

BOOK NOTE

Law and Economics of Contingent Protection in International Trade. Edited by Kyle W. Bagwell, George A. Bermann, and Petros C. Mavroidis. New York: Cambridge University Press, 2010. Pp. 424, \$98.00 (hardcover).

Law and Economics of Contingent Protection in International Trade is the third volume in the series *Columbia Studies on WTO Law and Policy*. The twenty-five authors invited to contribute provide an overview of the regulatory framework of contingent protection in the World Trade Organization (WTO). The book's eleven chapters present a legal and economic analysis of subsidies and countervailing duties, antidumping, and safeguards.

The book begins with a basic introduction to the World Trade Organization's multilateral disciplines on subsidies related to international trade in goods and the unilateral measures taken to respond to these subsidies, countervailing duties (CVDs). In the first chapter, Jan Wouters and Dominic Coppens explain the historical and legal context of the Agreement on Subsidies and Countervailing Duties (SCM Agreement), and provide a legal analysis of its main provisions complete with relevant case law.

In the book's second chapter, Robert Howse criticizes the WTO decision to eliminate the category of nonactionable subsidies, subsidies against which no action can be taken by affected members, and argues for the current SCM Agreement to restore this category of protection. Through a case study in Chapter 3, Joseph Francois highlights the inability of the current legal framework to deal with unusual cases and offers insight from economic theory regarding how to better address these issues.

In examining the WTO rules and decisions concerning nonagricultural export subsidies in Chapter 4, Andrew Green and Michael Trebilcock attempt to determine why disputes in this area are so common. Green and Trebilcock explain the economic disadvantages of these export subsidies as well as the political economy justifications for their proliferation in current international trade. Although export subsidies are prohibited under the existing WTO framework, enforcement is inconsistent due to disagreements regarding the proper identification and definition of export subsidies and the appropriate level of penalty for their use in violation

of WTO policies. Editors Bagwell and Mavriodis present opposing views on whether, and to what extent, an absolute prohibition on export subsidies should exist in their short reaction, Chapter 4.1.

Next, Piet Jan Slot provides an examination of the WTO dispute-resolution process as seen in the high-profile *Boeing-Airbus* litigation. In Chapter 5, Slot suggests that Boeing, or one of its subsidiaries, might have fared better had it brought its complaint alleging the incompatible granting of state aid by European Community (EC) member states to Airbus before the EC Commission rather than seeking redress in the WTO system. Conversely, in his comment on Slot's chapter, Mark Wu exposes some of the inherent difficulties multinational corporations face in suits before the EC, notwithstanding the benefits of the EC's state-aid rules.

In 1994, WTO member states adopted the WTO Anti-Dumping Agreement. Terence P. Stewart and Amy S. Dwyer provide an overview of its provisions as well as their conclusions regarding the members' use of the WTO anti-dumping laws in Chapter 6. Commenting on these measures, David A. Gantz presents the political and practical rationale for engaging in dumping in Chapter 6.1, exposing the flaws in the WTO's regulatory framework and implementation process. In Chapter 6.2, Thomas J. Prusa offers similar support for dumping, criticizing the Anti-Dumping Agreement for lacking economic justification. Prusa notes that certain pricing and sales decisions, although grounded in basic economic theory, would be sanctionable nonetheless under the WTO anti-dumping laws. William E. Kovacic explains the role of antitrust statutes in Chapter 7, discussing the different treatment of price discrimination ("dumping") by antitrust law as opposed to trade law. While antitrust law encourages price competition, Kovacic describes the conflicting view of trade law, which condemns dumping and predatory pricing. In Chapter 8, authors Stefano Inama and Edwin Vermulst examine the rules of origin in anti-dumping law, focusing on their use in the system adopted by the European Union. Commenting on this chapter, Piet Eeckhout expresses his agreement with the articulated position of Inama and Vermulst: that the use of harmonized non-preferential origin rules in the context of anti-dumping proceedings remains desirable, but that to realistically achieve this goal, third-country anti-circumvention legislation must be established as well.

The Uruguay Round of trade negotiations brought a seemingly major step to constrain abuses in anti-dumping practice. Claudio Dordi explains in Chapter 9, however, that the WTO Appellate

Body has interpreted the sunset review rules in the WTO contract in such a way that this supposed restriction is more of a flexible test, permitting duties to remain in place long after the date set for their termination. Expanding upon this conclusion in his commentary Chapter 9.1, Thomas J. Prusa contends that the sunset review rules, which require anti-dumping orders to be terminated unless domestic investigative authorities show that injurious dumping would resume without such orders, can be easily manipulated. Prusa illuminates the discrepancy in these decisions through his discussion of sunset reviews in the United States.

The last section of the volume focuses on safeguards. In Chapter 10, Jasper M. Wauters provides an overview of the WTO Agreement on Safeguards, examines the conditions for imposing safeguard measures, and illustrates some specific issues relating to the application of such measures. Wauters also discusses the interpretation of the Agreement's provisions by WTO Panels and the Appellate Body, exposing the Agreement's shortcomings and the failure of these tribunals to cure the imperfections. Marco Bronckers favors selective safeguards, criticizing the arguments offered in support of a nondiscriminatory application of safeguard measures as not convincing within the framework of the WTO Agreement in Chapter 10.1. A third author commenting on this topic, Kamal Saggi, contends in Chapter 10.2 that the structure of the Agreement and its subsequent interpretation by the Appellate Body are lacking an underlying economic rationale.

The need for safeguards in a trade agreement is advocated by Meredith A. Crowley, presenting empirical and theoretical data on the use of safeguards in Chapter 11. Crowley then tests two hypotheses with this data, concluding that the inclusion of a safeguard clause in the WTO Agreement may have facilitated greater tariff reductions. Finally, the book concludes with Chapter 11.1, in which Jeffrey L. Dunoff discusses the three rationales advanced by the functionalist scholarship regarding the purpose of safeguards and discourages continued efforts to determine why safeguards are needed in trade agreements.

Because this volume contains very little, if any, explanation of complex foundational concepts, the intended audience is likely comprised of individuals familiar with basic economic principles and who possess an understanding of international trade.

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