



DAVID MOSS  
NICK BARTLETT

## Note on WTO Disputes: Five Major Cases

### 1. *The Brazil-Canada Aircraft Dispute*

In 1998, the Brazilian aviation giant Empresa Brasileira de Aeronáutica S.A. (Embraer) and its Canadian competitor Bombardier were locked in a fierce battle over short-haul jets. Each company alleged that the other received illegal subsidies from its national government. In a government-funded export-promotion program known as Proex, Embraer's foreign customers received financing incentives and outright rebates worth an estimated \$2.5 million per plane.<sup>1</sup> While Embraer officials characterized the incentives and rebates as "interest equalization" payments designed to offset Brazil's sky-high interest rates, Bombardier executive vice-president Yvan Allaire charged that the rebates were "an abuse of the program" that resulted in serious injury to Canada's aerospace industry, which employed 15,000 workers.<sup>2</sup> Embraer countered Bombardier's attacks claiming that the Canadian firm received illegal and unfair support for research and development from the government-run Technology Partnerships Canada (TPC) as well as loan subsidies from the national "Canada Account" buyers program. As a spokesman for the Brazilian company suggested, "We can compete with Bombardier, but it's not fair to expect us to compete with the treasury of Canada."<sup>3</sup> After consultations in 1996 ended without agreement, both governments filed formal complaints with the WTO.

For the Brazilians, the legality of the Proex program hinged on whether or not it met the conditions necessary for an exemption in the WTO subsidies agreement. The relevant provision (Article 27 of the WTO Agreement on Subsidies and Countervailing Measures) permitted developing countries that showed need to grant limited (and temporary) subsidies, including export-contingent subsidies, which were otherwise prohibited under WTO rules.<sup>4</sup> Embraer asked the WTO's Dispute Settlement Body (DSB) to consider its subsidy program within the context of the nation's economic development, suggesting that the payments were necessary for Embraer to compete with rivals from more financially stable economies.<sup>5</sup> Canadian trade officials, meanwhile, argued that Canada Account (which facilitated large loans from the government to Canadian businesses) rarely gave discounted interest rates and simply followed standard international practices. As one official explained, "It exists because other countries do the same thing. If we didn't have it, Canadian companies would lose business."<sup>6</sup>

In August 1999, the DSB Appellate Body upheld two earlier panel rulings that subsidy programs in both countries violated WTO rules and should be removed within 90 days.<sup>7</sup> In

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Embraer's case, the DSB found that Brazil did not meet the necessary requirements to receive developing country benefits and, even if it had, its sub-market interest rates (which were below even international levels) would still constitute an illegal subsidy. The Technology Partnerships Canada and the Canada Account programs were also found to violate WTO rules.<sup>8</sup> Both sides believed that they could modify their respective subsidy programs to become WTO-compliant without abolishing them altogether. Although both claimed victory, insiders familiar with the case believed that Embraer would be much harder hit by the ruling as the volume and structure of its subsidies dwarfed those of Bombardier.<sup>9</sup>

The Appellate Body's August ruling was far from the end of the dispute. In late 1999, both countries filed with the WTO claiming that the other had not complied with its WTO obligations.<sup>10</sup> While Brazil interpreted the WTO's ruling as only applying to future Proex-financed sales, the Canadian government pushed for Brazil to remove the Proex financing on 900 still undelivered airplanes.<sup>11</sup> In May 2000, the dispute panel announced that while Canada's TPC reforms were in compliance, the Proex and the Canada Account programs continued to violate WTO rules.<sup>12</sup>

Canada soon demanded sanctions, claiming damages in excess of \$7 billion (Canadian) in lost sales between 1996 and 1999.<sup>13</sup> (Between 1998 and 2000, for example, Embraer's share of the global market for 50-seat jets surged from 35 percent to 57 percent while Bombardier's share dropped from 65 percent to 43 percent over the same period.)<sup>14</sup> Tension increased when an arbitrators' report awarded the Canadian government clearance to issue retaliatory tariffs of up to US\$233.5 million annually (totaling US\$1.4 billion over six years), which was at that time the largest sum ever granted under the WTO.<sup>15</sup> In late 2000, negotiations aimed at resolving the conflict broke down as the two countries disagreed over how Brazil should reform its Proex program. With talks over, Canada submitted a list of desired sanctions to the DSB while Brazil again claimed that further modifications to its subsidy scheme finally rendered it WTO-compliant.<sup>16</sup>

Instead of implementing sanctions, Canada decided to go "tit for tat" by granting customers Air Wisconsin and Northwest Airlines favorable interest rates through the government-run Canada Account program.<sup>17</sup> When Brazil requested yet another panel on the grounds that Canada Account program loans constituted an illegal subsidy, Canadian Prime Minister Jean Chrétien announced that such loans were made necessary as a result of Embraer's Proex benefits and that the government would not allow Brazil to "steal [jobs] away from workers from all parts of Canada who are... producing a very good airplane."<sup>18</sup> Meanwhile, ruling for the fifth time in as many years, a panel found that Brazil's Proex program violated certain WTO rules, but confirmed that Brazil could keep its export-subsidy program so long as it followed international standards.<sup>19</sup> In early 2002, the DSB found that the recent Canadian subsidies also violated WTO rules.<sup>20</sup> Although the DSB had effectively recognized Brazil as the victim of an unfair trade practice, in June it chose to "[defer] consideration" of Brazil's request for "authorization to take appropriate countermeasures." Brazil had asked permission to levy \$3.4 billion in retaliatory duties on Canadian goods.<sup>21</sup>

## *2. The EU-US Foreign Sales Corporation (FSC) Dispute*

One of the most contentious and far-reaching of all the WTO disputes arose out of a conflict over a seemingly technical difference in national tax systems. Under WTO rules, member nations were permitted to rebate indirect taxes collected on exports (such as value-added and sales taxes) but were not permitted to rebate direct taxes (such as income taxes). Because the primary tax on firms in many European nations was the value-added tax (VAT), as opposed to the corporate income tax in

the United States, European exporters appeared to enjoy a tax advantage relative to their American counterparts.<sup>22</sup>

