Note: Cases are indexed under short forms; Agreements are indexed under abbreviations (eg SGA for the Agreement on Safeguards, TRIMs for Agreement on Trade-Related Investment Measures).

accountability 255 interpretation of the GATT 108, 125, activism, judicial 129, 130 145-146, 148 actori incumbit probatio maxim 29 interpretation of the Safeguards adjudicating bodies, task of 29, 72, 263 Agreement 106 adjustment, promotion of 112–114, 122 interpretation of TRIPs 198–199, administrative review 14 201, 203-204 adverse effects 47, 48, 49, 54, 56, 86 judicial economy 196, 199 adverse selection 183, 184, 187 legitimacy of 252, 253, 275 agricultural products 134, 154 most favoured nation 206–208 Agriculture Agreement 133, 138-139, mutual recognition 208-219 140–141, 146–148, 153, 157 national treatment 206–208, 208–219 aircraft, subsidization of sales of 88-98 non-attribution 120 ownership of trademarks 203 aliens, protection of 188, 190, 192, 210 American Law Institute 3, 8 Paris Convention Article 8 204–206 Principles of Trade Law project 1, 2, 36 textualism 248-275 Reporters' Studies 2-3, 4-11 and WIPO 200 Anti-Dumping Agreement 28, 119 Argentina 133-157 Argentina – Footwear 103, 105 antidumping duties 4, 12, 17, 28, 76 Appellate Body 10, 93, 123, 129, 275 arm's length operations 5, 241, 242, analysis of the Agriculture Agreement 243, 244 143-145 automotive sector, India 158–178 Article 21.5 panels 91, 92 autonomy, procedural 251 burden of proof 263, 272 autonomy, regulatory 191, 194, 250, causation 105, 106 251, 274 consequences of decisions 253, 258 EC - Sardines 249, 250, 251 Bagwell, Kyle 4, 7–8, 12–35, 133–157, evidentiary standards 5, 9 158–178, 233 interpretation of "benefit" 85 balance of payments defense, India interpretation of "injury" 104, 107 165, 167 Beebe, B. 187 interpretation of "similarity" 148 interpretation of Paris Convention benchmark 194, 196, 197 legal 15–17, 19–20, 23 interpretation of TBT Agreement 267 no-subsidy 9, 222, 229, 231-234, 245

private sector 234–242	EC – Hormones 256, 269
Berne Convention 203	burden of proof 266, 266, 269
Besley and Seabright 89	interpretation of SPS 251, 256, 261
Brazil – Aircraft 6, 57, 88, 90	EC – LAN Equipment 49, 252
breach	EC – Sardines 9, 248–275
efficient 62	India – Auto 7–8, 158–178
gravity of 49, 50, 51, 56	India – Patents 200
burden of persuasion 261, 271–273	India – Quantitative Restrictions
burden of proof 261	161–162, 166, 167
allocation of 29–31, 57, 250, 262,	Japan – Alcohol 55
263–270, 273	Kodak – Fuji 94
and international standards 261,	Korea – Beef 274
272, 274	Lotus 193
and legal presumptions 261	Nicaragua 253
and national treatment 26	Nuclear Weapons 253
prima facie proof 261	Semi-Conductor 94
quantum of proof 29, 149–153, 261,	Shrimp – Turtle 90, 92, 93
270–274	US – Antidumping Act of 1916 23
rules for 262, 263, 270	US – Blouses from India 268
Burtless, Gary 110	US – Corrosion-Resistant German Steel 5
"but for" analysis 125, 127, 236	<i>US – Frozen Lamb</i> 104, 105, 106,
out for unaryolo 123, 127, 230	108, 119
Canada 9, 12–35, 220–247	US – FSC 4–5, 36–63
Canada Account 90–93	US – Havana Club 8
claims in US – Section 129 13–15	US – Hot Rolled Steel 119
Foreign Investment Review Act 167	<i>US – Lead and Bismuth</i> 79, 81, 83
	US – Line Pipe 6–7, 99
legal framework for export financing 94, 95	US – Non-Recurring Subsidies 5–6,
	78–87
ownership of timber 221	US – Section 129 4, 12–35
prior unliquidated entries 13	US – Section 211 Omnibus
provincial governments 221, 222,	Appropriations Act of 1998 24,
226–229, 236, 244, 246	179–219
stumpage program 220, 227, 235,	US – Section 301 23, 26, 49, 95, 169
244, 246	US – Settion 301 23, 20, 49, 73, 107 US – Softwood Lumber 9, 220–247
Canada – Aircraft 6, 52, 81, 88–98	US – Sunset Review Of Anti-dumping
Canada – Periodicals 207	Duties on Corrosion-resistant
Cannizaro, E. 46, 57	Carbon Steel Flat Products From
capital income, taxation of 37	Japan 76
capital markets 111	US – Wheat Gluten 103, 104, 119
Cappella, Elena 4	
cases 10	Cassing, James H. 112
Argentina – Footwear 103, 105	causation 105, 106, 107
Brazil – Aircraft 57, 88, 90	between imports and injury 102, 104,
Canada – Aircraft 6, 52, 81, 88–98	107, 108, 121, 127, 128
Canada – Periodicals 207	and correlation 105, 106
Chile – Price Band 7, 133–157	"substantial" cause 116, 124
EC – Asbestos 268	US analysis of 100, 101, 105, 118,
EC – Bananas 200	119, 124

