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Steel Tarrifs: A Shining Example of the Tenstion Between Politics and Economics in the United States

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STEEL TARIFFS: A SHINING EXAMPLE OF THE TENSION BETWEEN POLITICS AND ECONOMICS IN THE UNITED STATES TODAY

> There is a degree of prejudice against bounties, from an appearance of giving away the public money without an immediate consideration, and from a supposition that they serve to enrich particular classes, at the expense of the community.[1]

I. INTRODUCTION

On March 5, 2002, the Bush administration announced its intention to impose tariffs ranging from 8% to 30% on numerous categories of foreign-made steel.[2] The President imposed the tariffs using the power granted him by the "safeguards" provision in Section 201 of the Trade Act of 1974.[3] All told, President Bush levied tariffs on one-third of the steel products imported into the U.S. each year.[4] Reaction from U.S.

1. Alexander Hamilton, *Report on Manufactures, reprinted in* INDUSTRIAL AND COMMERCIAL CORRESPONDENCE OF ALEXANDER HAMILTON 247, 292 (Arthur Harrison Cole ed., 1928) (1791).

2. Press Release, The United States Mission to the European Union, White House Explains Steel Import Relief Decision (Mar. 5, 2002), *available at* http:// www.useu.be/Categories/Trade/Steel/Mar0502/FactSheetSteel Decision.html [hereinafter USEU Report]. 30% tariffs were imposed on imports of plate, hot-rolled sheet, cold-rolled sheet, coated sheet tin mill products, hot-rolled bar and cold-finished bar. 15% tariffs were imposed on rebar, certain tubular products, stainless steel bar and stainless steel rod. 13% tariffs were imposed on carbon and alloy fittings and flanges. Finally, 8% tariffs were imposed on stainless steel wire. *Id.*

3. *Id. See also* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487(1975)). Section 201 allows the President, after a finding by the U.S. International Trade Commission of serious injury, to "take all appropriate and feasible action within his power which . . . will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs." *Id.* The President's use of this power will be discussed in depth throughout this note.

4. Peter Morici, Ph.D., Professor of International Business, University of Maryland, College Park, *The Impact of Steel Import Relief on U.S. and World Steel Prices* 7 (July 2002), *at* http: //www.steelnet.org/new/20020700_impact_ import_relief.pdf.

trading partners affected by the tariffs came quickly, and the speed of their reaction was matched only by the veracity of their criticism.[5] The list of countries bearing the brunt of President Bush's new tariffs reads like a "who's who" of the U.S.'s closest allies — companies in Germany, Great Britain, Brazil, Australia, South Korea and Japan all stand to lose substantial income from steel exports to the U.S. as a result of these measures.[6] The tariffs also affected steel products from Russia and China, two countries whose political relationships with the U.S. are less stable.[7] While the President's steel tariffs were not a complete surprise — there had been rumblings from the U.S. steel industry since 1998 about its inability to cope with increased imports from abroad[8] — U.S. trading partners had hoped the election of pro-trade, republican George W. Bush would stave off the imposition of any new protectionist measures.[9]

5. CNN/World, *EU Steeling for U.S. Trade War* (Mar. 6, 2002), *at* http://www.cnn.com/2002/WORLD/europe/03/06/steel.wto1110/index.html (E.U. Trade Commissioner Pascal Lamy said, "[t]he U.S. decision to go down the route of protectionism is a major setback for the world trading system"); BBC News, *Trade War Looms over Steel Dispute* (Mar. 6, 2002) *at* http://news.bbc.co.uk/1/hi/business/1856760.stm. (Japanese Trade Minister Takeo Hiranuma said that Japan regretted that the U.S.'s decision had been made "without listening to the voices of its trade partners").

6. *See* BBC News, *Trade War Looms Over Steel Dispute, supra* note 5.

7. *Id. See also* CNN, *Europe Angry at U.S. Steel Tariff* (Mar. 5, 2002) "), *at* http://www.cnn.com/2002/WORLD/europe/03/05/steel/index.html (a Russian official warned that U.S. tariffs "could have a serious impact on the atmosphere of Russian-American relations"); Joe McDonald, *U.S. trade representative, visiting China, defends steel tariffs*, ASSOCIATED PRESS, Apr. 9, 2002 (Beijing has already demanded compensation from the U.S. for damage to its steel industry); Meng Yan, *WTO Panel on Horizon*, CHINA DAILY, June 7, 2002 (Lei Da, a senior economist with the Renmin University of China, said U.S. steel tariffs may divert large amounts of steel exports into the Chinese market and harm domestic prices).

8. *See U.S. Trade Policies: Hearing Before the Senate Finance Committee*, Jan. 27, 1999, 1999 WL 34884 (Statement of J. Peter Kelly, President and CEO of LTV Steel Co.) ("Unfortunately, foreign steel industries have been more subsidized, more protected and more cartelized than any other industrial sector . . . . In fact, past foreign overcapacity and the resulting unfair trade practices have harmed U.S. companies to the point where today the U.S. industry in periods of strong manufacturing activity can no longer satisfy 100 percent of U.S. demand.").

9. *See* Frank Mora, Viewpoint, *Farm, Steel subsidies undermine Bush's free trade position*, COMMERCIAL APPEAL, May 17, 2002, at B5 (the hopes of

As it turned out, President Bush, who promised a commitment to free trade throughout his election campaign,[10] agreed to support tariffs soon after he was elected.[11] Robert Zoellick, the newly appointed U.S. Trade Representative, announced that Section 201 action was being considered to help ailing steel companies on March 8, 2001, only two months after the President was elected.[12] President Bush officially began the process of implementing tariffs in June 2001, when he instructed the International Trade Commission to investigate the effects of imports on the American steel industry.[13]

In hindsight, it seems as if President Bush intended to give the steel industry its desired breathing room all along, despite his pre-election allegiance to free trade.[14] The question that the U.S.'s trading partners must be asking, is why? President Bush was enjoying an 80% approval rating in early March, 2002,[15] so it would seem as if he did not need to cater to the now-weakened steel producers lobby.[16] Why would the President, whose election platform trumpeted free trade as a cure for the

U.S. trade partners in Latin America were not unfounded, as President Bush professed unequivocal support for free trade during his election campaign).

10. Robert Collier, *Free Trade Battles Re-emerge with Bush*, S.F. CHRON., Jan. 20, 2001, at A3. Bush faced numerous tough decisions in the wake of his election as to whether or not he would forge ahead with his campaign promise to promote free trade. The appointment of Robert Zoellick as the U.S. Trade Representative seemed to imply that Bush would push for free trade. *Id.*

11. *See* Martin Crutsinger, *U.S. Eyes Help for Steel Industry*, AP ONLINE, Mar. 8, 2001, *available at* 2001 WL 15178239.

12. *Id.*

13. USEU Report, *supra* note 2. Pursuant to the requirements for Section 201 import-relief, the President first had to submit the issue to the U.S. International Trade Commission for a ruling on whether or not steel companies were being substantially harmed by unfair export practices of foreign producers. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)).

14. *See* Editorial, *All Hat, No Cattle*, CHI. TRIB., Mar. 29, 2002, at 18 ("The President, in March 2002 insisted that '[t]rade produces liberty and freedom, . . . [and] the U.S. is one of the most open markets in the world and we intend to keep it that way.'"). His imposition of tariffs on steel and lumber imports directly contradicts the notion that President Bush and his Administration intend to protect the freedom of entry into American markets. *Id.*

15. *Bob Zoellick's Grand Strategy*, ECONOMIST, Mar. 2, 2002.

16. *See A Tricky Business: Steel Companies Feel the Heat*, ECONOMIST, June 30, 2001 (today, the U.S. steel industry employs only 200,000 people).

world's economic ills, so quickly turn his back on the tenets of globalization?[17]

The answer, without chalking the President's actions up as another example of a politician not living up to his campaign promises, lies in the idea that democracy and capitalism (the seed from which the concept of globalized free trade has sprung) simply may not make good bedfellows.[18] This problem has plagued politicians in the U.S. throughout its history,[19] and it comes to the forefront once again in the analysis of President Bush's steel tariffs. Unfortunately, the possibility that democracy and capitalism do not co-exist in harmony, in and of itself, does little to explain the reasoning behind the President's actions. More importantly though, it gives foreign companies and their investors no basis upon which to evaluate the risks of future investments in the steel industry that might depend on the availability of U.S. markets.[20]

The purpose of this note is to shed light on the reasoning behind President Bush's imposition of steel tariffs, and to analyze whether imposing tariffs was justified under the circumstances.

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17. Jamie Dettmer, *Steel Strikes a Blow Against Free Trade*, INSIGHT MAG., Apr. 1, 2002, at 47 (President Bush began as a champion of free trade, but, as always, domestic politics have a nasty habit of getting in the way of free trade).

18. Lester Thurow, *New Rules: The American Economy in the Next Century*, *in* GLOBALIZATION AND THE CHALLENGES OF A NEW CENTURY 244, 250 (Patrick O'Meara et al. eds., 2000) [hereinafter Thurow, *New Rules*]. *New Rules* discusses the changing role of the U.S. on the world stage. Thurow argues that, while globalized free trade is a golden opportunity for the top 20% of the population, for the rest it will lead to lower wages and a lower standard of living. *Id.* The disproportionate nature of these benefits can only lead to problems in a democracy such as ours. *Id.*

19. *See* Stephen P. Magee and Leslie Young, *Endogenous Protection in the United States, 1900–1984, in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY at 145, 146–48 (Robert M. Stern, ed., 1988) [hereinafter Magee and Young, *Endogenous Protection*] (two thirds of the changes in U.S. tariffs this century are explained by economic variables such as unemployment, inflation, and the U.S. terms of trade).