In an attempt to equalize the tax treatment of exports, U.S. lawmakers had added the Domestic International Sales Corporation (DISC) provisions to the nation's tax code in 1971, effectively allowing export income to be partially exempted from the corporate income tax. Before long, however, the European Community had successfully challenged DISC as conferring an illegal export subsidy under GATT. U.S. officials responded by developing a new reimbursement mechanism as part of the Tax Reform Act of 1984, which they believed fully complied with GATT rules.<sup>23</sup> Under the new system, American companies that routed their exports through special foreign subsidiaries called Foreign Sales Corporations (FSCs) could exclude 15 to 30 percent of export earnings from the corporate tax.<sup>24</sup> The program saved U.S. exporters between \$3 billion and \$10 billion annually.<sup>25</sup>

In late 1997, the European Union charged that the FSC program conferred a subsidy contingent on export performance, thus violating the WTO Agreement on Subsidies and Countervailing Measures (SCM). The WTO panel assigned to hear the case ruled in favor of the EU in October 1999, and its decision was largely upheld on appeal several months later.<sup>26</sup> Faced with an order to withdraw its illegal export subsidy by October 2000, Congress repealed the FSC but also introduced a new system, known as the Extraterritorial Income Exclusion (ETI), which provided a comparable tax break. The U.S. claimed that the ETI, which granted a partial exemption on certain income derived from foreign operations as well as exports, eliminated the need for FSCs and avoided the export-contingent status of the former system. European trade officials challenged the modified law and, in August 2001, the DSB panel ruled that the ETI still constituted an illegal subsidy.<sup>27</sup> The Appellate Body upheld these conclusions, and, in late August 2002, WTO arbitrators approved the EU's proposal to impose \$4 billion in punitive duties on U.S. exports.<sup>28</sup> Within one week, the EU published a list of possible products to be affected, though European Parliament President Pat Cox insisted that the EU's "main concern is compliance, not sanctions" and several member nations (including France and Germany) clearly favored a milder response.<sup>29</sup>

At the heart of the FSC controversy were two basic distinctions – between direct and indirect taxes and between territorial and worldwide taxation. When the original GATT agreement was adopted after WWII, many economists believed that direct taxes fell on producers and sellers, whereas indirect taxes were ultimately borne by consumers. The notion that exports should be exempted from indirect taxes but not from direct taxes was thus based on the theory that the latter exemption would provide a subsidy to producers but the former would not. This rule was ultimately codified by a GATT Working Party in 1960.<sup>30</sup>

When the EC (and later the EU) challenged American attempts to get around this rule, U.S. officials did not directly contest the rule itself, even though many of the old assumptions about direct versus indirect taxes were no longer widely accepted. Instead, U.S. officials focused on the distinction between worldwide and territorial taxation. Under a worldwide system, resident corporations are taxed on their worldwide income (and are generally able to obtain credits on income taxes paid abroad up to, but not exceeding, the amount of their home tax liability). Under a territorial system, by contrast, income taxes are assessed only on income earned within the country itself. Although the United States had a worldwide system, American lawmakers believed that they could partially exempt the export earnings of resident corporations – while still technically adhering to GATT/WTO rules – by selectively adopting pieces of a territorial system. This was the logic underlying the FSC and ETI initiatives, although both were ultimately struck down by the WTO.<sup>31</sup>

By early 2002, the FSC dispute was threatening to provoke a major crisis in the international trading system. Wrote one expert, "We now have the makings of the mother of all trade wars

between the European Union and the United States on an issue on which both sides have little to be proud of and that could seriously damage the WTO."<sup>32</sup> EU Trade Commissioner Pascal Lamy insisted that retaliatory measures were "designed to protect our rights in the WTO. While wishing to de-escalate this dispute, our aim is to see the WTO-incompatible FSC export subsidies removed."<sup>33</sup> Still smarting from EU losses on other cases before the WTO, including the famous beef hormones dispute (see Dispute #4 below), one member of the European parliament indicated his desire that the tax dispute "make life as unpleasant ... as possible" for the United States.<sup>34</sup>

U.S. Trade Minister Robert Zoellick responded to European threats by warning that rash use of sanctions could unleash "a nuclear weapon on the trading system."<sup>35</sup> Many Americans believed that the EU's complaint, which had never been raised during the Uruguay negotiations, represented a strategic move designed to help resolve other disputes and conflicts rather than to protect European businesses against "subsidized" American exports.<sup>36</sup> From a U.S perspective, the goal of the FSC provisions "was not to boost US competitiveness against the Europeans. It was an effort to offset how we dealt with the export income as opposed to the way [the Europeans] dealt with export income. It was not supposed to be trade-distortive."<sup>37</sup> Some U.S. officials even suggested that EU members ought to be careful, since many were themselves vulnerable to tax law complaints of various kinds.<sup>38</sup> Others, like the chairman of the Senate Finance Committee, Max Baucus, simply remained defiant, declaring that the United States should never give up its struggle to "preserve the sovereign right of each country to set its own tax policy."<sup>39</sup>

Not everyone was itching for a fight, however. A significant group of European companies, many of whose U.S. subsidiaries had benefited from the FSC provisions, indicated that forcing a change in U.S. tax law was a "low priority." Some even opposed the EU's suit altogether.<sup>40</sup> On the other side of the Atlantic, an influential group of American business leaders known as the National Foreign Trade Council unveiled their own plan for a thorough overhaul of the U.S. tax system as a way of ending the conflict once and for all.<sup>41</sup> A growing number of economists, meanwhile, questioned whether preferential tax treatment for exports might actually do more harm than good. As one expert explained, "First, although subsidies may increase exports, they do not improve the trade balance [since imports are expected to rise by an offsetting amount as a result of exchange-rate adjustments]. ... Second, tax subsidies for exports spread some of the benefits of the tax cut to foreigners. It is not clear why subsidizing foreign consumption of American goods is preferred to domestic consumption of American goods. Third, export subsidies will encourage firms to make inefficient choices – that is, to favor export projects with lower total return but higher after-tax return [than] domestic projects..."<sup>42</sup>

Many U.S. officials continued to insist they would find a way to conform to the WTO rulings. President Bush himself announced in a meeting with EU leaders that he would push Congress to "fully comply." But as Congress and the Administrations explored numerous options for modifying the nation's tax laws, an aide close to the proceedings conceded, "There are many, many options because there is no easy fix."<sup>43</sup> EU officials indicated that they would impose sanctions only as a last resort but continued to press their counterparts in the United States for a clear plan of action to remedy the problem.<sup>44</sup>