Chile – Price Band 7, 133–157	Cuban Asset Control Regulation,
choice, quality 183	US 180
Codex Alimentarius Commission 248,	
255, 260, 271	Davidson, Carl 112
collateral estoppel 167	Deardorff, Alan V. 109
collective action 68	democracy 254
commensurability 51	Department of Commerce, US 12, 14
competitive advantage 54, 55, 111–112	discretion 24, 25, 26, 89, 259
compliance 21, 45–57, 89, 212	discrimination 192, 207, 208, 252, 253
incentives to induce 36, 37, 42, 43, 44–45, 58–60	dispute settlement system 26, 60, 90–93, 142, 200, 266, 270
consensus 254, 255, 256	binding rulings 50, 90, 95
consumer search cost 197, 198	and burden of proof 263, 264, 269
consumer welfare 68, 183, 184, 187, 201,	and countermeasures 40, 46, 50
271, 272, 273, 274	DSU 40, 50, 55, 75, 250
contract theory 264	enforcement provisions 34
Coombe, Rosemary 187	evidentiary rules 261–263
copyrights 209	information 265
corporate profits, taxation of 38, 38	objective of 262
correlation 105, 106	prompt settlement 55, 93
costs, trade 239	role of 2, 42, 55, 262
counterfactual analysis 125, 126,	due process 145, 148, 204
127, 236	Dupuy, PM. 49
countermeasures 41–43, 43–45, 45–57,	duties, ordinary customs 141, 145, 146
50, 52, 59	conversion of other measures
bounds on 41, 42, 43, 48, 51	146, 147
and compliance 36, 37	and GATT Article II 142, 148
effects test for appropriate level of	and price band systems 143, 147, 149
41–43	duty assessment mechanisms
as an incentive for compliance 42, 43,	prospective 17, 18, 27–29
44, 45, 58–60	retrospective 17, 18, 27–29, 31
liability rule approach 43	FG 41 - 260
model of 61	EC – Asbestos 268
neutralizing effects of 41	EC – Bananas 200
property rule approach 5, 43, 58,	EC – Hormones 256, 269
60, 62	burden of proof 266, 269
proportionality 48, 51, 57 quantum of 51, 56–57	interpretation of SPS 251, 256, 261
trade impact of 41, 42	EC – LAN Equipment 49, 252 EC – Sardines 9, 248–275
countervailing duties 4, 9, 12, 17,	Appellate Body decision 258, 268,
221, 224	271–272
level of 225, 226	Panel decision 267, 271, 272, 273
purpose of 222–226	econometric analysis 125, 126
review of 64	efficiency 35, 62, 113, 128, 209, 210,
role of 67, 69, 72, 222	212, 254
termination of 68, 73	Elliot, Kimberley Ann 113
Crawford, J. 46, 49, 57 Cuba 179–219	enforcement 34, 151, 153, 169 under-enforcement 58
Guba 1/7-217	under-emorcement 30

