

Bungenberg

International Subsidies

A Handbook



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A Handbook

edited by

Marc Bungenberg

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Foreword

In recent years, a profound paradigm shift has taken place in economic and trade policy: subsidies have become an indispensable part of the global economic order. Once regarded primarily as distortive state interventions, they are now increasingly viewed as strategic instruments of economic governance in times of arguing the political concept of economic security and strategic autonomy as an overarching objective. Subsidies are meant to foster innovation, strengthen industrial capacities, and thus safeguard economic sovereignty. Not only since the entry into force of the Inflation Reduction Act (IRA) in the United States in 2022, and the ensuing European responses, it has become evident that public financial support plays a central role in the geopolitical and ecological competition of our time. The debate on how Europe should position itself in this competition of systems has also shown that subsidies are not merely an economic policy issue, but one that touches upon the very foundations of Europe's internal market, its competition order, and the broader framework of global trade governance.

These developments are increasingly reflected both in legal scholarship and in policy practice. The growing interconnection between national, regional, and global subsidy regimes highlights the need for a systematic and comparative examination of subsidies law. The present handbook takes up this challenge. Originally conceived in the context of work on a commentary on European State aid law, it quickly became apparent that subsidies are gaining importance far beyond the Union's legal framework – within national support schemes as well as in emerging international and transnational regimes. This recognition provided the impetus to dedicate a separate handbook to an exploration of subsidy systems across different legal levels – national, regional, and universal.

This handbook brings together contributions from distinguished scholars and practitioners across jurisdictions. Their analyses illuminate the phenomenon of subsidies from multiple perspectives – ranging from the WTO framework and the European Union's State aid control to domestic subsidy regimes and the evolving field of strategic industrial policy. Taken together, these chapters depict a complex and rapidly changing area of law: one that is shifting from a traditional competition-based discipline toward an emerging industrial policy law that seeks to reconcile legality, efficiency, and strategic purpose on a global scale.

My sincere gratitude goes to all contributors – not only for their excellent chapters but also for their patience and commitment throughout the long process of preparing this handbook. I am equally grateful to Dr. Stefan Schelhaas of my chair and Dr. Matthias Knopik of Nomos Verlag for their unfailing support, editorial care, and professionalism, without which this publication would not have been possible. My thanks also extend to the members of my research team, in particular Dr. Romy Backenstraß and Xenia Astapenka, whose assistance and engagement have greatly contributed to the successful completion of this handbook.

It is my hope that this volume will contribute – at least a little bit – to a deeper understanding of subsidies law at the various legal levels and in different regions of the world – against the background of diverse institutional settings, political traditions, and economic philosophies. As always, I warmly welcome any comments or suggestions from readers (bungenberg@europainstitut.de).

Marc Bungenberg

Saarbrücken, November 2025

Contents

Foreword	V
Authors	IX
Literature	XVII
List of Abbreviations	XXI

Introduction	1
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CHAPTER 1: INTERNATIONAL AND EUROPEAN SUBSIDIES LAW

§ 1	WTO Subsidy Law	19
§ 2	Filling the Gaps: PTAs and State Interventions	43
§ 3	Anti-Subsidy Law, Countervailing Measures and China's Accession Protocol to the WTO	59
§ 4	EU State Aid Law	75
§ 5	EU Aid Law	168
§ 6	EEA State aid law	179
§ 7	NAFTA and USMCA	188
§ 8	Mercosur Subsidies Law	199
§ 9	ASEAN Subsidies Law	212
§ 10	RCEP Subsidies Law	227
§ 11	AFCFTA Subsidies Law	234

CHAPTER 2: EU FOREIGN TRADE LAW

§ 12	Anti-Subsidy Law of the European Union	243
------	--	-----

Foreign Subsidies Regulation

§ 13	The Foreign Subsidies Regulation: The why and the what of the EU's latest Push for a Level Playing field	273
§ 14	General Provisions: Scope of Application, Concept of Subsidy, Theory of Harm, Commitments and Redressive Measures	298
§ 15	The <i>Ex Officio</i> Tool	332
§ 16	Concentrations	358
§ 17	Public Procurement Procedures	387
§ 18	Common Procedural Provisions (Article 34-43 Regulation (EU) 2022/2560)	420
§ 19	Relationship of the Foreign Subsidies Regulation to other rules	437
§ 20	WTO Compatibility	455
§ 21	Between Scylla and Charybdis: the Tension between European Union Law and International Investment Protection Treaties	469

Subsidy relevant Regulations in EU Agreements

§ 22	Subsidy rules in Free Trade Agreements of the European Union	501
§ 23	EU-Switzerland Agreement	534
§ 24	EU/UK Subsidy Control after Brexit	554

CHAPTER 3: COUNTRY REPORTS

Member States of the European Union

§ 25	Austria	567
§ 26	Belgium	595
§ 27	Croatia	613

Contents

§ 28	Czech Republic	634
§ 29	Denmark	669
§ 30	France	680
§ 31	Germany	704
§ 32	Greece	757
§ 33	The Netherlands	775
§ 34	Poland	799
§ 35	Portugal	817
§ 36	Spain	836

Third Countries

§ 37	Australia	849
§ 38	Brazil	866
§ 39	Chile	876
§ 40	China	892
§ 41	Colombia	913
§ 42	India	930
§ 43	Indonesia	950
§ 44	Malaysia	963
§ 45	New Zealand	973
§ 46	Nigeria	987
§ 47	Norway	996
§ 48	Republic of Korea	1013
§ 49	Singapore	1024
§ 50	Switzerland	1046
§ 51	United Kingdom	1069
§ 52	United States of America	1089
§ 53	Uzbekistan	1126

Index	1139
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Introduction

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A. The growing importance of international subsidies law

A. The growing importance of international subsidies law	1
B. Policy perspectives on subsidies	20
C. Objectives and scope of the handbook	32
D. Content and Structure of the Handbook	34
E. Conclusion	43

A. The growing importance of international subsidies law

In an increasingly interconnected global economy, subsidies play a critical role in shaping international trade, economic development, and competition. Governments worldwide use subsidies as an **instrument of economic governance** to support domestic industries, promote technological innovation, and protect strategic sectors. Beyond these traditional functions, subsidies have gained even greater significance in the context of **global economic shifts, industrial transformation, and climate change mitigation** (see on the respective development in the EU → § 4 mn. 105 et seqq.).

