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I. INTRODUCTION

1. The WTO dispute settlement system does not authorize punitive sanctions. By requesting authority to impose trade sanctions against $4.043 billion worth of U.S. exports, however, punitive sanctions are precisely what the European Communities ("EC") seeks in this dispute. In so doing, the EC has relied on a methodology that has utterly no relationship to the appropriate WTO legal standards and the facts of this case.

2. As the United States will demonstrate below, the punitive sanctions sought by the EC are neither "appropriate countermeasures" nor "equivalent to the level of nullification or impairment." Instead, under a proper application of the law and the facts, the amount to which the EC is reasonably entitled is far less than the punitive amount it seeks.

II. PROCEDURAL BACKGROUND

3. On 20 March 2000, the Dispute Settlement Body ("DSB") adopted the report of the Appellate Body in WT/DS108/AB/R ("*FSC AB Report*") and the report of the Panel in WT/DS108/R ("*FSC Panel Report*"), as modified by the Appellate Body, in the dispute entitled *United States - Tax Treatment for "Foreign Sales Corporations"*. With respect to the DSB's recommendations and rulings that the FSC tax exemption was inconsistent with U.S. obligations under Articles 3.1(a) and 3.2 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), the DSB requested that the United States withdraw the FSC subsidy. With respect to the DSB's recommendations and rulings that the FSC tax exemption was inconsistent with U.S. obligations under Articles 10.1 and 8 of the *Agreement on Agriculture* ("Agriculture Agreement"), the DSB requested that the United States bring the FSC measure into conformity with its obligations under those provisions. Under Article 4.7 of the SCM Agreement, the DSB specified that the FSC subsidy be withdrawn at the latest with effect from 1 October 2000. On

7 April 2000, the United States informed the DSB of its intention to implement the DSB's recommendations and rulings in a manner consistent with its WTO obligations.[1]

4. Following the adoption of the *FSC* reports, the United States Congress commenced a consideration of legislation in an effort to comply with the DSB's recommendations and rulings. While this legislation was pending before Congress, the EC informed the United States that it intended to challenge the legislation under consideration should it be enacted into law. On 29 September 2000, the United States and the EC entered into a procedural agreement applicable to the follow-up to the *FSC* dispute.[2]

5. On 12 October 2000, the DSB granted a request by the United States to extend the time period for withdrawing the FSC subsidy to 1 November 2000.[3]

6. On 15 November 2000, the President of the United States signed into law the FSC Repeal and Extraterritorial Income Exclusion Act of 2000 (the "ETI Act" or "Act"). The United States considered that with the enactment of this legislation it had implemented the recommendations and rulings of the DSB and that the legislation was consistent with U.S. WTO obligations.[4]

7. On 17 November 2000, the EC requested dispute settlement consultations with the United States regarding the ETI Act, alleging that the Act failed to comply with the DSB's recommendations and rulings and that it was otherwise inconsistent with U.S. WTO obligations.[5]

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[1] WT/DSB/M/78 (12 May 2000), para. 20.
[2] WT/DS108/12 (5 October 2000).
[3] WT/DSB/M/90, paras. 6-7 (31 October 2000).
[4] WT/DSB/M/92, para. 143 (15 January 2001).
[5] WT/DS108/14 and Corr. 1 (21 November 2000).

8. On the same day, the EC, pursuant to Article 4.10 of the SCM Agreement and Article 22.2 of the DSU, requested authority from the DSB to take appropriate countermeasures and to suspend concessions in the amount of $4.043 billion per year.[6] The EC indicated that it intended to suspend tariff concessions and related obligations under the GATT 1994 by imposing an additional duty of 100 percent *ad valorem* above bound customs duties on a final list of U.S. products to be drawn from an indicative list attached to the EC request for authorization.[7]

9. On 27 November 2000, the United States informed the DSB, pursuant to Article 4.11 of the SCM Agreement and Article 22.6 of the DSU, that it objected to the appropriateness of the countermeasures and the level of suspension of concessions proposed by the EC.[8] In the view of the United States, the countermeasures proposed were not appropriate within the meaning of Article 4.10 of the SCM Agreement, and the level of suspension of concessions was not equivalent to the level of nullification or impairment within the meaning of Article 22.7 of the DSU.[9] As a result of the U.S. objection, the matter was referred to arbitration, and the original panel was designated to carry out the arbitration.[10]

10. The consultations between the United States and the EC failed to resolve the matter, and on 7 December 2000, the EC requested the establishment of a panel under Article 21.5 of the DSU.[11] On 20 December 2000, the DSB established a panel.[12]

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[6] WT/DS108/13 (17 November 2000).
[7] *Id*.
[8] WT/DS108/15 (27 November 2000).
[9] *Id*.
[10] WT/DS108/17 (13 December 2000).
[11] WT/DS108/16 (8 December 2000).
[12] *See* WT/DS108/19 (5 January 2001).

11. On 21 December 2000, the United States and the EC, pursuant to the procedural agreement of 29 September 2000, jointly requested that the arbitration proceeding be suspended until the adoption of the Article 21.5 panel report, or, in the event of an appeal, the adoption of the Appellate Body report.[13] On the same day, the Arbitrator suspended the arbitration pursuant to this joint request.[14]

12. On 20 August 2001, the Article 21.5 Panel circulated its report.[15] In its report, the Panel made the following findings:

(a) The ETI Act is inconsistent with Article 3.1(a) of the SCM Agreement.

(b) The United States has acted inconsistently with Article 3.2 of the SCM Agreement.

(c) The United States has acted inconsistently with Articles 10.1 and 8 of the Agriculture Agreement.

(d) The ETI Act is inconsistent with Article III:4 of GATT 1994.

(e) The United States had not fully withdrawn the FSC subsidies found to be inconsistent with Article 3.1(a) of the SCM Agreement and had therefore failed to implement the recommendations and rulings of the DSB made pursuant to Article 4.7 of the SCM Agreement.[16]

The Panel concluded, pursuant to Article 3.8 of the DSU, "that to the extent the United States has acted inconsistently with the *SCM Agreement*, the *Agreement on Agriculture* and the *GATT*

[13] *See* WT/DS108/18 (21 December 2000).

[14] *Id.*

[15] *United States - Tax Treatment for "Foreign Sales Corporations" - Recourse to Article 21.5 of the DSU by the European Communities* ("*ETI Panel Report*"), WT/DS108/RW, Report of the Panel, as modified by the Appellate Body, adopted 29 January 2002.

