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Marc BENITAH, The Law of Subsidies under the GATT/WTO System
 London, Kluwer Law International Ltd., 2001, 424p.

Country A engages in a practice that Country B considers to be subsidization. Subject to the rules of the GATT/WTO, Country B tries to respond to Country A's practice and make Country A stop. Subsidizing Country A seeks to make it as difficult as possible for affected Country B to defend itself. The legal techniques at subsidizing Country A's disposal to put obstacles in the way of affected Country B are what the book calls «attenuations». They attenuate, or weaken, the entitlements that Country B can use to defend itself. They include a range of steps, from invoking clear and undisputed provisions of the law to making far-fetched claims about what the law says or does not say. The law here is mainly the Agreement on Subsidies and Countervailing Measures and the GATT 1994, with frequent references to their precursors, such as the GATT 1947 and the Tokyo Round Subsidies Code. However, a large number of the issues presented also relate to the Uruguay Round Agreement on Agriculture (URAA) in effect from 1995.

The Table of Content, which by itself fills four pages, never mentions agriculture (it gets as close as «pasta» and «wine grapes»). Nevertheless, 31 of the 53 chapters refer to a situation involving agricultural products, either pre-1995 or under the URAA. Most of the issues under the URAA deal with export subsidization, but some domestic support issues also are discussed. Most of the URAA analysis is carried out with the Peace Clause (Article 13) still applying, unfortunately with only scant consideration of the situation arising after the expiration of the Peace Clause at the end of 2003.

The book essentially catalogues the legal techniques of attenuation – each chapter is devoted to one of the 53 techniques identified – and explains the technique by referring to its legal underpinnings, discussing a case where it was invoked, or interpreting the outcome of a case. For example, Chapter 1 explores explicit legal techniques for attenuating the entitlements granted to the Member allegedly affected by a subsidy, specifically what the book calls «effect-based norms». An example of such a norm is the requirement that affected Country B, in order to be able to impose countervailing duties, must establish that the effect of Country A's subsidization is to cause or threaten material injury. Chapter 1 is also where effect-based norms applying to agricultural export subsidies are examined, such as the requirement to stay within monetary and quantitative commitments. At the other end, Chapter 53 discusses the legal status of a counter-subsidy (with the remark that a counter-subsidy is as vulnerable as the subsidy it seeks to counteract).

It is particularly interesting to see how the book analyzes export subsidies and domestic support under the provisions of the URAA. The legal picture concerning export subsidies is found to be complex. The complexity arises from the interaction between the listing of some, but not all, export subsidies in the URAA (Article 9.1) and any listing of some products in a Member's Schedule of Commitments (Part IV, Section II). The attenuation of these provisions is said to take the form of effect-based norms. This means that the subsidization is not prohibited but it is subject to the obligation to avoid certain effects.

For example, a Member is permitted to provide a subsidy listed in Article 9.1 for a product listed in its Schedule. However, in terms of the effect-based norms, such subsidization must not have the effect of the Member exceeding its monetary and quantitative commitments on export subsidies. The entitlement of another Member to defend itself against the export subsidies in question is attenuated as long as the subsidization remains within the subsidizer's commitments.

Subsidies listed in Article 9.1 but granted on products not listed in the Schedule are found to be governed by a purely behavioural norm, *viz.* a Member shall not provide such subsidies. Although the book does bring up the argument that a breach of rules can have an adverse impact on other Members, the argument is relegated to the category of rebuttable presumptions and then dismissed. The book therefore does not make it clear what would constitute an attenuation of entitlements in this case.

Subsidies not listed in Article 9.1 are said to be governed by a norm entirely based on effect. The effect that must not result from such subsidization is circumvention of the export subsidy commitments. Thus, the attenuation of another Member's entitlements consists of not being able to defend itself against subsidies not listed in Article 9.1 as long as they do not result in circumvention of the subsidizer's commitments.

In domestic support in agriculture, the book identifies several techniques of attenuation. The *de minimis* technique, for example, is explained in the context of calculating the Current Total Aggregate Measurement of Support (Article 6.4 of the URAA). A Member can provide support up to a certain percentage of value of production without needing to include it in the calculation of support counting towards the Member's commitment (Part IV, Section I of the Schedule). Consequently, another Member's entitlement to defend itself against measures providing this *de minimis* support is attenuated.

Also on domestic support, the book brings up the Appellate Body ruling in the Korea – Beef case (December 2000), specifically the finding that the wording of Article 1 (a) (ii) of the URAA gives more priority to Annex 3 of the Agreement than to the « constituent data and methodology » of the Member's Schedule. The book does not explain what constitutes attenuation of the affected Members' entitlements in this case. The reader is left to conclude that somehow the affected Members were less able to defend themselves against Korea's support practices because Korea had to follow Annex 3 instead of the « constituent data and methodology » (of which there were none). In fact, the ruling meant that Korea had to use the particular years stipulated in Annex 3 instead of the years it preferred. Since this might or might not lead to Korea being shown to have breached its commitment, the case of the affected Members could possibly be strengthened, not necessarily weakened or attenuated.

The book has many small errors. Some are typographical: *e.g.*, Hufbauer more often spelt wrong than right, and incorrect paragraph reference in note 707. Some are terminological: *e.g.*, Aggregate Measurement of Support consistently called Aggregate Measure Support. Some are presentational: *e.g.*, the index points at some of the pages dealing with the peace clause but not to the key pages 17-18. Some are in factual detail: *e.g.*, incorrect statements that commitments (p.33) and *de minimis* exemptions (p.42) apply to measures instead of

applying to support. The contents nevertheless is solid and based on scholarship in a broad area.

While the book is aimed at readers trained in law, much of the contents helps the non-law person better understand the legal constraints the affected Country B faces in seeking shelter from the effects of Country A's subsidization. The catalogue-like presentation, without much assessment of what it all means in the aggregate, attenuates the effectiveness of communication of these insights. The book remains an important addition to the reading list of anyone interested not only in subsidy law in international trade but in the application of that subsidy law.

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