At the **national level**, subsidies have become a key policy tool in the competition for investment and industrial leadership. Governments use them to attract foreign direct investment, strengthen strategic industries, and maintain economic sovereignty in an era of heightened geopolitical and technological rivalries. Subsidies are thus increasingly recognized as **necessary instruments for implementing specific industrial policies**. The competition for industrial capacity in sectors such as semiconductors, renewable energy, and electric vehicles illustrates how subsidies shape global economic landscapes. Increasingly, industrial policy is seen as a crucial instrument for enhancing the competitiveness of economic areas, particularly as global power dynamics shift and economies seek to secure leadership in key technological and strategic sectors.

Governments thus deploy targeted financial assistance to foster innovation, accelerate digitalization, and promote economic diversification. Especially in times of economic crises, subsidies serve as **stabilizing measures** to support employment, sustain vital industries, and mitigate market failures. They also play a significant role in boosting resilience against external shocks, such as supply chain disruptions and geopolitical uncertainties.

In this evolving context, subsidies have become indispensable tools for pursuing industrial policy objectives and enabling national economies to remain competitive on a global scale. As such, industrial policy – with subsidies as a key instrument – forms part of today’s major policy concepts and buzzwords, such as strategic autonomy and economic security in the EU, or their equivalents elsewhere in the world. At the same time, however, subsidies can also lead to market distortions, particularly among trading partners, potentially undermining national policies or triggering subsidy races. This creates a clear need for regulation at the domestic, regional, and international levels.

At the **international level**, the legal framework governing subsidies remains fragmented and limited in scope. There is **no universal regime** under the United Nations or other global body; instead, the most comprehensive set of rules is provided by the World Trade Organization (WTO) through the **Agreement on Subsidies and Countervailing Measures (ASCM)**¹ (in detail on the ASCM → § 1 mn. 7 et seqq.). The ASCM defines and disciplines specific types of subsidies, particularly those that are contingent upon export performance or the use of domestic over imported goods, both of which are considered prohibited because of their direct trade-distorting effects (on prohibited subsi-

¹ Agreement on Subsidies and Countervailing Measures (ASCM) of 15 April 1994, OJ 1994 L 336, 156.

dies → § 1 mn. 21). Other subsidies, known as “actionable” subsidies, are not prohibited per se but may be challenged when they cause adverse effects to the interests of other members, such as injury to domestic industries or nullification of trade benefits (on actionable subsidies → § 1 mn. 22 et seqq.). Remedies are ex post: states can impose **autonomous countervailing duties** after investigations (→ § 1 mn. 27 et seqq.) or bring disputes before the **WTO Dispute Settlement Mechanism** (→ § 1 mn. 35 et seqq.), which is currently – regarding the Appellate Body – blocked by the U.S. (→ § 1 mn. 6).

6 To complement these binding disciplines, the **OECD** provides a **framework of soft law instruments**, most notably the **Arrangement on Officially Supported Export Credits**², which promotes transparency and a level playing field in export financing. These instruments, while non-binding, have considerable practical influence by shaping states’ export support practices and fostering international coordination. Thereby, the OECD conducts extensive work in the field of subsidies and subsidy law.³ Its activities include studies, databases, indicators, policy recommendations, and international cooperation – covering areas ranging from general subsidy structures to specific sectors (such as steel⁴, industry⁵, and fossil fuels⁶), as well as environmental aspects and export financing. Finally, the **IMF** and the **World Bank** examine the fiscal sustainability of subsidies – the IMF particularly with regard to fossil fuel subsidies (statistical assessment and reform recommendations),⁷ and the World Bank in developing and emerging economies, often in the context of structural reforms.⁸

7 Outside these institutions, the regulation of subsidies is sparse. **Regional trade agreements** occasionally include subsidy-related provisions, though often without robust enforcement mechanisms (see on this → §§ 7–11).

8 The **European Union** stands out as an exception, maintaining the most stringent and institutionalized regime through its State aid control, which operates as a supranational form of competition-based subsidy law and is considered the strictest subsidy regime in the world (→ § 4 mn. 245), putting EU companies at a disadvantage in international competition.⁹ The EU is therefore attempting to export its aid regime as part of free

² OECD, Arrangement on Officially Supported Export Credits, OECD/LEGAL/5005, last amended: 2 September 2024, available at <https://legalinstruments.oecd.org/en/instruments/OECD-LEGAL-5005> (last accessed: 5 November 2025).

³ See OECD, Subsidies and government support, available at <https://www.oecd.org/en/topics/subsidies-and-government-support.html> (last accessed: 5 November 2025).

⁴ See e.g. OECD, The Drivers and Impacts of Subsidies to Steel Firms, OECD Science, Technology and Industry Policy Papers No. 184, October 2025, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/10/the-drivers-and-impacts-of-subsidies-to-steel-firms_aff60a54/33e4b097-en.pdf (last accessed: 5 November 2025).

⁵ See e.g. OECD, The state of play of industrial subsidies as of 2023, Policy Brief, 23 June 2025, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2025/06/the-state-of-play-of-industrial-subsidies-as-of-2023_f93c3e45/753cd39f-en.pdf (last accessed: 5 November 2025).

⁶ See e.g. OECD, OECD Inventory of Support Measures for Fossil Fuels 2024, Policy Trends up to 2023, November 2024, available at https://www.oecd.org/content/dam/oecd/en/publications/reports/2024/11/oecd-inventory-of-support-measures-for-fossil-fuels-2024_bd47de52/a2f063fe-en.pdf (last accessed: 5 November 2025).

⁷ Black/Liu/Parry/Vernon, IMF Fossil Fuel Subsidies Data: 2023 Update, IMF Working Paper, WP/23/169, August 2023, available at <https://www.imf.org/en/Publications/WP/Issues/2023/08/22/IMF-Fossil-Fuel-Subsidies-Data-2023-Update-537281> (last accessed: 5 November 2025).

⁸ See e.g. Araar/Verme, A Comparative Analysis of Subsidy Reforms in the Middle East and North Africa Region, Policy Research Working Paper 7755, World Bank Group, July 2016, available at <https://openknowledge.worldbank.org/entities/publication/f9649d7d-84b7-526c-9b78-301a4c988692> (last accessed: 5 November 2025).

⁹ Cf. Weck/Reinhold *EuZW* 2015, 376 (377); Blauberger/Krämer *Journal of Industry, Competition and Trade* 2013, 171 (174); cf. also Jaeger/Haslinger/Bungenberg/Schelhaas p. 591 (596 et seq.).

