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# The protection of EU companies from international distortions of competition

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# Plan

- Public “subsidies” as key topic
- Policy claims: international distortions and competitiveness
- What do the current laws say?
- EU takes action
- Initial assessment

# Public subsidies as key topic

- International distortions caused by subsidies
- Subsidies are everywhere
  - Overlapping economic crises
  - Need for stimulating/supporting recovery and meeting defining challenges (climate change and green economy; digital transition)
- Re-emergence of State action and industrial policy (narrative or reality? See [GTA](#))

# Examples of subsidies

- CN Subsidies to green energy industry – dramatic impact
  - “[China on course to hit wind and solar power target five years ahead of time](#)”, *The Guardian*, 29 June 2023
- CN Subsidised FDI! ‘[Belt and Road](#) Initiative’ => cross-border subsidies
- US Inflation Reduction Act (“IRA”) = offers companies billions of dollars, largely through tax credits, to boost investment in new and nascent clean energy technologies. Companies are rewarded for reorganising supply chains to be located either in the US or among allies and partners

# New forms of subsidies

- Traditional scenario = Country A supports companies in its jurisdiction
- Subsidies granted by a third country to a country/beneficiary outside its territory (so-called “**transnational subsidies**”)
  - Recent EU CVD cases concerning China’s entering into agreements with other countries to set up “Special Economic Zones” with the latter, and providing subsidies to companies within these SEZ
  - General Court confirmed EC correct
- Subsidies granted by a third country to companies to facilitates their acquisitions in another country (so called “**M&A or investment subsidies**”). See Hufbauer, Moll and Rubini (2008)
- Subsidies granted to companies operating abroad (“**Foreign subsidies**”)
- First case? See [Belgian club Virton complaint to the Commission](#) (May 2023)

# Policy claims

## 1. Lack of level playing field

- Foreign subsidies/distortions (China; US - IRA)
- No effective global rule-book

## 2. EU laws are strict

- Burden for EU companies/internal market
- Business Europe; Franco-German Industrial Policy manifesto
- *Devil advocate:*
  - “Beware of competitiveness claims!”
  - “Is EU State aid law really so strict?”

# What do the current laws say?

- Current WTO subsidy laws are relatively weak (re traditional subsidies)
- Are ‘**transnational**’ or ‘**investment**’ or ‘**foreign** subsidies’ regulated?
- EU State aid law only applies to Member States’ action
- EU trade remedies (CVDs) only apply in an import scenario (but difficulties with ‘transnational subsidies’; BUT see General Court!)
- EU investment screening has a specific ‘security’ focus (not distortions of competition)
- Uncertain whether EU Merger Regulation can take into account of subsidies
  - Subsidies to **merging entities** can be considered (*RJB Mining; Scottish Power/Iberdrola; Boeing-MDD*)
  - Unclear whether impact of subsidies on **competitors** can be considered (“significant impediment of competition”; “market position of the undertakings concerned and their economic and financial power”). *Siemens – Alstom merger affaire* (2018)
- WTO subsidy rules are **not** likely to apply to “transnational” subsidies (“within the territory”, “jurisdiction”)
- Good summary? See [EU White Paper](#) and [Impact Assessment](#)

# EU action

- EU “**Foreign Subsidies**” regulation = remedies for “subsidies” granted by non-EU countries that produce impact on EU internal market (beyond trade to investment and competition)
- EU Trade remedies for “**transnational subsidies**” = countervailing support given by country A to enterprises in country B (recently confirmed by EU General Court!)
- EU [Temporary Crisis and Transition State aid Framework](#) (“**TCTF**”) = loosening of EU State aid disciplines aimed at boosting and retaining clean tech investments in Europe (“matching aid” to avoid relocation)
- EU Carbon Border Adjustment Mechanism (“**CBAM**”) = imposing EU carbon price to imports (lower carbon price as subsidy?)



# Initial assessment

- **EU leadership** but, by nature, unilateral action may raise **frictions**
- **Keep it simple** and **in line with WTO law** (i.e. stick to the basics)
- **Substantiate** your claims (beware of “Open Strategic Autonomy”)
- Important **clarifications** necessary (guidelines)
- **Responsiveness** of “old law” to new challenges is not unlimited

# Selected bibliography

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