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Brazil's Agricultural Trade War: Success and Failure on the Southern Route to Antarctica

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ARTICLES

Brazil's Agricultural Trade War: Success and Failure on the Southern Route to Antarctica

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I. INTRODUCTION – A LINE IN THE SAND

On September 8, 2004, the World Trade Organization (“WTO”) issued a report documenting Brazil’s landmark victory in its trade battle against U.S. cotton subsidies.¹ The Report concluded that certain U.S. government subsidies to cotton producers caused “serious prejudice” to Brazilian cotton farmers by encouraging excessive U.S. production of cotton, thus depressing world cotton prices.² This decision, the first ever by the WTO on agricultural subsidies, dealt the United States its most serious trade defeat in recent history.

Exultant Brazilian officials vowed: “This is a war that must continue[.]”³ The victory was particularly sweet for Brazil in light of some rather provocative comments made by U.S. Trade Representative Robert Zoellick in 2002.⁴ In October of that year, the

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1. Report of the Panel, *United States – Subsidies on Upland Cotton*, WT/DS267/R (Sept. 8, 2004) [hereinafter the “WTO Upland Cotton Panel Report”]. This Report followed the Panel’s submission of its interim report to the parties on April 2, 2004. The Panel submitted its final report to the parties on June 18, 2004. *Id.*

2. *Id.*

3. *U.S. Loses WTO Cotton Subsidy Case*, BBC NEWS WORLD EDITION, Apr. 27, 2004, at <http://news.bbc.co.uk/2/hi/business/3662183.stm>.

4. The U.S. Trade Representative is a member of the U.S. Cabinet and serves as the President’s principal trade policy adviser and chief trade negotiator. Mr. Zoellick assumed office as the U.S. Trade Representative on February 7, 2001, with the rank of Ambassador. On February 22, 2005, Mr. Zoellick was sworn in as the Deputy Secretary of State under Secretary of State Condoleezza Rice. See *Biography: Robert B. Zoellick, U.S. Department of State*, at <http://www.state.gov/r/pa/ei/biog/42449.htm> (Feb. 22, 2005). President Bush nominated U.S. Representative Rob Portman (R-Ohio) to be the new U.S. Trade Representative. See Paul Blustein, *Rep. Portman Named Next U.S. Trade Representative*, WASH. POST, Mar. 18, 2005, at E02, available at <http://www.washingtonpost.com/wp-dyn/articles/A45653-2005Mar17.html>. This

Miami Herald quoted Mr. Zoellick as warning Brazil that it could “take the southern route to Antarctica” to sell its products if it did not embrace the Free Trade Area of the Americas (“FTAA”).⁵ Brazilians interpreted Representative Zoellick’s threat as “an open declaration of war . . . ,” and, “[f]or Brazil — increasingly a thorn in the side of Washington’s trade agenda[,]” the WTO ruling marks a major victory in its campaign to transform the dynamics of international trade negotiations.⁶

article focuses on Mr. Zoellick’s tenure of office as Trade Representative, during which he was the principal architect of the Central America Free Trade Agreement (“CAFTA”) and aggressively pursued the Bush Administration’s Free Trade Area of the Americas (“FTAA”) agenda. Mr. Zoellick has served both Bush Administrations. During President George H.W. Bush’s Administration, Mr. Zoellick served as Under Secretary of State for Economic and Agricultural Affairs, as well as Counselor to the Department. During this time, he was the lead State Department official in the negotiations on the North American Free Trade Agreement (“NAFTA”), the Uruguay Round, and the creation and launch of the Asia Pacific Economic Cooperation group. Mr. Zoellick also was instrumental in working with the Congress on the 1991 vote on “fast-track” negotiating authority. He holds a J.D. from the Harvard Law School and a Master of Public Policy degree from Harvard University’s Kennedy School of Government. For Representative Zoellick’s official biography, see *United States Trade Representative, Ambassador Robert B. Zoellick*, at <http://www.whitehouse.gov/government/zoellick-bio.html> (last visited April 14, 2005). Mr. Zoellick often was the focus of critics of the Bush Administration’s trade policies. Critics charged that Mr. Zoellick zealously preached free trade, yet the United States does not practice free trade. See, e.g., Kevin Watkins, *Trade Hypocrisy: The Problem with Robert Zoellick*, GLOBAL POLICY FORUM (Dec. 20, 2002), available at <http://www.globalpolicy.org/socecon/ffd/2002/1220hypocrisy.htm> (discussing U.S. agricultural subsidies). Further, Mr. Zoellick’s association with private industry left him somewhat vulnerable to claims that he sought to enrich corporate interests at the expense of the citizenry. For example, he served on the advisory Council of Enron Corporation and was a board member of Alliance Capital, Said Holdings, and Jones Intercable. See *United States Trade Representative, Ambassador Robert B. Zoellick*, at <http://www.whitehouse.gov/government/zoellick-bio.html> (last visited Feb. 9, 2005).

5. Daniel McLaughlin, *Take a Hike to Antarctica*, BRAZZIL (Nov. 2002), available at <http://www.brazzil.com/pages/p10nov02.htm>. For brevity’s sake, the author assumes that readers will have some familiarity with trade issues and terminology. Accordingly, commonly used acronyms will receive only minimal explanatory footnote material. For example, the FTAA (in Spanish: *Área de Libre Comercio de las Américas* (“ALCA”); in French: *Zone de libre-échange des Amériques* (“ZLEA”); in Portuguese: *Área de Livre Comércio das Américas* (“ALCA”)) is a proposed agreement to eliminate or reduce trade barriers among all of the nations in the Western Hemisphere, except Cuba. See generally *Official Website of the Free Trade Area of the Americas*, at http://www.alca-ftaa.org/alca_e.asp (last visited Feb. 9, 2005).

6. William Greider & Kenneth Rapoza, *Lula Raises the Stakes*, THE NATION (Dec. 1, 2003), available at <http://www.thenation.com/doc.mhtml?i=20031201&c=1&s=greider>; Jane Bussey, *Boll evil? U.S. Detractors Waging Cotton Tug of War - The WTO’s Ruling that Subsidies to U.S. Cotton Farmers Artificially Skews International Prices, Elicits Cheers from Many Places Not Named Washington*, MIAMI HERALD (May 2, 2004), available at <http://www.geocities.com/ericsquire/articles/ftaa/mh040502.htm>.

Yet Brazil's success in this trade war may exact a high toll, producing both international and domestic casualties in its march along the southern route to Antarctica.⁷ Developed nations have cast Brazil as the villain in a series of failed multilateral trade negotiations, direly predicting that its uncompromising stance will undermine the interests of the poor countries whose cause it purports to champion.⁸ A growing chorus of international skeptics question Brazil's stimulus and standing to represent a constituency of developing nations given the size of its economy and its ascendance as an international "agribusiness titan."⁹ Brazil's trade war also may result in domestic casualties. The nation's leaders "ha[ve] yet to explain fully to Brazil's 180 million people how [its international trade victories and increasing] global political influence will fix its 11% illiteracy rate, widespread poverty, crumbling roads, and stifling bureaucracy."¹⁰

This short article¹¹ tracks Brazil's emergence as a central force in the mobilization of the G20 Plus,¹² a bloc of developing nations committed to global agricultural trade reform. The article also considers Brazil's performance on the "battlefield[s] of commerce"¹³ and concludes with some thoughts regarding the constit-

7. McLaughlin, *supra* note 5. See also Center for International Development, Harvard University, *Brazil Summary*, available at <http://www.cid.harvard.edu/cid/trade/gov/brazilgov.html> (last visited Oct. 31, 2004).

8. Cf. Commentary, *Cancún Fiasco: Belling the Cat*, ECON. & POL. WKLY. (Sept. 20, 2003), available at <http://www.gapresearch.org/governance/RavikanthCancun3.pdf>.

9. Mac Margolis, *Brazil's Growing Power*, NEWSWEEK INT. (Feb. 23, 2004), available at <http://msnbc.msn.com/id/4402548/site/newsweek>.

10. Andrew Hay, *Brazil Plays for Power on World Stage*, REUTERS (Oct. 19, 2004), available at <http://in.news.yahoo.com/041019/137/2he9z.html>.

11. These issues are highly complex, and a complete exploration is beyond the scope of this analysis. Furthermore, the focus of the discussion is agricultural issues. Singapore Issues, TRIPS, etc. are not addressed in any fashion.

12. "G20 Plus" is a reference to the group of twenty nations that acted as the catalyst for the Collapse in Cancún. It was established in August of 2003 during the final stages of the preparations for the V Ministerial Conference of the WTO, held in Cancún, Mexico, in September 2003. The group's primary focus is agriculture, the central issue of the WTO's Doha Development Agenda. See *G20, History*, available at <http://www.g-20.mre.gov.br/history.asp> (last visited Feb. 9, 2005). While sometimes referred to as the "G20 Plus" due to its shifting membership, nations currently counted among the G20 Plus are Argentina, Bolivia, Brazil, Chile, China, Colombia, Costa Rica, Cuba, Ecuador, Egypt, El Salvador, Guatemala, India, Mexico, Pakistan, Paraguay, Peru, the Philippines, South Africa, Thailand, Turkey, and Venezuela. See Andrew Walker, *Poor Countries Meet for Trade Talks*, BBC NEWS WORLD EDITION (Oct. 16, 2003), at <http://news.bbc.co.uk/2/hi/business/3196678.stm>.

13. Bussey, *supra* note 6.

uencies for whom Brazil ostensibly is waging this war on the southern route to Antarctica.

II. MOBILIZATION

After being "a [rather] reluctant player¹⁴ in the Uruguay Round,"¹⁵ Brazil emerged at the WTO's Doha Round¹⁶ as a key figure in the debate surrounding the contentious issue of agricultural subsidies. Due to its historically high indebtedness and the impact of rising interest rates, Brazil's agricultural sector suffered severe dislocations as a result of the country's "trade liberalization [policies] and macroeconomic adjustments."¹⁷ Not surprisingly, Brazil began to advocate for the liberalization of world agricultural trade. For example, at the 1998 Geneva Ministerial Conference commemorating the 50th anniversary of the creation of the General Agreement on Tariffs and Trade ("GATT") (predecessor to the WTO),¹⁸ then-Brazilian President Fernando Henrique Cardoso

14. *Brazil Centerstage at the WTO Doha Round*, BRAZIL NEWS (Nov. 2001), available at <http://www.brazilinfocenter.org/pdfs/november2001.pdf>.