### *3. The Asian-US Shrimp and Sea Turtle Dispute*

In a dispute touching upon both environmental politics and trade, India, Malaysia, Pakistan, and Thailand initiated proceedings against the United States alleging that a U.S. ban on their shrimp exports constituted trade discrimination. U.S. lawyers insisted that its laws requiring shrimp

exporters to use Turtle Excluder Devices (TEDs) conformed to WTO guidelines. TEDs were metal or mesh grids that were placed in shrimp nets to keep larger objects (including endangered turtles) from becoming ensnared. The TED devices eliminated 97 percent of accidental sea-turtle deaths in shrimp trawl nets and had been required by boats trawling in the United States since 1990.<sup>45</sup> Around the world, more than a dozen countries imposed similar domestic requirements on their fishermen. In 1989 Congress had also passed a legislative provision known as Section 609 (of U.S. Public Law 101-102) prohibiting the importation of shrimp that had been harvested in ways harmful to sea turtles. Initially applied only in the Caribbean and Western Atlantic region, Section 609 required that U.S. officials certify that exporting countries had TED systems in place before allowing their shrimp to enter the American market.<sup>46</sup> In the mid 1990s, a group of environmentalists in the United States won a federal suit requiring the government to enforce the legislation globally. As a result, the U.S. proceeded to embargo shrimp imports from all non-complying nations beginning on May 1, 1996.<sup>47</sup>

Five months later, India, Malaysia, Pakistan, and Thailand complained to the WTO that the United States did not have the right to force national conservation policies on other member countries. The complainants maintained that Section 609 obstructed trade in an industry worth \$2.5 billion dollars annually.<sup>48</sup> They also argued that the U.S. had implemented the provision in a way that unfairly discriminated against certain countries. The U.S. responded by arguing that Section 609 fell within the GATT's Article XX, which (dating back to 1947) permitted exceptions from normal GATT rules "necessary to protect human, animal or plant life or health...[or] relating to the conservation of exhaustible natural resources."<sup>49</sup> U.S. trade officials contended that the deaths of an estimated 150,000 sea turtles every year as a result of shrimping operations constituted the depletion of an "exhaustible national resource."<sup>50</sup>

In May 1998, the DSB panel ruled that Section 609 was inconsistent with GATT Article XX and thus constituted an illegal import restriction.<sup>51</sup> Many analysts had expected this outcome, since a GATT tribunal during the early 1990s had ruled against a similar U.S. restriction on tuna imports ostensibly designed to protect dolphins. The U.S. appealed the sea turtle decision, however. Five months later, the WTO's Appellate Body partially reversed the panel's original decision.<sup>52</sup> While agreeing that the United States had unjustifiably discriminated among exporting countries in its application of the sea-turtle law, the Appellate Body found that Section 609 did indeed fall within the GATT Article XX exemption. The U.S. announced in November 1998 that it would revise Section 609 to conform to the Appellate Body's recommendations regarding non-discrimination.<sup>53</sup> It also offered to provide technical assistance to developing nations willing to use TEDs. But the essential prohibition on non-TED shrimp remained in place. Two years later, Malaysia requested that a WTO panel investigate U.S. compliance with the Appellate Body's decision. Issuing a final report in the fall of 2001, the DSB found the U.S. to be in full compliance and thus ended the process with a definitive ruling in its favor.<sup>54</sup>

#### *4. The US-EU Beef Hormones Dispute*

In the second half of the twentieth century, cattle farmers in the United States, Europe, and elsewhere began treating their animals with hormones to "produc[e] bigger, more saleable, animals for slaughter."<sup>55</sup> This practice provoked a public outcry in Europe in the 1970s and 1980s, particularly after a series of stories in the European press suggested the existence of serious health risks associated with hormone-treated beef.<sup>56</sup> In response, the European Commission banned the use of hormones for growth purposes in livestock and prohibited imports beginning in 1989.<sup>57</sup> American cattle ranchers argued that the EU lacked sufficient evidence to justify the ban. Decades of tests conducted by the FDA, EU scientists, and others had found no indication that regulated dosages were harmful to human beings. According to some scientists, moreover, the hormones in treated beef did not

significantly surpass those occurring in the wild. A glass of milk from an untreated cow was said to contain more of some types of hormones than an eight-ounce steak from a hormone-treated animal.<sup>58</sup> Despite ongoing efforts to reverse the ban through bilateral negotiations, the GATT dispute settlement process, and even outright retaliation (including selected duty increases on European products in the late 1980s), the U.S. government was unable to convince the EU to change course.

In 1996 the United States formally brought its case to the WTO, arguing that the EU beef ban violated the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement).<sup>59</sup> The newly implemented SPS Agreement was designed to ensure that members did not “misuse” health regulations “for protectionist purposes”<sup>60</sup> and required that “any sanitary or phytosanitary measure is ... based on scientific principles and is not maintained without sufficient scientific evidence.”<sup>61</sup> The U.S. pointed out that after decades of research by various organizations, no scientific evidence had linked any ill effects to hormone-treated beef. (Interestingly, the EU was unable to produce evidence as to why it allowed pigs to be treated with similar hormones.)<sup>62</sup> The EU countered by arguing that “[t]here was not enough scientific evidence to conclude that these hormones, particularly when used by farmers without any official control, did not pose a risk to human health.”<sup>63</sup> The EU posited that since hormones were known to be carcinogenic in certain doses, the uncertainty over how and under what circumstances this effect occurred justified a cautious approach toward beef regulation.<sup>64</sup> It also firmly asserted that political and social context needed to be taken into account when assessing health risks.<sup>65</sup>

As the first formal test of the SPS Agreement, the beef hormone case was closely watched by the international media and trade specialists alike.<sup>66</sup> In August 1997 the DSB panel ruled that the EU’s ban on hormone-treated beef was not based on a full risk assessment and therefore violated the SPS agreement.<sup>67</sup> The Appellate Body subsequently upheld the panel’s ruling but suggested a much less stringent interpretation of the critical phrase, “based on scientific principles.”<sup>68</sup> According to the appellate report, the phrase did not require every member of the WTO to adhere fully to common international standards. Rather, each had the right to choose its own level of health protection, could take minority viewpoints into account, and was not obliged to quantify risk in order to take preventative measures.<sup>69</sup>