A. The growing importance of international subsidies law

trade agreements.¹⁰ Accordingly, the EU's recently concluded **free trade agreements** often contain extensive provisions on subsidies that are based on the WTO subsidy regime, but partially extend it (**WTO+**) (→ §§ 22–24).

The Agreement on the European Economic Area (EEA Agreement)¹¹ is a prime example of the successful export of EU state aid law: EEA state aid law is largely identical to the EU's state aid law. However, the agreement is a special case, which cannot be compared with other free trade agreements (on EEA State Aid Law → § 6).¹²

Outside Europe, there are no subsidy regulations comparable to EU state aid law. For example, the **North American integration agreements** (→ § 7) – NAFTA and its successor, the USMCA – do not contain any provisions comparable to the EU's prohibition of state aid (→ § 7 mn. 29). Rather, both agreements are closely modelled on the WTO subsidy regime, with the key difference that they establish a specific dispute settlement mechanism (→ § 7 mn. 31; in detail on NAFTA → § 7 mn. 4 et seqq.; on USMCA → § 7 mn. 25 et seqq.).

The **ASEAN agreements**, do not include specific provisions on subsidies, partly due to the differing levels of economic development among their member states (in detail on ASEAN → § 9). Instead, they likewise rely on the rules of the WTO subsidy regime (→ § 9 mn. 20).

The **RCEP Agreement** goes one step further: it builds upon the ASCM and expands and refines its subsidy-specific provisions (in detail on RCEP → § 10).

The **AfcFTA framework** does not ban subsidies and allows them especially for developmental purposes. Instead, it relies on dialogue (consultations) and defensive trade measures (remedies and DSM) to manage potential distortions. The success of this model hinges on states' capacities to raise and resolve subsidy-related concerns effectively (in detail on AfcFTA → § 11).

In summary, it becomes evident that MERCOSUR, ASEAN, AfcFTA, and similar frameworks so far contain weaker provisions, generally with a stronger **focus on trade-related aspects**. The situation is different in the **EU**, where competition and competition policy have traditionally been at the forefront, and only in recent years has increasing attention been directed toward the trade policy dimension.

At the **national level**, explicit subsidy laws are rare (as, for example, on the federal level in Germany → § 31 mn. 26). Instead, subsidies are usually governed indirectly through **constitutional or administrative principles**, such as equality before the law, budgetary discipline, and the proper use of public resources (see the respective Chapter in the country reports → §§ 25–53). Legal frameworks often provide for specific conditions to ensure that subsidies are used to pursue public values such as job creation, decarbonization benchmarks, technology sharing, or even steering capital and talent into desired sectors. The risk is to capture **subsidy races** between jurisdictions. This risk is one of the reasons for the rather strict state aid law of the EU (cf. → § 4 mn. 121).¹³

Regarding the enforceability of subsidies, **international investment law** with its Investor-State-Dispute-Settlement Mechanism will most likely play an increasing role in the upcoming years as long as no carve-out for subsidies is foreseen in investment agreements (on the tension between European Union law and international investment law see → § 21).

¹⁰ Cf. Weck/Reinhold EuZW 2015, 376; Blauburger/Krämer Journal of Industry, Competition and Trade 2013, 171 (174).

¹¹ Agreement on the European Economic Area, OJ 1994 L 1, 3.

¹² Jaeger/Haslinger/Bungenberg/Schelhaas p. 591 (618 et seqq.).

¹³ Cf. also Classen/Dittmann/Fechner/Gassner/Kilian/Möschel p. 583 (585–587, 591); Schäfer/Haucap/Hartwich p. 94 (111 and 113).

- 17 In sum, the international governance of subsidies reflects a **patchwork of regimes driven largely by trade and competition concerns** – a structure increasingly strained by the resurgence of industrial policy, which seeks to legitimize and strategically mobilize subsidies rather than merely constrain them. At national level, subsidy rules are often guided by **general public interests** and aim for a **fair and equitable share** in state spending. The impact on other states' economies does usually not play an important role.
- 18 This fragmented international framework reveals a **fundamental tension** between the traditional **trade- and competition-based approach** to subsidy control and the emerging paradigm of **strategic industrial policy**. Whereas classical subsidy law seeks primarily to limit state intervention in order to preserve undistorted competition and open markets, the new industrial policy logic emphasises the legitimate and even necessary role of the state in steering economic transformation. In an era defined by geopolitical rivalry, technological competition, and the climate transition, subsidies are increasingly viewed not as distortive exceptions, but as **instruments of strategic mobilisation**¹⁴ – tools to secure critical supply chains, promote green innovation, and protect national resilience.
- 19 This shift marks a profound **rebalancing of priorities**: from disciplining subsidies in the name of market neutrality to deploying them in pursuit of collective security, sustainability, and technological leadership. It is within this evolving landscape that the concept of industrial policy law begins to take shape – seeking to reconcile legality, efficiency, and strategic purpose on a global scale.

B. Policy perspectives on subsidies

- 20 From a **trade law perspective**, subsidies have always been a contentious issue. While some view them as essential tools for economic growth and industrial development, others argue that they distort fair competition and create an uneven playing field in global markets.¹⁵ This tension is reflected in international legal frameworks such as the **General Agreement on Tariffs and Trade (GATT) and the ASCM**,¹⁶ which set clear boundaries on the permissible use of subsidies (on the ASCM → § 1 mn. 7 et seq.). These agreements recognize that, while certain subsidies can be justified under specific economic and policy considerations, others – particularly those that distort trade – may warrant countervailing measures and legal challenge. Striking a balance between legitimate state intervention and the principles of fair competition remains one of the most pressing challenges in global economic governance.
- 21 Viewed through the lens of **competition law and policy**, subsidies must reconcile two objectives: enabling governments to pursue legitimate public goals while preventing public support from undermining fair market rivalry.¹⁷ There is a broad variety of approaches: The WTO disciplines provide international trade remedies to counter adverse

¹⁴ Cf. Weck EuZW 2025, 253 (256 et seq.).

¹⁵ This tension was already expressed in the Agreement on interpretation and application of Articles VI, XVI and XXIII of the General Agreement on tariffs and trade of 1979, OJ 1980 L 71, 72. Article 8(1) sentence 2 of the agreement stated: "Signatories also recognize that subsidies may cause adverse effects to the interests of other signatories." At the same time Article 11(1) sentence 1 emphasised: "Signatories recognize that subsidies other than export subsidies are widely used as important instruments for the promotion of social and economic policy objectives and do not intend to restrict the right of signatories to use such subsidies to achieve these and other important policy objectives which they consider desirable."