15. The Uruguay Round of the General Agreement on Tariff and Trade, or the GATT, transformed the GATT into the WTO. The negotiations were launched in September 1986, in Punta del Este, Uruguay, and the final deal was signed by ministers from most of the 123 participating governments at a meeting in Marrakesh, Morocco, on April 15, 1994. See World Trade Organization, *Understanding the WTO: Basics - The Uruguay Round*, available at http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm (last visited Oct. 15, 2004). This Round is considered one of the most significant multilateral trade negotiations ever undertaken. *Id.*

16. The Doha Round was initiated in Doha, Qatar, in November 2001, and the negotiations under the Round got underway in early 2002. See World Trade Organization, *Negotiations, Implementation, and Development: The Doha Agenda*, available at http://www.wto.org/english/tratop_e/dda_e/dda_e.htm (last visited Oct. 17, 2004). The Round has been labeled the "Doha Development Agenda" due to its focus on development issues. The United States has stated that these negotiating rounds represent "a once-in-a-generation opportunity to dramatically reform the rules of world trade, open new markets for goods and services, and spur economic and political progress throughout the developing world[.]" See U.S. Dept. of State, *Doha Development Agenda*, available at <http://www.state.gov/e/eb/tpp/c10339.htm> (last visited Oct. 17, 2004). The 2003 WTO Ministerial Conference in Cancún, Mexico, was a part of the Doha Round. Optimists hope that the Round will conclude at the next WTO Ministerial in Hong Kong, set for December 2005. *Id.*

17. Press Release, World Trade Organization, Trade Policy Reviews: First Press Release, Secretariat, and Government Summaries: Brazil, available at http://www.wto.org/english/tratop_e/tp45_e/tp45_e.htm (Oct. 24, 1996).

18. The Ministerial Conference is the WTO's highest-level decision-making body. Members of this conference are the trade ministers of the member countries. It meets "at least once every two years," as required by the Marrakesh Agreement Establishing the World Trade Organization - the WTO's founding charter. See World Trade Organization, *The Fifth WTO Ministerial Conference*, available at http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm (last visited Feb. 9, 2005). The Ministerial Conference has the authority to make decisions on all matters

stressed the need to reform the international agricultural trading system, to which he referred as the “greatest protectionist and subsidizing apparatus ever put together for the preservation of . . . one sector.”¹⁹ In 1999, Brazil traveled to the Third Ministerial Conference in Seattle ready to cross swords on this issue, but the “Battle of Seattle”²⁰ overshadowed the WTO negotiations conducted during this disastrous event.

In conjunction with, and following, the Fourth WTO Ministerial Conference in Doha, Qatar, in 2001, Brazil began an intensive recruiting effort to enlist allies for its agricultural reform campaign. Held only two months after the September 11, 2001, bomb-

pertaining to any of the multilateral trade agreements, and it establishes the agenda for “rounds” of negotiations regarding trade-related issues. See, e.g., World Trade Organization, *How the Negotiations are Organized*, available at http://www.wto.org/english/tratop_e/dda_e/work_organ_e.htm (last visited Feb. 9, 2005). The negotiations take place in the Trade Negotiations Committee and its subsidiaries. *Id.* The Second WTO Ministerial Conference was held in Geneva, Switzerland, on May 18-20, 1998. While the Conference was “supposedly more ceremonial than negotiational” in honor of the GATT’s 50th anniversary, see Sungjoon Cho, *A Bridge Too Far: The Fall of the Fifth WTO Ministerial Conference in Cancún and the Future of Trade Constitution*, 7 J. INT’L ECON. L. 219, 222 (2004), two substantive developments did result. First, against the backdrop of the devastating crisis amongst Asian financial markets, ministers adopted a declaration rejecting protectionist measures. See World Trade Organization, *The Geneva Ministerial Declaration*, WT/MIN(98)/DEC/1, para. 3 (adopted May 20, 1998), available at http://www.wto.org/english/thewto_e/minist_e/min98_e/mindec_e.htm (last visited Feb. 9, 2005). Second, ministers agreed upon a Declaration on Global Electronic Commerce recognizing the growth in global electronic commerce and establishing a program to examine all trade-related aspects of electronic commerce. See World Trade Organization, *Declaration on Global Economic Commerce*, WT/MIN(98)/DEC/2 (adopted May 25, 1998), available at http://www.wto.org/english/thewto_e/minist_e/min98_e/ecom_e.htm (last visited Feb. 9, 2005).

19. H.E. Ambassador Celso Luiz Nunes Amorim, Market Access Developments Since the Uruguay Round: Implications, Opportunities and Challenges, in Particular for Developing Countries and Least Developed Countries, in the Context of Globalization and Liberalization, Address Before the High Level Segment of the 1998 ECOSOC Substantive Session (July 7, 1998), at <http://www.un.int/brazil/speech/98d-clna-ecosoc-market.html>.

20. The Battle of Seattle has entered the lexicon of civil disobedience. Bruce Shapiro, *The Seeds of Seattle*, Salon.com, at <http://www.salon.com/news/feature/1999/12/08/wto/index.html> (Dec. 8, 1999). See also *Battle of Seattle*, Salon.com, available at http://archive.salon.com/directory/topics/battle_of_seattle/ (last visited Feb. 11, 2005). This “Battle” received extensive media coverage in late November and early December 1999, when tens of thousands of protesters gathered in Seattle streets, blocking the opening sessions of the WTO meeting. The world watched as police and National Guard forces used tear gas and rubber bullets to subdue demonstrators. Disparate interest groups mobilized with amazing speed to participate in the protest. For example, a petition of more than 1,700 groups, mostly from developing nations, was raised within a day to object to the way the WTO process was being conducted. Unlikely alliances were formed, including steelworkers, union supporters, environmental groups, and students. See Cho, *supra* note 18, at 222-24.

ings of the twin towers of the World Trade Center in New York City and on the U.S. Pentagon in Washington, D.C., the Doha Conference produced a Ministerial Declaration that committed member countries, particularly developed countries, to phase out export subsidies and substantially reduce trade-distorting domestic support.²¹ However, Brazil's frustration turned to anger when the United States enacted the 2002 U.S. Farm Bill, which introduced U.S.\$180 billion in farm subsidies over a ten-year period, and when the European Union ("EU") failed to reform its Common Agricultural Policy ("CAP").²² Brazil resolved to fight against these measures.

And fight it did. Brazil's aggressive stance on trade reform within the context of the FTAA during this time frame prompted Representative Zoellick's inflammatory suggestion that the country trade with Antarctica on the southern route.²³ Undeterred, the newly elected Brazilian government, led by the PT,²⁴ under the leadership of the charismatic and controversial Brazilian President Luis Inácio Lula da Silva (more commonly referred to as Lula), signaled its intention to take the southern Antarctic route. In a move designed to make the Antarctic route more viable, Brazil revitalized talks of a South American political bloc as a way to wield more influence in talks with the United States on the planned hemispheric FTAA,²⁵ another negotiating arena involving agricultural issues. Lula also lead an effort to strengthen the Southern Common Market ("MERCOSUR").²⁶

21. World Trade Organization, *The Doha Ministerial Declaration*, WT/MIN(01)/1, para. 13 (adopted Nov. 14, 2001), available at http://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm (last visited Nov. 20, 2004) [hereinafter the "Doha Ministerial Declaration"].

22. See Cho, *supra* note 18, at 227-30.

23. See *supra* text accompanying note 4.

24. "PT" is the acronym for the Portuguese "*Partido dos Trabalhadores*," or the Worker's Party.

25. See Andres Oppenheimer, *Existence of 'Latin America' Debated in Region*, MIAMI HERALD (May 22, 2003), available at <http://www.geocities.com/ericsquire/articles/ftaa/mh030523.htm>.

26. MERCOSUR is the Spanish acronym for the Southern Common Market ("*el Mercado Común del Sur*"), a common trade market composed of Argentina, Brazil, Paraguay, and Uruguay. See MERCOSUR, available at <http://www.mercosur.org.uy> (last visited Oct. 16, 2004). In Portuguese, the acronym is MERCOSUL ("*o Mercado Comum do Sul*"). See MERCOSUR, available at http://www.mercosur.org.uy/pagina_bienvenidaportugues.htm (last visited Feb. 9, 2005). Bolivia, Chile, Colombia, Ecuador, and Peru are associate, non-voting members of the bloc. *Id.* At a recent Summit, MERCOSUR welcomed Venezuela as an associate member and accepted Mexico in principle, gaining two oil suppliers and extending the market's reach to the U.S. border. See Ana Ines Cibilis, *Venezuela Joins Mercosur, Mexico, Provisionally*,

Concurrently, Brazil formed an alliance with India and South Africa to fight the "trade-distorting agricultural domestic support and . . . export subsidies in the advanced countries[.]"²⁷ The three nations announced the creation of the Group of Three ("G-3") to coordinate strategies in multilateral trade talks and to deepen their trilateral relationship.²⁸ The group also hopes to expand to include China and Russia.

In 2003, as the Fifth WTO Ministerial Conference drew near, Brazil and its allies fixed their attention on Cancún. To break the stalemate on agricultural issues, the United States and the EU issued a joint position on the agriculture negotiations.²⁹ This position was severely criticized by developing countries led by Brazil, India, and China, who presented an alternate proposal³⁰ calling for the elimination of export subsidies on all agricultural products.³¹ Ultimately, the initial joint U.S.-EU text was withdrawn by the Conference Chair.³²

In the final weeks before the Cancún Conference, representatives of numerous developing countries met to prepare. With the withdrawal of the U.S.-EU agricultural proposal, Brazil's emerging core group quickly gained new members when the initial dissenters, Brazil, India, and China, eventually persuaded other developing countries to join their coalition. This group emerged as the G20 Plus.³³

AGENCE FRANCE PRESSE (July 9, 2004), available at <http://www.tradeobservatory.org/headlines.cfm?refID=36224>. Cuba also has asked to become an associate member of MERCOSUR, a move that may further complicate Brazil's relationship with the United States and the FTAA negotiations. Bernd Radowitz, *Cuba's Bid to Join Mercosur Could Be Latest Roadblock for Americas Free Trade Zone*, ASSOCIATED PRESS (Mar. 4, 2005), available at http://biz.yahoo.com/ap/050304/brazil_mercosur_cuba_1.html?printer=1.

27. *India, Brazil Alliance Key to Secure Gains of Doha Agenda*, WORLD TRADE REV. (May 15, 2004), available at <http://worldtradereview.com/news.asp?pType=N&iType=A&iID=82&siD=6&nID=15042>. See Andreas Hernandez, *The Collapse in Cancún and the Transformation of the Global System*, Countercurrents.org (Sept. 16, 2003), at <http://www.countercurrents.org/glo-hernandez60903.htm>.