The decision caused considerable dissension and confusion among trade specialists. U.S. officials applauded the panel’s verdict but worried that the Appellate Body’s interpretation may have undermined the law’s future effectiveness at opening agricultural markets. One analyst commented that “the obligation to base SPS measures on existing international standards ... has been converted to an idealistic but wholly unenforceable objective.”<sup>70</sup> At the same time, the ruling infuriated many in the EU who, like the British National Farmers Union, believed that “the consumer’s wishes must be respected.”<sup>71</sup> Indeed, the case caused some observers to consider amending the SPS agreement to give increased weight to consumer opinions. As one academic suggested, “Public fears do play a role in the formulation of government policies regulating risks and it is not obvious that such fears should not play a role.”<sup>72</sup>

The EU was originally given until May 1999 to comply with the ruling. It soon became clear, however, that the EU would not comply. As one senior official commented, “Forcing beef with additives on the already suspicious consumer would have the wrong effect. Simply, the market would contract, prices would go down and everyone would suffer. I can see no point in doing that.”<sup>73</sup> When the deadline passed, the U.S. requested WTO authorization for retaliatory tariffs, which were set at \$116.8 million dollars a year.<sup>74</sup> Timothy J. Galvin, administrator of the Foreign Agricultural Service of the U.S. Department of Agriculture, made clear that the United States was not about to back down: “In maintaining its unscientific ban the EU does nothing to further the objective of protecting public health, but instead undermines the WTO Sanitary and Phytosanitary Agreement

and invites other countries to renege on their international obligations."<sup>75</sup> In July, the U.S. imposed 100 percent tariffs on a variety of agricultural goods. Meanwhile, the EU decided to extend its ban after a report from the Scientific Committee of Veterinary measures relating to Public Health (SCVPH) found that "carcinogenic effects could be envisaged" from growth hormones.<sup>76</sup> President Bill Clinton continued to defend the safety of American meat, proclaiming, "I would never knowingly permit a single pound of any American food product to leave this country if I had a shred of evidence that it was unsafe, and neither would any farmer in the United States."<sup>77</sup> By 2002, the beef sanctions were still in place but the two sides were engaged in negotiations aimed at resolving the dispute. The U.S. had offered to label its hormone-treated beef while the EU proposed expanded access to its market for untreated American beef.<sup>78</sup> Still, no final deal appeared imminent.

### *5. The U.S. Steel Tariff Dispute*

On March 5, 2002, President George W. Bush announced that the United States would levy import taxes of up to 30 percent on a wide range of steel products to help safeguard against an alleged surge in foreign competition.<sup>79</sup> There was little doubt that the U.S. steel industry was in crisis. In early 2002, prices for steel in the United States were at a 20-year low. Over the previous five years, 31 firms — accounting for nearly a third of U.S. steelmaking capacity — had filed for bankruptcy, resulting in the loss of 45,000 jobs.<sup>80</sup> The Bush administration's decision followed the release of an official report by the U.S. International Trade Commission, which found that the U.S. steel industry suffered substantial injury from imports.<sup>81</sup> The government claimed that temporary protection would give U.S. steel producers a chance to address their "fundamental structural problems."<sup>82</sup> But the move was highly controversial, even in the United States. As the former Reagan administration economist Murray L. Weidenbaum warned, "It's such a blatant exception to free trade principles that it will put us on the defensive, that's for sure."<sup>83</sup>

Predictably, the American decision provoked strong opposition from many WTO members. Within just one month of the announcement, Japan, China, Korea, Norway, Switzerland, and the EU had initiated formal DSB consultations with the United States on the matter. The European press accused the United States of hypocrisy, claiming the tariff safeguard measure "makes a mockery of America's claims to be a champion of free trade."<sup>84</sup> Calling the tariffs "unfounded, unnecessary and unfair," the EU quickly erected steel-related safeguard measures of its own ("...in no case will our measures last a day longer than those of the Americans")<sup>85</sup> and demanded 2.4 billion in compensation for injury to its industry.<sup>86</sup> Tension in the trade community mounted as the EU prepared a list of \$300 million dollars worth of retaliatory sanctions and irate Chinese government officials vowed to fight the safeguard measure "all the way."<sup>87</sup>

Safeguard measures, which were carefully defined in a special Agreement on Safeguards during the Uruguay Round negotiations, could take the form of quantitative import restrictions or increased tariffs. According to the agreement, a member of the WTO "may apply a safeguard measure to a product" only if that member nation "has determined...that such product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products."<sup>88</sup> Nations resorting to safeguard measures were thus required to prove serious injury to a domestic industry resulting from increased imports. They also were required to apply these measures on a short-term, non-selective, and progressively liberalizing basis.<sup>89</sup> Nations that were adversely affected by safeguard measures were allowed to request compensation and, if no agreement on compensation could be reached with the initiating member, were authorized to respond in kind by suspending "substantially equivalent concessions ...

to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.”<sup>90</sup>

Deputy U.S. Trade Representative Linnet Deily defended the American action by arguing that it strictly followed WTO safeguard procedures, that a “lengthy, transparent investigation” of the U.S. International Trade Commission had found that “increased steel imports caused or threatened to cause serious injury to specific segments of the U.S. steel industry,” and that safeguard measures were already in use in 20 other cases around the world.<sup>91</sup> Deily’s boss, U.S. Trade Representative Robert Zoellick, insisted that the “global steel industry has been rife with government intervention, subsidies and protection. These unfair practices have hurt the U.S. steel industry because our market has been much more open than others. ... So the President is committed to using U.S. laws and the international trade rules to the fullest extent possible to help American industries under stress to make sure that they have the opportunity to restructure and compete.” When asked by a reporter whether the safeguard action would undermine the “credibility” of his office or of America’s commitment to free trade, Zoellick replied that “in order to promote free trade, the United States has to manage the homefront and the international front. And on the homefront, the only way that we can continue to get support [from] the American people for open markets in trade is to use our domestic laws and our international laws to the fullest. ... The President believes very strongly that if we’re going to have an open, dynamic marketplace – and we have to have that to be able to compete – we also should be willing to help those that need a breathing space to come back.”<sup>92</sup>