20*. See* John H. Jackson, *Multilateral and Bilateral Negotiating Approaches for the Conduct of U.S. Trade Policies*, *in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 377, 393 (Robert M. Stern ed., 1988) [hereinafter, Jackson, *Multilateral and Bilateral Negotiating Approaches*] (the influence of narrow interests in the U.S. makes foreign governments nervous about the effective commitment of the U.S. toward an international system of rules regarding trade and other economic matters).

This note will examine both the consequences of imposing tariffs on steel products,[21] and the question of whether the steel industry is actually deserving of governmental protection.[22]

In order to properly evaluate the wisdom of the President's decision to impose tariffs, this note will first outline the context of the President's action. Section II will begin with a description of the history of arguments for and against free trade, and end with a look at historical uses of trade restrictions that have benefited the steel industry.[23] The actual analysis of the President's actions will then proceed along two semi-separate paths of inquiry.

The first path of inquiry, in Section III, is the economic analysis, but, since the U.S. government's steel policy is inextricably linked to the political realm,[24] it will undoubtedly touch on some issues that are political in nature. The main question in

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21. Article 8, ¶ 1 of the WTO Agreement on Safeguards, provides for compensation to countries affected by safeguard measures in the form of concessions or other "adequate means of trade compensation." Agreement on Safeguards*, available at* http://docsonline.wto.org/gen_browseDetail.asp?preprog=3, *reprinted in* 1995 DOCUMENTS SUPPLEMENT TO LEGAL PROBLEMS OF INTERNATIONAL ECONOMIC RELATIONS, THIRD EDITION 295, 299 (John H. Jackson, et al. eds., 1995), [hereinafter, Agreement on Safeguards]. Article 14 of the Agreement on Safeguards gives authority on dispute settlement to the WTO's Dispute Settlement Body. *Id*. The question of whether President Bush's steel tariffs will incur these penalties will be discussed *infra* at Section III.

22. Arguments of U.S. steel producers will be looked at in light of the effects of tariffs on steel consumers, and the general economy, in order to come to a conclusion on this question. This analysis is borne out of the Section 201 requirement that actions "provide greater economic and social benefits than costs." Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101-2487 (1975)).

23. Much of the information in this section was gleaned from the works of William A. Lovett, a staunch critic of the U.S.'s trade policy, and advocate for a U.S. withdrawal from the WTO. *See* WILLIAM A. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO 56 (1999); William A. Lovett, *The WTO: A Train Wreck in Progress*, 24 FORDHAM INT'L L.J. 410, 425–26 (Nov.–Dec. 2000); William A. Lovett, *Bargaining Challenges and Conflicting Interests: Implementing the Doha Round*, 17 AM. U. INT'L. L. REV. 951, 961 (2002).

24. *See* THE BOSTON CONSULTING GROUP INC., BCG REPORT, BREAKING THE STALEMATE: VALUE CREATION STRATEGIES FOR THE GLOBAL STEEL INDUSTRY (July 2002), at 7, *at* http://www.bcg.com [hereinafter BCG REPORT] (many decisions made by steel industry managers over the last 20 years have been based not on economic reasoning, but on the presumption that the government would provide some degree of protection to their companies).

the economic analysis of this note is whether President Bush could rightly impose steel tariffs — under either Section 201 of the Trade Act of 1974,[25] or under the World Trade Organization ("WTO") Agreement on Safeguards.[26] Statistics provided by U.S. steel producers, along with an analysis of historical trends in the steel industry, will provide a factual basis for the conclusions of this Note. The results of this factual analysis will then be compared with the language of the Trade Act of 1974 and the WTO's Agreement on Safeguards, in order to determine the validity of the President's actions. Economic analysis of the steel industry will show that the President's imposition of steel tariffs is not likely to be justified by a WTO dispute resolution panel, and will therefore result in compensation in the form of tariffs imposed by damaged nations on products of their choosing.[27] This section will also make clear the fact that, when weighed against their effect on steel consumers in the U.S. and the likely WTO sanctions, President Bush's steel tariffs cannot satisfy the requirement of Section 201 that any action undertaken "provide greater economic and social benefits than costs."[28]

25. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 201).

26. The Agreement on Safeguards requires members of the WTO to use safeguards "only if that Member 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." Agreement on Safeguards, *supra* note 21, at Article 2 ¶1. If U.S. steel tariffs are deemed a violation of WTO rules, under Article 22 of the WTO's Dispute Settlement Understanding, appropriate compensation would have to be paid, either in the form of reducing other trade barriers, or by allowing the affected countries to institute tariffs on other products as they see fit. Understanding on Rules and Procedures Governing the Settlement of Disputes, Apr. 15, 1995, art. 22 ¶¶ 1–3, Marrakesh Agreement Establishing the World Trade Organization, Annex Z, 31 LEGAL INSTRUMENTS — RESULTS OF THE URUGUAY ROUND, 33 I.L.M. 1226 (1994) [hereinafter DSU].

27. *See supra* note 21; *see also* CNN/World, *EC Compiles U.S. Tariff 'Hit' List* (June 5, 2002) *at* http://www.cnn.com/2002/WORLD/europe/06/05/eu.tariffs/index.html (E.U. approved a list of goods — including textiles, steel, and orange juice — which it plans on 'hitting' with retaliatory sanctions in response to U.S. steel tariffs).

28. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 201).

The second path of inquiry, in Section IV, will be termed the political analysis, although this analysis will incorporate some decidedly economic issues.[29] On the political side of the issue, this note will first examine the reasons behind the steel industry's formidable clout in the political arena.[30] It will then explain the problems facing the American industrial worker, and the middle class in general, as they relate to economic globalization.[31] This section of the note will also analyze the benefits of protecting the steel industry versus the political costs, both at home and abroad, that the U.S. has incurred in choosing to impose sanctions. Finally, this section will look at the steel industry's importance as an element of America's national defense.[32] Because steel production is a necessity in times of war — to pro-

29. The economic issues discussed in the political analysis section will be theory-based, and serve to explain why steel workers, and industrial workers in general, are rightly worried about the impact of globalization on their way of life. *See infra* Section IV.

30. *See* ECONOMIST, *supra* note 16 (although steel imports account for only 2% of imported products into the U.S. each year, 46% of U.S. anti-dumping measures relate to steel products). The reasons behind the steel industry's disproportionate clout are both historical and contemporary. U.S. steel built many of the symbols of American dominance, and the donations of Andrew Carnegie, and others like him, still support cultural institutions throughout the east coast and the mid-west. Steel has a place in the hearts of many voters in swing states such as Pennsylvania, Ohio, and West Virginia. *See* Michael Buchanan, *Analysis: Politics of Steel*, BBC NEWS, *at* http://www.news.bbc.co.uk/1/hi/world/americas/1857207.stm. This makes ignoring the plight of big steel a risky political move. Some political analysts believe that Bill Clinton's failure to renew Voluntary Export Restrictions on steel caused Al Gore's defeat, especially in West Virginia. *Id*.

31. *See* LESTER THUROW, THE FUTURE OF CAPITALISM: HOW TODAY'S ECONOMIC FORCES SHAPE TOMORROW'S WORLD 75–78 (1996). The American premium for unskilled labor has disappeared. Real per capita growth rose 40% from 1970 to 1996, while 60% of the workforce, in 1995, was working for real wages below previous peaks. *Id.* This implies that America was competitively successful in this period, but a majority of its workers were not. *Id.*

32. *See Facts About Steel: Preserving a Strategic American Industry* (Customer brochure from "Stand Up for Steel") (Sept. 30, 2002), *at* http://www.steel.org/facts/c3.pdf [hereinafter *Facts About Steel*]; *see also Increase of Steel Imports: Hearing Before the Subcomm. on Trade of the House Comm. on Ways and Means*, 1999 WL 107124 (Feb. 25, 1999) (Statement of George Becker, President, United Steelworkers of America) [hereinafter Statement of George Becker] ("Steelworkers have made the steel that has built America and defended this nation throughout its history.").

provide the raw material for everything from planes to bombs — many supporters argue that the steel industry is not only vital for the economic well-being of America, but also for America's survival as a nation.[33]

In conclusion, Section V of this note will argue that the President's imposition of steel tariffs was an unwise decision on both the economic and political levels.[34] By imposing tariffs on steel imports, President Bush has not only passed the costs of righting the ailing U.S. steel industry onto domestic steel consumers,[35] but he has also used up important international good will at a time when he cannot afford to do so. In making this decision, the President over-estimated the political capital of the steel producing industry, and under-estimated the overall effects of imposing tariffs.[36]

II. U.S. TRADE HISTORY, AND FACTORS LEADING UP TO THE PRESIDENT'S IMPOSITION OF TARIFFS

The U.S. has been grappling with the question of how to balance the protection of America's industrial base, with the inherent unfairness of trade restrictions, since its birth as a nation.[37] This balancing act has become especially relevant in the last year, as the debate over the U.S. government's prolonged protection of the domestic steel industry has once again heated up.[38] In order to fully understand the arguments for and

33. The idea of fostering independence as a rational for protecting industrial capacity was espoused in the trade policies of the founding fathers. *See* Richard N. Cooper, *Trade Policy as Foreign Policy, in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 291, 292 (Robert M. Stern ed., 1988). Adam Smith also cited national defense as a worthy reason for instituting restrictive trade measures in his treatise entitled, "Wealth of Nations." ADAM SMITH, WEALTH OF NATIONS 429–31 (1776).