¹⁶ Cf. Tietje/Nowrot/Tietje § 4 para. 164.

¹⁷ Cf. CJEU 21.9.1999 – joined cases C-115/97 – C-117/97, ECLI:EU:C:1999:434 paras. 98 et seq. – Brentjens; CJEU 23.10.1997 – case C-159/94, ECLI:EU:C:1997:501 para. 55 – Commission v France; CJEU 23.10.1997 – case C-157/94, ECLI:EU:C:1997:499 para. 39 – Commission v The Netherlands; CJEU

B. Policy perspectives on subsidies

effects for the domestic industry (on WTO subsidy law → § 1). The EU's state aid law represents the strictest of (supra)national regimes in the form of ex ante competition control (cf. → § 4 mn. 245; on EU state aid law → § 4), while systems such as those of the United Kingdom (→ § 51) and the United States (→ § 52) adopt comparatively lighter, more politically flexible approaches.

From a **competition policy** perspective, subsidies are problematic not primarily because they impose costs on taxpayers, but because they can **distort the competitive process**.¹⁸ When governments grant selective financial advantages to certain firms or sectors, those firms may gain market power not on the basis of efficiency, innovation, or product quality, but due to public support.¹⁹ This undermines the principle of a level playing field, where undertakings are expected to compete on merit.²⁰ Subsidies can also have **harmful side effects**: they may allow inefficient firms to survive,²¹ crowd out more competitive rivals, weaken the incentive for superior performance in competition,²² or even encourage predatory practices such as below-cost pricing that would otherwise be unsustainable (cf. on this → § 4 mn. 121). Yet subsidies can also serve legitimate purposes – correcting market failures,²³ fostering innovation, addressing externalities such as climate change, or promoting regional cohesion.²⁴

The **industrial policy** perspective on subsidies differs significantly from competition and trade policy. While competition law starts from the premise that subsidies tend to distort market rivalry,²⁵ industrial policy law focuses on their purpose – namely, that subsidies can be **legitimate tools** to build industries, create jobs, and foster technological innovation. This is particularly relevant today in the context of geopolitical rivalries, where reducing strategic dependencies has become a central policy goal (for the EU cf. → § 4 mn. 115 et seq.) – whether in the production of semiconductors, batteries, or the extraction and processing of critical raw materials, as well as renewable energy supply chains, or defence capacity. Accordingly, the broad strategic objectives of national and regional industrial policy today are centred on advancing the green transition, ensuring digital sovereignty, and, more generally, safeguarding national security. In this context subsidies are not condemned for being selective; they are **expected to favour certain sectors or firms** deemed vital in the future. Here, the **European Union** increasingly uses block exemptions

19.3.1991 – case C-202/88, ECLI:EU:C:1991:120 paras. 9 et seqq. – France v Commission; cf. also Müller-Graff/Koenig/Hellstern § 14 mn. 2.

¹⁸ Streinz/Kühling Art. 107 AEUV mn. 1.

¹⁹ Cf. European Commission, State aid, available at https://commission.europa.eu/topics/competition/state-aid_en (last accessed: 5 November 2025).

²⁰ Cf. European Commission, State aid, available at https://commission.europa.eu/topics/competition/state-aid_en (last accessed: 5 November 2025).

²¹ Müller-Graff/Koenig/Hellstern § 14 para. 1.

²² Mestmäcker/Schweitzer, § 42 mn. 18; see also Bungenberg/Heinrich/Bungenberg Art. 107 AEUV mn. 3.

²³ See Immenga/Mestmäcker/Schweitzer/Mestmäcker Die Beihilfenregeln im System des AEUV Rn. 22.

²⁴ See, for example, the wide range of different aid types that are exempted under the GBER (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ 2014 L 187, 1) in the EU: regional aid, aid for SMEs, aid for European territorial cooperation, aid for access to finance for SMEs, aid for research, development and innovation, training aid, aid for disadvantaged workers and workers with disabilities, aid for environmental protection, aid to make good the damage caused by certain natural disasters, social aid for transport for residents of remote regions, aid for broadband infrastructures, aid for culture and heritage conservation, aid for sport and multifunctional recreational infrastructures, aid for local infrastructures, aid for regional airports, aid for ports and aid involved in financial products supported by the InvestEU Fund. In addition, there is a large amount of tertiary legislation in the form of communications, guidelines, etc., which indicate when state aid outside the scope of the GBER is compatible with the EU internal market, see → § 4 mn. 28 et seqq.

²⁵ Cf. Bungenberg/Heinrich/Bungenberg Art. 107 AEUV paras. 2 et seq.

Introduction

and frameworks to channel subsidies towards policy goals: e.g. the Climate, Environmental Protection and Energy Aid Guidelines (CEEAG)²⁶, Important Projects of Common European Interest (IPCEI)²⁷ for batteries²⁸/hydrogen²⁹/semiconductors^{30, 31} and the Temporary Crisis and Transition Framework (TCTF)³² for green transition and energy security, which has been recently replaced by the **Clean Industrial Deal State Aid Framework (CISAF)**^{33, 34}. CISAF supports the Clean Industrial Deal³⁵ and enables the EU Member States to push forward the development of clean energy, industrial decarbonisation and clean technology and will be in place until 31 December 2030.³⁶

²⁶ European Commission, Guidelines on State aid for climate, environmental protection and energy 2022, OJ 2022 C 80, 1.

²⁷ European Commission, Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ 2021 C 528, 10.

²⁸ See European Commission 9.12.2019 – SA. 54793 (Belgium), SA 54809 (Finland), SA.54794 (France), SA. 54801 (Germany), SA.54806 (Italy), SA.54808 (Poland) and SA.54796 (Sweden), C(2019) 8823 final; European Commission 26.1.2021 – SA. 55855 (Austria), SA.55840 (Belgium), SA.55844 (Croatia), SA.55846 (Finland), SA.55858 (France), SA.55831 (Germany), SA.56665 (Greece), SA.55813 (Italy), SA.55859 (Slovakia), SA.55896 (Spain) and SA.55854 (Sweden), C(2021) 494 final.