Taking the lead in opposing the U.S. action, the EU attacked the new tariffs as both illegitimate and ill-conceived. As one EU memorandum explained, “US industry difficulties are not caused by rising imports – imports have been falling (33% since 1998) – but by an unstructured, inefficient industry already protected behind a wall of no less than 200 anti-dumping, anti-subsidy and safeguard measures of which 57 have already been applied over these past few years to EU exports. Prices in the US are already, because of past protectionist action, significantly higher than in the rest of the world.” The memorandum went on to explain that “in contrast to the US approach, the EU can show evidence of a recent surge in imports. Imports in 2001 stand at 26.6 million tonnes, compared to 15.4 million tonnes in 1997, an overall increase of 73% over the last 4 years.”<sup>93</sup> Many European officials also believed that the American safeguard measure would inevitably cost jobs in Europe. As the President of the EU observed, “The actions taken by the U.S. administration are not a solution to the problem. They can only serve to delay the much-needed reforms and cause agony and trouble to others. The jobs that are artificially kept in the U.S. are lost elsewhere in the world.”<sup>94</sup>

Although the consensus in Europe seemed to support retaliation, including the imposition of tariffs on unrelated products, not everyone agreed. “You won’t solve our problems by retaliating against American computers,” said Francis Mer, the chairman of Arcelor, Europe’s largest steel producer. “I stress prudence. As a European, I’m not at ease with the risk of destroying the trading system.”<sup>95</sup> With the E.U. apparently on the verge of applying retaliatory tariffs to \$2 billion of U.S. goods, the Bush administration had, by August 2002, exempted approximately half of the European steel imports affected by the original tariffs.<sup>96</sup>



## Endnotes

<sup>1</sup> Francois Shalom, "Jet spat goes to WTO: Aircraft-makers accuse each other of being unfairly subsidized by governments," *Gazette* (Montreal), 11 July 1998, C1. "The interest rate subsidies granted to foreign buyers of Embraer aircraft have the effect of reducing the interest rate paid by purchasers by 3.8 per cent on loans covering periods of up to 15 years. This amounts to a nominal reduction in the purchase price of Embraer aircraft of \$ 4m or 20 per cent of the cost of Embraer's regional jet, the ERJ-145. Alternatively, the subsidy can be taken by foreign buyers at the outset as a one-off payment of \$ 2.5m" (Mark Clough, "Geneva panel will rule on air dispute," *Financial Times* (London), 24 November 1998, 20).

<sup>2</sup> One Canadian official estimated that the Brazilian company would have made only half of its sales without the subsidy (Shalom, "Jet spat," C1).

<sup>3</sup> Francois Shalom, "Canada goes to bat for Bombardier in dispute with Embraer," *Gazette* (Montreal), 11 July 1988, D4.

<sup>4</sup> The restrictions are, specifically: the phasing out of export subsidies within an eight-year period (effectively by the end of the year 2002), a standstill obligation not to increase the level of export subsidies, and an obligation to phase out the subsidies sooner if their use is not tied to development needs (Clough, 20; World Trade Organization, Agreement on Subsidies and Countervailing Measures, Document LT/UR/A-1A/9 [text online], 15 April 1994, available at [http://docsonline.wto.org/GEN\\_searchResult.asp?RN=0&searchtype=browse&q1=%28@meta\\_Symbol+LTüURüA-1Aü9%29+%26+%28@meta\\_Types+Legal+text%29](http://docsonline.wto.org/GEN_searchResult.asp?RN=0&searchtype=browse&q1=%28@meta_Symbol+LTüURüA-1Aü9%29+%26+%28@meta_Types+Legal+text%29)).

<sup>5</sup> Chakravarthi Raghavan, "Canada, Brazil Seek Modus Vivendi on Trade Retaliation," *South-North Development Monitor* [text online], 29 August 2000, accessed 12 February 2002, available at <http://www.twinside.org.sg/title/vivendi.htm>.

<sup>6</sup> Heather Scoffield, "WTO deems \$3-billion Canada Account loan fund illegal: Interim ruling accompanies condemnation of Technology Partnerships program," *Globe and Mail*, 26 February 1999, B1.

<sup>7</sup> World Trade Organization, *Brazil - Export Financing Programme for Aircraft - Report of the Panel*, Document WT/DS46/R, 14 April 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Brazil Panel reports); *Canada - Measures Affecting the Export of Civilian Aircraft - Report of the Panel*, Document WT/DS70/R, 14 April 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Canada Panel Reports); *Brazil - Export Financing Programme for Aircraft - AB-1999-1 - Report of the Appellate Body*, Document WT/DS46/AB/R, 2 August 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Brazil Appellate Body (AB) reports); *Canada - Measures Affecting the Export of Civilian Aircraft - AB-1999-2 - Report of the Appellate Body*, Document WT/DS70/AB/R, 2 August 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Canada Appellate Body (AB) reports); Rick Mofina, "Bombardier welcomes trade ruling: WTO orders end to aircraft subsidies in Canada, Brazil," *Ottawa Citizen*, 3 August 1999, C1.

<sup>8</sup> Peter Morton, "WTO finds Canada, Brazil guilty: Illegal jet subsidies," *National Post*, 12 March 1999, C3.

<sup>9</sup> Embraer's loan subsidies totaled US\$4.5 billion, of which nearly half would be paid out upon delivery of the planes. Bombardier received \$100 million, most of which had already been received (and thus would not be refunded) at the time of the ruling (Mofina, C1).

<sup>10</sup> World Trade Organization, *Brazil - Export Financing Programme for Aircraft - Recourse by Canada to Article 21.5 of the DSU - Report of the Panel*, Document WT/DS46/RW, 9 May 2000 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Brazil Compliance panel report: Article 21.5); *Canada - Measures Affecting the Export of Civilian Aircraft - Recourse by Brazil to Article 21.5 of the DSU - Report of the Panel*, Document WT/DS70/RW, 9 May 2000 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Canada Compliance panel report: Article 21.5).

<sup>11</sup> Heather Scoffield, "Ottawa seeks \$10-billion in retaliation from Brazil: Applying to WTO to compensate for aerospace subsidies," *Globe and Mail*, 23 November 1999, B1; James Baxter, "Canada, Brazil rekindle feud: Countries battle over regional jet subsidies," *Ottawa Citizen*, 24 December 1999, H6. Canada reformed its Technology Partnerships Canada program to gain WTO compliance, reducing \$15-20 million dollars in investments to Bombardier and another firm (Francois Shalom, "Technology program to be amended: Canada will comply with WTO ruling and keep an eye on Brazil," *Gazette* (Montreal), 5 October 1999, D1).