34. *See* Thomas G. Donlan, Editorial, *Caving In for Steel: President Bush Puts Political Advantage Ahead of Competitiveness*, BARRON'S, Mar. 11, 2002, at 43.

35. *Id*.

36. This is evident in the back-tracking that has gone on since the tariffs were instituted, and in the recent preliminary decision by the WTO ruling against President Bush's tariffs on steel. *See infra* Part V.

37. *See* LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 56–57.

38. *See generally* Donlan, *supra* note 34, at 43 (the U.S. has imposed quotas, import restraints and price-fixing on steel imports — and given the domestic steel industry financial aid, technical assistance, tax shelters and other

against using trade restrictions to protect the steel industry, a review of the evolution of the U.S.'s international trade policy is necessary. After a synopsis of U.S. international trade policy, this section will look to the historical uses of trade restrictions benefiting the steel industry. The fact that the steel industry has been granted protection so many times in the past is one of the main points of contention between those who favor and those who oppose the imposition of tariffs.[39] It is only after a review of these historical factors that a comprehensive analysis of President Bush's steel tariffs may begin.

Arguments between protectionists and those in favor of free trade have persisted in America since the days of the Revolutionary War.[40] Luminaries such as Benjamin Franklin, Thomas Jefferson, and John Adams all shared a passion for the notion of free trade.[41] Their interest in free trade was, however, balanced by their skepticism towards relying too heavily on trading partners who had already established their sovereignty.[42] This skepticism was elucidated in Alexander Hamilton's "Report on

subsidies worth anywhere from $20 billion to $50 billion over the past 30 years); Neil King Jr. and Robert Guy Matthews, *So Far, Steel Tariffs do Little of what President Envisioned*, WALL ST. J., Sept. 13, 2002, at A1 (since 1968, federal efforts to protect the steel industry from imports have cost steel users $120 billion); *see also* Press Release, American Institute for International Steel, Inc., Steel Trade Policy (Oct. 19, 2002), *available at* www.aiis.org/steelpolicy.html (the U.S. government used quota protection in the 1960's, price controls in the 1970's, absolute quotas in the 1980's and early 1990's, and, most recently, anti-dumping laws to inhibit competition with U.S. steel producers).

39. *Compare* Statement of George Becker, *supra* note 32 (trade restrictions exist to protect U.S. steel workers from losing their livelihoods, and their way of life — those who feel otherwise have not seen the painful results of past failures to protect the steel industry), *with* Editorial, *Free Trade Over a Barrel*, WALL ST. J. EUR., July, 12, 2002, at A10 ("Big steel has been given half a dozen chances in the past 30 years to slim down and speed up behind various tariff and quota walls. The industry then uses up one of its politically granted nine lives and keeps coming back for more."). *See also supra* note 38.

40. It has been argued that the main reasons behind the Revolutionary War were the numerous disputes over trade policy between the Colonies and Great Britain (e.g., the Boston Tea Party and the Townshend Act, etc.). Cooper, *supra* note 33, at 291.

41. *Id.* In 1774, Jefferson espoused that "free trade with all parts of the world" was a "natural right" that no law could ever supplant. *Id.*

42. *Id.* The main fear, shared by Jefferson and Adams, was a lack of reciprocity from the U.S.'s trading partners, in particular, France. *Id.*

Manufactures," which although predominantly protectionist in its tone, set forth arguments on both sides of the dispute over trade restrictions that are still echoed today.[43] Hamilton's approach was that America should base its trade policy not on economic goals, but on the prospect of augmenting the fledgling nationhood of the former colonies.[44] At the time, this approach called for protection of America's growing industrial base through the use of trade restrictions.[45] Hamilton did recognize, however, that restrictions on trade should last only until the fledgling industry became self-sufficient — after such time, he believed those measures were evidence of "natural and inherent impediments to success" in that industry.[46] It is within this framework that many of the arguments over the U.S. government's steel policy take place to this day.[47]

The U.S. approach to international trade shifted around the middle of the nineteenth century, from promoting its own nationhood to promoting the sale of its products abroad.[48] The U.S. government imposed considerable tariffs on all imports from the mid-nineteenth century until the 1930's.[49] During this period, American steel played an enormous role in the development of the U.S. as a world superpower.[50] In fact, the great

43. *See* INDUSTRIAL AND COMMERCIAL CORRESPONDENCE OF ALEXANDER HAMILTON, *supra* note 1, at 264--66.

44. *Id*.

45. *Id.*

46. *Id.* at 292. The full text of Hamilton's comment is as follows: "The continuance of bounties on manufactures long established, must almost always be of questionable policy: because a presumption would arise, in every such case, that there were natural and inherent impediments to success. But, in new undertakings, they are as justifiable as they are oftentimes necessary." *Id.*

47. *See supra* note 39, comparing the contemporary views of steel industry supporters with those of opponents of continued protection.

48. Cooper, *supra* note 33, at 291–92.

49. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 69--73 (tariffs on imports during this period ranged from 25–50%). The period from 1889–1929 was, despite extremely high tariffs on imports, the most rapid period of growth that the American economy has ever experienced — on average, the economy grew 3.6% per year during this period. *Id.* at 60. While this was a period of development for the U.S., it is cited as evidence that protectionist practices are not always bad for the economy as a whole. *Id.*

50. *See generally* PETER KRASS, CARNEGIE (2002).

steel magnates of the late nineteenth and early twentieth century built most of the infrastructure that powered our country through the Industrial Revolution.[51] Interestingly, while being protected by considerable tariffs on imports during this period, U.S. steel companies used "differential pricing" policies abroad in order to capture market-share.[52] The zenith of U.S. tariff practice during this period came in the form of the Smoot-Hawley Tariff Act of 1930.[53] It is widely believed that the Smoot-Hawley Act was one of the main catalysts of the Great Depression, as its effects reverberated throughout world markets by effectively forcing other countries to impose the same levels of tariffs.[54] This choked off the flow of world trade, which led to global recession, and, arguably, to World War II.[55]

America's post-World War II policy on international trade was one of promoting full employment and growth, both of which were conducive to non-turbulent politics and harmony between countries.[56] This new policy was both a response to the events leading up to World War II, and to the rising threat of communism from the Soviet Union.[57] In this policy shift, the changing role of the U.S. on the world stage can also be seen. In less than half a century, America evolved from a developing

51. James Arnold, *Steel sector stares into the abyss*, BBC NEWS (Mar. 6, 2002), *at* http://www.news.bbc.co.uk/1/hi/business/1857914.stm.

52. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 67. "Differential pricing" would likely be deemed dumping by today's standards.

53. Tariff Act of 1930, ch. 497, 46 Stat. 590 (codified in scattered sections of the U.S.C.). *See also* Cooper, *supra* note 33, at 291–92. The Smoot-Hawley Act raised already high tariffs on imports by 40%–50%. Many economists believe the Smoot-Hawley Act was the eventual cause of the world-wide Depression of the mid-1930's. *Id.*

54. *See id.* at 298.

55. *Id*. In his memoirs, Secretary of State Cordell Hull (1933–1944) had this to say on the importance of trade after Smoot-Hawley: "From then on, to me, unhampered trade dovetailed with peace; high tariffs, trade barriers, and unfair economic competition, with war. If we could get fewer discriminations and obstructions [to trade] so that one country would not be deadly jealous of another and the living standards of all countries might rise, thereby eliminating the economic dissatisfaction that breeds war, we might have a reasonable chance for a lasting peace." *Id.* at 299.

56. *Id.* at 291–92.

57. *Id.* at 298–302.

nation, to one of only two nations vying for dominance on the world stage.

The end of World War II also brought on the most important development in world trade to that point — the signing of the General Agreement on Tariffs and Trade of 1947 ("GATT").[58] The GATT, and its granting of most favored nation ("MFN") status to all its members, was designed to insulate imports of foreign goods from manipulation for reasons of foreign policy or domestic economic policy.[59] The signing of the GATT ushered in a new era of trade policy for the U.S., one where foreign policy interests took precedence over other considerations when it came to international trade.[60] Coupled with the World Bank and the International Monetary Fund, the GATT brought about an unprecedented liberalization of trade and financial flows.[61] This, in turn, resulted in worldwide economic growth on a scale that had never before been seen.[62]

As the GATT evolved,[63] the onus of setting the example for free market economies was shouldered almost exclusively by

58. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 78–79.

59. Cooper, *supra* note 33, at 301. Of course, membership in GATT, by itself, became a political tool with which the Western world attempted to manipulate their Cold War communist rivals. *Id.*

60. LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 78. *See also* JOHN H. JACKSON, THE WORLD TRADING SYSTEM: LAW AND POLICY OF INTERNATIONAL ECONOMIC RELATIONS 11–14 (2002) [hereinafter JACKSON, THE WORLD TRADING SYSTEM].

61. Together — GATT, the IMF, and the World Bank — are referred to as the Bretton Woods System. JACKSON, THE WORLD TRADING SYSTEM, *supra* note 60, at 7.