²⁹ See European Commission 15.7.2022 – SA.64625 (Austria), SA.64642 (Belgium), SA.64640 (Czechia), SA.64633 (Denmark), SA.64646 (Estonia), SA.64632 (Finland), SA.64671 (France), SA.64647 (Germany), SA.64651 (Greece), SA.64644 (Italy), SA.64649 (Netherlands), SA.64626 (Poland), SA.64753 (Portugal), SA.64635 (Slovakia) and SA.64624 (Spain), C(2022) 5158 final; European Commission 21.9.2022 – SA.64631 (Austria), SA.64641 (Belgium), SA. 64636 (Denmark), SA.64628 (Finland), SA.64670 (France), SA.64654 (Greece), SA.64645 (Italy), SA.64650 (Netherlands), SA.64627 (Poland), SA.64754 (Portugal), SA.64634 (Slovakia), SA.64623 (Spain) and SA.64652 (Sweden), C(2022)6847 final; European Commission 15.2.2024 – SA.102821 (France), SA.102825 (Germany), SA.102815 (Italy), SA.102807 (The Netherlands), SA.102810 (Poland), SA.103494 (Portugal) and SA.102811 (Slovakia), C(2024) 1053 final; European Commission 28.5.2024 – SA.104676 (Germany), SA.104442 (Estonia), SA.104435 (Spain), SA.104668 (France), SA.104453 (Italy), SA.104440 (The Netherlands), SA.104434 (Slovakia), C(2024)3631 final.

³⁰ See European Commission 13.12.2018 – SA.46578 (Germany), SA.46705 (France), SA.46595 (Italy) and SA.46590 (United Kingdom), C(2018) 8864 final; European Commission 23.3.2021 – SA.56606 (Austria), C(2021)1876 final; European Commission 8.6.2023 – SA.101202 (Austria), SA.101141 (Czechia), SA.101143 (Finland), SA.101193 (France), SA.101129 (Germany), SA.101210 (Greece), SA.101151 (Ireland), SA.101186 (Italy), SA.101201 (Malta), SA.101171 (The Netherlands), SA.101175 (Poland), SA.101192 (Romania), SA.101200 (Slovakia) and SA.101150 (Spain), C(2023) 3817 final.

³¹ An overview of the current IPCEIs is provided by Bungenberg/Heinrich/Schmidt/Betzendörfer Art. 107 AEUV paras. 1571 et seqq.; see also European Commission, Approved integrated Important Projects of Common European Interest (IPCEI), available at https://competition-policy.ec.europa.eu/state-aid/ipcei/approved-ipceis_en (last accessed: 5 November 2025).

³² European Commission, Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2023 C 101, 3, amended by European Commission, Amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2023 C 2023/1188, and European Commission, Second amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2024 C 2024/3113.

³³ European Commission, Framework for State Aid measures to support the Clean Industrial Deal (Clean Industrial Deal State Aid Framework), OJ 2025 C 2025/3602; on CISAF, see Holtkamp, EnK-Aktuell 2025, 010581; see on the support possibilities under CISAF European Commission, Overview of support possibilities under the Clean Industrial Deal State aid Framework ('CISAF'), available at https://competition-policy.ec.europa.eu/document/download/93776e25-7c9c-4e19-aa9e-76ca80cbf5e4_en?filename=CISAF%20-%20Overview%20aid%20intensities%20_amounts%20.pdf (last accessed: 5 November 2025).

³⁴ European Commission, New State aid framework enables support for clean industry, Press Release of 25 June 2025, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1598 (last accessed: 5 November 2025).

³⁵ European Commission, The Clean Industrial Deal: A joint roadmap for competitiveness and decarbonisation, COM(2025) 85 final, 26 February 2025.

³⁶ European Commission, New State aid framework enables support for clean industry, Press Release of 25 June 2025, available at https://ec.europa.eu/commission/presscorner/detail/en/ip_25_1598 (last accessed: 5 November 2025).

B. Policy perspectives on subsidies

From an industrial policy law perspective, subsidies are not regarded as distortive state intervention that needs to be restricted, but as legitimate **policy instruments**. Hence, the legal focus is on how to authorise, structure, and target subsidies so that they **advance strategic economic goals** (e.g. climate transition, technological sovereignty) while minimising waste and political capture. In practice, this perspective complements but also competes with the competition law approach: competition law seeks to limit subsidies, industrial policy law seeks to enable them. 24

Here, the **European Commission** seeks to strike a balance between addressing competition concerns and recognising the legitimacy of subsidies as instruments of industrial policy,³⁷ even though the focus is increasingly **shifting towards an industrial policy orientation**.³⁸ For example, the admissibility of green subsidies is now the rule rather than the exception under the Green Deal Industrial Plan³⁹ and the accompanying changes⁴⁰ to the state aid regime.⁴¹ 25

In the **United States**, by contrast, legislation such as the Inflation Reduction Act (IRA)⁴² (→ § 52 mn. 45 et seqq.) and the CHIPS and Science Act⁴³ (→ § 52 26

³⁷ Cf. European Commission, A Competitiveness Compass for the EU, COM(2025) 30 final, 29 January 2025, p. 6: “*Competition policy is also an important lever to strengthen Europe’s competitiveness. Rigorous and effective antitrust and merger enforcement in accordance with clear and predictable rules protects fair competition and incentivises companies to innovate and become more efficient. At the same time, in the global race to develop deep technologies and breakthrough innovations, competition policy must keep pace with evolving markets and tech innovation. This needs a fresh approach, better geared to common goals and allowing companies to scale up in global markets – while always ensuring a level playing field in the Single Market.*”

³⁸ See European Commission, A Competitiveness Compass for the EU, COM(2025)30 final, 29 January 2025; Weck EuZW 2025, 253.

³⁹ European Commission, A Green Deal Industrial Plan for the Net-Zero Age, COM(2023) 62 final, 1 February 2023.

⁴⁰ See, for example, the GBER (Commission Regulation (EU) No 651/2014 of 17 June 2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ 2014 L 187, 1), which was reformed by Commission Regulation (EU) 2023/1315 of 23 June 2023 amending Regulation (EU) No 651/2014 declaring certain categories of aid compatible with the internal market in application of Articles 107 and 108 of the Treaty and Regulation (EU) 2022/2473 declaring certain categories of aid to undertakings active in the production, processing and marketing of fishery and aquaculture products compatible with the internal market in application of Articles 107 and 108 of the Treaty, OJ 2023 L 167, 1, in 2023; see also the 2022 reformed Guidelines on State aid for climate, environmental protection and energy 2022, OJ 2022, C 80, 1, as well as the TCTF (European Commission, Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2023 C 101, 3, amended by European Commission, Amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2023 C 2023/1188, and European Commission, Second amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2024 C 2024/3113) and the CISAF (European Commission, Framework for State Aid measures to support the Clean Industrial Deal (Clean Industrial Deal State Aid Framework), OJ 2025 C 2025/3602).

