As Delivered

United States - Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

Oral Statement of the United States at the Second Meeting of the Panel

1. Good morning Mr. Chairman and members of the Panel. I would like to thank the Panel on behalf of the U.S. delegation for this opportunity to appear before you again regarding the U.S. transitional safeguard measure on imports of combed cotton yarn from Pakistan. We would like to begin our presentation with a few general comments and then address some specific points that we hope will assist the Panel's deliberations. We look forward to answering any questions that you may have at the conclusion of our statement.

2. This case comes down to two fundamentally different views of Article 6 of the WTO *Agreement on Textiles and Clothing* ("ATC"). Like the Appellate Body stated in *United States - Wool Shirts* case, the United States believes that "the transitional safeguard mechanism provided in Article 6 of the ATC is a fundamental part of the rights and obligations of WTO Members concerning non-integrated textile and clothing products covered by the ATC during the transitional period." Accordingly, the United States has urged this Panel throughout this proceeding to focus on and give meaning to the plain words of Article 6 interpreted in light of their object and purpose.

3. Pakistan has taken the opposite view of Article 6. For Pakistan, Article 6 is *not* part of the fundamental rights and obligations of the ATC. Rather, at various points during this

proceeding, Pakistan has characterized Article 6 as a "waiver," or an "exception," or an "exception within an exception," or more tellingly, as "counter to the basic purpose of the ATC."

4. Informed by its view, Pakistan has advanced arguments whose effect would interpret Article 6 out of the ATC. For each issue in contention, Pakistan has asked the Panel to either *ignore* words clearly present in Article 6 or *add* new words and requirements that are not.

– For instance, under Pakistan's approach, the Panel would *ignore* Article 6.2's plain words "and/or" and "directly competitive" when interpreting the scope of the domestic industry.[1] The result: importing Members would lose the ability afforded by Article 6.2 to focus on those products directly competitive with imports in the marketplace and industries most affected by an import surge.

– Under Pakistan's approach, the Panel would *ignore* the factors set out in Article 6.3 and its clear direction that no one of these factors gives decisive guidance. Instead, Pakistan would have the Panel consider readjustment – a factor that is not even listed in Article 6.3 – to the exclusion of all others.[2] The result: importing Members would never be able to find serious damage if an industry attempts to

[1] *See e.g.*, Statement of Pakistan at the First Meeting of the Panel, at p. 5.

[2] *See e.g.*, First Written Submission of Pakistan, at pp. 33-34; Second Written Submission of Pakistan, at pp. 26-27.

restructure, notwithstanding clear evidence of serious damage or actual threat of serious damage as reflected in the overall deterioration in the Article 6.3 factors.

– Under Pakistan's approach, the Panel would *add* the obligation to obtain data for all factors from official sources and to refrain from relying on verified data from the private sector because, in Pakistan's view, such data are inherently self-serving, inaccurate and untrustworthy.[3] The result: importing Members would be unable to obtain data for most of the factors listed in Article 6.3. And for those that it could obtain from official sources, an importing Member would have to wait until such data were collected, analyzed and officially released to resort to the transitional safeguard mechanism, even if evidence of serious damage was clear and compelling. If a Member were required to wait until all data forming the basis of its analysis could be compared to official government statistics, then it would be impossible for a Member to respond to the damaging effects of an import surge in a timely manner, and Article 6 would be severely undermined.

– Under Pakistan's approach, the Panel would *add* to Article 6.2 and 6.3 new terms regarding actual threat of serious damage to require importing Members to "demonstrate a further sharp and substantial increase" and "quantify the level of

[3] *See e.g.*, Second Written Submission of Pakistan, at pp. 21-25.

those imports."[4] The result: importing Members would face requirements impossible to meet and, in turn, would never be able to conduct a meaningful analysis of actual threat of serious damage.

– Under Pakistan's approach, the Panel would *add* drawn-out time lines into the analysis of causation beyond anything required in the ATC.[5] The result: notwithstanding clear evidence of serious damage, importing Members would have to postpone safeguard action while imports continue their damaging surge.