62. *Id.* However, this explosive growth was not experienced in many eastern bloc countries, as MFN status was rescinded from all Communist countries in 1951. MFN status would become one of the most important, and oft-used weapons of the Cold War. Cooper, *supra* note 33, at 302.

63. To date, there have been three more completed rounds of negotiation — the Kennedy Round (1964–1967) the Tokyo Round (1973--1979), and the Uruguay Round (1989–1994). LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 81–82, 87–88, 101–03. The Uruguay Round culminated with the creation of the WTO, and accompanying agreements on Subsidies and Countervailing Measures, Safeguards, Trade in Services, Intellectual Property Rights ("TRIPS") and Dispute Settlement. *Id.* at 101.

the U.S.[64] The result of America leading the way for free markets was that U.S. markets were the most open in the world — this led to lower prices for consumers, but also to an increase in imports, which caused employees in domestic industries to lose their jobs.[65] So, as U.S. markets opened further, the livelihoods of U.S. workers became some of the more notable casualties of the Cold War.[66]

The steel industry began to feel the pressure from increased competition in the 1960's. In 1968, President Lyndon Johnson instituted the first trade restrictions specifically designed to benefit the U.S. steel industry.[67] Johnson imposed voluntary export restrictions ("VER's") on steel products from Europe and Japan in response to an increase in imports. Johnson's "voluntary" restraints were meant to give the domestic steel industry breathing room to restructure its businesses.[68] These restraints on steel trade were allowed to lapse in 1974, and another steel crisis immediately followed.[69] In 1977, President Jimmy Carter approved minimum "fair value" prices for steel imports through the "trigger price mechanism," in order to combat a dearth of

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64. *See* PAUL VOLCKER & TOYOO GYOHTEN, CHANGING FORTUNES: THE WORLD'S MONEY AND THE THREAT TO AMERICAN LEADERSHIP 189 (1992) (Trade Policy leaders believed that the U.S. had a responsibility to put the perceived interests of the economic system ahead of the short-term concerns of U.S. producers and workers throughout the Cold War).

65. *Id.* *See also* JACKSON, THE WORLD TRADING SYSTEM, *supra* note 60, at 17.

66. *See* LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 105. *See also* THUROW, *supra* note 31, at 75–78 (the wage-premium that industrial workers in America had enjoyed for so long disappeared gradually from the 1970's to mid-1990's).

67. U.S. DEP'T OF COMMERCE, INT'L TRADE ADMINISTRATION, REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE — STRUCTURAL PROBLEMS AND FUTURE SOLUTIONS 5 (2000), *available at* http://www.ita.doc.gov/media/steelreport 726.html [hereinafter REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE]. These restrictions took the form of Voluntary Export Restrictions ("VERs"). While these restrictions were deemed "voluntary," this was a misnomer, as the penalties for not complying with the export restrictions were steep. King Jr. & Matthews, *supra* note 38. This type of trade restriction was explicitly banned by the Agreement on Safeguards, signed in 1994. Agreement on Safeguards, *supra* note 21.

68. King Jr. & Matthews, supra note 38.

69. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 5. *See also* Statement of George Becker, *supra* note 32 (during the steel crisis of the late 1970's and early 1980's over 350,000 steelworkers lost their jobs).

low-priced steel products from Japan.[70] This attempt to curb imports of steel was largely ineffective, and did little to stave off the painful restructuring of the U.S. steel industry that took place in the 1980's.[71] President Ronald Reagan intervened in 1984, and once again imposed "voluntary" restraints on Japanese and European steel exports.[72] The idea, once again, was to give the U.S. steel industry breathing room to restructure and once again become a viable industry in the face of the major changes brought about by U.S. international trade policy.[73] George H.W. Bush extended Reagan's VER's during his term as President, thereby granting the steel industry a full decade of relief from low-priced imports.[74]

This time, the breathing room seemed to work, and new technology once again made U.S. steel producers some of the most efficient in the world.[75] By the time Bill Clinton became President in 1992, the U.S. steel industry appeared to be on the road to recovery after almost ten years of restructuring.[76] Despite these signs of recovery, however, complaints about unfair competition from abroad continued.[77] In 1994, President Clinton

70. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 5; King Jr. & Matthews, *supra* note 38.

71. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 5. *See also* Statement of George Becker, *supra* note 32. During this period of restructuring "steelworkers went from being taxpayers to being recipients of unemployment insurance, food stamps, and welfare payments from federal, state, and local governments." *Id.*

72. King Jr. & Matthews, *supra* note 38. As noted earlier, the term "voluntary" does not accurately describe these trade restrictions, as countries were forced by the consequences of not complying with the VER's to capitulate.

73. *Id.*

74. *Id.*

75. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 7 (led by "mini-mills" such as Nucor, Inc., the U.S. became a world leader in low cost steel production in the 1990's). *See also In America's Fiery Furnace*, ECONOMIST, Sep. 17, 1998. Using electric-arc furnaces and scrap metal, "mini-mills" now account for almost 40% of American steel production. *Id.* While "mini-mills" produce only low-grade steel at present, their technology is improving rapidly. *Id.*

76. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 6 (in the late 80's and early 90's the U.S. steel industry raised productivity by more than 300%, and eliminated 330,000 jobs).

77. *Id.* at 5–6.

allowed the last of the VER's to lapse,[78] and the steel industry was once again exposed to unencumbered international competition. The results for the U.S. steel industry were not favorable. Further discussion of steel policy in the latter Clinton years will follow in the two analysis sections of this note.[79]

At present, as evidenced by the Bush administration's opaque policy regarding international trade, the U.S. economic stance vis-à-vis the rest of the world has become unclear.[80] The Soviet Union and communism no longer stand as a viable alternative to democracy.[81] The U.S. is now the world's lone superpower, and the need to subsidize our allies by sustaining the world's most open markets has decreased drastically.[82] The forces behind our confused international trade policies are as clear as they are divergent. Protectionism has become the rallying cry of American industrial workers, while large corporations — eager to take advantage of the cost savings available in a wider market — are constant promoters of globalized free trade.[83] American workers have been steadily losing ground in terms of wage premiums for the last forty years, and their anger will inevitably return to the forefront as foreign policy concerns move to the rear.[84]

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78. As mentioned earlier, VER's became illegal under the WTO's Agreement on Safeguards, so their extension was not a viable option for President Clinton. *See* Agreement on Safeguards*, supra* note 21.

79. *See infra* Sections III, IV.

80. *See* Timothy M. Reif and Viji Rangaswami, *Joltin' Joe has Left and Gone Away – Embracing change: The way forward for U.S. trade policy and the WTO*, 32 LAW & POL'Y INT'L BUS. 427, 429 (2001) [hereinafter Reif & Ranaswami] (Citing polls that suggest a "growing disconnect between policy elites and the public with respect to the purpose, objectives, and benefits of U.S. trade policy.").

81. George Soros, *The Capitalist Threat*, ATLANTIC MONTHLY, Feb. 1997, at 46.

82. *Id.*

83. *See* Jeffrey Sachs, *International Economics: Unlocking the Mysteries of Globalization*, *in* GLOBALIZATION AND THE CHALLENGES OF A NEW CENTURY 217, 218 (Patrick O'Meara et al. eds., 2000) [hereinafter Sachs, *International Economics*].

84. *See* Thurow, *New Rules*, *supra* note 18, at 252. The majority of industrial workers in the U.S. facing lower real earnings will sooner or later become disaffected with democracy. *Id.* This is a major economic and political dilemma facing the U.S. in the 21st century. *Id.*

With the formation of the European Union ("EU"), and the promulgation of its common currency, the euro, some scholars believe we will not be alone at the top of the economic heap for long.[85] China could also be hot on the heels of the U.S., as its recent entrance into the WTO will eliminate many of the hindrances to expansion that previously held it back.[86] America needs to quickly find common ground between the protectionist instincts of its worker/voters and the capitalist desires of big business and politicians. If it cannot, we are in danger of not only losing our economic dominance, but also of reverting back to a policy of all-out protectionism, not seen since the 1930's.[87]

The U.S. steel industry has relied heavily on financial support and trade protection from the U.S. government for the past four decades, and its needs are once again at the forefront of our international trade policy.[88] Job losses in the steel-making industry have averaged five thousand per year since 2000,[89] and thirty-one steel companies have filed for bankruptcy protection since 1998.[90] The U.S. steel industry faced global competition without major governmental assistance for the last six years, and its overall competitiveness has been found wanting again.[91] This phenomenon begs the question — is the steel industry worthy of another grant of breathing room, or is it finally time to say, let the markets do what they will? The following two sections will attempt to answer these questions, while keeping in mind the U.S. steel industry's storied past, and also consider-

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85. *Id* at 247-48.

86. Hugo Restall, *Examining Asia: Who will push free trade?* ASIAN WALL ST. J., Apr. 10, 2002, at A11.

87. *See* Thomas Bray, *Bush caves in to political temptation*, THE DETROIT NEWS, Mar. 20, 2002, at 13 (President Bush lit "a dangerous fuse" by imposing tariffs, and it is one that history shows will be hard to put out); *see* Aaron Bernstein, *Backlash: Behind the Anxiety Over Globalization*, BUS. WK., Apr. 24, 2000 ("68% of Americans believe globalization drags down U.S. wages."). *See also* Keith W. Hammonds, *Freer Trade Gets an Unfriendly Reception*, BUS. WK., Sept. 22, 1997, at 34 (Harris Poll Results: 56% of those polled believe expanded international trade leads to a decrease in the number of U.S. jobs). Also, recall discussion of the Smoot-Hawley Act of 1930, at *supra* note 53.

