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| From: | General Secretariat of the Council |
| To: | Working Party on Competition |
| Subject: | Proposal for a Regulation on Foreign Subsidies distorting the Internal Market : Impact Assessment - presentation by the Commission |

Delegations will find in annex a presentation given by the European Commission during the Working Party meeting on Competition on 18 June : Agenda item 2.



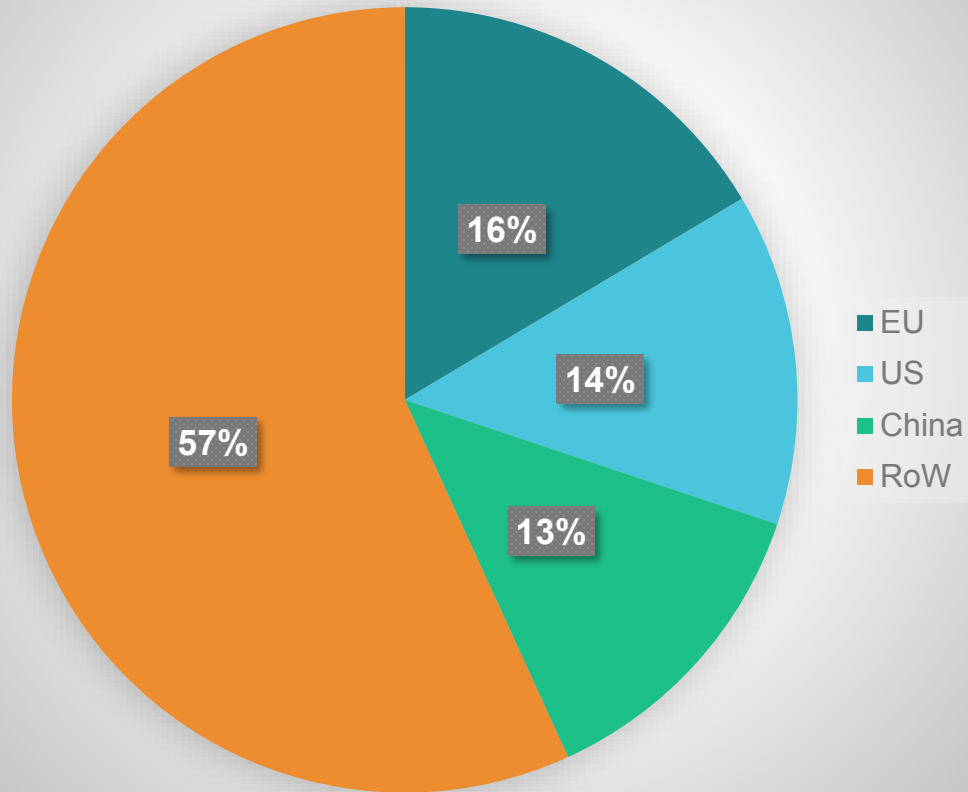
Impact Assessment

Proposal for a Regulation on foreign subsidies distorting the internal market

*Competition Council Working Party
Brussels, 18 June 2021*

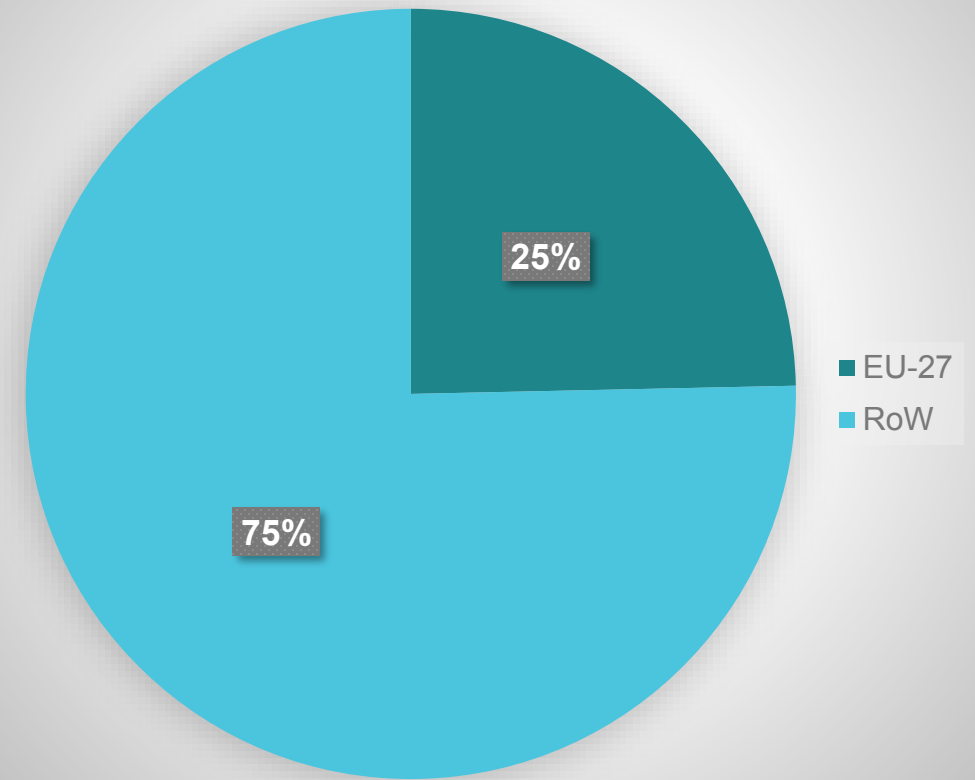
Introduction

Global trade in goods and services (EUR 20.7 trillion). Source: European Commission



Trade accounts for 35% of the EU's GDP

Global inward of stocks (USD 36,5 trillion). Source: UNCTAD