and technical regulations 249, 251

Hudec, Bob 194 Esserman, Susan 36 Hufbauer, Gary Clyde 113 European Communities 4–5, 36–63, 64-77, 78-87, 248-275 human rights 252 evidence, level of 270, 272, 273, 274 evidentiary standards 31, 35, 261-263, ILC Draft Articles on State 271, 274 Responsibility 45, 46, 47 in sunset reviews 65, 66, 73-74, 76 illegal measures, incentive to adopt in the TBT 260-274 exception 265, 266, 267, 269 import barriers, political rationale for experience goods 183 exporters and subsidies 224 imports, quantity of 123, 130 externality, international 170, causal link to injury 100, 102, 104, 224, 233 107, 108, 121, 126, 127, 128 in dubio pro mitius maxim 71 Factor Price Equalization Theorem 238 India – Auto 7–8, 158–178 fairness 148, 188, 271 balance of payments defense 165, 167 Feenstra, Robert C. 110 import licensing system 160–161, finality, principle of 92 162, 163, 166 foreclosure 243, 244 indigenization requirements 7, 158, foreigners, fair treatment of 188; see also 159, 160–161, 162–164, 166, aliens, protection of 167, 168 forum shopping 92, 194 Memorandum of Understanding free-rider problem 68 158, 160–161, 162, 163, 164, 165, 166, 168, 169 GATT 107, 167 Public Notice 60, 158, 160–161, 163, Article II 137–138, 142, 148, 153 Article III.4 249 *India – Patents* 200 interpretation of 108, 110, 122, 125, India – Quantitative Restrictions 126, 128, 142 161–162, 166, 167 local content requirements 167 inefficiency 32, 33, 111, 210 national treatment 206 information 29, 265 obligations under 107, 124, 159 injury 48, 242-244, 246 and safeguard measures 101-103, 122 attribution of 104, 104, 117, 122–127, Germany 64-77 globalization 197 existence of 242 good faith, principle of 269 and proportionality 56 goods, experience 183 serious 103, 116, 121, 122, 127 government, executive branch 24, 25 innovation 209, 211, 213–215 Greenwald, Michael 4 intellectual property 185, 197 Grossman, Gene M. 5-7, 64-77, 78-87, and mutual recognition 208, 211 99, 106, 213, 215 and national treatment 210-213 protection of 8, 179, 182, 191, 198, Havana Club case 24, 179-219 211 Hedlius, Tom 4 international standards 9, 252, 254–256, Helpman, Elhanan 115 258, 263, 269 Horn, Henrik 1-11, 106, 112, 113, appropriateness 265, 271–273 220-247, 248-275 "... as a basis for ... " 256–258 Howse, Robert 4-5, 6, 8, 36-63, 88-98,

179-219

international standards (cont.) and TBT Agreement 249, 260, 267 International Trade Commission, US 12, 116–117, 120 "but for" analysis 127 non-attribution 104, 117, 118, 119, 120, 129 interpretation, legal 250, 251–260 investments private 88, 89, 234 promotion of 111–112 Irwin, Douglas A. 106 ins cogens 53	liberalization, trade 109, 114, 122, 128, 149 Liebman, Lance 3 likelihood of continuation of recurrence of subsidization 66, 74–75 local content requirements 7, 8, 158, 170, 176 costs and benefits of 169, 172 domestic effects of 170, 172, 175 indigenization requirement, India 159, 161, 163, 167 models 170–173, 173–175, 175–176 Lotus case 193
ius cogens 53 Japan – Alcohol 55 judicial review 252 jura novit curia maxim 29 Kelly, Kenneth 106, 126 Kodak – Fuji case 94 Korea 99 Korea – Beef 274 labor-market conditions 67, 68, 112, 113 Lai, E. 213, 215 Landes, W. 183 language, integrity of 259, 260 Lanham Act, US 181 Lapan, Harvey 112 law interpretation of 1 judge-made 26, 29 WTO 31–32 law, international 32, 37, 45–48, 62, 71, 179, 251 customary 46 interpretation of 259 norms of 53 proportionality 51 law, trademark 185, 187–189, 189–192 enforcement costs 189, 190	Madrid Agreement Concerning the International Regulation of Marks 190 markets access 138 power 175, 177 prevailing conditions 234, 235 price 83, 84, 85 private 237 structure 68, 221 matching of concessional interest rates 96, 96, 97 Matusz, Stephen J. 112 Mavroidis, Petros C. 1–11, 12–35, 64–77, 78–87, 99, 220–247 maxims, legal actori incumbit probatio 29 in dubio pro mitius 71 jura novit curia 29 non ultra petita 31 Messerlin, Patrick A. 113 Milton and Mariam Handler Foundation 4 minimum import price 141, 144, 145 monopoly 173–175, 175–176 moral hazard 183, 184, 187 most favored nation 182, 191, 202, 206–208 Mussa, Michael 112
harmonization of 189, 191, 192 legislation, mandatory vs. discretionary 23–26, 29, 30, 94–96, 138, 164, 168, 169 legitimacy 252, 253, 253, 254, 255, 275 levies, variable 140, 141, 144, 145, 156	mutual recognition 208–219, 213, 215, 218, 218–219 naming and labeling requirements 259 national treatment 8, 206–208, 209 and efficiency 210, 212