– Under Pakistan's approach, the Panel would *add* new terms into Article 6.4 to require an importing Member to "assess individually and compare all potential sources of serious damage" and to conduct a new and separate causation analysis (even after causation has already been established) to determine whether imports from other sources caused serious damage.[6] Pakistan also tries to suggest that the *volatility* of its imports, which even Pakistan characterizes as extreme, should mitigate the effects of a 283.2 percent surge.[7] The result: importing Members would face an insurmountable attribution burden and would lose the ability to

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[4] *See e.g.*, Answers of Pakistan to Written Questions from the Panel, at p. 24; Second Written Submission of Pakistan, at p. 33.

[5] *See e.g.*, First Written Submission of Pakistan, at p. 37.

[6] *See e.g.*, Second Written Submission of Pakistan, at pp. 34-37.

[7] *See* Second Written Submission of Pakistan, at p. 38.

establish a Member-by-Member safeguard even in the face of a clear finding of serious damage or actual threat thereof.

5. These are just a few examples, culled from Pakistan's submissions, of how Pakistan would like the Panel to rewrite through interpretation the text of Article 6 and thereby disrupt the carefully negotiated balance of rights and obligations set out in the ATC. The United States urges the Panel to reject these efforts and to give full effect to the Article 6 transitional safeguard mechanism based on its plain meaning and the object and purpose it serves. Contrary to Pakistan's mistaken view, Article 6 of the ATC *is* a fundamental right given to importing Members. The United States would urge the Panel to interpret it as such and, as provided in Article 3.2 of the DSU, not to "diminish the rights and obligations provided in the covered agreements."

6. I would now like to turn to several more specific comments. Pakistan has raised no new arguments in its Second Written Submission or in its oral statement today. Instead, it has again relied on speculation and unsupported assertions. The United States would therefore like to take this opportunity to provide clarity on four points.

7. First, the United States has repeatedly stressed the importance of the Panel's focus on the facts of this case as set out in the Market Statement and therefore would like to respond to Pakistan's attempts to discredit these facts. Pakistan's assertions in its Second Written

Submission regarding U.S. data add nothing new. They merely recycle mistaken claims already advanced by Pakistan, which the United States fully rebutted in its First Written Submission.

8. The United States is extremely perplexed by the claim that it relied on false, unreliable, and untrustworthy data. The U.S. Government employed an appropriate and reasonable methodology for collecting and analyzing the data. The U.S. Government conducted its investigation using the best information available and relied on official data to the extent possible. Where official data were not available, the United States used information from other sources and conducted ongoing verification of this information.

9. Pakistan's insinuations that the data supplied by the American Yarn Spinners Association ("AYSA") were "false data" or that the United States failed to verify the accuracy of such data are plainly wrong. Pakistan offers *no concrete evidence* to support these claims; nor does Pakistan explain how the United States should have acted any differently. Pakistan merely makes and draws inferences from unsupported and inaccurate assertions.

10. The United States would like to take this opportunity to respond to the most glaring of these unsupported assertions. I apologize in advance for the length of these comments; however, given the many assertions that Pakistan advanced in its Second Written Submission, I want to be sure that the Panel is left with accurate, and not misleading, information.

– Contrary to Pakistan's insinuations, the AYSA is not a lobbying organization formed for the purpose of securing safeguard action in this case and does not represent half of the producers of the combed cotton yarn for sale industry. The AYSA represents the interests of the *entire* combed cotton yarn for sale industry and has done so since 1967. Reliance on information supplied by the sole voice of the combed cotton yarn for sale industry – information which was subsequently verified – was therefore perfectly reasonable and appropriate.

– Contrary to Pakistan's suggestions, figures contained in previous market statements are not relevant to this dispute. As the United States explained, the 1997 market statement on ring-spun cotton yarn is not an issue in this case. No safeguard measure was applied as a result of that investigation. Accordingly, it is inappropriate for Pakistan to draw conclusions about the Market Statement at issue in this proceeding from previous documents covering different time periods. The United States based its transitional safeguard action on the verified information contained in the Market Statement at issue in this proceeding, not on previous market statements.