100,000 foreign companies in the EU

Problem definition | problem tree

Drivers

Regulatory gap

Insufficient transparency

Problems

Distortions caused by foreign subsidies

Facilitation of acquisitions

Distortion of public procurement procedures

Other market distortions

Consequences

Crowding-out competitors and limiting their growth by overpaying for acquisitions/ investments

Unfair access to cutting-edge technologies

Crowding out competitors through subsidised bids

Data sources

Quantitative data

- Trade and investment data (e.g. Joint Research Centre)
- Subsidies data (e.g. Global Trade Alert)
- Subsidies' notifications (WTO)

Studies / reports

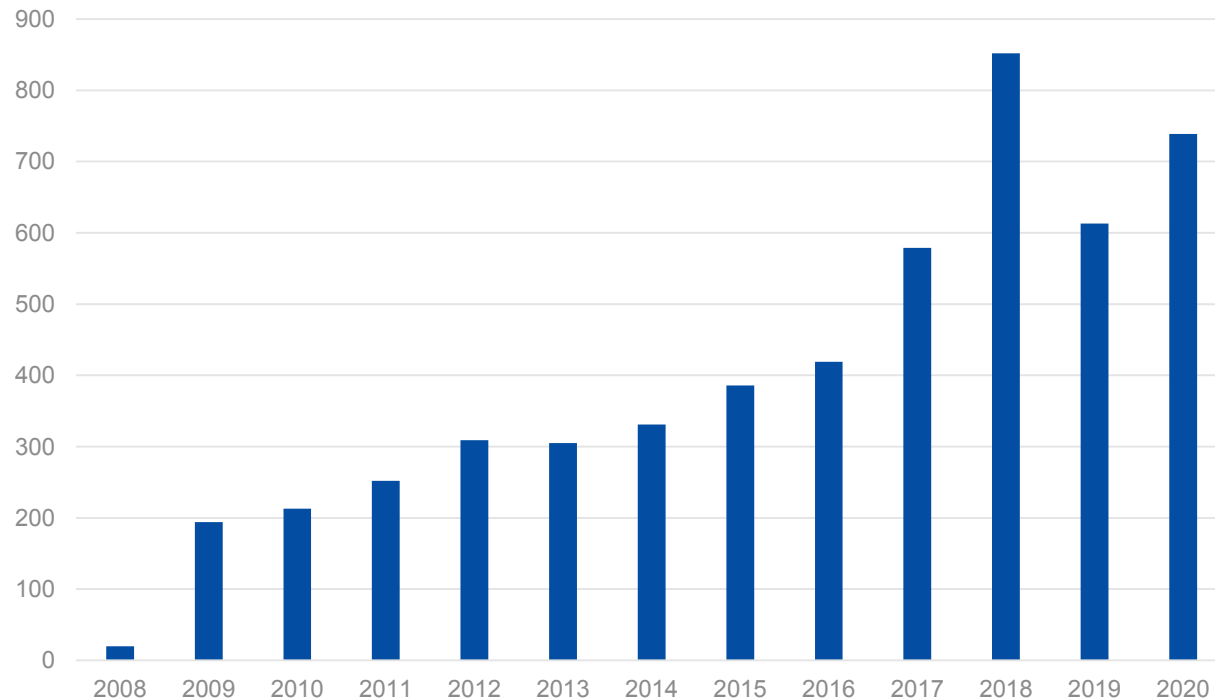
- OECD (e.g. semiconductors, aluminium, steel)
- European Court of Auditors
- German Monopolies' Commission
- European Commission (DG TRADE)
- Academia, etc