<sup>12</sup> See panel reports in note 10. "Source: WTO says Canada and Brazil still breaking rules," *Associated Press*, 2 May 2000. The panel also found that Canada's loan program would be in violation, leaving room for future action by Brazil (Raghavan, "Canada, Brazil Seek Modus Vivendi").

<sup>13</sup> World Trade Organization, *Brazil - Export Financing Programme for Aircraft - Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement - D[...]* - Decision by the Arbitrators, Document WT/DS46/ARB, 28 August 2000 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Brazil Arbitration report on the amount of sanctions: Article 22.6); Madhavi Acharya, "WTO backs Canada in Brazil trade row - Gives green light to sanctions worth \$2 billion," *Toronto Star*, 13 December 2000, 1.

<sup>14</sup> Les Whittington, "Tobin Retaliates Against Brazil," *Toronto Star*, 11 January 2001.

<sup>15</sup> Raghavan, "Canada, Brazil Seek Modus Vivendi."

<sup>16</sup> Canada never actually implemented the sanctions, presumably to avoid sparking a trade war.

<sup>17</sup> Bombardier gave Northwestern a 15-year, \$2.1-billion loan covering 80 percent of the \$2.6-billion sale after Brazil proposed giving more than \$1 billion to purchase Embraer planes (John Ward, "WTO ruling may spur negotiations to end Canada-Brazil trade fight," *Canadian Press*, 27 July 2001).

<sup>18</sup> Sandra Cordon, "MPs complain cabinet favouring Bombardier over West with low-cost loans," *Canadian Press*, 28 May 2001.

<sup>19</sup> Kathryn Leger, "Canada, Brazil both claim win in subsidy war: No clear decision: The WTO has given Brazil clear conditions," *National Post*, 27 July 2001, C5; "Dispute Settlement Update: Aircraft, Anti-dumping, Shrimp-Turtle" *Bridges* 5: International Centre for Trade and Sustainable Development, 31 July 2001 [text online], accessed May 2002; available at <http://www.ictsd.org/html/weekly/31-07-01/story6.htm>.

<sup>20</sup> World Trade Organization, *Canada - Export Credits and Loan Guarantees for Regional Aircraft - Report of the Panel*, Document WT/DS222/R, 28 January 2002 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Canada Panel Reports).

<sup>21</sup> World Trade Organization, *Canada - Export Credits and Loan Guarantees for Regional Aircraft: Objection by Canada to Recourse by Brazil to Article 22.2 of the DSU and Article 4.10 of the SCM Agreement and Request by Canada for Arbitration under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement*, Document WT/DS222/8, 24 June 2002 [text online], accessed September 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members1\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members1_e.htm) (under Brazil as complainant).

<sup>22</sup> Sheila R. Cherry, "Trading Away U.S. Sovereignty," *Insight on the News*, 11 September 2000, 19.

<sup>23</sup> The FSC system followed a 1981 GATT Council Decision Chairman's note on the matter (Gary Hufbauer, *The FSC Case: Background and Implications* (Washington DC: Institute for International Economics, 27 February 2002) [text online], accessed February 2002; available at <http://www.iie.com/papers/hufbauer0102.htm>).

<sup>24</sup> Many of the FSCs were located in the Virgin Islands and Barbados ("In Talks with EU, US Offers to Change Export Tax Breaks," *Dow Jones Newswire*, 2 May 2000). David L. Brumbaugh, *Export Tax Benefits and the WTO: Foreign Sales Corporations and the Extraterritorial Replacement Provisions*, CRS Report for Congress (Washington D.C.: Congressional Research Service, 24 January 2002), 4 [text online], accessed July 2002, available at <http://www.cnie.org/nle/crsreports/economics/econ-113.pdf>.

<sup>25</sup> Cherry, 19.

<sup>26</sup> World Trade Organization, *United States - Tax Treatment for "Foreign Sales Corporations" - Report of the Panel*, Document WT/DS108/R, 8 October 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members4\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm) (under United States Panel reports: Tax treatment); *United States - Tax Treatment for "Foreign Sales Corporations" - AB-1999-9 - Report of the Appellate Body*, Document WT/DS108/AB/R, 24 February 2000 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members4\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm) (under United States as respondent: Tax treatment).

<sup>27</sup> World Trade Organization, *United States - Tax Treatment for Foreign Sales Corporations - Recourse to Article 21.5 of the DSU by the European Communities - Report of the Panel*, Document WT/DS108/RW, 20 August 2001 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members4\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm) (under United States as respondent: Tax treatment).

<sup>28</sup> World Trade Organization, *United States - Tax Treatment for Foreign Sales Corporations - Recourse to Arbitration by the United States under Article 22.6 of the DSU and Article 4.11 of...It - Decision of the Arbitrator*, Document WT/DS108/ARB, 30 August 2002 [text online], accessed September 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_e.htm) (under Arbitration report on the amount of sanctions, Article 22.6: 2002).

<sup>29</sup> Adrian Cox, Blair Pethel, and Katrin Bennhold, "EU May Penalize U.S. Textiles, Steel Over WTO Tax Row," *Bloomberg News*, 6 September 2002.

<sup>30</sup> Hufbauer, *The FSC Case: Background and Implications*; Sidney Weintraub, "A Needless Trade War," *Issues in International Political Economy* 26, February 2002 [text online], accessed June 2002, available at <http://www.csis.org/simonchair/issues200202.htm>.

<sup>31</sup> See William G. Gale, *The Tax Treatment of Foreign Income: Issues and Options*, Testimony Submitted to the United States House of Representatives, Committee on Ways and Means, Subcommittee on Select Revenue Measures, 9 May 2002 [text online], accessed July 2002, available at <http://www.brookings.edu/dybdocroot/views/testimony/gale/20020509.pdf>; Joint Committee on Taxation, *Background and History of the Trade Dispute Relating to the Prior-Law Foreign Sales Corporation Provisions and the Present-Law Exclusion for Extraterritorial Income and a Description of these Rules*, JCX-10-02, 25 February 2002 [text online], accessed July 2002, available at <http://www.intltaxlaw.com/OUTBOUND/FSC/x-10-02.pdf>.

<sup>32</sup> Weintraub, "A Needless Trade War."