28. Balakrishnan Rajagopal, *A New Opportunity in Cancún's Failure*, YALE GLOBAL (Dec. 3, 2003), at <http://yaleglobal.yale.edu/display.article?id=2937>.

29. See Cho, *supra* note 18, at 227-30.

30. *Id.*

31. *Developing Countries Present Farm-Trade Plan to WTO*, UN WIRE (Aug. 21, 2003), at http://www.unwire.org/UNWire/20030821/449_7715.asp.

32. Rolf Kuntz, *G-21 conseguí nivelar campo para o jogo agrícola*, O ESTADO DE S. PAULO (Sept. 11, 2003), available at <http://www.estado.estadao.com.br>; *Protester Dies at WTO Talks; Draft Agriculture Plan Withdrawn*, UN WIRE (Sept. 11, 2003), at http://www.unwire.org/UNWire/20030911/449_8349.asp.

33. See *supra* text accompanying note 12.

At the Cancún Conference,³⁴ Brazil took an assertive approach to agricultural reform on behalf of the G20 Plus.³⁵ Approximately seventy other developing nations joined the G20 Plus in refusing to accept the U.S. and EU position. Developed nations, however, were not prepared to liberalize their policies unilaterally, rejecting demands that they open their markets without reciprocation. The United States and others also rejected an initiative for immediate reform of trade in cotton, an issue of economic importance to several West and Central African nations.³⁶ Facing wide substantive divergences, the WTO Conference disintegrated without consensus.

Following Cancún, Brazil and its G20 Plus allies refuted criticisms that their intransigence precipitated the collapse of the Conference and vowed to continue to pursue the reform of the world trading system.³⁷ The next section will consider Brazil's accomplishments along the southern route to Antarctica.

III. BATTLEFIELD RECORD ON THE SOUTHERN ROUTE

In the aftermath of the "Collapse in Cancún," Brazil launched

34. The Fifth WTO Ministerial Conference was held in Cancún, Mexico, from September 10-14, 2003. See World Trade Organization, The Fifth WTO Ministerial Conference, available at http://www.wto.org/english/thewto_e/minist_e/min03_e/min03_e.htm (last visited Oct. 17, 2004).

35. United States General Accounting Office, *Report to the Chairman, Committee on Finance, U.S. Senate, and to the Chairman, Committee on Ways and Means, House of Representatives - World Trade Organization: Cancún Ministerial Fails to Move Global Trade Negotiations Forward; Next Steps Uncertain* (Jan. 2004), at <http://www.gao.gov/new.items/d04250.pdf>.

36. Benin, Burkina Faso, Chad, and Mali submitted a proposal that developed countries eliminate their subsidies to cotton farmers and that compensation be paid to these four countries for economic damages resulting from these subsidies. See International Centre for Trade and Sustainable Development, Bridges Daily Update on the Fifth WTO Ministerial Conference, *Will Chair's AG Text Warm Up Frozen Talks?* (Sept. 12, 2003), at http://www.ictsd.org/ministerial/cancun/wto_daily/ben030912.htm. This proposal largely was directed to the United States. These countries are highly dependent on the export of cotton, which amounts to 80% of their export earnings. See Cho, *supra* note 18, at 230. However, they cannot compete in the market with subsidized producers with allegedly artificially low-priced cotton. Deeply frustrated with the response of the United States, which refused to eliminate subsidies, one African cotton producer reportedly said, "We are used to hardship, disease and famine. Now the WTO is against us as well. I think that this will stay in history . . ." *Id.* (citing International Centre for Trade and Sustainable Development, Bridges Daily Update on the Fifth WTO Ministerial Conference, *At the Eleventh Hour, Divergence All Over Again* (Sept. 14, 2003), at http://www.ictsd.org/ministerial/cancun/wto_daily/ben030914.htm).

37. See Cho, *supra* note 18, at 233-34.

its campaign to construct a new geography of trade³⁸ across a multiple axis of attack. It began with a concerted effort to consolidate its alliance with countries in the developing South. Within the South American continent, MERCOSUR constituted Brazil's first external frontier. Brazil's current objective for this allied grouping of countries is to complete and improve the customs union and to deepen and expand the integration in new areas.³⁹ MERCOSUR comprises an area of slightly less than twelve million square kilometers, or more than four times the size of Europe.⁴⁰ It represents a potential market of 200 million people with a joint Gross Domestic Product ("GDP") of more than U.S.\$1 trillion, which places it among the four largest economies of the world following the NAFTA, the EU, and Japan.⁴¹ Brazil's membership in MERCOSUR allows it to maximize scale advantages as well as to increase its bargaining position in broader regional agreements.⁴²

Beyond MERCOSUR, Brazil sought broader economic cooperation and integration between the MERCOSUR bloc and the Andean Community.⁴³ In 1998, the five Andean countries and the four MERCOSUR countries signed a framework agreement for the creation of a free trade area between the two blocs, and, in 2004, the two groups signed a free trade pact.⁴⁴ A common market

38. H.E. Mr. Luiz Inácio Lula da Silva, Statement by President of Brazil Luiz Inácio Lula da Silva at the United Nations Conference on Trade and Development, Eleventh Session, *available at* http://www.un.org/webcast/unctadxi/speeches/14bra_por2.pdf (June 14, 2004) (original Portuguese text).

39. World Trade Organization, Trade Policy Review Body, *Report by the Government - Trade Policy Review - Brazil*, WT/TPR/G/75 (Sept. 27, 2000).

40. See Ministério des Relações Exteriores, *Mercosur and Regional Integration, Mercosur - The Common Market of the South*, *available at* http://www.mre.gov.br/ingles/politica_externa/mercosul/merco_intro.asp (last visited Feb. 11, 2005).

41. See Embassy of Brazil, London, United Kingdom, *Mercosul*, *available at* <http://www.brazil.org.uk/page.php?pid=236> (last visited Feb. 11, 2005).

42. Josefina Monteagudo & Masakazu Watanuki, *Regional Trade Agreements for MERCOSUR: The FTAA and the FTA with the European Union* (Oct. 2001) (unpublished draft paper prepared for presentation at the "Impacts of Trade Liberalization Agreements on Latin American and the Caribbean" Conference organized by the Inter-American Development Bank and the Centre d'Etudes Prospectives et d'Information Internationales, Nov. 5-6, 2001, Washington, D.C.), *available at* <http://www.sice.oas.org/geograph/westernh/WM.pdf>.

43. See *Trade Policy Review - Brazil*, *supra* note 39. The Andean Community, or *la Comunidad Andina* ("CAN"), is a subregional organization made up of Bolivia, Colombia, Ecuador, Peru, and Venezuela. The five Andean countries together have 120 million inhabitants living in an area of 4,700,000 square kilometers, whose GDP in 2002 amounted to U.S.\$260 billion. See Andean Community, *available at* <http://www.comunidadandina.org/ingles/who.htm> (last visited Oct. 19, 2004).

44. See Cibilis, *supra* note 26.

encompassing this South American community of nations makes the southern route to Antarctica a major thoroughfare for international trade.

At the hemispheric level, Brazil has become a defining voice in the negotiations regarding the creation of the FTAA.⁴⁵ Brazil strategically has used its southern route influence as a member of MERCOSUR and its vision of an expanded South American trade bloc to leverage its negotiating power in the debates regarding the scope of this trade agreement. In recognition of Brazil's growing economic and political influence, it was named a Co-Chair, with the United States, of the FTAA negotiating process.⁴⁶

The FTAA was conceived as a vehicle to unite the economies of every country in Central America, South America, and the Caribbean, except Cuba, into a single free trade area. The United States initially envisioned the FTAA as an "ambitious project [to] eliminate[e] trade barriers from Alaska to Tierra del Fuego," based upon the NAFTA model.⁴⁷ A comprehensive FTAA would open Latin American markets to a wide range of U.S. service industries, would eliminate national restrictions pertaining to government procurement, and would eliminate differences in national regulatory schemes governing intellectual property or discriminating against foreign investment and competition.⁴⁸ Further, it potentially would export NAFTA's controversial investor protection provisions, under which domestic laws of the signatory nations may not disadvantage foreign persons or entities undertaking business in a member nation.⁴⁹

45. For a detailed history of the FTAA, visit its official website at http://www.alca-ftaa.org/alca_e.asp.

46. Ambassador Rubens Antonio Barbosa, *Latin American Perspective: The Free Trade Area of the Americas and Brazil*, 27 FORDHAM INT'L L.J. 1017, 1019 (2004).

47. Dr. Mario E. Carranza, *MERCOSUR, the Free Trade Area of the Americas, and the Future of U.S. Hegemony in Latin America*, 27 FORDHAM INT'L L.J. 1029, 1062 (2004).

48. *Id.* at 1032-33.

49. This is a reference to the rather infamous NAFTA Chapter 11, the discussion of which occupies the pages of numerous scholarly journals and is beyond the scope of this document. See North American Free Trade Agreement, Dec. 17, 1992, U.S.-Can.-Mex., chs. 1-9, 32 I.L.M. 289, chs. 10-22, 32 I.L.M. 603 [hereinafter "NAFTA"]. For a sample of just a few of the many law review articles devoted to the topic, see Edward J. Sullivan & Kelly D. Connor, *Making the Continent Safe for Investors – NAFTA and the Takings Clause of the Fifth Amendment of the American Constitution*, 36 URB. LAW. 99 (2004); Sean D. Murphy, *Contemporary Practice of the United States Relating to International Law: Measures "Relating To" Foreign Investors Under NAFTA Dispute Resolution*, 97 AM. J. INT'L L. 440 (2004); Daniel M. Price, *An Overview of the NAFTA Investment Chapter: Substantive Rules and Investor-State Dispute Settlement*, 27 INT'L LAW. 727 (1993).

