

The International Dimension of EU State Aid Control

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Overview

- EU State aid rules in the multilateral context
 - Interaction and comparison with WTO rules
- EU State aid rules in the bilateral context
 - Free Trade Agreements versus multilateral rules

EU State aid in the multilateral context

- EU State aid control regime is part of wider transnational regimes – notably WTO rules that apply to subsidies
- Support measures of EU Member States are subject to EU State aid rules and WTO rules
 - WTO law binding on Member States of EU (Article 216(2) TFEU)
- Support measures by EU itself are covered by WTO rules
 - WTO agreements binding on EU organs (Article 216(2) TFEU)

WTO subsidy regime

- GATT 1947 and GATT 1979 established a basic discipline on subsidies
 - Subsidies Code – not all GATT parties adhered to it
 - Articles VI and XVI
- GATT 1994 (Uruguay Round) established the Agreement on Subsidies and Countervailing Measures (SCM)
 - Applies to all WTO members
 - Definition of subsidies
 - Two clear broad sets of rules

Definition of subsidy/State aid:

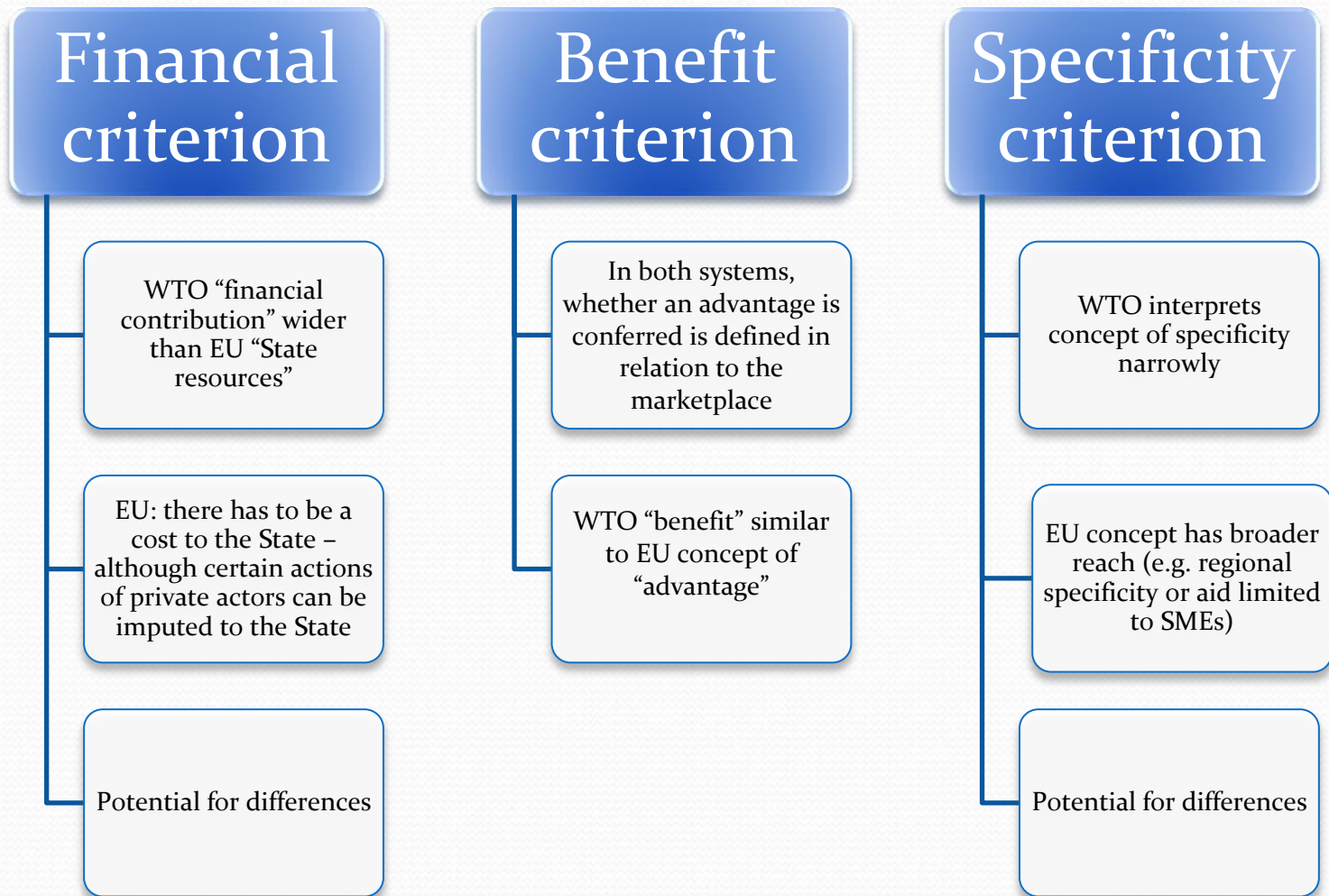
WTO:

- (i) a financial contribution by the government / public body
- (ii) confers a benefit upon its recipients
- (iii) is specific to a company, an industry, or a group of industries

EU:

- (i) granted through State resources
- (ii) provides an advantage to an undertaking
- (iii) selective
- (iv) potentially distorts competition and has an effect on trade

Assessing subsidies in WTO and EU



The WTO SCM is only applicable to subsidies in goods, not services

Types of subsidies



WTO traffic light system

Prohibited
Article 3
SCM

- Export subsidies
 - Import substitution subsidies
- Defined on the basis of their “nature”

Actionable
Articles 5 +
6 SCM

- Subsidies that cause adverse effects on WTO members
- Defined on the basis of their “effects”

Non-actionable
Article 8
SCM

- Similar to State Aid exception system (Article 107(2) TFEU)
- Expired in 2000

- WTO rules do not prohibit all subsidies
- Article 107(1) TFEU prohibits all State aid in principle
- But Articles 107(2) and (3) establish exceptions – similar to amber and green WTO categories

Control procedures:

WTO

- No ex ante control
- No exceptions to rules (no “WTO compatible subsidies”)
- 2 sets of rules:
- (i) Track 1 – Countervailing duties on prohibited and actionable subsidies if subsidy hurts domestic industry
 - Remedy = neutralise effect of subsidy on WTO member’s market through duties
- (ii) Track 2 – Dispute settlement for prohibited subsidies (no need to show adverse effect) and actionable subsidies (need to show adverse effect on domestic industry)
 - Remedy = withdrawal of subsidy or remove adverse effects

EU

- Ex ante assessment
- Exemption if covered by Block Exemption Regulation
- Notification procedure
- Commission applies balancing test when State aid not covered by Block Exemption Regulation
- Based on effect of the measure not the form
- Commission can authorise State aid
- Recovery of illegal State Aid by Commission on own initiative or following complaint
 - Remedy: retro-active recovery of aid

Notification and transparency procedures

WTO:

- Annual notification of subsidy under Article 25 SCM
- Sufficiently specific to enable other WTO members to measure trade effects
- No specific requirement to notify subsidy before it is granted
- Reviewed in WTO Subsidies Committee
- Poor compliance record

EU:

- Strong transparency measures introduced under Modernisation programme
- Member States to make public granting of un-notified aid if it exceeds threshold and set up website with details of beneficiary, amount and objective of aid
- Gives greater capacity to other Member States and companies to monitor compliance

EU-WTO regimes compared

- EU and WTO rules have common elements but differ in approach
 - Both aim at reduction of State aid/subsidies because of distortive effect on competition
 - EU law prohibits large number of State aids unless compatible under Article 107(2) and (3)
 - WTO prohibits export subsidies but allows countervailing measures against large range of other subsidies
- WTO law more limited in scope and enforcement?
 - Explained by different functions of EU State aid and WTO rules

EU State aid policy in a bilateral context

- Potential for regulation of subsidies beyond existing WTO rules through bilateral trade agreements?
 - Some bilateral agreements between EU and third countries mirror EU State aid provisions :
 - For example: Albania, Croatia, Switzerland, Turkey, Israel, Jordan, Tunisia, Egypt, South Africa
 - Others, e.g. EU-Singapore Free Trade Agreement (FTA) and EU-Korea FTA have chapters on competition and subsidies
 - Covers actionable subsidies and promotes transparency
 - EU-Singapore FTA subsidy provisions set a benchmark for other FTA negotiations
- Scope for advocacy of State aid control through bilateral agreements
 - Opportunity to test them

Concluding remarks

- Emphasis by EU on provisions and mechanisms to provide for effective control of State aid
 - Within EU and with third countries
- Different approach of WTO and EU
 - WTO deals with damage repair or remedies
 - EU allows for smoother intervention, promotes transparency and a more effects-based approach to steer Member States away from inefficient aid

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