– Contrary to Pakistan's assertions, AYSA data are not "inherently untrustworthy." The United States verified AYSA data by comparing it with official data and by engaging in direct discussions with individual firms. Nor has the AYSA data

become worse during this proceeding. In its First Submission, Pakistan asserted that AYSA data was "unverified, incorrect, and incomplete." The United States fully rebutted these contentions. Now, Pakistan claims that the data has become "unverifiable," "unreliable," "untrustworthy," and even "false."

– Contrary to Pakistan's insinuations, AYSA did not provide "incorrect" production data for 1997 and did not provide "false" and then "unverifiable" data for the first eight months of 1998. AYSA production data for 1996 and 1997 were *fully consistent* with official U.S. Bureau of the Census data. As the United States explained with respect to data for 1998, official 1998 production data *were not available* to the United States at the time the Market Statement was prepared. The AYSA data, current through August 1998, were the most up-to-date available at that time, and the United States assessed its accuracy based on the accuracy of other AYSA data and discussions with individual producers. In addition, contrary to Pakistan's completely false claims, the subsequently released 1998 official Census data supported rather than undermined AYSA figures. Even if one were to indulge Pakistan in its calculations on page 23 of its Second Written Submission, they yield a *mathematically impossible* result. If, as Pakistan purports, production during September through December 1998 was 19 percent higher per month than the average for the same period in 1997, then production in the earlier (the January through August) period would have had to decline by a

much greater amount than the figure noted in the Market Statement (or by 17.6 percent instead of the 10.2 percent decline that was listed in the Market Statement). The 19 percent figure asserted by Pakistan is very confusing, and the U.S. delegation would be pleased to walk you through these calculations, which reveal that this 19 percent figure has absolutely no basis in fact.

– Contrary to Pakistan's assertions, the three mills exiting the industry were directly impacted by the surge of low-priced imports from Pakistan. One of these mills closed permanently, and two others produce different products. That these two plants continue to operate *in another capacity and in other markets* is entirely consistent with the serious damage experienced by the defined industry. The deteriorating industry conditions (such as decreasing production, declining profitability, etc.) faced by the combed cotton yarn industry from the surge of imports had a tremendous impact on the firms operating in the industry, including the three mills that exited the industry. Because of the situation they faced, they were no longer viable industry participants in the combed cotton yarn for sale industry and were forced to either shut down entirely or produce different products.

– Contrary to Pakistan's assertions, the U.S. analysis of serious damage did not begin and end with the fact that these three plants exited the industry during the

period of investigation. This fact – which is not even among those required under Article 6.3 – constituted one of the many pieces of evidence demonstrating serious damage and actual threat thereof.

– Contrary to Pakistan's claim, there is no discrepancy between the 1996 figures for plant closures contained in the 1997 market statement (which listed 25 plants) and those listed in the Market Statement at issue (which listed 22 plants). As the United States explained to Pakistan during the TMB proceeding, the 1997 market statement (again, which indicated 25 plants) was prepared *prior* to the end of 1996. During the latter part of 1996, three more plants, not included in the 1997 market statement, exited the industry. Thus, by the time of the investigation into the present matter, for which full 1996 figures were available, there were 22 plants in the defined industry.

– Contrary to Pakistan's assertions, the United States did in fact verify the profitability and investment data contained in the AYSA surveys. The United States contacted individual respondents to the surveys to ensure that the aggregate information provided by AYSA accurately reflected that firm's profitability and investment picture. And, despite the fact that Pakistan appears to hold such strong views on this data, Pakistan has failed to explain how individual data from

individual companies would have been better than AYSA data, as such data would, under Pakistan's reasoning, pose the same concerns as the AYSA data.

– Finally, contrary to Pakistan's suggestions, the United States would like to stress that its reliance on *verified* AYSA data does not, in any way, violate the ATC. The ATC sets forth no requirement regarding the collection and analysis of data, and the Panel in the *United States - Wool Shirts* case specifically allowed the importing Member to collect the relevant data from relevant sources, *including the private sector.*

11. The second point that we would like to raise with you this morning concerns the scope of the "domestic industry producing like and/or directly competitive products." Pakistan has made no new claims in its Second Written Submission. Rather, it puts forth the same arguments which rely on speculation and interpretations of different phrases (such as "directly competitive or substitutable") from different WTO agreements (such as Article III:2 of the GATT). The United States has responded in great detail to these arguments in its Second Written Submission and will not repeat itself here.