"Brazil, however, pressed for a slower pace in negotiations[.]"⁵⁰ FTAA countries, it emphasized, are vastly different in terms of population, economic size, income levels, industrialization levels, and many other characteristics of development. Brazil feared that its local industries would be unable to compete with the more competitive U.S. industries⁵¹ and expressed its concerns that the U.S. position on topics such as intellectual property, government procurement, services, and investment could directly impact its regulatory autonomy and "undermine [its] capacity to design and carry out social, environmental, and technological development policies."⁵²

For Brazil, the FTAA was not, and is not, a foregone conclusion. "[I]t will sign the agreement only if the United States makes a serious commitment to open its domestic market[s],"⁵³ particularly to agricultural imports. Brazil consistently has advocated an FTAA that eliminates trade barriers on agricultural products, including the elimination of domestic agricultural production support and export subsidies. Given the strong U.S. constituencies favoring farm supports, the United States has resisted this demand, stating its preference for the use of the WTO process to "dismantle these barriers multilaterally."⁵⁴

When Brazil failed to capitulate to its view,⁵⁵ U.S. Trade Representative Robert Zoellick sent the now infamous harsh message to Brazil's government. "Zoellick stated that Brazil has a choice:

50. Carranza, *supra* note 47, at 1043.

51. *Id.*

52. Barbosa, *supra* note 46, at 1019.

53. Carranza, *supra* note 47, at 1043.

54. See José Antonio Rivas-Campo & Rafael Tiago Juk Benke, *FTAA Negotiations: Short Overview*, 6 J. INT'L ECON. L. 661, 669 (2003). While this protectionist stance on agriculture arguably is inconsistent with its demands for trade liberalization in other "sensitive" areas, the U.S. preference for a WTO resolution is logical. Dismantling barriers restricting trade in agricultural goods in the context of a regional agreement would have worldwide impact without any trade-off from countries outside the region. Consider that Japan has a heavily subsidized agricultural sector, as does the EU, where subsidies are nearly three times higher than U.S. levels. *Id.* See also Barbosa, *supra* note 46, at 1020.

55. "Tempting as it is to simplify matters by reducing them to a contest between two clearly defined camps, the current panorama is a lot more complex than that. Countries that accompany Brazil in the G-21 (the group of developing countries whose stance caused the Cancún meeting to collapse) are also to be found among those that have negotiated FTAs early on with the US: Chile, an associate member of Mercosur, and Mexico, Washington's Nafta partner which has recently signaled its intention to join Mercosur." *Trade Blocs In Latin America: The State of Play After Cancún*, LATIN AM. SPECIAL REP., July 1, 2004, available at 2004 WL 73258469.

to accept the [FTAA] or to go sell their products in Antarctica.”⁵⁶ To emphasize its message, the United States changed its negotiating strategy and focused on making bilateral offers to countries or groups of countries in the region instead of offering hemispheric concessions within the FTAA platform.⁵⁷ For example, the United States entered into negotiations on free trade agreements with Chile and with Central American countries and the Dominican Republic.⁵⁸ It also engaged in talks with other countries in the region, including Uruguay and the Andean Community countries of Bolivia, Colombia, Ecuador, and Peru, as well as Panama.⁵⁹

Brazil followed these efforts closely, accusing the United States of creating “commercial apartheid.”⁶⁰ Brazilian officials commented publicly that “the U.S. interest in negotiating these bilateral agreements seems to lie primarily in their potential for creating negotiating precedents for the future FTAA, in terms of both ‘offensive’ and ‘defensive’ topics, and in shattering potential coalitions with positions that are at odds with U.S. negotiating ambitions.”⁶¹ During this period, Brazil continued to rally its Antarctic route allies in MERCOSUR and the ANDEAN pact countries, managing successfully to block the U.S. plan to isolate it in FTAA talks.⁶² It also issued its own subtle threats to the

56. McLaughlin, *supra* note 5.

57. Carranza, *supra* note 47, at 1057-58.

58. The United States signed the Central America Free Trade Agreement (“CAFTA”) with Costa Rica, El Salvador, Guatemala, Honduras, and Nicaragua on May 28, 2004. See Press Release, Office of the United States Trade Representative, United States and Central America Sign Historic Free Trade Agreement (May 28, 2004), at http://www.ustr.gov/Document_Library/Press_Releases/2004/May/United_States_Central_America_Sign_Historic_Free_Trade_Agreement.html. The Dominican Republic joined the CAFTA in August of 2004. See Press Release, Office of the United States Trade Representative, Dominican Republic Joins Five Central American Countries in Historic FTA with U.S. (May 28, 2004), at http://www.ustr.gov/Document_Library/Press_Releases/2004/August/Dominican_Republic_Joins_Five_Central_American_Countries_in_Historic_FTA_with_U.S.html.

59. See Rivas-Campo & Benke, *supra* note 54, at 679. See also Christina R. Sevilla, *Can the United States and Brazil Spur Free Trade in the Americas – Cancún Versus Miami*, IN THE NATIONAL INTEREST (Jan. 7, 2004), available at <http://www.inthenationalinterest.com/Articles/Vol3Issue1/Vol3Issue1SevillaPFV.html>.

60. Tim Padgett (Miami) & Andrew Downie (Brasilia), *Lula’s Next Big Fight*, TIME ONLINE EDITION (Nov. 16, 2003), available at <http://www.time.com/time/nation/article/0,8599,543734,00.html>.

61. Barbosa, *supra* note 46, at 1024.

62. U.S. attempts to disarm Brazil in FTAA talks have been hindered by its failure to support Argentina during the severe economic crisis of 2001-2002. This failure created incentives for Argentina to strengthen its strategic alliance with Brazil and the rest of Latin America and seriously damaged U.S. credibility in the region. Carranza, *supra* note 47, at 1034, 1047, 1048. Dr. Carranza presents a

United States, aggressively pursuing a free trade agreement with the EU.⁶³

In an effort to break the impasse regarding the United States' "maximalist" approach to the FTAA, Brazil put forward a "Brazilian Proposal" for a "feasible" FTAA.⁶⁴ This general concept has prevailed in recent discussions, resulting in what has been referred to as the "FTAA Lite." This new framework is documented in the so-called Miami Declaration,⁶⁵ a set of principles which "contemplates a more flexible, but also diluted, FTAA."⁶⁶ Pursuant to the Miami Declaration, the FTAA parties will attempt to develop a common set of rights and obligations applicable to all FTAA members, with optional provisions that allow countries to assume different levels of commitment in any one of the areas of negotiation. Should they choose, members may reject the NAFTA-style trade disciplines or may participate at more ambitious levels in terms of the commitments they make and the benefits they receive on a bilateral or plurilateral basis.⁶⁷ This compromise is perceived as a diplomatic victory for Brazil in its

compelling discussion of the failure of the "Washington Consensus" in Latin America and the resulting political fall-out in the region. *Id.*

63. This is an effective strategy, given the "furious EU-U.S. competition" for emerging markets in Latin America and Asia. Carranza, *supra* note 47, at 1035. Further, courting other trading partners such as the EU would reduce Brazil's dependence on the United States and provide it and its MERCOSUR partners with a meaningful alternative to the FTAA. *Id.* at 1043. However, the Brazil-EU courtship has not been a particularly smooth one. In October 2004, MERCOSUR and the EU failed to conclude their negotiations on a free trade agreement. *After Failure of Lisbon, Continuation of Free-Trade Negotiations Postponed until 2005*, AGENCE EUROPE (Oct. 22, 2004), available at 2004 WL 85167317. Not surprisingly, the negotiations floundered over MERCOSUR's call for improved access to European markets for agricultural products and for services. The EU, also not surprisingly, demanded greater market openness for industrial products and services. *Id.* For a discussion of Brazil's plan to create an "auction dynamic" between the United States and the EU, see Christopher M. Bruner, *Hemispheric Integration and the Politics of Regionalism: The Free Trade Area of the Americas (FTAA)*, 33 U. MIAMI INTER-AM. L. REV. 1, 34-38 (2002).

64. Barbosa, *supra* note 46, at 1021.

65. Free Trade Area of the Americas, Eighth Trade Ministerial Meeting, Declaration of Ministers, Miami, Florida (adopted Nov. 20, 2003), available at http://www.ftaa-alca.org/Ministerials/Miami/Miami_e.asp (last visited March 17, 2005).

66. Carranza, *supra* note 47, at 1054.

67. *Id.* In the vocabulary of the WTO, "plurilateral" agreements contrast with multilateral agreements in that plurilateral agreements are signed only by member countries that choose to do so, while all members are party to multilateral agreements. See Caribbean Policy Development Centre, Glossary of Trade Terms (2002), available at http://64.233.161.104/search?q=cache:L_NUUNOBRsEJ:cpdcngo.org/cpdc/docs/Shantal%2520documents/Glossary%2520of%2520Trade%2520%2520Terms.doc+plurilateral+multilateral+definition&hl=en.

campaign to achieve a greater degree of balance and symmetry between the rights and commitments of developed and developing countries in matters of trade.⁶⁸

Brazil's crusade to construct a new world trade geography also extends across the global South. Post-Cancún, Brazil has focused this avenue of attack on strengthening its trilateral relationship with the other two members of the G-3, India and South Africa.⁶⁹ These industrial democracies represent the core of the G20 Plus, and trade between the three has been increasing rapidly.⁷⁰ For example, in 2002, Brazilian exports to India were larger in percentage terms than its exports to any other country; "[t]he total bilateral trade in 2002 reached U.S.\$1.2 billion."⁷¹ While this sum represents only about "one percent of Brazil's total foreign trade flow," trade with India "is growing rapidly, more than doubling in the past three years."⁷²

Trilaterally, the G-3 countries can reinforce their individual economic strength. Amongst these three nations, there is a market of 1.2 billion people, U.S.\$1.2 trillion of GDP, and foreign trade of U.S.\$300 billion. Trade officials plan to increase trilateral trade flows from U.S.\$4.6 billion presently to U.S.\$10 billion by 2007.⁷³ Additionally, following Brazil's lead, MERCOSUR also is

68. In the FTAA negotiations, Brazil has emphasized "the challenge of promoting integration among a large number of countries with a sharp degree of economic disparities and different levels of ambition vis-à-vis the scope of the future FTAA. In fact, no other trade integration process has ever been launched on the basis of such a heterogeneous set of countries as the FTAA negotiations." Barbosa, *supra* note 46, at 1019-20.

69. See Rajagopal, *supra* note 28.

70. Along with their closer economic ties, the G-3 democracies are attempting to influence global politics as well. *Id.* For example, they have agreed to work together to reform the United Nations, particularly urging the expansion of the U.N. Security Council to reflect the realities of the international community. Sridhar Krishnaswami, *India, Brazil, South Africa Call for U.N. Revamp*, THE HINDU (Sept. 25, 2004), available at <http://www.hindu.com/2004/09/25/stories/2004092501621200.htm>. This is a public declaration of support for Brazil's bid to gain a permanent seat on the Security Council. In January 2004, Brazil took a two-year place on the Council and is lobbying strongly for the seat to become permanent. Elise Labott, *Powell Calls Brazil 'Serious Candidate' for U.N. Security Council*, CNN WORLD (Oct. 5, 2004), at <http://www.cnn.com/2004/WORLD/americas/10/05/powell.brazil/>.

71. Embassy of Brazil in India, *Brazil-Indian: Dynamic Trade Relations*, available at <http://brazilembassyinindia.com/btrade.htm> (last visited Feb. 13, 2005).