[16] *Id.*, para. 9.1.

1994 it has nullified or impaired benefits accruing to the European Communities under those agreements."[17]

13. On 15 October 2001, the United States appealed the *ETI Panel Report.* On 14 January 2002, the Appellate Body circulated its report, in which it affirmed the Panel's findings but modified the Panel's reasoning.[18]

14. The DSB adopted the *ETI AB Report* and the *ETI Panel Report*, as modified, on 29 January 2002. Pursuant to the procedural agreement of 29 September 2000, this arbitration resumed on the same day.

III. SUMMARY OF ARGUMENT

15. In its submission of 4 February 2002, the EC stated that the amount of sanctions it has requested is based on the estimated amount of the U.S. export subsidy. The United States assumes that in so doing, the EC is relying on Article 4.10 of the SCM Agreement. In fact, however, the amount of sanctions requested by the EC has no relationship to the standard of Article 4.10. Under Article 4.10, properly interpreted, countermeasures are not "appropriate" if they are "disproportionate" to the trade impact of the subsidy on the EC. A reasonable approximation of the trade impact of the U.S. export subsidy on the EC indicates that the EC's figure of $4.043 billion is grossly in excess of the amount of the trade impact. Therefore, the Arbitrator should find that the amount requested by the EC is "disproportionate" and, thus, not "appropriate" within the meaning of Article 4.10. In addition, the Arbitrator should find that the

[17] *Id.*, para. 9.2.

[18] *United States - Tax Treatment for "Foreign Sales Corporations" - Recourse to Article 21.5 of the DSU by the European Communities* ("*ETI AB Report*"), WT/DS108/AB/RW, Report of the Appellate Body adopted 29 January 2002.

amount requested by the EC is not "equivalent to the level of nullification or impairment" within the meaning of Article 22.7 of the DSU. The Arbitrator should decide that the EC is entitled to countermeasures or suspension of concessions in an amount no greater than the amount of the trade impact of the subsidy on the EC.

IV. COUNTERMEASURES ARE NOT "APPROPRIATE" WITHIN THE MEANING OF ARTICLE 4.10 OF THE SCM AGREEMENT IF THEY ARE DISPROPORTIONATE TO THE TRADE IMPACT ON THE COMPLAINING MEMBER

16. The first issue in reviewing the EC's request is to determine the proper legal standard to apply. In its methodology paper of 4 February 2002,[19] the EC explains how it calculated the $4.043 billion figure, but it does not identify the legal standard on which this calculation is based. Nor does the EC explain what portion of its $4.043 billion figure is for "appropriate countermeasures" and what portion is for the "suspension of concessions". However, given the repeated references in the *EC Methodology Paper* to the phrase "appropriate countermeasures", combined with the omission of any reference to a standard based on actual nullification or impairment suffered by the EC, the United States assumes that the EC is relying on the standard of "appropriate countermeasures" in Article 4.10.

17. The amount of countermeasures sought by the EC is inconsistent with the standard of Article 4.10. Under Article 4.10, properly interpreted, countermeasures are not "appropriate" if they are disproportionate to the trade impact of a subsidy on the complaining Member.

[19] *Methodology Paper of the European Communities*, 4 February 2002 ("*EC Methodology Paper*").

18. It is well-accepted in WTO jurisprudence that Articles 31 and 32 of the *Vienna Convention on the Law of Treaties* ("*VCLT*") reflect customary rules of interpretation of public international law within the meaning of Article 3.2 of the DSU. Application of those articles demonstrates that countermeasures are not "appropriate" if they are disproportionate to the trade impact on the complaining Member.

A. The Ordinary Meaning of Article 4.10 Does Not Preclude a Consideration of the Trade Impact on the Complaining Member

19. Pursuant to Article 31(1) of the *VCLT*, one must consider the ordinary meaning of Article 4.10, the text of which reads, in pertinent part, as follows:

> In the event the recommendation of the DSB is not followed within the time-period specified by the panel, . . . the DSB shall grant authorization to the complaining Member to take appropriate countermeasures ... . (Footnote omitted).[20]

For purposes of this arbitration, the issue is what is the ordinary meaning of the term "appropriate".[21]

20. "Appropriate" is defined as "specially suitable (*for*, *to*); proper, fitting".[22] As is often the case, however, this dictionary definition does not resolve the interpretive question.[23]

21. Article 4.10 is qualified by footnote 9 to the SCM Agreement, which states as follows: "This expression [appropriate] is not meant to allow countermeasures that are disproportionate in

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[20] In a similar vein, Article 4.11 of the SCM Agreement provides that "the arbitrator shall determine whether the countermeasures are appropriate."

[21] There is no dispute that the suspension of concessions sought by the EC constitutes "countermeasures" within the meaning of Article 4.10.

[22] *The New Shorter Oxford English Dictionary* (1993).

[23] *Cf., Canada - Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, Report of the Appellate Body adopted 20 August 1999, para. 153 ("Clearly, however, dictionary meanings leave many interpretive questions open.").

light of the fact that the subsidies dealt with under these provisions are prohibited."[24]

"Disproportionate" is defined as "Lacking proportion, poorly proportional; out of proportion (*to*); relatively too large or too small."[25] "Proportion", in turn, is defined as "(A) comparative relation or ratio between things in size, quantity, number, etc."[26] "Proportional" is defined as "That is in (due) proportion; related in terms of proportion *to* something; corresponding in degree, size, amount, etc.; comparable".[27] Similarly, "proportionate" is defined as "That is in (due) proportion (*to*); appropriate, proportional [,] corresponding."[28]

22. Putting these definitions together, one discerns that countermeasures are "appropriate" under Article 4.10 if they are "proportionate" (or "not disproportionate") to something else, but neither the text of Article 4.10 nor these definitions definitively answer the question of what that "something else" is. A consideration of the ordinary meaning does demonstrate, however, that the text of Article 4.10, on its face, does not preclude the trade impact on the complaining Member as the "something else" on which a determination of disproportionality must be based. Other tools of treaty interpretation establish that this "something else" is, indeed, the trade impact on the complaining Member.

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[24] The same language appears in footnote 10, which is attached to Article 4.11.
[25] *The New Shorter Oxford English Dictionary* (1993).
[26] *The New Shorter Oxford English Dictionary* (1993).
[27] *The New Shorter Oxford English Dictionary* (1993).
[28] *The New Shorter Oxford English Dictionary* (1993).