12. Instead, I would like to highlight that Article 6.2 of the ATC is very clear that the domestic industry – for purposes of the transitional safeguard mechanism – is the domestic industry producing like and/or directly competitive products. This statement is not an

interpretation of the ATC; these are the actual words the agreement uses. No matter which dictionary is used, this phrase expressly authorizes an importing Member to focus on the domestic industry producing one of three products: (1) like and directly competitive products, (2) like (but not directly competitive) products; and (3) directly competitive (but not like) products. This phrase does not address "directly competitive or substitutable" products; this phrase does not address "indirectly competitive" products; this phrase does not address "hypothetically competitive" products; and this phrase does not address "subsets" of products.

13. On the facts of this case, the United States focused its identification of the domestic industry on one of the three options in Article 6.2, namely, products which are like and directly competitive with imports. The only domestic mills producing combed cotton yarn like and directly competitive with Category 301 imports were combed cotton yarn for sale establishments. Vertically integrated fabric producers – upon which Pakistan's entire argument turns – were spinning combed cotton yarn for their internal consumption, *not* for sale on the market.

14. Pakistan claims that the highly exceptional release onto the market of combed cotton yarn by vertically integrated fabric producers – in those rare instances when they spin too much yarn for their fabric production – means that *all* combed cotton yarn spun by such producers are directly competitive. This flawed argument has no basis in fact. At the time of the Market Statement, vertically integrated fabric producers were not in the business of spinning yarn for sale for the market, and consumers in the market (such as weavers) did not rely on captive

combed cotton yarn as an alternative source of supply. Based on the facts, there was no reason to expect that vertically integrated fabric producers would change their established business practices and production methods and begin to produce substantial quantities of combed cotton yarn for sale in the market. The remote and hypothetical possibility that they would is not enough to convert goods, which are *in fact* not directly competitive, into those that are.

15. Likewise, the fact that it may be possible to obtain certain information from vertically integrated producers of *other* industries (such as the steel industry), which may produce both for the merchant and captive markets, does not magically change the facts of this case and the actual structure of the combed cotton yarn for sale industry. Each investigation turns upon its unique facts. In the instant matter, vertically integrated fabric producers – which consume roughly 99 percent of the combed cotton yarn they manufacture – do not maintain information pertinent to a determination under Article 6, particularly the many variables listed in Article 6.3. Although Pakistan asserts otherwise, it has failed to provide *any* evidence to the contrary. Therefore, Pakistan's attempts to extrapolate from investigations involving completely different factual circumstances are inapposite.

16. In addition, as the United States has discussed in previous submissions, many of these economic variables are not relevant to the combed cotton yarn manufactured by vertically integrated fabric producers, and Pakistan has offered no concrete method for obtaining certain of these factors. Thus, to have included, as Pakistan asserts, vertically integrated fabric producers

as part of the domestic industry, would have required the United States to examine many factors for which it could not collect data and, in turn, would have made recourse to Article 6 in these circumstances impossible.

17. The third point that the United States would like to raise this morning concerns Pakistan's repeated claims regarding "continuous autonomous industrial adjustment." Pakistan misuses this term to suggest that "continuous autonomous industrial adjustment" is incompatible with a finding of serious damage or actual threat thereof. Pakistan also implies that this process somehow conflicts with the transitional safeguard mechanism.

18. Continuous autonomous industrial adjustment and serious damage can go hand in hand. For instance, in the case before the Panel, the combed cotton yarn for sale industry was engaged in the process of autonomous adjustment during the period prior to the damaging surge in imports: production was increasing as the number of plants in the industry were decreasing. However, during the investigation period – particularly during the first eight months of 1998 – a dramatic surge in imports led to a significant deterioration in the conditions of the industry, as measured by the marked decline in the Article 6.3 factors: production dropped, shipments declined, inventories increased, etc.