72. Mario Osava, Global Policy Forum, *India-Brazil: Cementing the South-South Alliance*, INTER PRESS SERV. NEWS AGENCY (Jan. 31, 2004), available at <http://www.globalpolicy.org/globaliz/econ/2004/0131indiabrazil.htm>.

73. International Centre for Trade and Sustainable Development, *India, Brazil, South Africa Strengthen South-South Cooperation*, BRIDGES WEEKLY TRADE NEWS DIGEST (Mar. 10, 2004), available at <http://www.ictsd.org/weekly/04-03-10/story3.htm>.

concluding preferential trade agreements with South Africa and India.⁷⁴ A marked success for Brazil, this G-3 collaboration inaugurates a new era in South-South cooperation and allows the developing South to wield significantly more influence in international trade negotiations.

If Brazil's battle plan succeeds, China, and possibly even Russia, will join the G-3 alliance along the Antarctic trade route. After the failure of the WTO talks in Cancún, Brazil has been actively seeking to recruit China to join the struggle to redraw the map of world trade geography. In recent bilateral discussions with China,⁷⁵ Brazil sought to intensify the two nations' burgeoning trade relationship, an important relationship considering that the two countries are the developing world's two biggest economies.⁷⁶ "Total trade between the two nations grew five-fold between 2000 and 2003 to a value of [U.S.]\$8 [billion]."⁷⁷ In 2004, trade between Brazil and China may surpass U.S.\$8 billion.⁷⁸

During these bilateral discussions, Brazil invited China to join the emerging trade alliances between developing countries. For example, Brazil announced plans to establish a free trade pact between China and MERCOSUR, creating a "healthy multipolarity" in trade that would strengthen the developing world's campaign to eliminate agricultural subsidies in rich nations.⁷⁹

74. See Rajagopal, *supra* note 28.

75. Brazil's efforts to improve its relationship with China may pay political dividends as well as economic rewards. China has expressed its sympathy for Brazil's aspirations to become a permanent member of the U.N. Security Council. China would be an important sponsor considering that it holds one of the five permanent seats on the Council. "China views the question with sympathy, supports Brazil's desire to play a bigger role in the United Nations, and we can discuss this matter further," said the Chinese Ambassador to Brazil. Edla Lula, *Lula's Great China Trip*, BRAZZIL (May 2004), at <http://www.brazzil.com/2004/html/articles/may04/p141may04.htm>.

76. *Brazil Wins China Trade Support*, BBC NEWS WORLD EDITION (May 28, 2004), at <http://news.bbc.co.uk/2/hi/business/3756635.stm>.

77. *Id.*

78. *Id.*

79. *Id.* Brazil and its MERCOSUR allies also have been discussing an enhanced trade relationship with the Gulf Cooperation Council. See *Mercosur Approaches Arab Countries*, MERCOPRESS (Feb. 24, 2005), at <http://www.mercopress.com/Detalle.asp?NUM=5167&Palabra=gulf>. The Council includes Saudi Arabia, Bahrain, the United Arab Emirates, Kuwait, Oman, and Qatar. While visiting the chairman of the Council in Saudi Arabia to discuss a possible cooperation framework agreement between MERCOSUR and the Council, Brazilian Foreign Secretary Celso Amorim also planned to visit Jordan, the Palestinian Authority, Syria, Oman, Qatar, Kuwait, Tunisia, and Algiers. *Id.* During this trip, Brazil scheduled a Summit of South American and Arab Countries, which will be held in Brazil in May 2005. According to Eduardo Duhalde, the head of MERCOSUR's representative commission, the purpose

Further, Brazil has made no secret that it hopes that China and Russia will join the G-3 along the Antarctic route to counterbalance what it perceives as the U.S. and European dominance of global trade.⁸⁰

Meanwhile, despite its successful battles at the sub-regional, regional, and supraregional levels, Brazil did not abandon its trade reform offensive within the WTO multilateral trading system.⁸¹ To the contrary, the WTO may be the forum in which Brazil has achieved its most significant Antarctic route victories. Flexing its new "trade broker" muscles, Brazil broke ground in 2002 by initiating the WTO's dispute settlement procedure against U.S. domestic support measures for cotton producers, exporters, and users.⁸² This was the very first WTO challenge involving agricultural farm subsidies, and the mere fact of its filing was a seminal event.

In its complaint, Brazil alleged that subsidies paid to U.S. cotton farmers from 1999 to 2002, and those subsidies mandated

of this Summit is "to conquer markets without 'scandalous subsidies in farming products'—as is the case in the US and the EU. . . ." *Mercosur, Arab Presidential Summit to Take Place in May*, MERCOPRESS (Mar. 32, 2005), available at <http://www.mercopress.com/Detalle.asp?NUM=5373>. Some observers have expressed concerns about a draft Declaration pertaining to the Summit which contains statements that "strongly condemn Israel and tacitly endorse violent Arab groups that are on the U.S. State Department's list of terrorist organizations." Andres Oppenheimer, *Arab Summit Draft Raises Concerns*, MIAMI HERALD (Jan. 6, 2005), available at http://www.miami.com/mld/miamiherald/news/columnists/andres_oppenheimer/10576246.htm. Countries scheduled to participate in the Summit include Argentina, Algeria, Bahrain, Bolivia, Chile, Colombia, Comoros, Djibouti, Egypt, Ecuador, Guiana, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Oman, the Palestinian Authority, Paraguay, Peru, Qatar, Saudi Arabia, Somalia, Sudan, Suriname, Syrian Arab Rep., Tunisia, the United Arab Emirates, Uruguay, Venezuela, and Yemen. See *Summit of South American-Arab Countries*, at http://www2.mre.gov.br/aspa/en_home2.htm (last visited Apr. 4, 2005). This is particularly noteworthy considering that Israel is another potential MERCOSUR trading partner. An Israeli official recently declared Israel's desire to reactivate trade agreement talks with MERCOSUR. *Israel Wishes to Reactivate FTA Talks with MERCOSUR*, CHINA VIEW (Mar. 8, 2005), available at http://news.xinhuanet.com/english/2005-03/08/content_2667025.htm.

80. *Brazil Wins China Trade Support*, *supra* note 76.

81. See *Trade Policy Review – Brazil*, *supra* note 39. While this article focuses on agricultural matters, it should be noted that Brazil also joined seven other WTO members in lodging a complaint against U.S. tariffs on steel imports. The resulting ruling authorized the imposition of retaliatory restrictions on trade with the United States, convincing the United States to drop the steel duties. World Trade Organization Appellate Body, *United States—Definitive Safeguard Measures on Imports of Certain Steel Products*, WT/DS248/AB/R (Nov. 10, 2003).

82. WTO Upland Cotton Panel Report, *supra* note 1. Cotton producers from the West African nations of Benin, Burkina Faso, Mali, and Senegal joined Brazil's challenge. *Id.*

through 2007 in the latest Farm Bill, violated the "Peace Clause" in the WTO's Agreement on Agriculture.⁸³ Under the terms of the Peace Clause, countries enjoyed immunity only if they capped their subsidies at the 1992 levels. In 1992, the United States allegedly paid cotton producers U.S.\$1.62 billion. Brazil contended that the United States breached that cap in 1999 and 2001, paying its cotton farmers U.S.\$2.3 billion in 1999 and U.S.\$2.06 billion in 2001. "Brazil argue[d] that these subsidies distort[ed] trade by depressing world cotton prices" and that, "[a]s a result, Brazilian cotton producers . . . lost out on sales worth U.S.\$600 million in the 2001-02 season alone."⁸⁴ Meanwhile, the U.S. share of world cotton exports rose from under 20% in 1999 to more than 40% in 2004.⁸⁵ Brazil argued that, were it not for these distorting subsidies, U.S. cotton output would have fallen by 29% between 1999 and 2002, and world prices would have risen by 12.6%.⁸⁶

The United States countered that its farm payments do not distort trade as they are "decoupled" from production. Instead, farmers are paid according to the number of acres that they planted and to the cotton they produced in the past, regardless of their current production. Accordingly, these subsidies do not artificially inflate supply or depress prices.⁸⁷

In its September 8, 2004, report, the WTO panel hearing Brazil's challenge ruled in favor of Brazil on all of its major claims.⁸⁸

83. The Peace Clause, aptly named as it was designed to prevent a trade war, is the commonly used referent for Article 13 of the Agriculture Agreement. This Clause precludes most dispute settlement actions against a country that is complying with the Agriculture Agreement's domestic and export subsidy commitments. *See* World Trade Organization Agreement on Agriculture, art. XIII, Apr. 1994, *available at* http://www.wto.org/english/docs_e/legal_e/14-ag.pdf (last visited Feb. 11, 2005) [hereinafter "Agreement on Agriculture"] (the Agreement on Agriculture is one of the agreements signed at the Marrakesh Ministerial Meeting in April 1994, and was among those agreements included in the Final Act resulting from the 1986-1994 Uruguay Rounds).

84. The West African nations suffered even more disproportionately. They are heavily dependent on cotton for the bulk of their export earnings. They were hit particularly hard by sharp falls in cotton prices in recent years. As one article remarked, "West Africa's case against cotton subsidies was moral; Brazil's is legal." *Unpicking Cotton Subsidies*, THE ECONOMIST GLOBAL AGENDA (Apr. 30, 2004), *available at* http://www.economist.com/agenda/PrinterFriendly.cfm?Story_ID=2626900.

85. *Id.*

86. *Id.*

87. *See* WTO Upland Cotton Panel Report, *supra* note 1.

88. *Id.* The Panel did, however, agree with the United States that the income support provided to U.S. cotton farmers that is fully decoupled from production and prices has not suppressed or depressed world cotton prices. *Id.* It also rejected

The Panel concluded that, because subsidies exceeded 1992 levels, the U.S. cotton program violated international trade rules.⁸⁹ Not unexpectedly, the United States appealed the ruling,⁹⁰ but this did little to dampen Brazil's enthusiastic response to the win: "This is a precedent," said Roberto Azevedo, a legal adviser to Brazil's foreign ministry. "This is a war that must continue."⁹¹

The EU also has suffered casualties on the WTO front in Brazil's continuing trade reform war. In 2003, Brazil, with Australia and Thailand, filed a complaint in the WTO against EU sugar subsidies.⁹² The complaint alleged that the almost U.S.\$2 billion in annual export subsidies that the EU pays its sugar farmers encourages overproduction and artificially depresses international prices.⁹³ Brazil accused the EU of exporting more subsidized sugar than is allowed under WTO trade agreements. The complaint estimated that global sugar prices would rise almost 20% if Brussels scrapped subsidies and that Brazilian sugar producers

Brazil's claim that U.S. domestic support programs caused an increase in U.S. world market share for upland cotton, and it declined to find that U.S. domestic support programs threatened to cause, or per se caused, serious prejudice to Brazil's interests from 2003-2007. *Id.*

89. *Id.*

90. See Emad Mekay, *U.S. Appeals WTO Ruling On Cotton Subsidies (Correction)*, INTER PRESS SERV. NEWS AGENCY (Oct. 20, 2004), available at 2004 WL 59285674. The appeal was unsuccessful. *WTO Rejects U.S. Appeal in Cotton Case*, REUTERS (Mar. 3, 2005), available at <http://www.msnbc.msn.com/id/7079004/print/1/displaymode/1098/>.