B. The Context of Article 4.10 Establishes That the Appropriateness of Countermeasures Must Be Assessed by Reference to the Trade Impact on the Complaining Member

23. Article 31(1) of the *VCLT* provides that, in addition to ordinary meaning, a treaty interpreter shall consider "the terms of a treaty in their context ... ." With respect to Article 4.10 of the SCM Agreement, the relevant context is Article XXIII:2 of the GATT 1994, Article 22.4 of the DSU, and Articles 7.9 and 9.4 of the SCM Agreement.

1. The Standard of "Appropriate" in Article XXIII:2 Has Been Applied by Reference to Trade Impact

24. Article XXIII of GATT 1994 is the provision from which the current WTO dispute settlement system evolved.[29] Article XXIII provides for a consultation process and the referral of a matter to the CONTRACTING PARTIES for a recommendation if necessary. Of particular relevance here is that paragraph 2 of Article XXIII provides for sanctions in certain circumstances, such as where a recommendation by the CONTRACTING PARTIES is not followed. Paragraph 2 provides as follows:

> If the CONTRACTING PARTIES consider that the circumstances are serious enough to justify such action, they may authorize a contracting party or parties to suspend the application to any other contracting party or parties of such concessions or other obligations under this Agreement as they determine to be appropriate in the circumstances. (Emphasis added).

Thus, the standard for sanctions contained in Article XXIII – the centerpiece of dispute settlement – uses the same term as Article 4.10: "appropriate."

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[29] *See* John H. Jackson, *The World Trading System: Law and Policy of International Economic Relations* (MIT Press 1989), page 94 ("Article XXIII is the centerpiece for dispute settlement.").

25. Of course, the use of identical terms, standing alone, is not particularly significant, because it begs the question of what "appropriate" means. What *is* significant is how that term has been interpreted and applied.

26. The only instance of authorized sanctions under Article XXIII of GATT 1947 is found in the report of the working party in *Netherlands Action under Article XXIII:2 to Suspend Obligations to the United States*.[30] In that dispute, the working party expressly recognized that "it was appropriate to consider calculations of the trade affected by the measures and countermeasures in question."[31] The most pertinent portions of the report state as follows:

> 2. The Working Party was instructed by the CONTRACTING PARTIES to investigate the appropriateness of the measure which the Netherlands Government proposed to take, having regard to its equivalence to the impairment suffered by the Netherlands as a result of the United States restrictions.
>
> 3. The Working Party felt that the appropriateness of the measure envisaged by the Netherlands Government should be considered from two points of view: in the first place, whether in the circumstances, the measure was appropriate in character, and, secondly, whether the extent of the quantitative restriction proposed by the Netherlands Government was reasonable, having regard to the impairment suffered.[32]

27. With respect to the interpretive question here – the meaning of "appropriate" – the significance of the working party report cannot be overstated. The report demonstrates that from the very beginnings of the GATT system, the CONTRACTING PARTIES took the position that the appropriateness of a countermeasure had to be assessed in regard to the impairment suffered

[30] L/61, BISD 1S/62, Report adopted by the CONTRACTING PARTIES on 8 November 1952.
[31] *Id*., para. 4 (emphasis added).
[32] *Id*., paras. 2-3 (emphasis added).

by the complaining party. Indeed, they went so far as to say that a countermeasure had to be assessed in regard to its "equivalence" to the impairment suffered.

28. The drafters of the WTO Agreement essentially codified this interpretation in the form of Article 22.4 of the DSU. Article 22.4 – which applies to disputes brought under Article XXIII – provides as follows: "The level of suspension of concessions or other obligations authorized by the DSB shall be equivalent to the level of nullification or impairment."[33] In other words, in order for a countermeasure to be "appropriate" under Article XXIII:2, it must be "equivalent" to the level of the nullification or impairment.[34]

2. Articles 7.9 and 9.4 of the SCM Agreement Use a Standard of Trade Impact

29. In addition to the GATT 1994 and the DSU, other provisions of the SCM Agreement provide contextual support for the proposition that the "appropriateness" of countermeasures should be assessed by reference to the trade impact on the complaining Member.

30. One such provision is Article 7.9 of the SCM Agreement, which applies to actionable subsidies. Article 7.9 provides for "countermeasures, commensurate with the degree and nature of the adverse effects determined to exist ... ." The ordinary meaning of "commensurate" is "1. Of equal extent, coextensive (*with*, *to*); 2. Proportionate (*to*, *with*). Thus, countermeasures under Article 7.9 must be assessed in relation to the adverse effects on a complaining Member

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[33] *See also* Article 22.7 of the DSU, which provides that an arbitrator acting pursuant to Article 22.6 "shall determine whether the level of such suspension is equivalent to the level of nullification or impairment."

[34] As noted by one scholar, "[I]n the GATT regime the term used in the place of 'equivalent' was 'appropriate' (GATT Article XXIII(2))." Petros C. Mavroidis, *Remedies in the WTO Legal System: Between a Rock and a Hard Place*, 11 Eur. J. Int'l L. #4 (2000), downloaded from <www.ejil.org/journal/Vol11/No4/index.htm/>, page 39 (emphasis added). In this regard, the EC's original panel request challenging the FSC and its panel request challenging the ETI Act both invoked Article XXIII. *See* WT/DS108/2 (9 July 1998); and WT/DS108/16 (8 December 2000).

caused by subsidized merchandise, and must be "of equal extent to", "coextensive with" or "proportionate to" those adverse effects.

31. Another relevant provision is Article 9.4 of the SCM Agreement.[35] Article 9 of the SCM Agreement established a procedure by which a Member could seek relief from a non-actionable subsidy program in certain circumstances. Under Article 9.4, if various requirements were satisfied, the SCM Committee could authorize a Member "to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist." Thus, like the other provisions discussed above, under Article 9.4 the appropriateness of countermeasures had to be assessed in relation to the effects on the complaining Member caused by a subsidy program, and the countermeasures had to be "of equal extent to", "coextensive with" or "proportionate to" those effects.

