THIRD PARTY ORAL STATEMENT OF BENIN

24 July 2003

Mr. Chairman, members of the Panel,

It is my honour to represent Benin at this Third Party session today. The other two members of our delegation are Mr. Eloi Laourou of the Permanent Mission of Benin, and Mr. Brendan McGivern of White & Case, our legal adviser.

Although Benin acceded to the WTO back in 1996, this marks our first entry into WTO dispute settlement. We have been led to take this unprecedented step by the magnitude of the threat posed by US cotton subsidies, and the highly damaging effect that such subsidies have on the exports and economy of our country.

In our third party submission, we sought to provide to the Panel, at the earliest possible stage, information on the impact of the WTO-inconsistent US subsidies on Benin. In our view, this provides essential additional context to the issues facing the panel.

I do not intend to repeat what was in our submission, but it is worth highlighting some key facts.

The importance of the cotton sector to Benin can hardly be overstated. As noted in our submission, it accounts for 90 per cent of our agricultural exports, and three-quarters of our export earnings over the past four years. It generates 25 per cent of national revenues. In total, about a million people in Benin – out of a total population of six million – depend on cotton or cotton-related activities. Cotton plays a particularly important role in rural areas, where national poverty reaches its highest levels.

Mr. Chairman, Members of the Panel: the results of US cotton subsidies are readily apparent in West Africa. The United States provides huge, and WTO-inconsistent, subsidies for cotton. This leads to an oversupply of cotton on the world market, and a consequent decline in prices. Moreover, when cotton from Benin enters world markets, it must compete against massively-subsidized US cotton.

The dollar value of these subsidies dwarfs all other economy activity in Benin. As indicated in our submission, the subsidies paid by the United States to its 25,000 cotton farmers exceed the entire gross national income of Benin – and indeed the other countries in the region as well.

This demonstrates, rather dramatically, the impossibility of Benin ever competing with such subsidies. It is inconceivable that any developing country – let alone a least-developed country in West Africa – could ever match the virtually limitless resources of the United States.

Therefore, for us, the solution to this problem lies in the WTO. We ask simply that the United States respect its WTO obligations regarding subsidies.

Mr. Chairman, we agree with Brazil that the United States cannot invoke the peace clause to bar the claims that have been advanced in this dispute. We agree that the peace clause constitutes an affirmative defence, and that the burden lies on the United States to demonstrate that has met all the conditions for the successful invocation of this affirmative defence. This it has failed to do.

In any event, whether the peace clause constitutes an affirmative defence, as we believe, or is part of the "balance of rights and obligations of Members", as the United States argues, the result is the same. Brazil's First Submission has established, clearly and unambiguously, that the United States is in breach of its WTO obligations. The US First Submission has provided no convincing rebuttal of Brazil's claims.

Mr. Chairman, Members of the Panel:

In its submission of July 11, the United States argued that the phrase "support to a specific commodity" should be understood to mean "product-specific support". However, the term "product-specific" does not appear in Article 13(b)(ii). If the drafters of the Agreement on Agriculture had wanted to use this term in Article 13(b)(ii), they obviously could have done so, as they did elsewhere in Agreement, such as in Article 6(4), or in Annex 3. Moreover, if the US interpretation were accepted, measures providing support to more than one commodity could not be challenged under Article 13(b)(ii). This elevates form over substance, and is contrary to both the language and the object and purpose of this provision.

Finally, the United States asks this Panel to exclude from its terms of reference certain measures that it argues were not the subject of consultations. We were not part of the consultations, and will not delve into the facts of this disagreement. However, Benin would recall the statement of the Appellate Body in *Brazil Aircraft* (DS46):

> "We do not believe….that Articles 4 and 6 of the DSU, or paragraphs 1 to 4 of the SCM Agreement, require a precise and exact identity between the specific measures that were the subject of consultations and the specific measures identified in the request for the establishment of a panel. As stated by the Panel, '[o]ne purpose of consultations, as set forth in Article 4.3 of the SCM Agreement, is to 'clarify the facts of the situation', and it can be expected that information obtained during the course of consultations may enable the complainant to focus the scope of the matter with respect to which it seeks establishment of a panel." [emphasis added]

Indeed, Benin notes that the United States itself took a similar approach in the recent *Japan – Apples* case. In the US replies to the Panel on October 16, 2002, USTR stated that:

> "[T]here is no requirement in the DSU to consult on a particular claim in order to include that claim in a panel request and to have such a claim form part of the panel's terms of reference. The purpose of consultations is to provide a better understanding of the facts and circumstances of a dispute; logically, then, a party may identify new claims in the course of consultations."

Although this US reply dealt with claims rather than measures, it is consistent with the ruling of the Appellate Body in *Brazil Aircraft* that panels should not require a "precise and exact identity" between the measures that were the subject of consultations and the measures identified in the panel request.

Mr. Chairman, Members of the Panel:

For Benin, this dispute is of critical national importance. As we stated in our Third Party submission, we are not seeking any special and differential treatment in the present case. We are simply asking that the United States abide by the disciplines that it agreed to at the end of the Uruguay Round.

Thank you for allowing Benin to present its views to the Panel. We would be pleased to reply to any questions you may have.