned in the EC's panel request.<sup>12</sup>

22. According to the EC, the US position is wrong because the "United States considers the subsections of the [AJCA] expressly mentioned in a particular part of the request for the establishment of the Panel to be the sole subject of litigation in this proceeding."<sup>13</sup> Well, the United States must admit that it did rely on the fact that in Section 2 of the EC's panel request the EC was, in fact, purporting to identify the subject of the dispute. The United States reached the conclusion that it did because Section 2 is entitled "THE SUBJECT OF THE DISPUTE". Apparently, according to the EC, the title to Section 2 actually means "A SUBJECT OF THE DISPUTE".

23. Section 2, consistent with the plain English reading of its title, identifies as the subject of the dispute sections 101(d) and (f), referring to them as "provisions which will allow US exporters to continue benefiting from the tax exemptions ...".<sup>14</sup> However, the only tax exemption that these provisions allow to continue to be used is the ETI Act tax exclusion. Therefore, the only fair reading of the EC panel request is that the EC's claims related to the transition provisions for the ETI Act tax exclusion, and not the FSC tax exemption.

24. Thus, the EC's discussion of the nature of Article 21.5 proceedings and what can and cannot be raised therein is irrelevant.<sup>15</sup> Even if the EC could have made a claim regarding section 5 of the

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<sup>12</sup> *First Written Submission of the United States*, 2 June 2005, para. 20.

<sup>13</sup> EC Rebuttal, para. 19 (footnote omitted).

<sup>14</sup> WT/DS108/29, page 2.

<sup>15</sup> *See, e.g.*, EC Rebuttal, paras. 21-23.

ETI Act and the continued use of the FSC tax exemption, the fact is that it did not do so in its request for the establishment of a panel. Therefore, the Panel must find that these claims are not within its terms of reference.

**Conclusion**

25. Mr. Chairman, that concludes our oral statement. The US delegation stands ready to respond to any questions you may have.

### **ANNEX D-3**

## **THIRD PARTY ORAL STATEMENT OF AUSTRALIA**

(1 July 2005)

Mr Chairman, Members of the Panel

Australia welcomes the opportunity to present its views to the Panel in this dispute.

I will not repeat the points Australia has made in its written submission other than to reiterate the importance that Australia places on an interpretation of the DSU that ensures prompt compliance with the recommendations and rulings of the DSB. As stated in Article 21.1 of the DSU, such compliance is "essential in order to ensure effective resolution of disputes to the benefit of all Members".

Australia looks forward to participating further in the panel's consideration of the issues before it.

## ANNEX D-4

### THIRD PARTY ORAL STATEMENT OF BRAZIL

(1 July 2005)

#### **Mr. Chairman and Distinguished Members of the Panel,**

1. Brazil welcomes the opportunity to appear before you today at this third party session of the meeting with the Panel in the present dispute.

2. In light of the conciseness of the submissions presented by the parties and third parties in this proceeding, it would not come as a surprise to the Panel if Brazil says that it will *briefly* touch on some of the issues in question in this case. As you will see, we will give the word *briefly* its full ordinary meaning, by any test according to the Vienna Convention on Treaty Law.

3. Not only will this intervention be short, but it will also be reiterative of what Brazil has already put forward in its submission of 9 June. As a third party, Brazil has had no access to whatever the United States and the European Communities (EC) might have submitted to the Panel after their rebuttal briefs of 16 June, particularly in terms of the EC's claims of violation under Article 3 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), Articles 3, 8 and 10 of the Agreement on Agriculture ("AoA"), Article III:4 of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), and Articles 19 and 21 of the DSU.

4. Introductory explanations given, Brazil takes the opportunity to emphasize the following points we raised on 9 June:

- (a) Prompt compliance as a central element for the appropriate functioning of the WTO dispute settlement system; and
- (b) The continuation of a non-compliance situation through the *American Jobs Creation Act of 2004* ("AJCA").

#### **Prompt Compliance**

5. Reduced to its essence, the central argument of the United States in the present case is that a WTO Member would be allowed to maintain a subsidy previously found to be prohibited pursuant to WTO law insofar as a *compliance* panel does not make a recommendation under Article 4.7 of the SCM Agreement to the effect that that WTO Member withdraw a subsidy with respect to which there already existed a multilateral recommendation by the DSB that it be withdrawn *without delay*.

6. To say the least, it is hard to reconcile such an argument with the basic principles of WTO dispute settlement, especially that of *prompt* compliance.

7. Even though the mere fact that this argument is made may suggest otherwise, Brazil does not believe it necessary to reproduce here the text of several provisions in the DSU requiring Members to promptly comply with DSB's rulings and recommendations.

8. Brazil only notes that the adjective the drafters of the DSU choose to signify the relevance to be attached to this principle is *essential*. Among its meanings, we will find those of *necessary*, *fundamental*, *indispensable*. It is not a light word, for sure.

