**UNITED STATES – SECTION 211 OMNIBUS APPROPRIATIONS ACT**
**(DS176)**

**CLOSING STATEMENT OF THE UNITED STATES**
**SECOND MEETING OF THE PANEL**
**MARCH 7, 2001**

1. Thank you, Mr. Chairman and members of the Panel. We have, I believe, addressed all of the points the EC has raised today in our written submissions to the Panel. In the interests of saving time, therefore, I simply refer the Panel to those submissions.

2. I do, however, want to highlight a few points. First, we agree with the EC that, if the principle of non-recognition of foreign confiscations is represented by one circle, and TRIPs by another, these circles do not intersect. That is because the issue of whether a confiscating entity can claim ownership of trademarks in the United States is not addressed by TRIPs: the rules for determining the owner of a trademark are left to national legislation. The problem with the EC's position is that if TRIPs does require Members to recognize all registrants as owners, as the EC argues, then Members are powerless to deny ownership of trademarks in their territory to confiscating entities. This is tantamount to a requirement that Members give effect to foreign confiscations with respect to trademarks in their territory. It is not enough to say, as the EC has, that there is a principle of non-recognition that relates to expropriations and is unaffected by TRIPs obligations. If Members are not compelled to give effect to foreign confiscations with respect to trademarks in their territory – and the EC agrees that Members are not – then the Panel must find that TRIPs itself does not compel Members to give such effect. The EC's interpretation of TRIPs does not permit such a finding. The correct interpretation of TRIPs requires it.

3. Second, some questions were raised today concerning whether section 211(b), directed to trademarks registered in the United States by virtue of an underlying foreign registration, treated U.S. nationals more favorably than non-U.S. nationals. U.S. nationals may fall under this provision as successors to foreign trademark registrants. Section 211(b) specifically applies, by its own terms, to all successors in interest – whether U.S. or not. Therefore, section 211(b) does not violate national treatment obligations.

4. Third, it is not clear to me what point the EC seeks to prove by naming several so-called "Cuban origin" trademarks owned by U.S. companies. If the point is that the ownership of U.S. registrants cannot be challenged, and that the ownership of foreign registrants can be, then this point is wrong. The ownership of U.S. nationals in trademarks can be challenged on the same basis as the ownership of any other nationals. If the EC's point was that section 211 would have prevented such registrations by non-U.S. nationals, but permits registrations by U.S. nationals, this point is also incorrect. Section 211 focuses on the trademark ownership claims of those who, in the first instance, derive their ownership from a confiscation. Others are unaffected by section 211.

5. Finally, I want to discuss expand further on my response earlier today that section 211 did not expropriate rights that existed before section 211. A trademark registration could always be challenged on the grounds that the registrant is not the owner of the trademark. Further, if the registrant is not the owner, he is unable to assert rights of ownership in the trademark. Section 211 did not change this. The same rights that existed before section 211 exist after section 211.

6. That concludes my closing remarks. I want to thank the Chairman and the members of the Panel for their attention and for the work they have put into this case.