88. *See* BCG REPORT, *supra* note 24, at 7.

89. ECONOMIST, *supra* note 16.

90. CNN/Europe, *Bush backs steel tariffs* (Mar. 5, 2002), *available at* http://europe.cnn.com/2002/BUSINESS/03/05/steel/index.html.

91. *See* BCG REPORT, *supra* note 24, at 7.

ing the decline of U.S. industrial workers in general over the same period.

III. PRESIDENT BUSH'S USE OF SECTION 201 — AN ECONOMIC ANALYSIS

The economic analysis of the Bush administration's steel tariffs begins with a close look at the requirements of Section 201 of the Trade Act of 1974. The Bush administration claims that Section 201 was enacted in 1974 to give the Executive Branch the power to do exactly what President Bush has done in the instant case — impose tariffs in order to safeguard an American industry.[92] Tariffs on steel were implemented based on the premise that U.S. steel companies were caused "substantial injury" as a result of a surge in steel imports.[93] This section focuses on the idea that the troubles facing steel manufacturers are not the result of increased quantities of imports, as required by Section 201; but, rather, they are the result of a downturn in the global steel market that has magnified the challenges faced by U.S. steel manufacturers who must already cope with higher than average production and transportation costs.[94] The economic analysis section will conclude that the President's imposition of sanctions in retaliation for increased quantities of imports was a misuse of the power granted by Section 201, and should therefore be rescinded.[95]

In order to come to this conclusion, this section will analyze the claims put forth in the realm of the WTO dispute resolution

92. *See* Robert Zoellick, Editorial, *The Reigning Champions of Free Trade*, FIN TIMES, Mar. 12, 2002.

93. USEU Report, *supra* note 2. *See also* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 201).

94. *See* Arnold, *supra* note 51 ("While it costs $293 to produce a ton of hot-rolled coil steel in the U.S., it costs just $212 in the former Soviet Union, and $185 in Brazil."). *See also*, BBC News, *Trade War Looms over Steel Dispute*, *supra* note 5. Steel jobs have decreased in the U.S., the United Kingdom, Germany, and the rest of the European Union in the past four years: the U.S. steel industry has lost 20,000 jobs; the U.K. steel industry has lost 10,000 jobs; Germany has lost 7,900 steel jobs; and the EU has lost a total of 22,200 jobs since 1998. *Id.*

95. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 201 requires that any action "provide greater economic and social benefits than costs").

mechanism. While the language of the WTO Agreement on Safeguards is similar to the language of Section 201 — there are slight differences, which make the standard for implementing safeguards under the umbrella of the WTO less stringent than that used by the U.S. government.[96] As this section will show, President Bush's sanctions will be invalidated under the less stringent standards used by the WTO, and will inevitably draw retaliatory sanctions aimed at other, more viable industries.[97] This is the most compelling reason why the President's imposition of tariffs cannot satisfy Section 201, since it requires that the economic benefits not outweigh the costs of any action.[98] When measured with WTO sanctions in mind, the President's action fails this test.

To begin, a clear understanding of the requirements that Section 201 places on the imposition of tariffs is needed. The President made his original request for an investigation into the effects of imports on the American steel industry to the International Trade Commission ("Commission") in June, 2001.[99] Section 201 of the Trade Act of 1974 reads as follows:

> Sec. 201. Action to Facilitate Positive Adjustment to Import Competition
>
> > (a) Presidential action. If the United States International Trade Commission (hereinafter referred to in this chapter

96. Compare Article 2, ¶ 1 of the Agreement on Safeguards (at *supra* note 26), with the language of Section 201 above. Note that requirements of the Agreement on Safeguards are considered less stringent than those of Section 201 because there is no obligation that the safeguards "provide greater economic and social benefits than costs." Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101-2487 (1975)) (Section 201).

97. Dettmer, *supra* note 17, at 47. *See also* CNN/World, *EC Compiles U.S. Tariff 'Hit' List*, *supra* note 27 (the EC's 'hit list' of goods includes textiles, steel, and orange juice). This inevitable rejection by the WTO, coupled with the U.S.' tougher standard for the imposition of tariffs, again begs the question, why? The answers apparently cannot be found in economic analysis — see Section IV, *infra* for another explanation.

98. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)).

99. USEU Report, *supra* note 2.

> as the "Commission") determines under section 202(b)[100] that an article is being imported into the United States in such increased quantities as to be a substantial cause of serious injury, or the threat thereof, to the domestic industry producing an article like or directly competitive with the imported article, the President, in accordance with this chapter, shall take all appropriate and feasible action within his power which the President determines will facilitate efforts by the domestic industry to make a positive adjustment to import competition and provide greater economic and social benefits than costs.[101]

The most important phrases of Section 201, for the purposes of this note, are "in such increased quantities as to be a substantial cause of serious injury," and "provide greater economic and social benefits than costs." Both phrases, when examined further, lead to the conclusion that the steel tariffs imposed by President Bush are not in compliance with the requirements imposed by Section 201 of the Trade Act of 1974.

President Bush's administration was not the first to examine the most recent surge of imports and its effects on the U.S. steel industry. Just two years before President Bush began the process of imposing tariffs, the U.S. Department of Commerce published a 235-page report, prepared for the Clinton administration, entitled "Global Steel Trade — Structural Problems and Future Solutions" (the "Clinton Report").[102] The Clinton Report provided a comprehensive analysis of the 70% increase of steel imports in 1998, against the backdrop of a 25% decrease in average steel prices.[103] Interestingly, this report concluded that the majority of this increase in imports came from South Korea, Japan, Russia, and Brazil.[104] Notably, this list does not include Great Britain, Germany, Australia or China, all four of whom faced substantial exposure to the Bush administration's tariff schedule.[105]

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100. *See* Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 202(b) — Investigations and determinations by commission).

101. *Id.*

102. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE*, supra* note 67, at 1.

103. *Id.* at 1.

104. *Id.* at 2.

105. *See* BBC News, *Trade War Looms Over Steel Dispute*, *supra* note 5. Perhaps more interesting than the inclusion of E.U. countries, along with

The Clinton Report took a decidedly different approach to responding to the surge of imports. It chose to focus on the problems with the global steel market in general, and on the new "mini-mill" steel companies that were driving the U.S. towards becoming a world leader in low cost steel production.[106] The Clinton Report concluded that the main problem with the steel industry in the U.S. is not imports, but global over-capacity in general.[107] In response to this report, President Clinton decided to forego a major interruption in the steel market (i.e. the imposition of tariffs), in favor of bilateral negotiations aimed at reducing global overcapacity.[108] The Clinton Report also stated that, by early 2000, while prices were still low, the U.S. steel industry was well on its way to recovery, as domestic shipments were once again on the upswing.[109]

Data on steel imports from 1999–2001 lends credence to the Clinton Report's findings. According to the American Iron and Steel Institute,[110] total imports of steel mill products[111] in 1999 were 35,731,000 tons.[112] In 2000, total imports of steel mill products rose 6.2% to 37,957,000 tons — a slight increase.[113] Surprisingly, in the year 2001, when the Commission was determining whether an increase in steel imports was damaging domestic manufacturers, imports of steel mill products fell

Australia and China, in President Bush's tariff plan, is the fact that Brazil and Russia will receive more lenient treatment than these countries. *Rust Never Sleeps*, ECONOMIST, Mar. 7, 2002. This is despite the fact that the Clinton Report states that the majority of the 1998 import surge came from Korea, Japan, Russia, and Brazil. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 2.

106. REPORT TO THE PRESIDENT: GLOBAL STEEL TRADE, *supra* note 67, at 4–7.

107. *Id.* at 14.

108. *Id.* at 106.

109. *Id.* at 8.

110. The American Iron and Steel Institute is a trade group representing steel and iron producers across the U.S.. The AISI compiles data and industry reports which are available both online at http://www.steel.org and in hard copy form.

111. All of the products covered by President Bush's tariffs fall under the umbrella of steel mill products. USEU Report, *supra* note 2.

112. AMERICAN STEEL INSTITUTE, YEAR 2000 SELECTED STEEL INDUSTRY DATA (2000), *at* http://www.steel.org/stats/2000.htm.

113. *Id.*

20.8% to 30,080,000 tons.[114] During the same three-year period, total steel production by U.S. manufacturers followed roughly the same pattern by increasing 4.5% from 1999 to 2000, and falling 11.5% from 2000 to 2001.[115] These numbers fail to show any surge of imports to which the steel industry could attach blame for the general malaise affecting it.