91. *Unpicking Cotton Subsidies*, *supra* note 84. See also *US Loses WTO Cotton Subsidy Case*, *supra* note 3. One interesting development to monitor as Brazil amasses victories in its trade crusade: groups of U.S. investors are purchasing and operating farms in Brazil. Brazil Iowa Farms, L.L.C., is one such group, with about 250 investors, most of whom hail from Iowa. This group purchased a 7,000 acre farm in central Brazil and is negotiating for another large parcel. Plans are to raise cotton, soybeans, and corn. Jerry Perkins, *Farmland Lures Investors to Brazil*, DES MOINES REG., May 2, 2004, at 1M. Other similar groups seek investors for Brazilian agricultural investments. *Id.*

92. Report of the Panel, *European Communities – Export Subsidies on Sugar*, WT/DS266/R (Oct. 15, 2004), available at [http://www.worldtradelaw.net/reports/wto/panels/ec-sugar\(panel\)\(brazil\).pdf](http://www.worldtradelaw.net/reports/wto/panels/ec-sugar(panel)(brazil).pdf) [hereinafter "WTO Sugar Panel Report"]. Commentators have found the situation somewhat ironic given that the EU already had planned a "radical overhaul" of its sugar program [that] would 'substantially cut back EU sugar exports and export refunds, abolish intervention, reduce EU production and the internal sugar price.'" *WTO Rules U.S. Cotton Subsidies & EU Sugar Subsidies are Illegal – WTO Rules Against EU Sugar U.S. Cotton Support, Backing Brazil*, BLOOMBERG (Sept. 8, 2004), at <http://www.organicconsumers.org/corp/sugar091004.cfm>.

93. See Todd Benson, *Brazil's New WTO Success Could Spur More Cases*, N.Y. TIMES (Aug. 6, 2004), available at <http://www.kniff.de/cgi-bin/cgiproxy/nph-proxy.cgi/010110A/http/www.iht.com/articles/532844.htm>.

lost U.S.\$500 million to U.S.\$700 million in exports per year because of these subsidies.

Brussels disputed that charge, insisting that Europe's sales of sugar bought from poor countries in Africa, the Caribbean, and the Pacific basin should not be counted against its permitted exports. The EU accepts 1.6 million tons of sugar imports under poverty alleviation programs benefiting African, Caribbean, and Pacific nations, and some of these imports are re-exported. A spokesman said that the EU was one of the world's largest importers of sugar and hence a major supporter of farmers in poor countries. "If [Brazilians] are attacking the EU, they are attacking developing countries,' said Gregor Kreuzhuber, the European Commission's agriculture spokesman."⁹⁴

The EU also pointed to inconsistencies between the complainants' claims and the structure of their own past and present sugar regimes, and it warned that the complaint threatened not only EU sugar producers, but also producers in the poor African, Caribbean, and Pacific countries that enjoyed preferential access arrangements with the EU.⁹⁵

Siding with Brazil, the WTO Panel ruled that as much as half of EU sugar exports exceeded subsidy ceilings.⁹⁶ The Panel found that EU sugar support distorts world market prices because surplus production enjoying production subsidies must be exported.⁹⁷ The EU Commission unsuccessfully appealed the ruling,⁹⁸ Brazil celebrated yet another victory, proclaiming it to be an important step in the elimination of distortions in agricultural markets.

These battlefield successes have provided heavy ammunition for Brazil in its global trade reform war. The landmark WTO Panel Reports resulting from Brazil's WTO litigation strategy may prompt a flurry of similar claims from other developing countries. Trade observers reportedly have warned that Brazil's wins will open "the floodgates for challenges' against developed country agricultural subsidies," particularly given the expiry of the

94. See WTO Sugar Panel Report, *supra* note 92. See also *Bitterness at EU Sugar Subsidies*, BBC NEWS WORLD EDITION (Apr. 27, 2004), at <http://news.bbc.co.uk/2/hi/business/2285293.stm>.

95. European Union News Release, *EU Commission Appeals WTO Sugar Ruling*, at <http://www.eurunion.org/News/press/2004/200400142.htm> (Oct. 15, 2004).

96. WTO Sugar Panel Report, *supra* note 92.

97. *Id.*

98. *EU Loses Sugar Appeal, Spurring Policy Overhaul*, BLOOMBERG (Apr. 28, 2005), available at <http://bloomberg.com/apps/news?pid=71000001&refer=australia#>.

Peace Clause.⁹⁹

This litigation threat compounds the potential impact of the Panel Reports on Brazil's Doha Round negotiating strategy. Brazil recognized this conflation within the WTO front, stating that it "‘didn't bring these cases to interfere with the WTO negotiations, but without them,’ the EU and U.S. ‘would never change their policies,’ . . . ‘The cases are an important element for pressure.’"¹⁰⁰

In July 2004, Brazil pressed its advantage in the Doha Round battle when it succeeded in forging a new framework agreement on agriculture.¹⁰¹ Pursuant to this agreement, members will eliminate their agricultural export subsidies and will review export credit and export guarantee programs to ensure that they are not trade distorting.¹⁰² Accordingly, cotton export subsidies will now be formally negotiated as part of the Doha Round.

The framework also calls for deep cuts in tariffs that provide a barrier to the importation of agricultural products.¹⁰³ Countries with the highest tariffs will be called upon to make the deepest cuts in an attempt to harmonize tariff levels across all countries. Trade-distorting forms of domestic support for agriculture will be cut substantially, with caps on support levels on specific commodities and cuts in the overall levels of trade-distorting supports.¹⁰⁴ In the first year of implementation, each member's total trade-distorting support will be cut by 20% from currently allowed levels.¹⁰⁵

Brazil celebrated the new framework as yet another conquest

99. International Centre for Trade and Sustainable Development, Bridges Weekly Trade News Digest, *WTO Interim Report on US Cotton Case: Brazil Claims Victory* (Apr. 28, 2004), available at <http://www.ictsd.org/weekly/04-04-28/story1.htm>. Trade analysts predict that this ruling also makes other agricultural products, such as soybeans and rice, vulnerable to similar challenges. Sandy Burke & Sam Goble, COHA Research Assocs., *Brazil Continues to Emerge, But Has Not Quite Arrived*, at http://semana2.terra.com.co/imagesSemana/documentos/brasil_coha_20040824.doc (Aug. 18, 2004).

100. *WTO Rules U.S. Cotton Subsidies & EU Sugar Subsidies are Illegal – WTO Rules Against EU Sugar U.S. Cotton Support, Backing Brazil*, *supra* note 92.

101. Doha Work Programme, *Decision Adopted by the General Council on 1 August 2004*, WT/L/579 (Aug. 2, 2004).

102. *Id.*

103. *Id.*

104. *Id.*

105. *Id.* Aside from this deadline, the framework's agricultural annex lacks concrete commitments and lacks details on dates for the phasing out of export subsidies and on the criteria for the designation of special agricultural products. For a collection of opinions criticizing the July Framework, see Anup Shah, *WTO July 2004 Package of Framework Agreements* (Aug. 2, 2004), at <http://www.globalissues.org/TradeRelated/FreeTrade/July2004Package.asp>.

in its campaign to reform the world's agricultural markets.¹⁰⁶ The newly assertive Brazil is not only protecting, but is also expanding, its borders in the new geography of trade. While its battlefield successes along the Antarctic route appear to justify its aggressive tactics, the following section considers whether Brazil has had to make sacrifices in "its heady new role as Third World standard bearer."¹⁰⁷

IV. CONSTITUENTS AND CASUALTIES

Brazil's southern route victories have been credited with revolutionizing the dynamics of global trade negotiations. Yet critics suggest that casualties litter the route to Antarctica in Brazil's wake. Challenging both its methods and its motives, these critics question whether Brazil has the moral authority¹⁰⁸ to act as the leading advocate for the interests of the developing world.

With regard to its methods, "Brazil is gaining a reputation as a spoiler" among much of the developed world.¹⁰⁹ After the collapse of the WTO talks in Cancún, U.S. Trade Representative Robert Zoellick publicly castigated Brazil and its allies, stating that "[t]he rhetoric of the 'won't do' overwhelmed the concerted efforts of the 'can do[.]' 'Won't do' led to impasse."¹¹⁰ U.S. Senator Chuck Grassley, Chairman of the Senate Finance Committee at the time, similarly opined: "[S]ome participants [in trade talks] seem[] to be more satisfied with hollow rhetoric than real negotiation."¹¹¹ Seasoned trade observers have suggested that Brazil's "intransigent" negotiating stance has perpetuated the polarized atmosphere in the WTO, preventing, rather than promoting, progress in multilateral negotiations.¹¹²

Brazil's motives for assuming the mantle of spokesperson for the developing world on agricultural trade issues, or of its General in this trade war, also have been questioned by developed coun-

106. Mario Osava, *Brazil Deals Another Blow to Farm Subsidies*, INTER PRESS SERV. NEWS AGENCY (Aug. 4, 2004), available at <http://www.ipsnews.net/interna.asp?idnews=24945>.

107. Padgett & Downie, *supra* note 60.

108. See, e.g., Hay, *supra* note 10.

109. *Brazil Summary*, *supra* note 7.

110. See Press Release, Office of the United States Trade Representative, Trade Talks Collapse Over Unwillingness of Some to Negotiate, USTR Says, available at <http://mumbai.usconsulate.gov/wwwwhashnews787.html> (Sept. 14, 2003).

111. See Cho, *supra* note 18, at 233 (citing Memorandum from the Office of U.S. Senator Chuck Grassley, Collapse of Trade Negotiations in Cancún (Sept. 14, 2003)).