⁴¹ Meyer/Hoffmann EuZW 2023, 413 (417).

⁴² Available at <https://www.congress.gov/bill/117th-congress/house-bill/5376/text> (last accessed: 5 November 2025). See also Committee for a Responsible Federal Budget, What’s In the Inflation Reduction Act?, available at <https://www.crfb.org/blogs/whats-inflation-reduction-act> (last accessed: 5 November 2025); The White House, Building a clean Energy Economy: A Guidebook to the Inflation’s Reduction Act’s Investments in Clean Energy and Climate Action, available at <https://bidenwhitehouse.archives.gov/wp-content/uploads/2022/12/Inflation-Reduction-Act-Guidebook.pdf> (last accessed: 5 November 2025); Maywald IStR-LB 2022, 67 (67 et seq.).

⁴³ Available at <https://www.congress.gov/bill/117th-congress/house-bill/4346> (last accessed: 5 November 2025). See also Maywald IStR-LB 2022, 67 (68).

mn. 35 et seq.) explicitly deploy subsidies as **tools of strategic industrial policy**. The U.S. does not treat such measures as matters of competition law; rather, by embedding them within budgetary and sectoral frameworks, subsidies become legal expressions of strategic economic policy – with competition considerations treated as secondary. **China**, on the other hand, integrates subsidies directly into its central economic planning, most notably through its Five-Year Plans and the Made in China 2025⁴⁴ strategy (see in detail → § 40).

From an industrial policy law perspective, the objective is not to restrain subsidies, but to **mobilise them lawfully, transparently, and efficiently** – while maintaining a degree of “fair competition review” to prevent excessive market fragmentation.

- 27 Finally, there is increasingly a “**strategic autonomy**” perspective on subsidies, which has become especially prominent in the European Union⁴⁵ (→ § 4 mn 109 et seq.), but also plays a role in U.S.⁴⁶, Chinese, and industrial strategies of other countries. Under the doctrine of “strategic autonomy” subsidies serve **national security and independence** as much as **economic upgrading**. This perspective differs again from both competition law (which worries about distortions) and industrial policy law (which focuses on targeted growth and structural change). Subsidies in this sense are **tools to reduce external dependency in critical sectors and ensure resilience against shocks, crises, or geopolitical pressures**. Unlike competition law (efficiency) or industrial policy (growth/innovation), strategic autonomy is about **security of supply and sovereignty**. In this sense, subsidies are justified not primarily by market failures, but by geopolitical vulnerabilities (energy, semiconductors, rare earths, defence).

⁴⁴ A translation of the “Notice of the State Council on the Publication of “Made in China 2025”” is provided by the Center for Security and Emerging Technology of the Georgetown University, available at <https://cset.georgetown.edu/publication/notice-of-the-state-council-on-the-publication-of-made-in-china-2025/> (last accessed: 5 November 2025).

⁴⁵ See European Commission, Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe’s recovery, COM(2021) 350 final, 5 May 2021, p. 11 et seq; See also the so-called “matching clauses” in the revised R&D&I framework (European Commission, Framework for State aid for research and development and innovation, OJ 2022 C 414, 1, para. 98), the TCTF (European Commission, Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2023 C 101, 3, para. 86, last amended by European Commission, Second amendment to the Temporary Crisis and Transition Framework for State Aid measures to support the economy following the aggression against Ukraine by Russia, OJ 2024 C 2024/3113) and the new IP-CEI Communication (European Commission, Criteria for the analysis of the compatibility with the internal market of State aid to promote the execution of important projects of common European interest, OJ 2021 C 528, 10, para. 38), according to which potential aid recipients who can prove that they receive a certain subsidy payment in third countries can also receive a comparably high level of support beyond the stipulated aid intensities in the European Union. This is intended to prevent European companies from relocating abroad (→ § 4 mn. 110); see also Bungenberg ZEuS 2023, 502 (511).

⁴⁶ See U.S. Department of Energy, Energy Department Announces Actions to Secure American Critical Minerals and Materials Supply Chain, 13 August 2025, available at <https://www.energy.gov/articles/energy-department-announces-actions-secure-american-critical-minerals-and-materials-supply> (last accessed: 5 November 2025); see also on the Chips and Science Act → § 52 mn. 35 et seq.

Index

Bold numbers refer to articles, normal ones to margin numbers.