3. In Light of Article XXIII:2 of GATT 1994, Article 22.4 of the DSU and Articles 7.9 and 9.4 of the SCM Agreement, It Would Be Untenable to Interpret Article 4.10 of the SCM Agreement as Permitting Countermeasures That Are Disproportionate to the Trade Impact on the Complaining Member

32. As demonstrated above, other relevant dispute settlement provisions of the WTO Agreement require expressly, or have been interpreted to require, a consideration of trade impact in assessing the amount of countermeasures or suspension of concessions to which a complaining Member should be entitled. In light of this context, it would be untenable to interpret Article 4.10 as permitting countermeasures that are disproportionate to the trade impact on the complaining Member.

[35] Article 9.4 no longer applies because it was not extended under Article 31 of the SCM Agreement. Nevertheless, it continues to provide context for purposes of interpreting other provisions of the SCM Agreement.

33. In this regard, one might argue that because Article 4.10 does not expressly reference "nullification or impairment", "adverse effects", or "effects", it should be assumed that the drafters intended that the appropriateness of countermeasures under Article 4.10 be assessed without regard to such factors. Such an argument is invalid for several reasons.

34. First, the argument ignores Article XXIII:2 of GATT 1994, which also does not expressly refer to the trade impact on the complaining Member, but instead simply uses the word "appropriate." As demonstrated above, Article XXIII:2 has been interpreted so as to require a consideration of – indeed an equivalence to – the level of nullification or impairment suffered by a complaining Member.

35. Second, the argument fails to provide any answer to the question "disproportionate to what?" The concept of "disproportionate" necessitates a comparison of proposed countermeasures with something else. In light of the context and, as discussed below, the object and purpose of the WTO dispute settlement system, the only logical comparison is between the proposed countermeasures and the impact of the subsidy on the complaining Member's trade.

36. Third, the argument is inconsistent with the analysis of the Appellate Body in *Canada Autos*.[36] In that case, one of the issues faced by the Appellate Body was whether Article 3.1(b) of the SCM Agreement covers so-called *de facto* import substitution subsidies. The panel in that case had found that Article 3.1(b) does not cover *de facto* subsidies. The panel relied on the fact that there is explicit language in Article 3.1(a) of the SCM Agreement applying to subsidies contingent "in law or in fact" upon exportation, whereas in Article 3.1(b) there is no such

[36] *Canada - Certain Measures Affecting the Automotive Industry*, WT/DS139/AB/R, WT/DS142/AB/R, Report of the Appellate Body adopted 19 June 2000.

language. The panel reasoned that the explicit inclusion of the phrase "in law or in fact" in Article 3.1(a) and the omission of similar language in Article 3.1(b) meant that the drafters must have intended that Article 3.1(b) not apply to subsidies that are *de facto* contingent upon import substitution.[37]

37. The Appellate Body disagreed with the panel, observing that "omissions in different contexts may have different meanings, and omission, in and of itself, is not necessarily dispositive."[38] While the Appellate Body acknowledged the relevance of Article 3.1(a) as context, it faulted the panel for failing to examine other contextual elements and to consider the object and purpose of the SCM Agreement.[39] The Appellate Body noted that the text of Article 3.1(b) itself did not specifically exclude the *de facto* concept, and found as a contextual matter that Article III:4 of GATT 1994 covered both *de jure* and *de facto* inconsistencies.[40] The Appellate Body concluded by stating that "it would be most surprising if a similar provision in the *SCM Agreement* applied only to situations involving *de jure* inconsistency."[41]

38. By the same token, Article 4.10 does not expressly exclude trade impact as the benchmark for determining whether countermeasures are "disproportionate". Given that all of the other dispute settlement provisions dealing with countermeasures or suspension of

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[37] *Id*., para. 137, describing the panel's analysis.
[38] *Id*., para. 138.
[39] *Id*.
[40] *Id*., paras. 139-140.
[41] *Id*., para. 140. The Appellate Body also recalled its findings in *EC Bananas* to the effect that textual differences between Articles II and XVII of the GATS did not mean that Article II did not cover *de facto* discrimination. *Id*., para. 141.

concessions require a consideration of effects or nullification or impairment, "it would be most surprising" if the related provision of Article 4.10 omitted such a consideration.

39. Indeed, if the drafters had intended to completely discard such an established principle, they would have done so explicitly. Certainly, terms such as "appropriate" and "not disproportionate" should not be interpreted so as to substitute a punitive standard for the standard consistently used elsewhere by the drafters.

40. Fourth, Article 1.2 of the DSU makes clear that Article 4.10 of the SCM Agreement prevails only to the extent that there is a difference between Article 4.10 and the DSU. Given that Article 4.10 does not, by its terms, require that the trade impact on the complaining Member be ignored, the standard in the DSU of trade impact would continue to apply.

41. Therefore, a better reading of Article 4.10 and footnote 9 is that the terms "appropriate" and "not disproportionate" require a relationship between the amount of the countermeasures and the amount of the trade impact, although a less strict relationship than required by other WTO dispute settlement provisions. Such a reading is consistent with the findings in prior arbitrations.[42]

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[42] *European Communities - Regime for the Importation, Sale and Distribution of Bananas - Recourse to Arbitration by the European Communities Under Article 22.6 of the DSU* ("*EC Bananas*"), WT/DS27/ARB, Decision by the Arbitrators circulated 9 April 1999, para. 6.5 ("[T]he benchmark of *equivalence* reflects a stricter standard of review for Arbitrators acting pursuant to Article 22.7 of the WTO's DSU than the degree of scrutiny that the standard of *appropriateness*, as applied under the GATT of 1947 would have suggested.") (italics in original); and *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* ("*Brazil Aircraft*"), WT/DS46/ARB, Decision of the Arbitrators circulated 28 August 2000, note 51 ("[T]he term 'appropriate', read in the light of footnotes 9 and 10, may allow for more leeway than the word 'equivalent' in terms of assessing the appropriate level of countermeasures.").

C. A Consideration of Object and Purpose Establishes That the Appropriateness of Countermeasures Must Be Assessed by Reference to the Trade Impact on the Complaining Member

42. In addition to ordinary meaning and context, Article 31(1) of the *VCLT* provides that a treaty shall be interpreted "in the light of its object and purpose." A consideration of the object and purpose of the dispute settlement provisions of the WTO Agreement supports the view that the appropriateness of countermeasures must be assessed by reference to the trade impact on the complaining Member. This object and purpose can be gleaned from the dispute settlement provisions themselves. From these provisions, one can discern two different, but related, objectives: (1) to induce compliance; and (2) to restore the balance of rights and obligations.