112. *Brazil Summary*, *supra* note 7.

tries.¹¹³ “U.S. Trade Representative Zoellick [has] lashed out at advanced developing countries such as . . . Brazil . . . stressing that ‘large emerging market countries [who are] . . . competitive . . . should not expect more lenient terms . . . which should be the reserve of the poorest developing countries. ‘So that’s how we’re going to have to strike the balance,’ he said — ‘for those that are truly in need versus those that are competitive.’”¹¹⁴

Cynics also allege hypocrisy in Brazil’s aggressive condemnation of U.S. cotton subsidies. The chairman of the U.S. National Cotton Council noted that “it is interesting that while Brazil is alleging serious prejudice in the WTO, it is expected to increase cotton production in 2004 by 85 percent over its 2001 production. While U.S. production [is declining], Brazil and China are expected to increase production . . . , [and] the combined market share of Brazil and China is expected to climb by six percentage points to 34.5 percent in 2004 as compared to 2001.”¹¹⁵ This increase, the chairman noted, is almost twice the size of the entire annual cotton crop in West Africa, countries from which region joined Brazil in its WTO cotton complaint against the United States and which are unlikely to be able to compete against the more competitive Brazilian cotton exports.¹¹⁶ In his view, “[t]he rhetoric blaming the United States for oversupply and overproduction of cotton are simply and clearly inaccurate.”¹¹⁷ Even Brazil’s cotton farmers acknowledge that the country “is certainly one of the most competitive cotton-producing areas in the world.”¹¹⁸ They brag that the Brazilian State of Mato Grosso is “drawing farmers from all over [Brazil] in search of cheap land and low labor costs.”¹¹⁹

Brazil’s WTO cotton and sugar complaints raise another concern regarding Brazil’s methods. Although Brazil asserts that it “‘didn’t bring these cases to interfere with the WTO negotiations,’” critics charge that Brazil’s litigation strategy weakens the

113. Cf. Forrest Laws, *NCC Chairman Says Brazil’s WTO Economic Analysis Faulty*, SOUTHWEST FARM PRESS (July 7, 2004), available at <http://southwestfarmpress.com/news/070704anderson-speech/>.

114. *India, Brazil, South Africa Strengthen South-South Cooperation*, *supra* note 73.

115. Laws, *supra* note 113.

116. Cf. *id.*

117. *Id.*

118. Todd Benson, *Brazil’s Big Stake in Cotton Likely to Become Bigger*, N.Y. TIMES (June 29, 2004), available at <http://www.globalexchange.org/countries/brazil/2205.html>.

119. *Id.*

multilateral trade system.¹²⁰ Not only does litigation divert resources from the negotiating process, countries may stall negotiations if they perceive that they will be forced to “pay twice” on an issue.¹²¹ Litigation also is very public and can be fiercely acrimonious, souring relationships and strengthening a nation’s resolve on an issue. What Brazil gains in litigation it may lose economically or politically.

Even some of Brazil’s southern route allies privately have become skeptical that Brazil has the credentials to represent a developing world constituency. Brazil is the largest economy in Latin America and the eighth largest in the world.¹²² Agriculture accounts for 27% of Brazil’s GDP,¹²³ and the country is among the top five largest exporters of coffee, orange juice, cane sugar, beef, poultry, corn, soybeans, and soybean meal in the world.¹²⁴

Brazil also is a member of the Cairns Group, a coalition of seventeen agricultural exporting countries which accounts for one-third of the world’s agricultural exports.¹²⁵ These “efficient agricultural producers” seek to further liberalize agricultural by “advocating for improved agricultural market access across the board.”¹²⁶

This position, however, is not unanimous among Brazil’s allies in the G20 Plus.¹²⁷ Members with less competitive agricultural sectors see unfettered liberalization as a threat “and are demanding greater flexibility in the administration of [agricultural] support programs.”¹²⁸ Various groups of developing countries have advocated for the inclusion of strategic products and a special safeguard mechanism in the agriculture negotiations;

120. Cf. *WTO Rules U.S. Cotton Subsidies & EU Sugar Subsidies are Illegal – WTO Rules Against EU Sugar U.S. Cotton Support, Backing Brazil*, *supra* note 92.

121. Tim Josling, *Agricultural Trade Cases in the WTO: What Do They Mean for the Agricultural Negotiations?*, IPC Roundtable Discussion, available at <http://www.agri-trade.org/Brown%20Bag%20Series/josling.ppt> (last visited Nov. 1, 2004).

122. Agriculture and Agri-Food Canada, *Agri-Food Trade Policy*, available at http://www.agr.gc.ca/itpd-dpci/english/country/brazil_e.htm (last visited Oct. 31, 2004).

123. *Id.*

124. *Id.*

125. Cairns Group members include Australia, Argentina, Bolivia, Brazil, Canada, Chile, Colombia, Costa Rica, Guatemala, Indonesia, Malaysia, New Zealand, Paraguay, the Philippines, South Africa, Thailand, and Uruguay. For more information about the Cairns Group, visit its website at <http://www.cairnsgroup.org/introduction.html> (last visited Nov. 1, 2004).

126. Guy de Jonquieres, *Fresh Road Map to Help Find the Exit*, *FIN. TIMES*, Oct. 1, 2004, at 4, available at 2005 WL 9303336; *Brazil Summary*, *supra* note 7.

127. *Brazil Summary*, *supra* note 7.

128. *Id.*

others seek to preserve current preferential treatment.¹²⁹ Poorer countries that enjoy preferential access to rich nations' markets justifiably fear the intense competition that liberalization could bring.¹³⁰ In FTAA talks, for example, the "U.S. offer[ed to] grant[] different rates of reductions in trade barriers throughout the region, providing . . . [greater] access to the U.S. market for the smaller and poorer economies [as compared to access for] MERCOSUR [members]."¹³¹ Instead of supporting this position, Brazil argued that MERCOSUR was unfairly penalized by this approach.¹³² Some of these smaller and poorer countries might admit to feeling abandoned by Brazil on the Antarctic route.

Internal conflicts also exist within MERCOSUR, Brazil's power base. Brazil's cotton boom has caused friction with neighboring Argentina, where textile manufacturers complain that they are being flooded with "cheap," or inexpensive, cloth made from Brazilian cotton.¹³³ G-3 members too disagree on agricultural policies. India, for instance, still hopes to protect domestic agricultural industries, while fellow G-3 ally Brazil is pushing "to further liberalize trade in this area."¹³⁴ While it is naïve to assume that the so-called Third World will always speak with a unified voice, some poor developing countries feel betrayed and exploited by Brazil's position on agricultural trade issues.¹³⁵

Consider also the contention that Brazil, which has the eighth-largest economy in the world but ranks fourth worst in the gap between rich and poor, cannot act as a moral leader of the developing world.¹³⁶ Although Brazil is the eleventh wealthiest country on the planet, nearly 70% of Brazilians live in poverty, with 40% living on less than U.S.\$1 per day.¹³⁷ Ten million Brazilian citizens are chronically undernourished,¹³⁸ while "most of the [nation's] wealth is concentrated in a [very] few hands or leaves

129. Cho, *supra* note 18, at 236-37.

130. de Jonquieres, *supra* note 126.

131. Carranza, *supra* note 47, at 1051.

132. *Id.*

133. Benson, *supra* note 118.

134. Cho, *supra* note 18, at 236.

135. Cf. Briefing Paper, *Arrested Development? WTO July Framework Agreement Leaves Much To Be Done*, OXFAM INT. (Aug. 2004), available at http://www.oxfam.org.uk/what_we_do/issues/trade/bn_wtoframework.htm.

136. Hay, *supra* note 10; Marc Cooper & Tim Frasca, *Lula's Moment*, THE NATION (Mar. 10, 2003), available at <http://www.thenation.com/doc.mhtml?i=20030310&s=frasca>.

137. Hernandez, *supra* note 27.

138. Cooper & Frasca, *supra* note 136.

the country through multinational corporations.”¹³⁹

Brazil's President Lula was elected on promises to redress these social inequities.¹⁴⁰ Lula's election victory was viewed as a product of “the people's mobilization,”¹⁴¹ uniting peasants, the urban poor, workers, the middle class, and factions of the elite behind a plan to revive the economy by enacting massive land reform, by expanding domestic demand, and by stimulating national industries.¹⁴² On international trade, Lula stated: “Through our foreign trade . . . Brazil's foreign relations will aim at improving the living conditions of Brazilian men and women, at increasing income levels and generating dignified jobs. Trade negotiations are today of vital importance.”¹⁴³ However, “Brazil's leaders have yet to explain fully to Brazil's 180 million people how its rising global political influence will fix its 11% illiteracy rate, widespread poverty, crumbling roads, and stifling bureaucracy.”¹⁴⁴

Critics charge that these dismal social conditions, combined with the country's sophisticated and efficient sectoral production, sustain Brazil's agricultural strength.¹⁴⁵ Much of Brazil's agricultural production is dominated by foreign capital.¹⁴⁶ For example, Cargill Incorporated, the international marketer, processor, and distributor of agricultural, food, financial, and industrial products and services, is the fifth largest exporter of Brazilian coffee, handles 20% of the country's soybean exports, processes 25% of its coca, is the third largest orange juice producer in the country, and is its second largest seed company.¹⁴⁷ The powerful agribusiness also owns a significant volume of export terminal capacity in Brazil.¹⁴⁸

139. Hernandez, *supra* note 27.

140. Cristovam Buarque, *Brazil Lula's Empty Promises*, BRAZZIL (Sept. 2004), available at <http://www.brazzil.com/2004/html/articles/sep04/p106sep04.htm>.

141. *Brazil's Lula Caught Between the Nation and Free Trade*, EXEC. INTELLIGENCE REV. (Nov. 8, 2002), available at http://www.larouchepub.com/other/2002/2943lula_braz.html.

142. Walden Bello, *Brazil's New Era*, FRONTLINE (Nov. 2002), at <http://www.frontlineonnet.com/fl1923/stories/20021122000405800.htm>.

143. President Luiz Inácio Lula da Silva, A New Course for Brazil, Address to the Congress by the President of the Federative Republic of Brazil, at http://www.mre.gov.br/ingles/politica_externa/discursos/index.asp (Jan. 1, 2003).

144. Hay, *supra* note 10.

145. *Cancún: Another World Fights to be Born*, A WORLD TO WIN NEWS SERV. (Oct. 12, 2003), at <http://rwor.org/a/1215/awtwcancun.htm>.

146. *Id.*

147. Amit Thorat, *Rising Market Control of Transnational Agribusiness*, IDEAS (Dec. 1, 2003), available at http://www.networkideas.org/focus/dec2003/fo01_Market_Controll.htm.