- 2021 State Aid Scoreboard **29** 6
- Aadhaar **42** 25
- Absolute impossibility
 - insolvency **31** 93
 - recovery **31** 70
- Academic research **26** 16
- Accelerate the development **44** 26
- Accession process
 - Georgia **22** 23
 - Republic of Moldova **22** 23
 - Ukraine **22** 23
- Accession Treaty **28** 5, **34** 1 et seqq.
- Access to files
 - disclosure conditions **18** 55 et seq.
 - extended access to files **18** 55
 - FSR **18** 51 et seqq., 56 et seq.
 - restrictions **18** 56
- Accountability **11** 8
- Achmea judgment
 - investment protection **21** 37 et seqq.
 - judicial autonomy **21** 37 et seqq.
- Acquisition of companies **16** 5
- Acquisition of control **16** 25 et seqq.
- Actionable subsidy **1** 22 et seqq.
- Action by stages, civil law contract **31** 110
- Action for acknowledgment, civil law contract **31** 110
- Action for annulment **31** 99
 - current legal interest **12** 51
 - direct and individual concern **12** 50, **31** 102
 - recovery measures **31** 102
 - third-country **12** 52
- Action for failure to act, recovery measures **31** 103
- Action for performance **31** 95
 - administrative act **31** 105
- Act on State Aid for Research and Development Projects **27** 36
- Actus contrarius **31** 68
- Adams case **23** 25
- Ad hoc legislation **26** 60
- Administrative act **31** 48
 - administrative litigation act **48** 14
 - administrative procedures act **48** 14
 - ancillary provisions **31** 53
 - cancellation **31** 69 et seqq.
 - immediate enforcement of revocation **31** 71
 - interest **31** 76 et seq.
 - interim legal protection **31** 107
 - legal protection for competitors **31** 105 et seqq.
 - misuse of aid **31** 72
 - reclaim **31** 73 et seqq.
 - unlawfulness **31** 58
- Administrative contract **48** 15
- Administrative control **39** 38
- Administrative court **32** 24 et seq., 52 et seq.
- Administrative decision, decision on support **34** 32 et seqq.
- Administrative litigation **40** 58
- Administrative objection **33** 59
- Administrative regulations **31** 28
- Administrative revision procedures **32** 60
- Administrative sanctions **40** 28
- Advanced Micro Devices (AMD), subsidies in New York **52** 84 et seqq.
- Advantage, economic **14** 34 et seqq.
- Advises **44** 20
- Advisory body **26** 50
- Advisory function **44** 32
- AfCFTA **46** 28
 - PTS **11** 6 et seqq., 8
- AfCFTA guidelines, trade remedies **11** 14
- Affect trade between Member States **5** 21 et seq.
- Aggregation clause **16** 53
- Agreement on Agriculture **41** 20 et seqq., **43** 24
- Agreement on Fisheries Subsidies **1** 51
- Agreement on Subsidies and Countervailing Duties **9** 12 et seq.
- Agreement on Subsidies and Countervailing Measures (ASMC) **9** 9 et seq., 11 et seq., 20, **41** 20 et seqq.
- Agricultural structures **31** 23
- Agriculture and food **31** 9
- Agriculture Block Exemption Regulation **27** 5
- Agriculture subsidy **44** 3
- Agro Ingreso Seguro **41** 10, 30
- Aid amount **26** 4, 10
- Aid application **33** 26, **34** 34 et seqq.
- Aid monitoring **34** 23 et seqq.
- Aid schemes, regulatory acts that directly affect the plaintiff and do not entail implementing measures **31** 103
- Aid volume, Spain **36** 14
- Air transport agreement, state aids **23** 3
- Air Transport Agreement (ATA)
 - acquis communautaire **23** 35
 - amendments to legislation of the parties **23** 34
 - appeal rights of third parties **23** 43
 - competences of WEKO **23** 41

Index

- covid-19 pandemic 23 48
- direct applicability of Art. 13 ATA 23 43
- Fluglärmstreit 23 38
- interpretation 23 35
- legal remedies 23 42
- relevance of EU secondary legislation issued
 - after signing 23 37
- scope 23 33
- state aid provision 23 32
- swissair grounding case 23 46
- swiss practice 23 47
- two pillar system 23 32
- WEKO 23 33
- Allocation request 16 96
- Allowance, financial 14 23 et seqq.
- Amazon HQ2, subsidy Race 52 7
- American Recovery and Reinvestment Act of 2009 52 22, 27
- American Rescue Plan Act 52 22, 27
- Amount of the countervailable subsidy 12 29
- Ancillary provisions 31 53
- Andean Community (CAN) 8 1
- Andean Community of Nations 41 26
- Ankara Agreement
 - duty to inform 22 21
 - enforcement 22 22
 - legal harmonisation 22 21
 - state aid control 22 20 et seqq.
- Annulment 32 56, 34 47 et seqq.
- Anti-circumvention, FSR 18 32 et seqq.
- Anti-circumvention rule 16 53
- Anti-competitive practices 8 41
- Antidumping, investigation 8 40
- Anti-Dumping Commission 37 54 et seqq.
- Anti-subsidy duties
 - China 3 22
 - non-market economies 3 22
- Anti-subsidy proceedings 12 39
 - announcement 12 42
 - application 12 40
 - circumvention 12 49
 - consultations 12 42
 - definitive countervailing duty 12 46
 - ex-officio 12 41
 - expiry review 12 47
 - initiation of proceedings 12 40
 - interim review 12 47
 - investigation 12 43
 - lesser duty rule 12 44
 - period of pre-disclosure 12 45
 - provisional countervailing duties 12 44
 - provisional stage 12 45
 - refunds 12 48
 - termination of the procedure 12 46
 - termination without measures 12 46
 - undertaking 12 46
- Antitrust authorities, Spain 36 5
- Antitrust rules 13 41
- Applicability of international treaties 50 8
- Applicant 14 18
- Application 48 17
- Application of the FTA, autonomous application 23 15
- Application procedure 31 50 et seqq., 32 27
- Applying for state aid, Norway 47 47 et seq.
- Approved investment 44 6
- Argentina 8 2 et seq.
- Artificial Intelligence 52 41
- Artificial Intelligence Subsidies, USA 52 37
- ASCM 1 5 et seqq.
 - conferral of a benefit 1 14
 - countermeasure subject 20 22
 - countervailing duties 1 33
 - examination procedure 1 29 et seq.
 - gaps 2 8 et seqq.
 - non-specific subsidy 1 18
 - price support 1 13
 - public body 2 9 et seq.
 - reform 1 49
 - scope of application 19 43 et seqq.
 - specific subsidy 1 16
 - subsidy 1 9 et seqq.
 - subsidy definition 20 19 et seqq.
- ASCM subsidies, comparison to FSR subsidies 20 16 et seqq.
- ASEAN Declaration 9 1
- ASEAN establishment 9 1
- Asia-Pacific 10 1
- Association Agreement 28 4
- Association agreements, effects under EU law 21 25 et seq.
- Association of Southeast Asian Nations 49 42
- Association relationship 6 3
- Audit findings 28 114
- Audit obligation 33 34
- Auditor, subsidy fraud 31 35
- Audit report 28 113
- Australia 9 7
- Austria 25 1 et seqq.
 - abuse of funding 25 21
 - aid recovery in insolvency 25 45 et seq.
 - basic levy 25 26
 - breach of the notification obligation 25 34 et seqq.
 - chamber of commerce 25 26
 - competence for granting aid 25 23
 - competence to grant aid 25 11
 - competitor lawsuits 25 49
 - conduct 25 15
 - contracting obligation of the aid grantor 25 60
 - COVID-19 aid measures 25 6
 - criminal law 25 19 et seqq.
 - criminal Law on Corruption 25 20
 - definition of subsidy 25 2

