CHAPTER 20

The WTO Dispute Settlement System and Renewable Energy Subsidies: The Case of Feed-in Tariffs*

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1 Introduction

Historically, government subsidization began to be frequently and systematically adopted during the mercantilist period from the XVI and the XVII century, although in some countries it goes back even longer.¹ This period was

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¹ For a more detailed historical analysis and background on subsidies, see John H. Jackson, World Trade and the Law of GATT (Bobbs-Merrill Co., 1969); Ennio Triggiani, Gli Aiuti Statali...
characterized by the introduction of new production and commercialization methods. The merchant class was vested with great power, and often used such power to provide political institutions with suggestions and requests. Indeed, political support was a fundamental element of companies’ survival and growth because states had the power to affect the market and promote the competitiveness of national companies. A broad array of strategies and measures could lead to this result—including the adoption of discriminatory tax regulations and quotas against foreign products and companies in favor of domestic industries. In Europe, mercantilism developed at a time when the economy was in transition, after centralized nation-states successfully replaced the previous feudal system. Moreover, technological innovation in the transportation sector—and in particular in shipping—together with increasing urbanization, led to a rapid and exponential growth in international trade.

The function of mercantilism was twofold: on the one hand, it focused on how international trade could bend to serve the interests of nation-states, while on the other it explored ways for national governments to contribute to domestic companies’ trade and business development. Those were the years that saw the adoption of modern accounting. The latter allowed precise and constant monitoring of trade inflows and outflows, creating the necessity of maintaining a positive trade balance, which could be achieved by ensuring that exports were higher than imports. This was possible thanks to the introduction of new domestic products that could effectively replace traditionally imported ones. During the liberalist period—characterized by a laissez-faire economic policy—public subsidies were set aside, while they revived at the end of the xix century when protectionism enjoyed a new vogue. Since then, subsidies have been used by governments both to promote national economic, social, and political policy as well as to correct market distortions. It is generally recognized that subsidies often produce harmful effects on free trade and production rather than equitable results, and international trade law has taken into account all these concerns in drafting specific rules on subsidies. In this contribution, we are going to draw the attention on the effects of subsidies, distinguishing subsidies which are necessary for desirable and acceptable purposes from those that are nothing but disguised protectionist measures and that might trigger international trade remedies. In particular, this evaluation will be applied to renewable energy subsidies. Governmental

Alle Imprese Nel Diritto Internazionale e Comunitario 1–41 (Cacucci Editori, 1993); Paolo Picone & Aldo Ligustro, Diritto dell'Organizzazione Mondiale del Commercio 229 (Cedam, 2002).