19. The fact that the industry was *already* engaged in adjustment – with some establishments leaving the defined industry and others becoming more efficient – does not minimize the serious

damage and actual threat thereof that the industry was experiencing. Pakistan denies the very reality of the deterioration in each and every one of the Article 6.3 factors when it suggests that efforts to convert production from combed to carded yarn or otherwise readjust imply that serious damage or actual threat thereof could not have existed or did not exist. The facts of this case - as set forth in the Market Statement and in the various submissions of the United States - clearly establish that the industry was in fact suffering serious damage and actual threat thereof, notwithstanding ongoing efforts to retool, to readjust, and to cope even in the face of the flood of imports.

20. Furthermore, the United States finds it very difficult to understand how Pakistan could suggest that Article 6 is incompatible with continuous autonomous industrial adjustment. Far from being so, the Article 6 transitional safeguard is an essential element of this restructuring process. Article 6 gives Members the ability to act so that industries seriously damaged by increased imports can adjust to the changed circumstances rather than be destroyed by them. The ATC explicitly recognizes this fact by providing a transitional safeguard mechanism *during* the ten-year restructuring process given to the textiles and clothing sector and contemplates that importing Members might need to resort to Article 6 to provide a temporary limit on imports during the adjustment process. Moreover, the transitional safeguard does not *prevent* imports; it merely limits imports to current levels and provides for growth in subsequent years.

21. Fourth, the United States was mindful of guidance from previous panels and the Appellate Body regarding past U.S. transitional safeguard investigations. The United States specifically followed this guidance in this instance by:

- examining and explaining its conclusions regarding all relevant economic factors in Article 6.3,
- considering at least all the factors in Article 6.3,
- considering and explaining how the totality of factors supported its conclusion of serious damage or actual threat thereof resulting from increased quantities of imports;
- establishing a causal link between the increased quantities of imports and the declining conditions in the domestic industry;
- addressing the specific question of whether changes in consumer preferences or technological changes caused serious damage,
- relating the data to the particular industry damaged;
- conducting a separate and future oriented analysis of actual threat of serious damage; and
- applying the restraint after the consultation process had been concluded, with prospective effect.

22. Unable to counter these core facts and the ATC-consistency of the U.S. actions, Pakistan instead adds new hurdles and new requirements.

- For instance, regarding serious damage, Pakistan does not contest that each and every factor listed in Article 6.3 showed marked deterioration during the investigation period. Rather, as discussed above, Pakistan asks the Panel to negate this showing based on the fact that a few mills converted their production from combed to carded yarn in the face of serious damage to the industry from imports.

- Regarding actual threat of serious damage, Pakistan again does not dispute the core data upon which this finding relies and even acknowledges the extreme volatility of its imports. Rather, Pakistan confuses the text of Article 6.3 with that of Article 6.4 and attempts, on that basis, to add new unfounded requirements into the analysis of actual threat of serious damage, such as a demonstration of a further sharp and substantial increase in imports and a quantification of that surge.

- Regarding causation, Pakistan fails to explain how, even under the causation analysis of other WTO agreements that it advances, the United States failed to establish causation based on the upward trend in Category 301 imports and the negative trends in other economic variables, or how the United States failed to

demonstrate that other factors – such as consumer preferences or technological changes – were not a cause.

– Regarding attribution, Pakistan does not dispute that, during January-August 1998, the magnitude of its 283.2 percent surge was greater than any of the leading suppliers to the U.S. market or that its prices (26.2 percent lower than the average U.S. price and 20 percent lower than the average world price of imports) were substantially less than any of the leading suppliers to the U.S. market. Instead, Pakistan asks the Panel to strike down the U.S. attribution analysis because the United States did not comply with obligations that the ATC does not impose.

23. At bottom, Pakistan has failed to establish a *prima facie* case that the United States violated Article 6 of the ATC. Factually, Pakistan's claims rely on "facts" that were available to the United States at the time of its investigation but did not consider. However, these "facts" amount to unsupported assertions and speculation, which Pakistan has failed to buttress with credible evidence. Legally, Pakistan repeatedly grounds its arguments in either misreadings of the ATC or imputations of different phrases from other agreements.

24. This kind of factual and legal analysis does not establish an Article 6 violation. Rather, as the United States has argued throughout this proceeding, it underscores the extent to which Pakistan has failed to establish a case.