and intellectual property policy 180, 210–213, 215, 216–217	Pauwellyn, J. 53, 54, 208 Peru 248–275
and mutual recognition 208–219, 213 and TRIPs 24, 26, 179, 182,	persuasion, burden of 261, 271–273 policy, beggar-thy-neighbor 224, 233, 245
191, 202 and the US 8, 25, 26 Neary, J. Peter 112	policy, intellectual property 211, 213, 215, 215–216
Neven, Damien J. 4–5, 6, 8, 36–63,	policy, trade 35, 68, 112, 149, 150, 151
88–98, 179–219	change in 123, 125, 126
Nicaragua case 253	and Prisoner's Dilemma 33, 151, 153,
Nicolaidis, K. 200	210
no-subsidy benchmark 9, 229,	unilateral 32, 33, 151
231–234, 245	Posner, R. 183
definition of 222, 231	predictability 141, 152, 153
non-attribution of injury 104, 106	and price band systems 144, 155
and causality 105, 108, 109, 117, 126	and variable levies 140, 141, 144, 146
SGA requirement 105, 108, 119, 121,	price band system 134, 135, 135–137,
127, 129	138, 140, 142, 146, 154
non ultra petita maxim 31	benefits of 154, 155
nontariff barriers 138, 210	conversion to tariffs 139, 140, 143,
Nordhaus, W. 211, 215, 228	146, 147, 148, 149, 154, 155
norms, treaty 48	and "ordinary" duties 139, 142, 143,
Nuclear Weapons case 253	147
•	predictability and transparency 155
obligation	reference price 135, 136,
of conduct 49, 50	141, 144
erga omnes 53–56	price comparison, international 239,
erga omnes partes 53, 54, 55, 57, 208	240, 245
to implement rulings 55	prior unliquidated entries 13, 14, 16, 19,
of result 49	28, 29, 30
per se 45	and methodology cases 20
Ochs, Jack 112	and revocation cases 21, 22
OECD Arrangement, and the SCM	Prisoner's Dilemma 33, 151, 153, 210,
Agreement 96–98	242
Office of Foreign Assets Control, US 180	private sector benchmark 234–242, 245
Olson, M. 68	privatization 80, 81, 84
	at arm's length 80, 82, 83, 84,
pacta sunt servanda principle 26, 48	85, 87
Panel recommendations 31	gamma method of assessing change
Paris Convention 24, 26	of ownership 78–79, 80, 86
Article 6 192–198, 200, 201	same-person method of assessing
Article 8 204–206	change of ownership 78, 79,
national treatment 206	80, 86
trademark provisions 181, 189, 190,	profit maximization 84
191, 198	prompt settlement 93
pass-through of subsidies 240, 241, 242,	proof
243, 244	prima facie 261
patents 184, 187, 192, 202, 203, 209	quantum of 29, 30, 261, 270–274