43. Article 22.1 of the DSU provides that "[c]ompensation and the suspension of concessions or other obligations are temporary measures ... ." This suggests that one of the purposes of countermeasures is to induce compliance. This is precisely the conclusion reached by the arbitrator in *EC Bananas*, which found that "it is the purpose of countermeasures to *induce compliance*."[43] However, the arbitrator did not find this purpose to be inconsistent with the standard set forth in Article 22.4 of the DSU, which requires equivalency between the level of suspension of concessions and the level of nullification or impairment. Thus, to the extent that the object and purpose of Article 4.10 of the SCM Agreement is to induce compliance, assessing the appropriateness of countermeasures by reference to the trade impact on the complaining Member is consistent with that object and purpose.

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[43] *EC Bananas*, para. 6.3 (emphasis in original); *accord*, *European Communities - Measures Concerning Meat and Meat Products (Hormones) - Original Complaint by the United States - Recourse to Arbitration by the European Communities Under Article 22.6 of the DSU* ("*EC Hormones*"), WT/DS26/ARB, Decision by the Arbitrators circulated 12 July 1999, para. 40; and *Brazil Aircraft*, para. 3.44.

44. Another purpose of countermeasures can be found in Article 3.3 of the DSU, which refers to the need for "the maintenance of a proper balance between the rights and obligations of Members." This language suggests that one of the purposes of countermeasures is to restore the overall balance of rights and obligations between the Members concerned that would exist if the non-conforming measure were withdrawn. This is the conclusion reached by the arbitrator in *EC Hormones*, which found that "[t]o allow the effect of suspension of concessions to exceed that of bringing the measure into conformity with WTO rules would not be justifiable in view of DSU objectives."[44] Thus, to the extent that the object and purpose of Article 4.10 of the SCM Agreement is to maintain the balance of rights and obligations among Members, assessing the appropriateness of countermeasures by reference to the trade impact on the complaining Member is not only consistent with that object and purpose, it is the *only* method that is consistent with that object and purpose.

45. At the same time, dispute settlement provisions do not authorize punitive sanctions. This was the finding of the arbitrator in *EC Bananas*, which in referring to Article 22.4 of the DSU found nothing "that could be read as justification for counter-measures of a *punitive* nature."[45] This also was the finding of the arbitrator in the *U.S. Section 110(5)* case, in which the arbitrators stated that they "shall ensure that their determination of the level of nullification or impairment of benefits does not lead to a situation where potential suspensions of concessions or other

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[44] *EC Hormones*, para. 39; *see also* Patricio Grané, *Remedies Under WTO Law*, 4 J. Int'l Econ. L. 755, 759 (2001), discussing how under Article XXIII of GATT 1947, "[t]he withdrawal of concessions, as a remedy of last resort, was a counterbalancing action, its objective being to offset the reduction in benefits resulting from the non-conforming measure."

[45] *EC Bananas*, para. 6.3 (italics in original); *accord EC Hormones*, para. 40.

obligations under Article 22.7 would be in fact 'punitive', because the level of EC benefits nullified or impaired by the operation of Section 110(5)(B) would have been overestimated."[46]

46. Only an interpretation of Article 4.10 that requires a consideration of the trade impact on the complaining Member satisfies all of the objectives described above. In the context of this case, awarding the EC an amount of countermeasures based on the entire amount of the subsidy might be said to have an inducing effect, but it would not restore the balance of rights and obligations. Instead, it would upset the balance of rights and obligations, because the EC would be better off than it would be if the subsidy did not exist. Moreover, countermeasures in such an amount would be punitive, because, as demonstrated in section V, below, the total amount of the subsidy is grossly in excess of the estimated trade impact on the EC.

D. The Negotiating History of the SCM Agreement Confirms That the Appropriateness of Countermeasures Under Article 4.10 Must Be Assessed by Reference to the Trade Impact on the Complaining Member

47. As demonstrated above, the application of Article 31 of the *VCLT* establishes that the appropriateness of countermeasures under Article 4.10 must be assessed by reference to the trade impact on the complaining Member. This meaning is confirmed by recourse to the negotiating history of the SCM Agreement.[47]

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[46] *United States - Section 110(5) of the US Copyright Act - Recourse to Arbitration Under Article 21.5 of the DSU*, WT/DS160/ARB/25/1, Award of the Arbitrators circulated 12 October 2001, para. 4.27. In *Brazil Aircraft*, para. 3.55, the arbitrator stated that a calculation of appropriate countermeasures under Article 4.10 based on the amount of the subsidy would not be punitive. However, that case is distinguishable on its facts because the amount of the subsidy alleged by Canada (C$3.2 billion in present value terms) was far less than the amount of trade harm that Canada alleged it had suffered (C$4.7 billion in present value terms). *Id.*, para. 3.19, 3.21. Indeed, the arbitrator acknowledged that "in practice there may be situations where countermeasures equivalent to the level of nullification or impairment will be appropriate ... ." *Id.*, para. 3.57

[47] Article 32 of the *VCLT* provides that "[r]ecourse may be had to supplementary means of interpretation, including the preparatory work of the treaty and the circumstances of its conclusion, in order to confirm the meaning

(continued...)

48. Article 4 of the SCM Agreement has its origins in a proposal made by Switzerland.[48] Insofar as prohibited subsidies are concerned, there are two particular aspects of the Swiss proposal that are relevant. First, Switzerland proposed the so-called "traffic light" approach, which divided subsidies into the three categories of prohibited, actionable and non-actionable.[49] Like other WTO rules violations, prohibited subsidies would constitute a violation of obligations without the need to establish any sort of adverse trade effects.[50] The second significant aspect of the Swiss proposal is that a Member would be permitted to apply "appropriate countermeasures" unilaterally against a prohibited subsidy.[51] Any such retaliation, however, would have to be "proportional", and unilateral retaliation would be subject to multilateral review in order to ensure that this was the case.[52]

49. A subsequent Swiss communication elaborated on the meaning of "appropriate countermeasures."[53] Continuing to emphasize the importance of "proportionality",[54] Switzerland stated that the purpose of the countermeasures it was proposing would be "to offset the adverse

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[47] (...continued)
resulting from the application of article 31 ... ."

[48] *Communication from Switzerland*, MTN.GNG/NG10/W/17 (1 February 1988).