Furthermore, in the same three-year period, the trade deficit (the difference between the amount of steel imported by consumers in the U.S., and the amount of steel exported by U.S. steel producers) in the U.S. steel market actually improved. In 1999, U.S. steel makers exported 5,426,000 tons of steel, while importing 35,731,000 tons.[116] These numbers amount to a trade deficit of 30,305,000 tons in 1999. In the year 2000, while imports grew only 6.2% to 37,957,000 tons, steel exports increased 20.3% to 6,529,000 tons, and created a deficit of 31,428,000 tons.[117] By these numbers, from 1999 to 2000, the trade deficit in the U.S. steel market grew only 3.6%.[118] More interesting than the slight increase in the steel trade deficit from 1999 to 2000, is the rather large decrease that is seen from 2000 to 2001. In 2001, exports decreased 5.9% to 6,144,000 tons of steel.[119] However, coupled with the aforementioned 20.8% decrease in imports to 30,080,000 tons, this gave the U.S. steel industry a deficit of 23,936,000 tons.[120] This indicates that, from 2000 to 2001, the trade deficit in U.S. steel decreased by

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114. AMERICAN STEEL INSTITUTE, YEAR 2001 SELECTED STEEL INDUSTRY DATA (2001), *at* http://www.steel.org/stats/2001.htm. *See also* Press Release, American Institute for International Steel, AIIS Warns Bush Administration: Current Steel Supply Shortage in U.S. Market Threatens Customers; More Protection Not Needed for Big Steel (Feb. 27, 2002), *available at* http://www.aiis.org/release
/?file=release92.htm (last visited Oct. 20, 2002).

115. AMERICAN STEEL INSTITUTE, YEAR 2000 SELECTED STEEL INDUSTRY DATA, *supra* note 112; AMERICAN STEEL INSTITUTE, YEAR 2001 SELECTED STEEL INDUSTRY DATA, *supra* note 114.

116. AMERICAN STEEL INSTITUTE, YEAR 2000 SELECTED STEEL INDUSTRY DATA, *supra* note 112.

117. *Id.*

118. *See Id.* The author calculated this number on his own, using the AISI's statistics.

119. AMERICAN STEEL INSTITUTE, YEAR 2001 SELECTED STEEL INDUSTRY DATA, *supra* note 114.

120. *Id.*

24%.[121] It is therefore counterintuitive to blame the present state of the steel industry on any import surge in the last three years.[122]

Using these numbers, which were released by the American Iron and Steel Institute (a decidedly pro-steel organization[123]), coupled with the report prepared for President Clinton in 2000, it is hard to agree with the idea proposed by the Bush administration that the steel industry has been crippled in recent years by a surge in imports. In fact, it appears as if the position of American steel producers was improving relative to foreign importers from 1999 to 2001.[124]

Complicating the President's case for Section 201 sanctions further, is the state of the steel industry worldwide. Steel prices have been eroding steadily for the past twenty years in all parts of the world.[125] Despite constant decreases in steel prices due to improved technology and the emergence of new, lower wage producers, managers of steel companies have continued to make capital investments and endure ever-increasing costs related to labor and retirement benefits.[126] This phenomenon is no doubt linked to the presumption that governments will provide protection in case of the inevitable market

121. *See Id.* The author calculated this number on his own, using the AISI's statistics. *See also Meltdown*, ECONOMIST, Jan. 4, 2001 (Citing the fact that, as of January, 2001, "imports, which have never accounted for more than about a third of American steel consumption, are now at their lowest level in years.").

122. *See* Thomas Fuller, *U.S. Agency Rejects New Tariffs on Steel,* INT'L HERALD TRIB., Aug. 28, 2002 (people are starting to realize that, while the steel industry already has protection, steel companies continue to file for protective measures).

123. *See Facts About Steel*, *supra* note 32 (report released by the American Iron and Steel Institute hailing President Bush's use of Section 201 safeguards, and implying that more should be done to protect domestic steel producers in the U.S.).

124. *See* Press Release, American Institute for International Steel, AIIS Warns Bush Administration*, supra* note 114. A Decline in import supply to the U.S., coupled with a slight improvement in demand, created a shortage of steel supply in the U.S. *Id.* These factors indicate an improving environment for domestic steel producers and vitiate any need for steel tariffs. *Id.*

125. BCG REPORT, *supra* note 24, at 7.

126. *Id.* at 5--7 (while the increase of productivity from Russia, Korea, and Brazil has, predictably, pushed down global steel prices, steel companies have remained blissfully ignorant of this reality).

downturns related to operation in a commodity-oriented business.[127] Again, it is important to note that the imposition of steel tariffs will likely lead to the U.S. paying compensation to the numerous nations affected by this action under the terms of the WTO Agreement on Safeguards.[128] This likelihood leads to the conclusion that the President's steel tariffs are not in compliance with Section 201.[129]

The final point of this section is that, by imposing tariffs on steel, the President has shifted the cost of repairing the ailing steel producers onto consumers of steel.[130] The main consumers of the steel affected by President Bush's tariffs are manufacturers such as Ford, General Motors, and Caterpillar — a much larger economic force than the now beleaguered steel industry.[131] An increase in the price of steel, of the sort that has been brought on by the President's steel tariffs, affects the price of

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127. *Id.* Steel producers are in the commodities business, so they are constantly operating in a cyclical environment. One of the main problems facing the global steel industry is that many steel companies operate as if they are oblivious to the cyclical reality of the world in which their companies operate. *Id* at 9. *See In America's Fiery Furnace, supra* note 75 (Because of the breathing room provided by governmental protection, "nobody ever goes bust in the American steel industry.").

128. Violation of the Agreement on Safeguards would lead the U.S. into the realm of WTO dispute resolution, where "appropriate compensation would have to be paid [by the U.S.], either in the form of reducing other trade barriers, or by allowing the affected countries to institute tariffs on other products as they see fit." DSU, Article 22 ¶¶1, 2, & 3, *supra* note 26.

129. To date, the European Union, Japan, China, South Korea, New Zealand, Norway, Switzerland, and Brazil have all filed actions before the W.T.O. dispute resolution body — they were consolidated as of July 23, 2002. *See* W.T.O., *United States — Definitive Safeguard Measures on Imports of Certain Steel Products*, 2002 WL 1622550, at *1 (July 23, 2002). Section 201 requires that action by the President be taken only when it will "provide greater economic and social benefits than costs." Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)).

130. Editorial, *All hat, no cattle*, CHI. TRIB., Mar. 29, 2002, at 18. As a side note, it is apparent that many of the U.S.'s major steel producers were facing financial crises before the 1998 increase in imports. *See* Adam Ritt, *The Imports Gremlin*, NEWSTEEL, Feb. 1999. This is another indication that the Clinton Report was correct in its analysis, and in its focus on righting the overcapacity problem, rather than imposing further restrictions on the steel industry.

131. Editorial, *All Hat, No Cattle*, *supra* note 130, at 18.

everything from soup cans to heavy machinery.[132] While the companies that must pay these higher prices will not be put out of business, it will affect their margins.[133] Companies such as Ford and Caterpillar can absorb these costs at present, but if there is a larger economic downturn, the smaller margins caused by steel tariffs give these much more significant companies less cushion with which to weather the storm.[134]

The point then seems clear — the President has chosen to impose tariffs on steel imports, despite evidence that the steel industry was in fact turning around, and despite the negative effects the tariffs will have on other, more viable industries. This stands in direct opposition to the Section 201 requirement that the imposition of safeguards "provide greater economic and social benefits than costs."[135]

IV. STEEL TARIFFS AND DOMESTIC POLICY — A POLITICAL ANALYSIS

President Bush, in contrast with the historical tendency of the Republican Party to support free trade, [136] has, so far in his first term, not been the champion of free markets he promised he would be in his election campaign.[137] It seems evident, from the facts set forth in the previous section, that the reasoning behind the President's decision to impose steel tariffs cannot be divined from purely economic analysis. While this is not neces-

132. Ed Lotterman, *Steel Tariffs Cave to Politics, But Are Bad Economic Policy* (2002), *available at* http://www.edlotterman.com/SteelTariffs.htm (last visited Apr. 18, 2003).

133. *Id.*

134. *Id.*

135. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)).

136. *See* Magee and Young, *Endogenous Protection*, *supra* note 19, at 148. While the historic stance of the Republican party is one supporting free trade, Republican presidents have historically been more supportive of protection. Magee and Young believe this is a result of balancing, as Republican policies favor high unemployment and low inflation — this is not always a popular stance for the President to adopt, especially in tough economic times. *Id.*

137. *See* Mora, *supra* note 9 (Bush professed unequivocal support for free trade during his election campaign); *see also* Collier, *supra* note 10, at A3 (Bush faced numerous tough decisions in the wake of his election as to whether or not he would forge ahead with his campaign promise to promote free trade).

sarily surprising, considering the overall nature of the U.S. political system, it is problematic in the sense that market-based economies like the U.S. require predictability to function at optimum levels.[138] This section will attempt to identify the political factors weighing in on the President's decision. After identifying those factors, conclusions will be put forth as to both the wisdom of relying on those factors, and the overall effects of doing so.

Amazingly, despite the steel industry's precipitous decline in the past 40 years, it has managed to retain a powerful political front — although steel imports account for only 2% of products imported into the U.S. each year, 46% of U.S. anti-dumping measures relate to steel products.[139] In short, the industry that was once the poster-child for American capitalism has become the champion of the protectionist movement.[140] One reason why the steel industry has been so quick to seek governmental support in the past four decades is that imposing tariffs on steel products does not have the same effect as the imposition of tariffs in many other industries.[141] In most industries, a tariff that restricts imports in order to drive up their price will, by the same token, drive down the price of U.S. exports and thereby discourage their production.[142] But, since the U.S. steel industry does not rely on exports to survive, asking for import relief is an attractive option that is normally less so in other industries.[143]

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138. *See* Dean Lebaron, *Market Efficiency*, Feb. 27, 1999 (Markets are most efficient when there are large numbers of well-informed investors. The "noise" of unpredicted events causes markets to be inefficient and unpredictable), *at* http://www.deanlebaron.com/book/ultimate/chapters/mkt_eff.html (last visited Apr. 19, 2003).