proof (cont.)	to promote restructuring 111–114
standard of 261	sanitary and phytosanitary measures
proof, burden of 261	194, 251, 253, 255
allocation of 29–31, 57, 250, 262,	Sazanami, Yoko 113
263–270, 273	Schwartz, W. 43
and international standards 261, 272,	SCM Agreement 39, 41, 49, 52, 54, 221,
274	242
_, _	actionable subsidies 47, 49
and legal presumptions 261	
and national treatment 26	benchmarks 9, 41, 234–242
prima facie proof 261	constraints imposed by 6
quantum of proof 29, 149–153, 261,	CVD instrument 222–226
270–274	evidentiary standards 66
rules for 262, 263, 270	existence of a subsidy to a good 226,
proportionality 50, 51, 52, 56, 119	229
countermeasures 43, 45-57, 58	"injury" in 69, 71
protectionism 113, 152, 153, 169, 196,	interpretation of 83, 86
197, 237, 253	investigations 73
public choice theory 149	objective of 5, 68, 70, 72, 76, 86
public good 185, 187	obligations under 65, 66, 79
public good 103, 107	and the OECD Arrangement 96–98
reasonableness 253, 255	and privatization 80
reasoning, legal 10	purpose of 42, 67, 95, 233
reciprocity 33, 149, 150, 153	re-drafting of Article 21.3 76
redistribution 110	review of countervailing duties 64
remedies 31–35	rules on countermeasures 47
prospective and retrospective 32–35	size of subsidy 67
time function of 28, 31, 32	thresholds, de minimis 69
"restriction," meaning of 165	use of countervailing duties 68
restructuring 111–114	Scotchmer, S. 212, 213
retaliation 34, 35, 36	security, legal 48, 49, 95, 96
right, property 227	self-help 96
Rousslang, Donald J. 106	Semi-Conductor case 94
rule of law 55	SGA 3, 100, 101–103, 119, 122, 133
rules and exceptions 265, 266, 267,	'but for' analysis 125
269	interpretation of 106, 109, 113, 115,
20)	
cofoguard massures 6, 7, 00, 102, 110	128, 129, 130
safeguard measures 6, 7, 99, 102, 110,	objectives of 101, 109–115, 128
111, 122	requirements of 114, 123
causality test for 6, 100, 102, 104, 106,	shareholders income, taxation of 38
128, 129, 130	Shrimp – Turtle 90, 92, 93
as compensation 109–110, 122, 128	silence, legislative 70, 71, 73, 74, 115,
extent of 117, 118, 119, 120, 122,	201
127–128, 129, 130	sovereignty 71, 72, 199, 250, 258, 259
objective of 129	domestic 189, 190, 193, 199, 201, 202,
as political safety valves 114-115,	203
122	SPS Agreement 194, 251, 253
to promote adjustment 112–114, 122,	international standards 255
128	stability 48, 49
	, ,

Staiger, Robert W. 233 state responsibility 23, 49, 50, 95 ILC Draft Articles 45, 46, 47 Statement of Administrative Action 16–17, 19, 21, 30, 31	TBT Agreement 9, 194, 249, 251, 253, 259, 264 evidentiary standards 260–274 international standards 254, 255, 258, 261
Stone, Katherine Van Wezel 202 stumpage program 220, 222, 227, 228,	interpretation of 194, 267, 268 technical regulations 249, 260
244, 246	Technical Barriers to Trade 9
benefit to lumber producers 230-231,	textualism 248–275
240–242, 242–244	thresholds, <i>de minimis</i> 5, 69–72, 76, 77
contracts 229, 230, 231, 241 contractual complexity 222, 245	timber ownership of 227, 228, 229, 232
subsidies 42, 72, 224, 231, 234	private harvesters 220, 221, 232
benefits of 37, 44, 54, 55, 58, 80, 81,	property rights to 227
83	trade agreements 32, 33, 149, 150, 223
and countermeasures 48, 52, 59	enforcement of 151, 153
financial contribution 44, 52, 53, 79	trade balancing requirements, India 7,
level of 41, 43, 48, 76	159, 160–161, 164–166, 167,
non-recurring 78–87 pass-through 240, 241, 242, 243, 244	168, 177 effect of 159, 168
production 224	withdrawal of 159, 162
successors-in-interest 206, 207	trade liberalization 109, 114, 122, 128,
sunk cost 5, 84, 186	149
sunset review 64, 65, 83	trade names 182, 204, 205
de minimis standards in 69–72,	Trademark Law Treaty 190
70, 71	trademarks 179, 183–187, 195, 201
evidentiary standards 65, 66, 73–74, 76	entitlement to use 185, 191, 195
function of 67–69	external effects of 188, 190, 209, 212 harmonization of 180, 198, 199, 201
opportunity to present evidence 75	international rules 187–189, 189–192
supply and demand 106, 107, 153 import supply curve 123, 124, 125,	likelihood of confusion 200
125, 126, 129, 130	ownership of 182, 200, 202, 204, 207
and imports 122, 126	protection of 181, 185, 186
Svenska Handelsbanken 4	public good aspect 187, 209
Sykes, Alan O.	recognition of 201, 203
Chile - Price Band 7, 133–157	right to protection 8, 198
India - Auto 7–8, 158–178	social and economic functions
property rule 43	183–187 transparency 153, 156, 271
safeguard measures 110, 113, 114, 115	transparency 153, 156, 271 Agricultural Agreement 138, 140, 146
the SGA 106, 107, 108, 124	"ordinary" duties 141, 144, 153
tariffication	and price band systems 135, 141, 144,
Agricultural Agreement 138, 143,	155, 156, 157
146, 147, 149, 154–155	Traynor, Michael 4
benefits of 141, 149-153, 156	treaties
Chilean price band system 137, 139,	interpretation of 205, 253, 255, 257, 266
140, 147, 157	norms 48
taxation 36, 37, 38, 50	101110 10