[49] *Id*., page 1. The United States notes that in citing to various Uruguay Round negotiating documents, it has relied on electronically-stored versions of those documents. Thus, the page citations set forth herein may differ from the pagination in the "green stripe" hard-copy versions of the same documents due to the vagaries of word processing software.

[50] *Id*., page 4.

[51] *Id*.

[52] *Id*., page 3.

[53] *Elements of the Negotiating Framework; Communication from Switzerland*, MTN.GNG/NG10/W/26 (13 September 1989).

[54] *Id*., pages 3-4.

effect of prohibited subsidies"[55], and that such "countermeasure must not go beyond what is necessary to offset the negative effect."[56]

50. Although the negotiators embraced the Swiss traffic light approach, as evidenced by the structure of the SCM Agreement, they did not accept the notion of unilateral "appropriate countermeasures." Instead, they opted for the multilateral process set forth in Article 4 of the SCM Agreement. They did, however, retain the Swiss concept of "appropriate countermeasures" as a response to the retention of a measure found to be a prohibited subsidy. In light of this, the Swiss explanation that "appropriate countermeasures" should not go beyond what is necessary to offset the negative effects of a prohibited subsidy is particularly persuasive evidence of what the drafters intended in regard to Article 4.10.

51. The evidence of this intent is not confined to the communications by Switzerland. Those delegations that chose to elaborate in their communications on the nature of "appropriate countermeasures" – as opposed to those that merely endorsed the concept of "appropriate countermeasures" – also were of the view that such countermeasures must be based on trade impact.

52. For example, the United States agreed with Switzerland that "[w]ith respect to a prohibited subsidy, proof of nullification or impairment would not be required. Instead, the only issue would be the amount of trade loss."[57] Commenting favorably on the Swiss proposal, the United States indicated that, as it understood it, "this procedure would work in a manner roughly

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[55] *Id*., page 3.
[56] *Id*., note 1.
[57] *Communication from the United States*, MTN.GNG/NG10/W/20 (15 June 1988), page 15 (emphasis added).

analogous to the right to compensation for trade-restricting actions under GATT Article XIX."[58] In a subsequent communication, the United States proposed that in the case of remedies for prohibited subsidies that affect trade in third country markets or the home market of the subsidizing country, "affected parties would be entitled to take countermeasures to compensate for import substitution in the home market of the subsidizing country and/or displacement in third country markets."[59]

53. Australia, referring to a multilateral process for dealing with prohibited subsidies, proposed authorizing all affected contracting parties to take countermeasures, "with the onus on the offending contracting party to demonstrate that any countermeasures to be taken were not commensurate with the nature of the subsidy programme and the degree of its impact."[60]

54. Thus, a consideration of the SCM Agreement's negotiating history confirms the meaning of Article 4.10 resulting from the application of Article 31(1) of the *VCLT*; namely, that the appropriateness of countermeasures under Article 4.10 must be assessed by reference to the trade impact on the complaining Member.

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[58] *Id*. Article XIX authorizes the suspension of an obligation or the withdrawal or modification of a concession as a "safeguard" measure. Article XIX:3(a) allows contracting parties affected by such a measure to suspend "substantially equivalent concessions or other obligations".

[59] *Elements of the Framework for Negotiations; Submission by the United States*, MTN.GNG/NG10/W/29 (22 November 1989), page 6 (emphasis added).

[60] *Elements of the Framework for Negotiations; Submission by Australia*, MTN.GNG/NG10/W/32 (30 November 1989), page 4 (emphasis added).

E. Scholarly Commentary Supports the View that the "Appropriateness" of Countermeasures Under Article 4.10 Must Be Assessed by Reference to the Trade Impact on the Complaining Member

55. Although an application of the rules of the *VCLT* is dispositive, it is worth noting that what scholarly commentary exists is consistent with the interpretation of Article 4.10 set forth above.

56. For example, one scholar has stated the following with respect to Article 4.10:

> The footnote to Article 4(10) SCM states that proportionate means not disproportionate. The only reasonable interpretation of the term is that punitive damages are to be excluded. But if damages are not punitive, what are they? Intuitively, one would support the thesis that, because of the footnote, for proportionate countermeasures to be calculated one should use the actual damages suffered as the proper benchmark. And maybe small deviations, in accordance with the discussions following the EC request to take countermeasures in the *Superfund* litigation cited above, will be tolerated. But, at any rate, the benchmark must be the damages suffered.[61]

Similarly, another commentator has concluded that Article 4.10 requires that countermeasures "are not disproportionate to the injury suffered."[62]

F. Summary

57. As demonstrated above, when one applies Articles 31 and 32 of the *VCLT*, one must conclude that countermeasures under Article 4.10 of the SCM Agreement are not "appropriate" if they are "disproportionate" to the trade impact on the complaining Member. The terms "appropriate" and "disproportionate" may require less precision than the comparable terms "equivalent" and "commensurate" in other WTO dispute settlement provisions. However, they

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[61] Mavroidis, *supra*, page 45 (emphasis added).

[62] Allan Rosas, *Implementation and Enforcement of WTO Dispute Settlement Findings: An EU Perspective*, J. Int'l Econ. L. 131 (2001), page 142, note 45.

do require that trade impact on the complaining Member be the primary factor in the analysis. As the United States will demonstrate in the following section, the amount of countermeasures claimed by the EC is not even remotely linked to the trade impact of the U.S. subsidy on the EC.

V. A REASONABLE ESTIMATE IS THAT THE AMOUNT OF THE TRADE IMPACT ON THE EC IS NO MORE THAN $956 MILLION

58. In the preceding section, the United States demonstrated that countermeasures under Article 4.10 of the SCM Agreement are not "appropriate" if they are "disproportionate" to the amount of the trade impact on the complaining Member. In order to determine whether the amount of countermeasures claimed by the EC – $4.043 billion – is disproportionate, it is first necessary to estimate the trade impact on the EC of the U.S. export subsidy. In this section, the United States sets forth the methodology it believes the Arbitrator should use to quantify the estimated trade impact on the EC. For the reasons explained below, the United States believes that this amount is no more than $956 million per annum.