<sup>33</sup> "EU requests US sanctions," *International Tax Review* (London), December 2000/January 2001, 7.

<sup>34</sup> Nicholas Clegg, member of the European Parliament, as quoted in Geoff Winestock, "How One Trade Dispute Fuels Another – U.S. Steel Tariffs May Stiffen EU Opposition to Tax Breaks," *Wall Street Journal*, 12 March 2002, A18.

<sup>35</sup> Guy de Jonquière's, "Raising the transatlantic trade stakes," *Financial Times* (London), 14 January 2002, 17.

<sup>36</sup> Hufbauer, *The FSC Case: Background and Implications*.

<sup>37</sup> Joel Johnson, vice-president of international affairs for the Aerospace Industries Association, as quoted in Nick Jonson, "WTO decision harmful to U.S. exporters unlikely to stand," *Aerospace Daily*, 27 June 2001, 1.

<sup>38</sup> Lenore Taylor, "Nervous EU Ponders Its 'Nuclear Bomb'," *Australian Financial Review*, 17 January 2002, 9.

<sup>39</sup> Evelyn Iritani, "WTO Disallows U.S. Tax Breaks Trade: Backing European view, the agency rules against sheltering of income from foreign sales," *Los Angeles Times*, 15 January 2002, C1.

<sup>40</sup> Winestock, "How One Trade Dispute Fuels Another," A18.

<sup>41</sup> Edward Alden, "Reform Urged to US Tax Laws in Face of Sanctions," *Financial Times* (London), 3 May 2002, P10.

<sup>42</sup> Gale, 6-7.

<sup>43</sup> Alden, P10.

<sup>44</sup> Winestock, "How One Trade Dispute Fuels Another," A18.

<sup>45</sup> David Balton, Director of the Office of Marine Conservation, Bureau of Oceans and International Environmental and Scientific Affairs, "Setting the Record Straight on Sea Turtles and Shrimp," Remarks to the Eleventh Annual Judicial Conference of the U.S. Court of International Trade on Social Justice Litigation: The CIT and WTO, 7 December 1999 [text online], accessed February 2002; available at [http://www.state.gov/www/policy\\_remarks/1999/991207\\_balton\\_turtles.html](http://www.state.gov/www/policy_remarks/1999/991207_balton_turtles.html).

<sup>46</sup> Balton, "Setting the Record Straight on Sea Turtles and Shrimp."

<sup>47</sup> Balton, "Setting the Record Straight on Sea Turtles and Shrimp."

<sup>48</sup> Fred Pearce, "Free Trade Protects the Environment: Right or Wrong?" *New Scientist*, 27 November 1999, 16.

<sup>49</sup> General Agreement on Tariffs and Trade (GATT): *Text of the General Agreement*, July 1986, Article XX, 45.

<sup>50</sup> Anne Swardson, "Turtle-Protection Law Overturned by WTO; Environmentalists Angered by Decision," *Washington Post*, 13 October 1998, C2.

<sup>51</sup> World Trade Organization, *United States - Import Prohibition of Certain Shrimp and Shrimp Products - Report of the Panel*, Document WT/DS58/R, 15 May 1998 [text online], available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/dispu\\_status\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/dispu_status_e.htm) (hyperlink DS58).

<sup>52</sup> World Trade Organization, *United States - Import Prohibition of Certain Shrimp and Shrimp Products - AB-1998-4 - Report of the Appellate Body*, Document WT/DS58/AB/R, 12 October 1998 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members4\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm) (under United States Appellate Body (AB) reports).

<sup>53</sup> For more detail on the WTO decision see Balton "Setting the Record Straight on Sea Turtles and Shrimp."

<sup>54</sup> World Trade Organization, *United States - Import Prohibition of Certain Shrimp and Shrimp Products - Recourse to Article 21.5 of the DSU by Malaysia - AB-2001-4 - Report of the Appellate Body*, Document WT/DS58/AB/RW, 22 October 2001 [text online],

accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members4\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members4_e.htm) (under United States, Compliance panel report Article 21.5).

<sup>55</sup> Peter Holmes, "The WTO beef hormones case: a risky decision?" *Consumer Policy Review* 10 (March/April 2000): 61.

<sup>56</sup> For example, the story of an Italian boy who grew breasts after eating hormone-injected beef had become an urban myth across the continent (Holmes, 61).

<sup>57</sup> Regine Neugebauer, "Fine-Tuning WTO Jurisprudence and the SPS Agreement: Lessons From the Beef Hormone Case," *Law and Policy in International Business* 31 (2000): 1255.

<sup>58</sup> Dale E. McNeil, "The First Case Under the WTO's Sanitary and Phytosanitary Agreement: The European Union's Hormone Ban," *Virginia Journal of International Law* 39:89 (November/December 1998): 97.

<sup>59</sup> World Trade Organization, *Agreement on the Application of Sanitary and Phytosanitary Measures*, Document LT/UR/A-1A/12, 15 April 1994 [text online], accessed July 2002, available at [http://docsonline.wto.org/gen\\_browseDetail.asp?preprog=3](http://docsonline.wto.org/gen_browseDetail.asp?preprog=3).

<sup>60</sup> World Trade Organization, *Understanding the WTO Agreement on Sanitary and Phytosanitary Measures* [text online], accessed 7 May 2002, available at [http://www.wto.org/english/tratop\\_e/sps\\_e/spsund\\_e.htm](http://www.wto.org/english/tratop_e/sps_e/spsund_e.htm).

<sup>61</sup> World Trade Organization, *Agreement on the Application of Sanitary and Phytosanitary Measures*, Article 2.2.

<sup>62</sup> Holmes, 67.

<sup>63</sup> Holmes, 63.

<sup>64</sup> Holmes, 63.

<sup>65</sup> Holmes, 63-64.

<sup>66</sup> Neugebauer, 1257.

<sup>67</sup> World Trade Organization, *EC Measures Concerning Meat and Meat Products (Hormones) - Complaint by the United States - Report of the Panel*, Document WT/DS26/R/USA, 18 August 1997 [text online], available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members2\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members2_e.htm) (under European Communities as respondent: "Measures Concerning Meat and Meat Products (Hormones)").

<sup>68</sup> World Trade Organization, *EC Measures Concerning Meat and Meat Products (Hormones) - AB-1997-4 - Report of the Appellate Body*, Document WT/DS26/AB/R and WT/DS48/AB/R, 16 January 1998 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members2\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members2_e.htm) (under European Communities Appellate Body (AB) reports); Neugebauer, 1262-63.