treaties (cont.) US - Line Pipe 6-7, 99 object and purpose 255 Appellate Body decision 119-122, Vienna Convention on the 122 - 128Interpretation of Treaties 26, facts 99-101 US - Lumber 8-9 129, 196, 252, 253, 255 TRIMs Agreement 7, 159, 167 *US – Non-Recurring Subsidies* 5–6, 78–87 Annex 168 Appellate Body decision 81-83, Illustrative List 165, 168 83 - 87requirements of 164 US - Section 129 4, 12-35 TRIPs Agreement 24, 26, 179, 180 US - Section 211 Omnibus Article 16.1 199 Appropriations Act of 1998 24, Article 42 203-204 179-219 Articles 15.1 and 15.2 198-199 US - Section 301 23, 26, 49, 95, 169 enforcement of intellectual property US - Softwood Lumber 220-247 rights 192 US - Sunset Review Of Anti-dumping harmonization of intellectual Duties on Corrosion-resistant property laws 191 Carbon Steel Flat Products From interpretation of 182, 196 Iapan 76 national treatment 206, 208 US - Wheat Gluten 103, 104, 119 ownership of trademarks 201, 202 patents provisions 202, 205 value public policy objectives 190, 198 exchange 82, 83 trademark provisions 190, 191, 210 scarcity 82 Tuerk, E. 194 utility 82 vertical integration 222, 240-242, 243, uncertainty 108, 153, 154, 156 unemployment 113, 114 Vienna Convention on the Law of United Steelworkers of America 116 Treaties 26, 129, 196, 252, 253, Uruguay Round Agreements 138, 142 US Extraterritorial Income Exclusion Wallender, Jan 4 Act 2000 39, 40 Weiler, Joseph H. H. 9, 248–275 Foreign Sale Corporation scheme WIPO, International Bureau of 200 WTO 1, 90-93, 146, 275 37-39, 50 trade legislation 12-13, 123, 124 adjudicating bodies 29, 72, 263 trademark legislation 181, 221 WTO Agreement 226, 233, 242, 257 US – Antidumping Act of 1916 23 WTO contract 13-14, 21, 49 US – Blouses from India 268 rights and obligations under 42, 50, US - Corrosion-Resistant German Steel 54, 97, 130 Statement of Administrative Action 5, 64-77 Appellate Body decision 66, 67-75, 76 16, 16-17 US - Frozen Lamb 104, 105, 106, 108, 119 WTO-inconsistent behavior 15-19, US - FSC 4-5, 36-63 19-23, 26 US - Havana Club 8, 179-219 WTO law 46, 103-106, 167 US - Hot Rolled Steel 119 local content requirements 176, 177 US - Lead and Bismuth 79, 81, 83 role of res judicata 159, 162, 167