A. Because of the Particular Circumstances of this Dispute, a Proxy Is Needed to Measure the Trade Impact of the U.S. Subsidy on the EC

59. Concessions made under the WTO are made with respect to trade, and the EC has requested authorization to suspend concessions the value of which is determined in reference to trade flows. Accordingly, the quantification of any trade impact on the EC as a consequence of the U.S. export subsidy should be done in terms of trade effects. Ideally, a measurement of this trade impact would be based on: (1) estimates of the effect of subsidized U.S. exports to third markets on EC exports to those same markets; and (2) given the nature of the subsidy, estimates

of the effect of subsidized U.S. exports to the EC in displacing domestic shipments by EC producers in the EC market.

60. It would be very difficult, however, to obtain reliable figures using such an approach in this case. Unlike other cases involving discrete products or sectors, the subsidy in question is not limited to a single product or sector, but instead is a measure of general application. Moreover, unlike other cases which involve a single market, the subsidy is not limited to a single market, but instead applies to all markets to which U.S. products may be exported.

61. A precise measurement of the effects of the export subsidy on the domestic shipments and exports of the EC and other countries would require very specific data for a very large number of products, as well as knowledge or reliable estimates of a wide variety of sector-specific parameters of economic behavior. There are very significant limitations imposed on such an exercise based on the availability and detail of data, difficulties in the concordance of trade and production data across countries, and uncertainties and a paucity of economic literature concerning important parameter values. The difficulty of such an analysis, whether done by either or both parties, and the complexities and uncertainties created for the Arbitrator are issues that, in the view of the United States, should be avoided. In light of these difficulties, it is necessary to have recourse to a proxy to try and approximate the impact of the subsidy on EC trade.

B. The Total Amount of the Subsidy Is an Acceptable Proxy for the Amount of the Trade Impact on All Countries

62. In the *EC Methodology Paper*, the EC is silent on the underlying logic for using the amount of the subsidy as a basis for determining "appropriate countermeasures" under Article 4.10. However, because Article 4.10 unquestionably requires a consideration of trade impact, the EC presumably considers the amount of the subsidy in 2000 as a proxy for the trade effects caused by the subsidy. In the view of the United States, it would not be unreasonable to use the total amount of the subsidy as a proxy for the global trade effect of the subsidy, although not as a proxy for the trade effect on the EC itself. In light of the specific circumstances of this case described above – the wide variety of products and markets potentially affected by the U.S. subsidy – the United States believes that it is reasonable to use the total estimated dollar value of the subsidy in the year 2000 as a starting point, and that this figure provides a reasonable approximation of the maximum global trade impact of the subsidy.[63] Accordingly, we base our own calculations of the trade impact on the EC by starting with that amount.

C. Determining the EC Share of the Global Trade Effect of the Subsidy in 2000

63. Using the total dollar value of the subsidy in 2000 as a proxy for the global trade effect of the subsidy, as presumably did the EC, it is next necessary to determine the portion of that global trade effect that should be attributed to EC trade. The EC neglected to take this critical second step. To make this determination, it is first necessary to consider the potential impact of an export subsidy.

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[63] Regarding the use of the year 2000, in addition to the fact that the EC based its calculations on the year 2000, the most recent year for which production data is available is the year 2000.

64. An export subsidy presumably provides an incentive to firms to increase exports by lowering the costs for firms to export. Firms increase their level of exports either by increasing production or by shifting shipments from domestic to foreign markets. Thus, in principle, EC exports to third country markets may be reduced due to competition in those markets with subsidized U.S. exports. As consumers in these markets shift expenditures toward subsidized U.S. exports, demand for domestically-produced and imported goods – including imports from the EC – may decline. In addition, in principle, an export subsidy also may have effects in the EC domestic market. Just as consumers in third country markets may shift their expenditures toward subsidized U.S. exports, so, too, may consumers in the EC market, resulting in a possible decline in demand for EC-produced goods in its own market.

65. As discussed above, determining the precise effects of the subsidy on world and EC exports and domestic sales would be quite difficult. As a proxy was required for the total value of the global trade effect of the FSC in 2000, so, too, is a proxy needed to reasonably approximate that portion of the global trade effect of the subsidy that affects the EC.

66. What links changes in EC exports and EC domestic sales due to the export subsidy is that these changes should be reflected in levels of production in the EC. In other words, if the EC is exporting less and selling less domestically, it must be producing less of the affected products. Therefore, a logical proxy for the EC's share of the global trade effect of the subsidy is the EC's share of global goods production.

67. Some adjustments are necessary, however, in calculating the EC's share of global goods production. First, U.S. goods production should be excluded, because we are measuring the

effect of the subsidy on countries other than the United States. In addition, the value of EC goods exports to the United States also should be excluded from the calculation, because EC exports to the United States do not compete with U.S. products that benefit from the U.S. export subsidy.[64] For the same reason, the value of total world goods exports to the United States should be excluded from total world goods production. Thus, the relevant production share for the EC would be EC goods production minus EC goods exports to the United States, divided by world goods production minus U.S. goods production and minus world goods exports to the United States.

68. Applying this approach, the EC's share of relevant global production is 26.8 percent. This figure is calculated as follows.

69. Using World Bank data, EC goods production totaled $2.176 trillion for 2000 (on a value-added basis), U.S. goods production totaled $2.767 trillion, and world goods production (including EC and U.S.) totaled $11.281 trillion.[65] Using U.S. Census data, U.S. goods imports from the EC totaled $220.0 billion in 2000, and U.S. goods imports from the world totaled $1.218 trillion in 2000.[66] Therefore, the EC's share of the global trade effect of the subsidy is:

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[64] If they did, then the findings that the FSC provisions and the ETI Act provide export-contingent subsidies would be in error.

[65] *See World Development Report 2002*, pages 236-237 (copy attached as Exhibit US-1) for (1) nominal GDP and (2) specific shares of non-services GDP by EC countries and the world for 2000. The share of non-services production for the two non-reporting EC countries (Ireland and Sweden) is assumed to be the weighted-average share of the reporting EC countries (27.9 percent). Because *World Development Report 2002* does not contain comparable figures for the United States in 2000, the U.S. share of non-services production for 2000 is based on a 1999 estimate as reported in *World Development Report 2001*, p. 297 (copy attached as Exhibit US-2). The United States does not believe that the use of a 1999 estimate affects the accuracy of the calculation, because the production of goods as a share of U.S. GDP has been consistently declining. The United States believes that, if anything, the use of a 1999 estimate probably works in favor of the EC.