139. ECONOMIST, *supra* note 16.

140. *See Regarding GATT Uruguay Round Implementing Legislation and its Significance to the Steel Industry: Hearing Before the Subcommittee on Trade Committee on Ways and Means*, Feb. 8, 1994, 1994 WL 14168260 (testimony of Joseph Cannon, Chairman of the Board, Geneva Steel, on behalf of the American Iron and Steel Institute) ("Since 1980, we have probably used U.S. antidumping (AD) and countervailing duty (CVD) laws more than any other industry. . . .").

141. Avinish Dixit, *How Should the United States Respond to Other Countries' Trade Policies, in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY at 249, 251 (Robert M. Stern ed., 1988).

142. *See id.*

143. *See id.*

The main problem with the U.S. steel industry's reliance on protective measures is that they in turn breed retaliation.[144] This retaliation should then, in a perfect world, have its own political ramifications for those who support protective measures. One theory of why retaliatory measures have not had the requisite amount of negative force to outweigh the positive political impact of "protecting" an industry is that the true effects of trade intervention are not understood by the electorate.[145] To put it another way, Americans would rather raise tariffs, and accept punitive measures in return, than support the domestic industry in question through governmental subsidies.[146] This point sounds like a non-starter, as it would surprise no one to find out that Americans — or people of any nation for that matter — would rather subsidize an ailing industry through the imposition of tariffs, than use federal funds for the same purpose.[147] The problem is that, while this is obviously politically favorable, in the end it is more expensive.[148] This solution also creates a credibility problem for President Bush on the world stage, as his election was largely viewed internationally as a victory for free trade, and a sign that U.S. markets would become more open during his term, rather than more restricted.[149]

While the President has seemingly damaged his image as a champion of free trade with his allegiance to steel producers,

144. Rudiger Dornbusch and Jeffrey A. Frankel, *Macroeconomics and Protection, in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY, at 82 (Robert M. Stern, ed., The MIT Press, 1988) [hereinafter Dornbusch & Frankel, *Macroeconomics and Protection*].

145. Alan V. Deardorff and Robert M. Stern, *Current Issues in Trade Policy: An Overview*, *in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 17, 41 (Robert M. Stern ed., 1988) [hereinafter Deardorff & Stern, *Current Issues in Trade Policy*]. If the public will not protect an industry with subsidies, maybe that should be taken to mean the industry should not be protected. *Id.* Protection has the same effects as a subsidy, but it also inflicts further damage on other parts of the economy. *Id.*

146. *Id.*

147. *See* Dornbusch & Frankel, *Macroeconomics and Protection*, *supra* note 144, at 112.

148. Deardorff & Stern, *Current Issues in Trade Policy*, *supra* note 145, at 38. Tariffs are a form of exploitative intervention that presents governments with a "Hobson's choice." Any country can use the tariff at the expense of other countries, but if all countries use tariffs, they are all likely to lose in the end. *Id.*

149. *See supra* note 5 for the reaction of the U.S.'s major trading partners.

the benefit of that allegiance may in fact be his election. Looking to the state of West Virginia, it is surprising that George W. Bush was able to carry the state in the 2000 Presidential election. West Virginia has two Democratic senators, one of whom, Robert Byrd, has been in office for over forty years.[150] West Virginia, however, is also the state whose fortunes have historically been most closely aligned with that of the steel industry.[151] Because of its small size, steel issues — as well as coal — are able to dominate the political landscape of West Virginia. As it turns out, the state of West Virginia carries five electoral votes — all five of which went to George W. Bush in the 2000 election.[152] This number seems miniscule until Bush's margin of victory is noted — that margin was five electoral votes.[153]

The steel industry is forced to rely on its political capital, and the sympathetic nature of its cause to insure protection in largely because of its former dominance. U.S. steel workers are among the highest paid industrial workers in the world.[154] This fact is a reflection of strong union power in the steel industry and a long tradition of automatic productivity raises.[155] Unfortunately, those wages have been out of line with actual productivity growth and economy-wide wage growth for years.[156] The only way to protect these disequilibrium wages over the years has been through restrictive trade policies.[157] It is for this rea-

150. Buchanan, *Analysis: Politics of Steel, supra* note 30.

151. *Id. See Romancing Big Steel*, ECONOMIST, Feb. 14, 2002 (Prior to the 2000 election, "Dick Cheney, as George Bush's running mate, wooed West Virginia's steel workers, promising that his boss (unlike Bill Clinton) would not forget them.").

152. *Id.*

153. *Id.*

154. Dornbusch & Frankel, *Macroeconomics and Protection*, *supra* note 144, at 119.

155. *Id. See also Meltdown, supra* note 121 ("Steel is an old business in America, dominated by firms such as U.S. Steel and Bethlehem Steel that date back to the 19th century. That is a proud legacy but also a costly one, measured in everything from the size of their pension plans to the cost of cleaning up old facilities.").

156. Dornbusch & Frankel, *Macroeconomics and Protection*, *supra* note 144, at 119.

157. *Id. See Meltdown, supra* note 121 ("Backed by an army of lawyers, American steel makers have been attacking imports for decades, successfully winning over one administration after another. Despite years of decline, steel remains one of the most protected and subsidised industries in America, and

son that the steel lobby has become so adept at getting its needs met in recent times. As noted above, the steel industry's political machine may have played a large role in deciding the 2000 Presidential election.

While an analysis of the U.S. steel industry's political might, and its propensity to call for protection, may lead to the implication that U.S. steel companies are the only ones clamoring for help[158] — their complaints coincide with the decline of the American industrial worker in general.[159] The reasons that Americans should remain skeptical of globalized free trade can be seen in a pair of economic theories. The first is a concept recognized in the nineteenth century by David Ricardo, known as the "law of comparative advantage."[160] The law of comparative advantage postulates that, when free trade is established between two countries, each country will take on the manufacturing or production duties best suited to it.[161] This concept has negative implications for production-oriented industries such as the steel industry. It implies that companies, if given the opportunity, will relocate production facilities to countries where the price of labor is lower.[162] While this may not sound the death knell for American industrial workers — so long as we are able to maintain a technological and efficiency advantage — it may have more important negative implications for their bargaining power in future labor disputes.[163]

The second economic theory that should give American industrial workers pause when they contemplate the benefits of free

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one of the main irritants in global trade negotiations, weakening American arguments for open markets elsewhere.").

158. *See* Fuller, *U.S. Agency Rejects New Tariffs on Steel*, *supra* note 122.

159. Thurow, *New Rules supra* note 18, at 249–50.

160. *See* DAVID RICARDO, ON THE PRINCIPLES OF POLITICAL ECONOMY AND TAXATION, 313 (Ronald M. Hartwell ed., 1971) (1819).

161. *Id. See also* Sachs, *International Economics*, *supra* note 83, at 218. The theory of comparative advantage is often criticized for depending on a relatively perfect competitive environment that rarely exists in the real world. *See* Paul Krugman, *Strategic Sectors and International Competition, in* U.S. TRADE POLICIES IN A CHANGING WORLD ECONOMY 207 (Robert M. Stern ed., 1988).

162. *See* ECONOMIST, *supra* note 16 (production costs for steel in the U.S. are among the highest in the world, second only to Japan).

163. Sachs, *International Economics*, *supra* note 83, at 225.

trade is that of "factor price equalization."[164] At its most basic level, the theory of factor price equalization states that real wages for labor in the U.S. will continue to fall, while real wages in developing countries will continue to rise because companies can now relocate their production capacity at will.[165] Therefore, if this theory is correct in its assumptions, because the cost of living in the U.S. is bound to be much higher than that in developing nations, industrial laborers in America may soon become a thing of the past.[166] These are sobering concepts. America has defined itself by its industrial might for more than a century, and, while the turn towards technology seems inevitable, there is no doubt that the road ahead will not be smooth for America's industrial workers.

The final political factor weighing on President Bush's decision is the argument that a viable steel industry is an essential element of national security. The concept of protecting industries in order to preserve national security has existed as long as the concept of free trade.[167] While economists have consistently argued that industries necessary to the preservation of national security should be given direct subsidies, rather than supported with restrictions on imports, this has not happened in the U.S..[168] The national security argument carries an inordinate amount of weight at present, and the steel industry, in its latest campaign entitled "Stand Up for Steel," missed no opportunity to point this out when lobbying for the present tariff measures.[169] To some degree, a viable steel industry is neces-

164. Thurow, *New Rules, supra* note 18, at 249–50.

165. *Id. See also* Rick Jervis, *As Debate on Tariffs Rages, U.S. Steel Expands in EU's Backyard*, WALL ST. J., Mar. 25, 2002, at A15 ("Steel still is a labor-intensive industry and, with the U.S.'s high labor costs, you could see [production facilities] slowly moving [from the U.S.] to the east.").

166. Thurow, *New Rules, supra* note 18, at 249–50.

167. *See* SMITH, WEALTH OF NATIONS, *supra* note 33, at 429–31. *See also* JACKSON, THE WORLD TRADING SYSTEM, *supra* note 60, at 22 (in addition to being necessary for national security purposes, a steel industry may also become an attribute of sovereignty — a crown jewel of sorts).