148. *Id.*

This foreign capital has provided Brazil with some of the world's most modern agricultural facilities. However, laborers from the poorest regions in the country make these facilities work.¹⁴⁹ They are paid very low wages and are treated differently than are wagedworkers in more developed countries.¹⁵⁰ These conditions, activists contend, make it possible for Brazil to be a major agricultural exporter.¹⁵¹ Lula was elected to the presidency in 2002 promising massive land reform to ease these inequalities, yet these promises also appear to be casualties of his deliberate march to Antarctica.¹⁵²

For example, it was not without irony that the architect of Brazil's WTO litigation strategy is a wealthy Brazilian agribusinessman,¹⁵³ Agriculture Minister Roberto Rodrigues. Minister Rodrigues is credited with convincing a reluctant Brazilian Administration to take on the United States and the EU in the WTO.¹⁵⁴ Rodrigues, who comes from a prominent São Paulo farm-

149. *Cancún: Another World Fights to be Born*, *supra* note 145. For a discussion of these monopsony conditions in Latin America, see Jonathan B. Wight, *Does Free Trade Cause Hunger? Hidden Implications of the FTAA*, 2 RICH. J. GLOBAL L. & BUS. 167, 173-75 (2001).

150. *Cancun: Another World Fights to be Born*, *supra* note 145.

151. *Id.*

152. Natuza Nery & Andrew Hay, *The Farmer Behind Brazil's Big Farm Fight* REUTERS (Sept. 20, 2004), available at <http://www.truthabouttrade.org/article.asp?id=2544>. See also ANGUS WRIGHT & WENDY WOLFORD, *TO INHERIT THE EARTH: THE LANDLESS MOVEMENT AND THE STRUGGLE FOR A NEW BRAZIL* (2003). This book tells the story of Brazil's *Movimento dos Trabalhadores Rurais Sem-Terra* (the MST, or, in English, the Landless Workers Movement), which has been called "the most important and exciting popular movement in the world." Noam Chomsky, *Confronting the Empire*, ZNET (Feb. 1, 2003), at <http://www.zmag.org/content/showarticle.cfm?SectionID=40&ItemID=2938>. This group has secured rights to more than 20 million acres of unused farmland for millions of desperately poor, landless, jobless, and seemingly helpless men and women.

153. See Nery & Hay, *supra* note 152.

154. Pedro de Camargo Neto, who was Brazil's deputy agriculture minister at the time, also is recognized as advocating Brazil's WTO litigation strategy. In 2001, he began a campaign to sue the United States when he heard repeated complaints from soybean farmers about lower-priced American soybeans. A wealthy cattle rancher from the state of São Paulo in the middle of Brazil's farm belt with a master's degree in engineering from the Massachusetts Institute of Technology, "Mr. Camargo is not one of the dispossessed." He had been an adviser for Brazil during global trade negotiations in the Uruguay Round, and he remains involved in Brazil's legal actions, advising the private sector on the agricultural trade talks and acting as a consultant to Brazil's Commodities and Futures Exchange. Elizabeth Becker & Todd Benson, *Brazil's Road to Victory Over U.S. Cotton*, N.Y. TIMES (May 4, 2004), available at <http://thereitis.org/displayarticle251.html>. It is also enlightening that Brazilian cotton farmers raised the money to fund the WTO cotton litigation. They organized a cash-generating raffle of cattle, agricultural equipment, and cars to collect the money needed to begin the historic legal action against the United States. See Carlos

ing family, strongly disagreed with Lula on the President's plans to focus on family farming rather than agribusiness. Rodrigues¹⁵⁵ argued that, instead of devoting resources to land reform that would offer small plots to thousands of peasants, Brazil would be better served by fighting to remove domestic and international barriers to large-scale farmers, who already were "the world's top coffee, sugar and orange juice producers, the biggest beef exporters, and who were set to become the [number one] soy exporters."¹⁵⁶

Lula was convinced, and now Brazil's agribusiness exports are driving Brazil's fastest economic growth since 1996.¹⁵⁷ At home, Rodrigues' defense of agribusiness "may have dampened [Lula's] enthusiasm for agrarian reform and whet his appetite for trade battles."¹⁵⁸ "[B]ig farmers have never had it so good,"¹⁵⁹ and Brazil's first leftist, working-class president is better known for challenging First World nations over agricultural trade issues on the Antarctic route than for land reform efforts designed to assist Brazil's poor.

Lula's original leftist coalition of the Landless Workers Movement ("MST"),¹⁶⁰ labor unions, and some members of his *Partista Trabalhador* ("Worker's Party") have taken note of this stark disparity. While Brazil has become one of the largest food exporters in the world, nearly a third of the Brazilian population suffers food insecurity.¹⁶¹ Lula has a strong constituency, but it is a different one than that upon which he originally based his presidential platform. "[T]he left is now adrift"¹⁶² and accuses the President of

Castilho, *Brazen Brazil Picks Away at Agricultural Subsidies*, THE WORLD PAPER (May 2004), available at <http://www.worldpaper.com/2004/may/may1.html>.

155. Some claim that Rodrigues will stop at nothing to promote farming interests. The Pastoral Land Commission, a Catholic human rights group, accuses Rodrigues of destroying family farming. Some environmentalists also contend that he is doing too little to protect Brazil's vast savanna from agricultural encroachment. "He seems not to consider the savanna as an important ecosystem," said an environmental activist in Brazil who has met with Rodrigues in an effort to save some of the 30% of the tropical wilderness that remains. See Nery & Hay, *supra* note 152.

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. "MST" is the Portuguese acronym for "*Movimento dos Trabalhadores Rurais Sem-Terra*," or the Landless Workers Movement. See WRIGHT & WOLFORD, *supra* note 152.

161. Norman Madarasz, *Dissecting Brazil's Zero Hunger*, BRAZZIL (Sept. 2003), available at <http://www.brazzil.com/2003/html/news/articles/sep03/p104sep03.htm> (quoting Brazilian Minister of Food Safety, José Graziano da Silva).

162. Burke & Goble, *supra* note 99.

ignoring his election pledges for social reform.¹⁶³ While Brazil's international influence grows, domestic unrest threatens public support for government policies. Compromise on issues such as budget spending and fiscal policy have delayed the ambitious Zero Hunger¹⁶⁴ and land reform programs upon which Lula campaigned. After such little progress, many of Brazil's landless and poverty stricken are disillusioned by Brazil's aggressive march along the southern route.¹⁶⁵

V. CONCLUSION

When U.S. Trade Representative Robert Zoellick warned Brazil that it could "take the southern route to Antarctica" to sell its products,¹⁶⁶ he likely did not anticipate Brazil's emergence as a powerful voice in regional and global trade negotiations. Brazil accepted this challenge and declared war on the status quo of the world's dominant trading system. Heading firmly down the Antarctic route, Brazil skillfully enlisted allies and carefully constructed campaign strategies in its trade reform crusade. Despite its numerous critics, Brazil has persevered, and its stunning battlefield victories have been influential in creating a new geography of global agricultural trade.

163. Buarque, *supra* note 140.

164. When Lula was sworn in on January 1, 2003, he promised to focus his administration's attention on ending hunger in Brazil, appointing a new Minister for Food Safety to co-ordinate a "Zero Hunger (or *Fome Zero*, in Portuguese) Programme." President Lula stressed that "if, by the end of my mandate, every Brazilian has food to eat three times a day, I shall have fulfilled my mission in life." Embassy of Brazil, London, United Kingdom, *Zero Hunger Programme*, available at <http://www.brazil.org.uk/page.php?cid=1501> (last visited Nov. 2, 2004).

165. Nery & Hay, *supra* note 152. The MST also is angry that Lula abruptly reversed course and overturned the ban on planting genetically modified soybeans. In March 2005, Brazil's Congress passed a Biosafety Law that permits the planting of genetically-modified crops ("GMOs"). "Brazilian President Luiz Inácio Lula da Silva defied his environment minister, much of his party and his own campaign promises this week when he won legislation to allow the sale and planting of GMO plants[.] . . . Big farmers driving economic growth and biotechnology firms like Monsanto Co. supplying the seeds were seen as gaining from the controversial legislation . . . 'Brazil is just building up agribusiness[.]' said Gabriela Couto of Greenpeace's campaign against GMO crops." Andrew Hay, *Environmentalists Fear Brazil's Lifting of GMO Ban*, REUTERS (March 4, 2005), available at <http://www.reuters.co.uk/newsArticle.jhtml?type=worldNews&storyID=684076§ion=news&src=rss/uk/worldNews>. The MST and small Brazilian farmers believe that the move will bring them no benefit and will serve to further advantage multinationals such as Cargill and Monsanto, who will be able to collect large fees from the farmers every year for their use of the genetically engineered seeds. *Cancún: Another World Fights to be Born*, *supra* note 145.

166. McLaughlin, *supra* note 5.

Brazil's central challenge now is to strike a balance between taking a defiant and unyielding stance in pursuit of its interests and those of its southern route allies and jettisoning the firm ideological stance on which it has pursued its trade reform agenda.¹⁶⁷ Should it pugnaciously adopt a "won't do" negotiating position,¹⁶⁸ the United States and other developed countries most certainly will attempt to paint Brazil as a reckless international populist.¹⁶⁹ Conversely, should it appear too conciliatory, it risks alienating the many supporters who have come to rely on Brazil as a powerful spokesman for their interests.¹⁷⁰

Brazil also risks alienating its citizenry if it ignores pressing commitments at home while pursuing its aggressive Antarctic route campaign. To date, Brazilian President Lula has maintained domestic support by "talking left, governing right[,]""¹⁷¹ and the very fact of his election is symbolically compelling.¹⁷² One might question, however, whether his administration can continue to balance its ambitious domestic social reform agenda with its aspirations to alter the balance of power in the global system of trade.

Based upon its successful campaign thus far along the southern route, Brazil seems up to these challenges. As Lula has stated: "The U.S. thinks first and foremost about the U.S., so now it's up to the Brazilians to think more about ourselves," he told Time last year. "Foreign trade and relations depend on daring, wisdom and political will."¹⁷³ And, regardless of its ultimate win/loss record, Brazil's agricultural trade war¹⁷⁴ has made the Antarctic route a prominent landmark in the new geography of world trade.¹⁷⁵

167. *Brazil Summary*, *supra* note 7.

168. *See supra* text accompanying note 110.

169. Padgett & Downie, *supra* note 60.

170. *Brazil Summary*, *supra* note 7.

171. Summit of Americas Center, Florida International University, State of Democracy in the Americas Conference Series, *Brazil More Aggressive, But Outlook for Better Results Under Lula Still Cloudy Experts Conclude* (Mar. 4, 2004), at http://www.americasnet.net/news/brazil_conf/report.pdf.

172. Greider & Rapoza, *supra* note 6.

173. Padgett & Downie, *supra* note 60.

174. *Brazil Summary*, *supra* note 7.

175. *See* H.E. Mr. Luiz Inácio Lula da Silva, *supra* note 38.