25. Under Article 11 of the DSU, this Panel is not to engage in a *de novo* review of the market situation or to determine what it would have done with the evidence available to the United States. Rather, Article 11 charges the Panel with reviewing whether the U.S. transitional safeguard measure conforms with Article 6 based on an objective assessment of the matter before it, including the facts of the case and the applicability of and conformity with the relevant provisions of the ATC. When this standard is applied, the United States believes that the Panel will have no choice but to conclude that the U.S. transitional safeguard on imports of combed cotton yarn from Pakistan was appropriate and fully consistent with the ATC.

Thank you.

United States - Transitional Safeguard Measure on Combed Cotton Yarn from Pakistan

Oral Response of the United States to "Questions" from Pakistan at the Second Meeting of the Panel

December 13, 2000

1. During the second meeting of the Panel on December 13, 2000, Pakistan used the "question and answer" period to make several lengthy statements, which raised a number of issues. The United States responded orally to these statements and submits the following for the written record. The United States is providing these written comments to the best of its recollection as it did not transcribe, verbatim, its remarks.

2. The United States noted that rather than ask questions during the allocated question and answer period, Pakistan made three separate oral statements. As a result, the United States explained that it was very difficult to discern exactly whether Pakistan had any questions for the United States and, if so, what they were.

3. In addition, the United States noted that Pakistan, in its three new oral statements, introduced new "evidence," which Pakistan again failed to buttress with real and credible support. The United States also expressed its amazement that Pakistan waited until this very late date to introduce new information represented as "evidence" when it had many opportunities to provide this information to the Panel and to the United States in writing during these proceedings.

4. The United States also noted that it would respond to Pakistan's "questions" dealing with new "evidence" only after Pakistan provides its questions in writing, supported by actual documentation of these supposed facts. Pakistan claimed to have "evidence" that vertically integrated fabric producers are regular importers of combed cotton yarn from Pakistan. Pakistan claimed to have "evidence" that a specific vertically integrated fabric producer purchases all of its combed cotton yarn from the market. Pakistan claimed that there are vertically integrated fabric producers selling combed cotton yarn on the market which are not members of AYSA. Pakistan claimed that the United States made particular statements during the TMB proceeding.

5. The United States noted that Pakistan made these and other assertions without offering any proof or supporting evidence.

6. The United States also responded to the long "question" (in reality a statement) of the legal advisor of Pakistan. The United States first noted that it would respond to his overall statement before answering the specific "question" posed concerning paragraph 15 of Pakistan's oral statement. The United States noted that it had serious concerns with Pakistan's repeated, unsupported claims that the AYSA data was unverified, unverifiable, untrustworthy and false. The United States noted that these are very serious claims, which Pakistan failed to back up with any credible evidence. For instance, Pakistan claimed again and again that AYSA production data for 1998 was "false" without supplying any evidence to the contrary. Rather, the United

States noted that Pakistan appears to have invented the 19 percent figure listed on page 23 of its second written submission, which Pakistan used to claim that U.S. production data for 1998 was incorrect. The United States noted that this figure is mathematically impossible and has absolutely no basis in fact.

7. The United States also took issue with Pakistan's claim that the United States is attempting to "distort" Pakistan's arguments. The legal counsel for Pakistan argued in particular that Pakistan never claimed that Article 6 of the ATC was counter to the fundamental purpose of the ATC. In response, the United States referenced 3 specific instances in Pakistan's submissions, where Pakistan made this claim. On page 38 of Pakistan's second written submission, Pakistan called Article 6 an "exception." On page 13 of Pakistan's answers to the written questions from the Panel, Pakistan called Article 6 a "waiver." On page 13 of Pakistan's answers to the written questions from the Panel, Pakistan specifically claimed that Article 6 was "counter to the basic purpose" of the ATC.