168. *See* PETER KENEN, THE INTERNATIONAL ECONOMY 171 (1985).

169. *See Facts About Steel, supra* note 32 ("The history of America's steel industry is inseparable from our nation's economic, political and military development."). *See also Romancing Big Steel, supra* note 151 (President Bush, in August 2001, "told cheering steel workers in Pittsburgh that their product was 'an important national security issue.'").

sary for U.S. national security, but the question remains — how far must we go to protect this industry?[170]

V. CONCLUSION

On a macro level, the U.S. has always had difficulties reconciling protectionism and free trade.[171] These difficulties stem from the fact that unfettered free trade begets a sacrifice of sovereignty that the people of the U.S. do not seem eager to countenance.[172] Simply put, the problem facing proponents of free trade in the U.S. is that we live in a democracy. People will only indulge free trade so long as it does not infringe on their lifestyle.[173] While this decidedly protectionist attitude draws the ire of many who believe that free trade is essential both to our economy, and to the overall development of the world,[174] the facts indicate that the people of the U.S. are uncomfortable with the idea of wholeheartedly embracing globalized free trade.[175]

Overall, President Bush's steel tariffs do not score well in a traditional cost/benefit analysis, where the whole of American society is viewed.[176] Although the steel industry was once the poster-child of America's economic might, today it plays only a small role in our economy. The reasons for the steel industry's decline in economic might are numerous; and, while many of those reasons are the direct result of increased globalization,

170. *See Romancing Big Steel, supra* note 151 ("The uncertainty lies in the political calculations. Some Republicans may be at risk if [President] Bush angers the steel lobby. . . . [President] Bush's wild approval ratings suggest he could dare to jilt Big Steel. Less obvious is whether he has the will.").

171. *See* LOVETT ET AL., U.S. TRADE POLICY: HISTORY, THEORY, AND THE WTO, *supra* note 23, at 56.

172. *See* Bernstein, *supra* note 87.

173. *See Id.*

174. Bray, *supra* note 87, at 13.

175. Lovett, *Bargaining Challenges and Conflicting Interests*, *supra* note 23 ("In 1999, only twenty-eight percent [of Americans] believed that the U.S. should lower its trade barriers even if other countries do not."). *See also* Bernstein, supra note 87.

176. *See Rust Never Sleeps, supra* note 105 ("Once again, America's steel industry has shown its extraordinary political clout. Against its 160,000 workers, [President] Bush had to weigh the interests of American consumers, foreign producers and, if his shrillest critics were to be believed, the future of free trade itself. And yet, in the end . . . steelworkers . . . had the final say."). *See also Romancing Big Steel, supra* note 151 (twelve million people work in steel-consuming industries, while only 160,000 produce steel).

some of the blame also lies with the former giants, such as Bethlehem Steel, and U.S. Steel.[177] These former giants still hold the ear of many politicians in Washington, and have consistently used their political clout to force protectionist measures designed to prop up their failing businesses.[178] The steel industry is the most protected industry in America and will continue as such until the true costs of imposing tariffs are seen through an economic, rather than political lens.

While President Bush campaigned on a platform of free trade, his steel tariffs indicate that America's trade policy is in desperate need of clarification.[179] This conclusion has gained validity in the months after the tariffs were first imposed. Since announcing the new tariffs on March 5, 2002, the Bush administration has retreated from its original tariff structure significantly.[180] Of the 13 million tons of imported steel originally affected by the tariffs, 25% are now exempt from duties.[181] The President has acquiesced to pressure from large steel using companies such as Daimler-Chrysler, while leaving smaller steel users to fend for themselves under the price increases caused by the tariffs.[182] In sum, only the largest of steel using manufacturers have benefited from President Bush's backtracking.[183]

More recently, the WTO released a 900-page preliminary report indicating that the U.S. steel tariffs are a violation of

177. Dettmer, *supra* note 17, at 47 ("The U.S. steel industry has done little in the last few years to transform itself from a lame duck to a lean, mean, manufacturing machine."). *See also In America's Fiery Furnace, supra* note 75 (the fact that American steel has enjoyed governmental protection of some sort for the past two decades has allowed its major players to put off much-needed consolidation).

178. *See* Press Release, American Institute for International Steel, Steel Trade Policy, *supra* note 38 ("As a result of the 40-year effort by the domestic steel industry, the U.S. has the most protective and economically irrational trade laws in the world. Following quota protection (1960's), price controls (1970's), and absolute quotas (1980's to the early 1990's), the latest protectionist weapon of choice for the U.S. steel industry is the dumping law.").

179. Reif & Ranaswami, *Joltin Joe has left and gone away*, *supra* note 80, at 429--30.

180. Neil King Jr. and Geoff Winestock, *U.S. Weakens Steel Tariffs Further*, WALL ST. J., Aug. 23, 2002, at A2.

181. King Jr. & Matthews, *supra* note 38.

182. King Jr. & Winestock, *supra* note 180, at A2.

183. *Id.*

global trade rules.[184] This report, although not final, confirms this Note's analysis of the "import surge" relied upon by the Bush administration in the instant case.[185] President Bush's response to this report also seems to confirm the notion that these tariffs are not a product of economic necessity; but, rather, they are a political invention designed to curry favor in 'Rust Belt' states.[186] Instead of ending the tariffs now that sanctions on other industries are imminent, the Bush administration plans on appealing the official ruling when it comes out, and then negotiating with the WTO on appropriate compensation.[187] In short, President Bush plans on continuing his subsidization of American steel producers, despite increased costs to steel consumers and the impending negative consequences to other industries.[188] As noted in Section III, this disregard for the economic consequences of imposing tariffs is violative of the requirement in Section 201 of the Trade Act of 1974, that any action "provide greater economic and social benefits than costs."[189] Disregarding the WTO's ruling will also have international political consequences for the U.S., at a time when we urgently need international support.

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184. Robert Guy Matthews, *WTO Says U.S. Tariffs on Steel Violate Rules*, WALL ST. J., Mar. 27, 2003, at A2 ("A final WTO decision, which is expected to follow the preliminary ruling, is due in about a month. The WTO wouldn't comment on or confirm the panel's report.").

185. *See infra* Section III (discussing the facts surrounding the 'import surge' that was relied upon by the Bush administration).

186. *See* Robert Guy Matthews, *U.S. Steel Tariffs Likely to Stay Despite WTO-Sanction Threat*, WALL ST. J., Mar. 31, 2003, at A2 ("The Bush administration plans to appeal the official ruling . . . and then start a long process of negotiations with the WTO."). *See also Romancing Big Steel, supra* note 151. If the E.U. decides to implement retaliatory sanctions, the list of U.S. exports affected could include textiles, steel, and orange juice. CNN/World, *EC Compiles U.S. Tariff 'Hit' List*, *supra* note 27.

187. Matthews, *U.S. Steel Tariffs Likely to Stay Despite WTO-Sanction Threat*, *supra* note 186, at A2.

188. *See* Matthews, *WTO Says U.S. Tariffs on Steel Violate Rules, supra* note 184, at A2 ("[S]teel users blame the tariffs for sharply higher prices, which have increased their own costs, supply shortages and quality issues. David Pritchard, chief executive of A.J. Rose Manufacturing . . . testified before the House Ways and Means Subcommittee on Trade, that tariffs added $1.1 million to the company's cost of material in the last year and that he was forced to lay off 33 workers in the past year.").

189. Trade Act of 1974, Pub. L. No. 93-618, 88 Stat. 1978 (codified as amended at 19 U.S.C. §§ 2101–2487 (1975)) (Section 201).

The fact is, we live in a world where it is possible to create a product in the U.S., ship it to Malaysia to be packaged, and then put it to market in Europe.[190] There is no reasonable way to turn back from the path of globalized free trade, so the U.S. must make a concerted effort to live with the world that our trade policies have, in effect, created.[191] It has been said that the best response to some international events, such as a temporary influx in imports, is one of adjustment in the domestic economy rather than protected resistance to change.[192] This did not happen in the instant case, and has not happened in the past forty years with respect to the U.S. steel industry.

As long as the American steel industry can deliver votes, its ability to induce protective measures from the U.S. government will remain intact. The steel tariffs of March 5, 2002, are a perfect example of this phenomenon. While their economic benefits to the nation as a whole will certainly be found lacking, the benefits to President Bush seem to have already accrued.[193] The international fallout has already begun,[194] but the consequences of this fallout, which will be seen in retaliatory tariffs imposed on other more viable industries, have not yet occurred. When the consequences of President Bush's imposition of tariffs are finally felt, someone is sure to be blamed for making a political decision where the laws of economics should have ruled — the one sure thing is that the blame will not be left at the feet of the steel industry.

Brady P. Priest[*]

190. Sachs, *International Economics*, *supra* note 83, at 220.

191. *See infra* Section II, in particular, the U.S.'s post-World War II trade policy and the creation of GATT and the WTO.

192. Dixit, *How Should the United States Respond*, *supra* note 141, at 249.

193. *See infra* Section IV, referring to the President's unlikely victory in West Virginia, a state largely controlled by the Democratic Party.

194. *See infra* Section I for the reaction of the U.S.'s major trading partners. *See also* Matthews, *WTO Says U.S. Tariffs on Steel Violate Rules, supra* note 184.

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