9. The drafters, however, did not use the term only once. In two DSU provisions – Articles 3.3 and 21.1 – this adjective appear to qualify the obligation of *prompt* compliance. A meaning must be attached to this. Unlike Brazil in this statement, the drafters were not simply reiterative. By recurring twice to this word, the drafters emphasized how important *prompt* compliance is for the appropriate operation of the multilateral dispute settlement system.

10. As Brazil expressed in its submission, this is not only a DSU-case. It involves prohibited subsidies, as defined by the SCM Agreement. There, the *prompt* compliance principle is even further reinforced through especial remedies, as those established by Article 4.7.

### **Non-compliance**

11. To avoid additional repetitions, Brazil – on the issues of the extension and "grandfathering" – will only highlight the argument presented in paragraphs 19 to 21 of our third party submission and, in slightly different terms, captured in paragraph 12 of the EC's rebuttal submission.

12. In analyzing this case, one should bear in mind that the extension and "grandfathering" provisions in the AJCA simply extend subsidies held WTO-inconsistent in two previous proceedings. This constitutes a delay of the long-overdue implementation of the recommendations deriving from the original proceedings on the *Foreign Sales Corporations* subsidies.

13. In this respect, by asserting that the United States is under no obligation to withdraw the ETI Act subsidies because no recommendation pursuant to Article 4.7 of the SCM Agreement was made by the first compliance panel is tantamount to arguing for a new deadline for implementation. In our view, should a *compliance* panel, having found that the WTO-inconsistencies remain, be required to reward the non-compliant Member with a new time-period for implementation, Articles 3.2 and 19.2 of the DSU would be depleted of any significance.

### **Conclusion**

14. In our view, this Panel should conclude that the United States has not yet complied with the DSB's recommendations and rulings concerning this matter in the sense that the United States has not yet fully withdrawn prohibited subsidies found by previous related proceedings to be inconsistent with the multilateral rules.

Thank you.

## ANNEX D-5

### THIRD PARTY ORAL STATEMENT OF THE PEOPLE'S REPUBLIC OF CHINA

(1 July 2005)

1. Thank you, Mr. Chairman, and members of the Panel. China appreciates this opportunity to present its views on the issues raised in this Panel proceeding.

2. In regard to the situation in this case, China cannot share the view that "the United States has not failed to comply with the DSB's recommendations and rulings, and the transition provisions of the AJCA are not inconsistent with Article 4.7 of the SCM Agreement, for the simple reason that, ... there was no DSB recommendation or ruling under Article 4.7 to withdraw the subsidy insofar as the ETI Act tax exclusion is concerned."<sup>1</sup>

3. The DSB made recommendations and rulings under article 4.7 when adopting the panel and Appellate Body report on 20 March 2000, which requested the US to withdraw the FSC subsidies within certain time-period. Subsequently, the United States enacted the ETI Act with a view to complying with the recommendations and rulings of the DSB in *US-FSC*. In the first compliance panel proceeding, the ETI scheme was found inconsistent with article 3.1(a) of the SCM Agreement and the US was requested to bring it into conformity with its obligations under relevant Agreement, including *the SCM Agreement*.<sup>2</sup>

4. Article 4.7 of *the SCM Agreement* requires prohibited subsidies to be withdrawn "without delay", and provides that a time-period for such withdrawal shall be specified by the panel.<sup>3</sup> The obligation to withdraw prohibited subsidies without delay is not released simply because the first compliance panel did not specify a time-period in its conclusion. The party concerned failed to fully implement the DSB recommendations and rulings by introducing transition period and grandfathering provisions for FSC scheme, an export subsidy measure. How can transition period and grandfathering provisions for another prohibited subsidy measure be justified?

5. The Appellate Body has made it clear why a long transition period and grandfathering provision are not in conformity with the obligation to withdraw the prohibited subsidies without delay. A Member's obligation under Article 4.7 of *the SCM Agreement* to withdraw prohibited subsidies "without delay" is unaffected by contractual obligations that the Member itself may have assumed under municipal law. Likewise, a Member's obligation to withdraw prohibited export subsidies, under Article 4.7 of *the SCM Agreement*, cannot be affected by contractual obligations which private parties may have assumed *inter se* in reliance on laws conferring prohibited export subsidies.<sup>4</sup>

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<sup>1</sup> US First Written Submission para. 10.

<sup>2</sup> US-FSC 21.5 AB report para. 257.

<sup>3</sup> US-FSC 21.5 AB report para. 229.

<sup>4</sup> US-FSC 21.5 AB report para. 229.

6. China would like to conclude its submission by recalling that the primary objective of the dispute settlement mechanism is to secure the withdrawal of the measures found to be inconsistent with the covered agreements.

Thank you, Mr. Chairman.