[66] *See U.S. International Trade in Goods and Services; Annual Revision for 2000*, U.S. Bureau of the Census (21 June 2001) (copy attached as Exhibit US-3).

$$\frac{(\$2{,}175.852 \text{ billion} - \$220.019 \text{ billion})}{(\$11{,}281.281 \text{ billion} - \$2{,}767.196 \text{ billion} - \$1{,}218.022 \text{ billion})}$$

$$= 26.8 \text{ percent}$$

D. Determining the Correct Amount of the Subsidy in 2000

70. The next step in the calculation is to determine the correct amount of the subsidy in 2000. The EC has estimated this amount as $4.043 billion. For the reasons that follow, the United States believes that a more accurate estimate is $3.567 billion.

71. The EC estimated the amount of the subsidy in 2000 based on projections forward of data for the year 1996 in an attempt to replicate U.S. methodology.[67] The United States believes that rather than attempting to replicate U.S. methodology, the Arbitrator should use the official U.S. estimate of the subsidy for the year 2000. According to the Budget of the United States Government, the actual level of the FSC subsidy (foregone tax revenue) was estimated to be $3.89 billion for 2000.[68]

72. The $3.89 billion figure, however, reflects an amount for subsidies provided to exports of both goods and services. Therefore, this amount must be reduced by the amount of subsidies provided with respect to the export of services, because the SCM Agreement applies only to goods.

73. The most recent detailed breakout of the beneficiaries of the FSC provisions by product is contained in the study done by the Statistics of Income Division of the U.S. Internal Revenue

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[67] *See EC Methodology Paper*, para. 10.

[68] *Analytical Perspectives; Budget of the United States Government for Fiscal Year 2002*, page 63, line 4, "Exclusion of income of foreign sales corporations". (Copy attached as Exhibit US-4).

Service ("SOI") in 2000.[69] Non-manufactured products and services accounted for approximately 12.7 percent of the total subsidy provided in 1996.[70] Categories relating to services are: agricultural services; motion picture distribution; engineering and architectural services; and computer software.[71] As shown below, based on data from the *SOI Study*, these four services categories accounted for approximately 8.3 percent of net exempt FSC income in 2000:

1996 data on exempt FSC income, in $ thousands

All Goods and Services exempt income	$8,496,280
Services Categories	
1. Agricultural services	$ 5,703
2. Computer software	$ 482,913
3. Motion picture distribution	$ 167,425
4. Engineering and architectural services	$ 48,680
Total	**$ 704,721**
Services Income as a percentage of all exempt income	8.3%

74. Therefore, the total 2000 subsidy of $3.89 billion needs to be reduced by 8.3 percent in order to reflect the amount of the subsidy attributable to exports of goods (as opposed to

[69] *Foreign Sales Corporation, 1996* (2000) ("*SOI Study*"). The EC appears to refer to, but does not cite, this study in *EC Methodology Paper*, para. 9.

[70] *See SOI Study*, pages 111-114 (copy attached as Exhibit US-5). Detailed information on net exempt income by product is provided on pages 111-114. The amount of the subsidy is calculated by adding columns 26 and 27, and then multiplying the sum by 0.35, which is the U.S. corporate tax rate; *i.e.*, if the income were not exempt, it would be taxed at a rate of 35 percent.

[71] The following three categories of non-manufactured products and services contain both goods and services components. These are: fisheries products and services; coal mining products and services; and miscellaneous manufactured products and services. The United States conservatively has refrained from making an adjustment for these categories.

services). After making this adjustment, the appropriate estimated subsidy level for 2000 is $3.567 billion.

E. The Amount of the Trade Impact on the EC

75. The final step in the calculation is to apply the EC percentage of world goods production to the amount of the subsidy, properly estimated. The calculation is 0.268 x $3.567 billion = $956 million. Thus, a reasonable approximation of the amount of the trade impact of the subsidy on the EC is $956 million.[72]

VI. THE AMOUNT OF COUNTERMEASURES CLAIMED BY THE EC IS NOT APPROPRIATE BECAUSE IT IS DISPROPORTIONATE TO THE AMOUNT OF THE TRADE IMPACT ON THE EC

76. As demonstrated above, countermeasures are not "appropriate" within the meaning of Article 4.10 of the SCM Agreement if they are "disproportionate" to the trade impact on the complaining Member. The $4.043 billion in trade sanctions sought by the EC is clearly disproportionate to the $956 million amount which the United States believes constitutes a reasonable estimate of the actual trade impact of the subsidy on the EC. Accordingly, the United States believes that the Arbitrator should find pursuant to Article 4.11 of the SCM Agreement that the countermeasures sought by the EC are not "appropriate." For the same reason, the Arbitrator should find pursuant to Article 22.7 of the DSU that the level of suspension of concessions or other obligations requested by the EC is not equivalent to the level of nullification or impairment.

[72] This amount is represented graphically in Exhibit US-6.

77. In prior arbitrations of this sort, when arbitrators have found the requested level of countermeasures or suspension of concessions to be excessive under the standards of Article 4.11 of the SCM Agreement or Article 22.7 of the DSU, the arbitrators have gone on to determine the amount of countermeasures or suspension of concessions that would be consistent with the relevant legal standard. For the reasons set forth above, the United States believes that the Arbitrator should find that the amount of countermeasures and suspension of concessions to which the EC should be entitled is no more than $956 million per annum. Countermeasures of this magnitude would satisfy all of the objectives of the dispute settlement system discussed above.

VII. CONCLUSION

78. For the foregoing reasons, the United States respectfully requests that the Arbitrator:

(a) find pursuant to Article 4.11 of the SCM Agreement that the countermeasures requested by the EC are not appropriate;

(b) find pursuant to Article 22.7 of the DSU that the level of the suspension of concession or other obligations requested by the EC is not equivalent to the level of nullification or impairment; and

(c) find that the amount of countermeasures or suspension of concessions or other obligations to which the EC is entitled is no more than $956 million.

List of Exhibits

Exhibit No.	
US-1	*World Development Report 2002*, pages 236-237
US-2	*World Development Report 2001*, page 297
US-3	*U.S. International Trade in Goods and Services; Annual Revision for 2000*, U.S. Bureau of the Census (21 June 2001)
US-4	*Analytical Perspectives; Budget of the United States Government for Fiscal Year 2002*, page 63
US-5	*Foreign Sales Corporation, 1996* (2000), Statistics of Income Division, U.S. Internal Revenue Service, pages 111-114
US-6	Worldwide Trade Effect of FSC, 2000