Individual case studies: 14

Problem definition | Subsidies | Volume and duration

Number of new subsidy measures (worldwide) per year

Source: Global Trade Alert



Increased risk of distortive subsidies

- Based on experience from the global financial crisis 2008/2009, subsidy measures tend to have a long life
- Around 33% of trade distorting measures (incl. subsidies) introduced in 2009 were still in place by 2020
- The global fiscal stimulus packages provided in 2020 have been more than double compared to the fiscal response to the 2008/2009 crisis

Problem definition | Subsidies| EU presence

Foreign acquisitions of European companies.

| Equity share | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020* |
|--------------|------|------|------|------|------|------|------|-------|
| >10% | 2897 | 3507 | 3551 | 3476 | 3438 | 3751 | 3370 | 1906 |
| >25% | 2735 | 3319 | 3421 | 3327 | 3272 | 3630 | 3267 | 1837 |
| >30% | 2727 | 3301 | 3405 | 3314 | 3255 | 3613 | 3254 | 1830 |
| >40% | 2694 | 3267 | 3384 | 3286 | 3232 | 3586 | 3231 | 1823 |
| >50% | 2677 | 3234 | 3343 | 3263 | 3200 | 3562 | 3203 | 1817 |

(*): Data for 2020 not yet complete

Case studies (14)

- covering acquisitions, public procurement bids and other market situations
- Several 3rd countries
- Several economic sectors

Public procurement

- 14% of the EU GDP or EUR 2.1 trillion
- 5% of the winning bids in contracts above EUR 250m were foreign companies

Problem definition | Distortions | Examples

Both foreign subsidies and State aid have the same distortive potential but EU State Aid control minimises it

Acquisitions

- Outbidding crowds out potential acquirers
- preventing external company growth
- access to technology
- Shifting production facilities

Public procurement

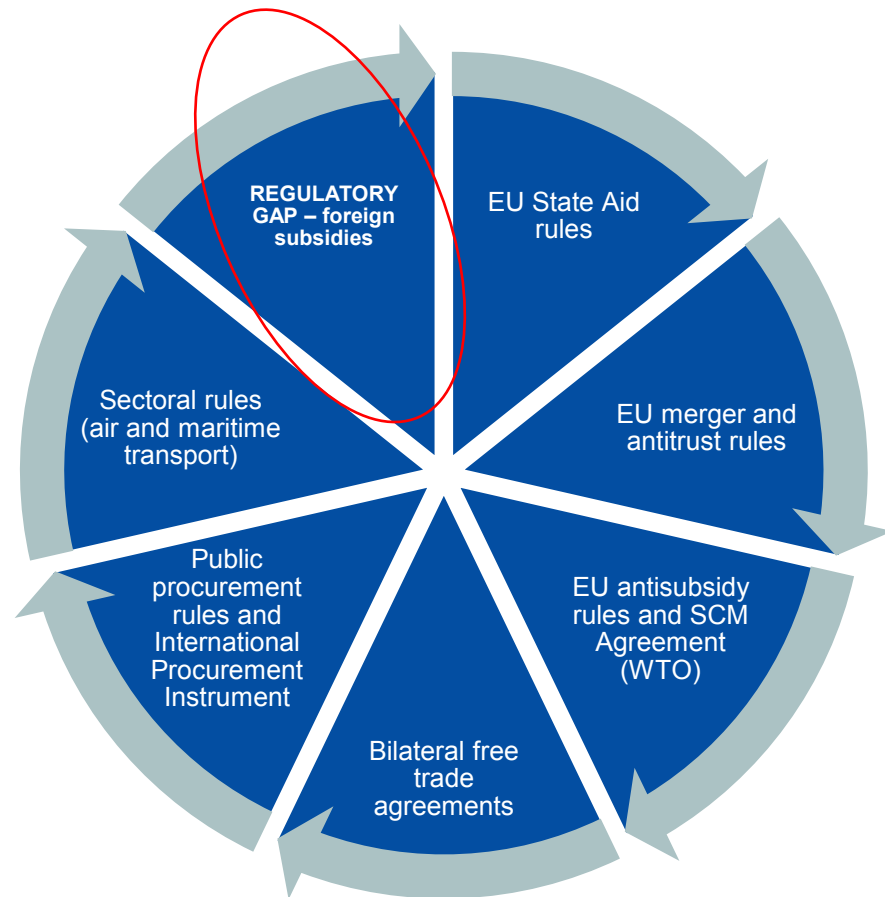
- Underbidding crowds out competing bids
- Strategic bidding to control assets
- Distorting price signals

Other situations

- Distorting private tenders
- Delocalisation
- Distorting price signals in production or provision of services