<sup>69</sup> The European Commission, *The 'hormone' case: Background and history*, Commission Background Paper (Brussels, 24 May 2000) [text online], accessed May 2002, available at [http://europa.eu.int/comm/trade/miti/new\\_dispute/hormones/hormbkgr\\_en.htm](http://europa.eu.int/comm/trade/miti/new_dispute/hormones/hormbkgr_en.htm).

<sup>70</sup> McNeil, 123.

<sup>71</sup> Paul Brown, "Europe fights US on beef hormones: Commissioner resists use of artificial growth aids," *Guardian*, 22 November 1995, 8.

<sup>72</sup> Robert A. Pollak, "risk regulation," in *The New Palgrave Dictionary of Economics and the Law*, ed. Peter Newman (New York: Stockton Press, 1998), Volume 3, 350-356.

<sup>73</sup> Franz Fischler, member of the EC Commission responsible for agriculture, as quoted in Brown, 8.

<sup>74</sup> World Trade Organization, *European Communities - Measures Concerning Meat and Meat Products (Hormones) - Original Complaint by the United States - Recourse to Arbitration by the Euro[...] - Decision by the Arbitrators*, Document WT/DS26/ARB, 12 July 1999 [text online], accessed July 2002, available at [http://www.wto.org/english/tratop\\_e/dispu\\_e/distabase\\_wto\\_members2\\_e.htm](http://www.wto.org/english/tratop_e/dispu_e/distabase_wto_members2_e.htm) (under European Communities Arbitration report on the amount of sanctions: Article 22.6); Frances Williams, "US wins approval for beef sanctions," *Financial Times* (London), 27 July 1999, 8.

<sup>75</sup> "U.S. Agriculture Department Official on EU Beef Hormone Ban," U.S. Mission to the EU, 26 September 2000 [text online], accessed January 2002, available at <http://www.useu.be/issues/beef0926.html>.

<sup>76</sup> The European Commission, *The 'hormone' case: Background and history*.

<sup>77</sup> Charles Babington and John Burgess, "Clinton Defends Open Trade," *Washington Post*, 2 December 1999, A1.

<sup>78</sup> "Trade Still bananas," *Economist*, 22 July 2000. Edward Alden, "US and EU revive talks on beef-hormone dispute," *Financial Times* (London), 10 June 2001.

<sup>79</sup> The tariffs ranged from 8 to 30 percent depending on the type of steel and did not apply to developing nations or countries in special agreements with the United States ("White House Explains Steel Import Relief Decision," U.S. Department of State, 5 March 2002 [text online], accessed May 2002, available at <http://usinfo.state.gov/topical/econ/wto/02030501.htm>).

<sup>80</sup> "White House Explains Steel Import Relief Decision."

<sup>81</sup> "USTR Briefing on Steel," Press Briefing by U.S. Trade Representative Robert Zoellick, U.S. Department of State Press Release, 5 March 2002 [text online], accessed May 2002, available at <http://www.whitehouse.gov/news/releases/2002/03/20020305-10.html>.

<sup>82</sup> "USTR's Deily Defends Bush Steel Tariffs Decision," U.S. Department of State, 11 March 2002 [text online], accessed May 2002, available at <http://usinfo.state.gov/topical/econ/wto/02031104.htm>.

<sup>83</sup> Steven Pearlstein and Clay Chandler, "Reaction Abroad on Steel is Harsh," *Washington Post*, 7 March 2002, E1.

<sup>84</sup> "Mittal Gets His Tariff," *Daily Telegraph*, 6 March 2002, 27.

<sup>85</sup> "Steel safeguard measures: statement by European Commission President Romano Prodi," EU Press Conference, Brussels, 27 March 2002 [text online], accessed May 2002, available at [http://europa.eu.int/comm/trade/goods/steel/pc\\_270302.htm](http://europa.eu.int/comm/trade/goods/steel/pc_270302.htm).

<sup>86</sup> "EU enacts steel tariffs, seeks truce," *Seattle Times*, 28 March 2002, C3; "European Commission response to US Decision to impose protectionist duties on steel imports," EC Memo, 18 March 2002 [text online], accessed May 2002, available at [http://europa.eu.int/comm/trade/goods/steel/pr\\_180302.htm](http://europa.eu.int/comm/trade/goods/steel/pr_180302.htm).

<sup>87</sup> Neil King, Jr., "An Angry U.S. Says EU's Tariff Threat Undercuts WTO," *Wall Street Journal Europe*, 18 April 2002, UKA2; "China: Official says government to fight US steel lawsuit 'all the way'," *BBC Monitoring*, 19 April 2002.

<sup>88</sup> World Trade Organization, *Agreement on Safeguards*, Document LT/UR/A-1A/8, 14 April 1994, Article 2, Section 1 [text online], accessed July 2002, available at [http://docsonline.wto.org/gen\\_browseDetail.asp?preprog=3](http://docsonline.wto.org/gen_browseDetail.asp?preprog=3).

<sup>89</sup> World Trade Organization, *Safeguards (SG Agreement)* [text online], accessed May 2002, available at [http://www.wto.org/english/tratop\\_e/safeg\\_e/safeint.htm](http://www.wto.org/english/tratop_e/safeg_e/safeint.htm).

<sup>90</sup> World Trade Organization, *Agreement on Safeguards*, Article 8, Section 1.

<sup>91</sup> "USTR's Deily Defends Bush Steel Tariffs Decision."

<sup>92</sup> "USTR's Zoellick Says Steel Tariffs a Safeguard Step," U.S. Department of State, Transcript, 5 March 2002 [text online], accessed May 2002, available at <http://usinfo.state.gov/topical/econ/wto/02030504.htm>.

<sup>93</sup> "European Commission response to US Decision to impose protectionist duties on steel imports."

<sup>94</sup> "Steel safeguard measures: statement by European Commission President Romano Prodi."

<sup>95</sup> Quoted in Geoff Winestock, "European Steel Maker is Wary of a Trade War – Arcelor Chief Urges Patience as Government Weighs Response to U.S. Move," *Wall Street Journal*, 15 March 2002, A6.

<sup>96</sup> "Steel, Rolled," *Economist*, 31 August 2002, p. 54.