8. Next, the United States took issue with comments by the legal advisor of Pakistan regarding claims made by the United States before the Appellate Body in *Korea - Alcohol*, which Pakistan asserted are in conflict with claims the United States is making in this proceeding. The United States noted that Pakistan's references to U.S. claims in *Korea - Alcohol* were entirely out of context. Contrary to Pakistan's suggestions that the United States was offering an interpretation of the term "directly competitive" that was at odds with its position in *Korea -*

Alcohol, the United States noted that its claims in that case were directed at the phrase "directly competitive or substitutable product" in the context of paragraph 2 of GATT Article III; they were not interpretations of Article 6 of the ATC's phrase "like and/or directly competitive."

9. The United States also took the opportunity to note, with respect to the Appellate Body's findings in *Korea - Alcohol*, that its discussion of potential competition was based on facts that were available at the time, not on remote, speculative, or made-up facts. The United States attempted to cite the exact reference from the Appellate Body's findings but could not recall the exact language at the time.

10. The United States also noted its concern with Pakistan's statement in its second written submission that the United States has used other cases and other agreements, specifically the Panel's findings in the *United States - Wheat Gluten* dispute, in an "opportunistic" manner. The United States noted that at no point in this proceeding has the United States relied on other agreements or interpretations of other agreements to interpret the substantive obligations of the ATC. The reference to the findings in *Wheat Gluten* in the First Written Submission of the United States referred to the *procedural* findings of the Panel concerning the standard of review under Article 11 of the DSU.

11. The United States also took issue with the assertion of the Pakistani legal advisor regarding vertically integrated producers. The United States noted again that the relevant inquiry

in this case is not the extent of vertical integration in an industry, but rather, who is producing like and/or directly competitive products for purposes of Article 6. On the facts of this case, vertically integrated fabric producers were not.

12. The United States also responded to Pakistan's contention that the United States had not responded to two of Pakistan's arguments. Pakistan first claimed that the United States failed to respond to its argument that the definition of the product subject to the restraint controls the definition of the domestic industry. The United States noted that it did in fact respond to this contention in paragraph 49 of its second written submission where it stated that, although the imported product initially frames the analysis, it is the producers of the like and/or directly competitive product that ultimately control the definition of the domestic industry in Article 6.2.

13. Regarding Pakistan's second claim that the United States did not address its argument that there was a discrepancy between the defined industry and imports subject to the restraint, the United States noted that it addressed this argument in paragraph 50 of its second written submission. The United States also noted that it addressed this argument in its first written submission but could not recall the precise paragraph number at the time.

14. The United States then explained the argument contained in these portions of its submissions. *If* a vertically integrated producer imported combed cotton yarn from Pakistan (or anywhere else), these imports would come into the United States onto the market (which the

United States explained includes both domestic production and imports). Such imports would therefore constitute a subset of the already tiny amount that the vertically integrated producers might purchase on the open market. The United States pointed the Panel to Appendix I of the Market Statement, which explains that vertically integrated producers might purchase less than five percent from the market in cases where its fabric production is not in "balance." In other words, if vertically integrated fabric producers actually imported combed cotton yarn, it would constitute a fraction of this five percent figure. The United States also noted that Pakistan failed to provide any evidence to support its speculation that vertically integrated fabric producers actually imported from Pakistan or somehow bypassed the market through imports.

15. The United States then responded to the final "question" raised by the delegation from Pakistan which essentially asked the United States to explain how it can claim that there is such a thing as a "like but not directly competitive product." The United States directed the Pakistani delegate to Article 6.2 of the ATC which specifically provides three options: products which are (1) like and directly competitive, (2) like (but not directly competitive), (3) directly competitive (but not like). In other words, the ATC specifically contemplated the existence of like but not directly competitive products. The United States then pointed to the facts of this case which clearly establish the existence of such products. Vertically integrated fabric producers, which manufacture combed cotton yarn for internal consumption, do not produce a directly competitive product.

16. At the conclusion of the Panel meeting, the United States responded to Pakistan's claim that it introduced its new "evidence" only to respond to several footnotes in the U.S. submission, which accused Pakistan of introducing speculation into this proceeding. In response, the United States noted that Pakistan should have introduced this "evidence" to support the many assertions that it made in its three written submissions, most of which appear as early as its First Written Submission. The United States therefore noted that it believed it was inappropriate for Pakistan to introduce new evidence at this late stage in the proceeding and stated that it was incumbent on Pakistan do have done so earlier.