Problem definition | Drivers

Regulatory gap



Insufficient transparency

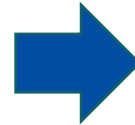
Existing reporting obligations on subsidies are insufficient:

- Latest comprehensive WTO report on subsidies is from 2006; acknowledges scarce data, also difficult to compare across sectors and countries
- WTO data only include schemes, not individual grants outside schemes
- By October 2020, 83 out of 164 WTO members have not yet made their full notification for 2019, 68 have not notified for 2017 and 58 have not notified for 2015

Objectives

Objectives

- General objective: Restore the level playing field
- Specific 1: Identify the most distortive subsidies
- Specific 2: Remove the distortions caused by foreign subsidies



Problem/drivers

- Problem: Foreign subsidies distort the internal market
- Main driver: Regulatory gap
- Secondary driver: Insufficient transparency

Why should the EU act?

Legal basis and necessity for EU action

- Art. 207 (commercial policy),
 - mentions explicitly subsidies and foreign direct investments
 - exclusive competence
- Article 114 (approximation EU law):
 - In view of absence of rules in MSs
 - shared competence to legislate

Added value EU action

- Similar to EU State Aid and Trade Defence
- Uniform development and application of rules

Policy options (1) | Overview

Option 1:
Do nothing

Option 2:
Issue guidance

Option 3:
Change
existing EU
rules

Option 4:
Develop new
legislation

Upfront insufficient:

- EU antitrust Regulation
- EU antitrust rules
- EU Foreign Direct Investment Screening Regulation

Analysed in detail:

- State aid provisions
- EU Merger Control Regulation
- Public Procurement Directives

Policy options (2) | Option 4 in detail

| Design parameters | Choices (sub-options) for developing new legislation (option 4) | | | |
|---------------------------|---|-------------------------------------|---|---------------------------------------|
| a. Competence level | a1) Commission only | | a2) Shared enforcement by Commission and MS | |
| b. Investigative approach | b1) Ex-officio | b2) Notification with no thresholds | b3) Notification with moderate thresholds | b4) Notification with high thresholds |
| c. Distortion threshold | c1) EUR 200.000 | | c2) EUR 5 million | |
| d. Assessment criteria | Legal test + indicators + categories of most distortive subsidies | | | |
| e. Balancing test | e1) No balancing test | | e2) Balancing test | |
| f. Redressive measures | Behavioural + structural + repayment | | | |

Impacts of the policy options

- Impacts of the choices within option 4 (new legislation) analysed in detail for each problem
- Main impacts are on admin burden
 - on enforcer (public authorities) and
 - on companies
 - Admin burden noted as major concern by stakeholders in consultations
- Best choices within option 4 to establish policy packages for each problem
 - Comparison of such policy packages

Comparing packages: Problem 1 (acquisitions)

- Policy package 1:
 - Ex-officio tool with shared enforcement and low threshold for unlikely distortive subsidies
- Policy package 2:
 - Notification of large acquisitions; exclusive Commission enforcement and high threshold for unlikely distortive subsidies
- Policy package 3:
 - Same as 2 but with an additional ex-officio tool for acquisitions below notification threshold; exclusive Commission enforcement

➤ Best rating for policy package 3

Comparing packages: Problem 2 (public procurement)

- Policy package 1:
 - ex-officio tool with shared enforcement
 - Policy package 2:
 - Notification for specific PP with exclusive Commission enforcement
 - Policy package 3:
 - Same as 2, but with an additional ex-officio tool for PP below notification threshold with exclusive Commission enforcement
- Best rating for policy package 3

Comparing packages: Problem 3 (other situations)

- Policy package 1:
 - Ex-officio tool with shared enforcement and low threshold for unlikely distortive subsidies
 - Policy package 2:
 - Ex-officio tool with exclusive enforcement and high threshold for unlikely distortive subsidies
- Best rating for policy package 2 (focused investigative tool)

The preferred option (1) | Summary

- One preferred package for each problem:
 - For large acquisitions → notification procedure with high threshold
 - For large public procurement procedures → notification procedure with high threshold
 - For all other market distortions; and acquisitions and public procurement cases below the notification threshold → ex officio
 - Commission as sole enforcer and distortion threshold at EUR 5m
- Stakeholder's feedback accounted for, in particular on administrative burden (thresholds, procedures) and enforcement competence.

The preferred option (2) | Benefits and costs

- Benefit: Improved level playing
- Direct costs
 - Notification of acquisitions
 - Cases/ Companies: ~ 30 / year resulting in cost of EUR 5,000 – 500,000.
 - Notification of public procurement.
 - Cases: ~ 36/year. Consumer: Risk of higher prices in the short term
 - General ex officio tool
 - Cases: ~ 30-45/year.

Thank you



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