Does the World Trade Organization leave appropriate policy space for its members to pursue legitimate objectives, such as the economic development of developing countries, the conversion to a greener economy, or recovery in times of a global economic downturn?

This legal and normative analysis of the WTO rules on subsidies and countervailing measures sheds light on why governments resort to subsidization, and, by tracing the historical origins of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Agriculture, on why they have been willing gradually to confine their policy space. This sets the stage for a systematic and comprehensive legal analysis of both agreements, which integrates the vast amount of case law and proposals tabled in the Doha Round. A separate case study explores the complex rules on export credit support, and the book closes with an in-depth normative assessment of the WTO rules on subsidies and countervailing measures.

Dominic Coppens is an associate at Sidley Austin LLP’s Geneva office, where he is a member of the firm’s International Trade and Arbitration group. He advises governments and private stakeholders on international trade matters, with a focus on dispute settlement under the auspices of the World Trade Organization. He is also an Associate Fellow of the Leuven Centre for Global Governance Studies at the University of Leuven, Belgium.
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WTO Disciplines on Subsidies and Countervailing Measures: Balancing Policy Space and Legal Constraints
Dominic Coppens
WTO DISCIPLINES ON SUBSIDIES AND COUNTERVAILING MEASURES

Balancing Policy Space and Legal Constraints

DOMINIC COPPENS
To Lucia, Sybille, and Isaac
There is a crack, a crack in everything
That’s how the light gets in
LEONARD COHEN
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Dominic Coppens
Somewhere between Geneva and Brussels

1 Obviously, the views expressed in this book do not represent the views of Sidley Austin LLP or its clients.
FOREWORD

Dominic Coppens can be credited with a unique accomplishment: he has produced the first very comprehensive discussion of the Subsidies and Countervailing Measures (SCM) Agreement from a law and economics perspective. This is an awesome task that for various reasons should not be underestimated.

First, the agreement is far from being an economist’s dream. Indeed, a number of papers have questioned the use of various terms (‘price suppression’, ‘price depression’, ‘price undercutting’) to describe more or less the same phenomenon (the price effects of subsidization).

Second, lumping all subsidies under the same heading is also problematic, since subsidies, on occasion, might even be the first best response to a market distortion. Some economists have gone so far as to ask whether it makes sense to outlaw some subsidies (an instrument that expands trade) when instruments that contract trade (tariffs) are tolerated and negotiated. In this vein, the question whether outlawing subsidies might provide trading partners with less of an incentive to commit on the tariff front has also been discussed in literature.

On the other hand, case law has provided analysts with many headaches. Key areas such as the causality requirement, the issue of de facto specificity, and many others have not been resolved.

And then there are wider policy issues that are back in the discussion, even though more so among academics for the time being. Chief among them are the issue of currency manipulations and the question whether there would be an inquiry into the intent to subsidize, whether, for example, we should reinstate the expired Article 8 of the SCM Agreement, and exonerate ‘green’ subsidies from liability. Similar discussions slowly find their way to the negotiating table as acrimony (especially regarding currency manipulations) is growing at a steady pace.

All this is masterfully exposed in this remarkable book that Dominic Coppens has put together. Confronted with this formidable task he...
managed to produce a volume of rare clarity and precision. I have found it very useful myself and have included it in the list of compulsory readings for my students. I am convinced that many other academics will soon do the same.

This is of course the first major work by the author. In that it is both a blessing and a curse: a blessing because he starts from a very high standard, and a curse because all his subsequent work will be measured against the standard he set for himself. There are few people who can live up to high expectations but I have every reason to believe that Dominic Coppens belongs to this exclusive club.

Petros C. Mavroidis
European University Institute (Florence)
and University of Neuchâtel
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<td>Brazil–Aircraft</td>
<td>Recourse to Arbitration by Brazil under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement, WT/DS46/ARB, 28 August 2000.</td>
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<td>Canada – Aircraft Credits and Guarantees (Article 22.6 – Canada)</td>
<td>Decision by the Arbitrator, Canada – Export Credits and Loan Guarantees for Regional Aircraft – Recourse to Arbitration by Canada under Article 22.6 of the DSU and Article 4.11 of the SCM Agreement, circulated 17 February 2003.</td>
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<td>Country</td>
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