Index

- distinction between sovereignly granted aid and aid granted under public law 25 25
- distinction between subsidies granted by sovereign act and subsidies granted by private law 25 3
- fraud 25 20
- fundamental rights, fiscal validity of the 25 12
- funding agencies 25 24 et seqq.
- funding policy 25 9
- funding statistics 25 6
- general framework guidelines for the granting of subsidies 25 17
- general framework guidelines for the grant of aid (ARR) 25 16
- IPCEI 25 8
- legal protection 25 47 et seqq.
- limits to the granting of aid, budgetary law 25 10
- limits to the granting of aid, simple law 25 16 et seqq.
- limits to the granting of state aid, constitutional law 25 10, 13 et seqq.
- private enforcement 25 49 et seqq.
- procedure for granting aid 25 28 et seqq.
- reclaim 25 30
- self-binding standard 25 14, 18
- sovereign granting of subsidies 25 5
- state aid recovery 25 36, 40 et seqq.
- state liability 25 64
- subsidy contract 25 27
- subsidy programmes 25 4
- Authorities competent on deciding on the damage claims 28 131
- Autonomous adaptation, EU law 23 2
- Available information 14 8
- Award of damages 33 61
- Award procedure 14 17, 67, 78, 103 et seqq.
- Balancing test 14 57 et seqq., 16 161 et seqq.
- Bancoldex 41 7, 40 et seqq.
- Bank guarantee 34 7 et seqq.
- Bank of America, subsidies 52 94
- Bankruptcy 34 54
- Basic AD Regulation, significant distortions 3 19
- Basic AS Regulation
 - article 1 3 17
 - benchmark 3 28 et seqq.
 - China 3 21
- Basic Law, Germany 31 16 et seqq.
- Beggar-Thy-Neighbor Policies 52 3
- Beggar-Thy-Neighbor Subsidies, USA 52 119
- Belgian milestone cases 26 5
- Beneficiary
 - damages 26 80
 - liability 32 64
 - recovery 26 56
- Bespoke incentives 44 32
- Bilateral agreements
 - competence 22 15
 - systematisation 22 16
- Bill of Rights, absence in Australia 37 8
- Binding effect 22 3
- Block exemptions 16 145, 34 17 et seqq.
- Boeing/Airbus Dispute 52 6
- Bolivia 8 6
- Bounties, and state aid 37 26 et seqq.
- Boy Scouts of America (BSA), in-Kind Support 52 70 et seqq.
- Brazil 8 2 et seqq.
 - and international law 38 17
 - constitution 38 7, 16
 - economic order 38 20 et seqq.
 - federation 38 9
 - federative competences 38 28
 - fiscal war 38 30
 - international trade law 38 17
 - oil industry 38 19
 - political organization 38 1
 - retreaded tyres 38 18
- Brazilian Supreme Court
 - Supremo Tribunal Federal 38 4, 6
 - tax competence disputes 38 8
- Breach of cooperation duty, fines 28 96 et seqq.
- Breach of reporting duties, fines 28 95 et seqq.
- Breach of the duty to notify 33 36 et seqq.
- Budget 5 33 et seq., 42 49
 - Brazil 38 23
 - legality 39 4
 - planning 48 16
 - restrictions 38 23
- Bundeswehr 31 3
- Burden of investigation 14 69
- Burden of proof 26 74, 33 60
- Burden on state budgets 14 33, 38
- Business association 14 8
- Business Incubator Support, USA 52 51
- Business secrets Confidential information, FSR 18 40
- Cabinet of ministers 28 28
- Calculation of turnover 16 48 et seqq.
- California, subsidy rules 52 67 et seqq.
- California Competes Tax Credit (CCTC) 52 68
- Call for applications
 - rectification of deficiencies 28 75 et seqq.
 - termination of the procedure 28 75 et seqq.
- Calvo doctrine, reemergence in the EU with respect to investment protection treaties 21 107 et seqq.
- Cambodia 9 13
- Canada, Softwood Lumber Case 7 19
- CAP
 - adjustment 3 37, 58

Index

- benefit 3 44
- burden of proof 3 37
- general 3 10, 16
- out-of-country benchmark 3 37, 46 et seq.
- prevailing terms and conditions 3 43
- public body 3 49, 55
- special difficulties 3 37 et seq., 57
- third country price 3 48
- transparency 3 49, 55
- work market price 3 48
- Capacity building 11 18 et seq.
- Carbon Capture and Sequestration, USA 52 46
- Carbon Capture Tax Credit, USA 52 46
- CARES Act, USA 52 22, 26
- Caribbean Community (CARICOM) 8 1
- Cash grant 34 36
- Categories, distortion 14 52 et seqq.
- Caterpillar, subsidies 52 94 et seq.
- Cease-and-decist action 26 75
- Central American Integration System (SICA), sistema de la Integración Centroamericana (SICA) 8 1
- Central Bank, USA 52 23
- Central Bank of Nigeria 46 3
- Central government agency 48 11
 - subsidy program operator 48 10
- Change of control 16 159
 - direct control/indirect control 16 20
- Chase Bank, subsidies 52 94
- Checklist, GBER 32 41
- China 14 33
 - accession 40 16
 - Accession Protocol (CAP) 3 7
 - export tax 3 34
 - Hong Kong 9 8
 - overcapacity 3 33
 - VAT 3 34
- CHIPS and Science Act of 2022, USA 52 22, 35 et seqq.
- CHIPS for America International Technology Security and Innovation Fund 52 39
- CHIPS for America Workforce and Education Fund 52 39
- Circumvention 14 93
- CIT exemption 34 35
- Civil Code contracts regarded as public law contracts 28 63
- Civil law and common law 38 5
- Civil law consequences 16 91
- Civil law contract
 - action by stages 31 110
 - action for acknowledgment 31 110
 - legal protection for competitors 31 110
 - misuse of aid 31 82
 - nullity 31 79
 - pending ineffectiveness 31 81
- quasi-negatory action for injunctive relief and removal 31 110
- recovery 31 78 et seqq.
- Civil litigation 40 58, 48 29
- CJEU's case law, FTA and EU Treaties 23 14
- Claim for damages
 - causal link 33 72 et seq.
 - Spain 36 37
- Claim in tort against State aid provider 31 121
- Clean Energy Act (Cth), Queensland Nickel case 37 15 et seq.
- Clean Energy Subsidies, USA 52 37 et seqq., 46, 48
- Clean Hydrogen Subsidies, USA 52 48
- Climate Change, U.S. Response 52 48
- Clustering 44 8
- Coastal Protection 31 23
- Co-financing 5 11 et seq., 15 et seq., 26 et seqq., 35 et seq.
- Cole v Whitfield 37 20 et seqq.
- Colombian Constitution 41 13
- Commercial intelligence 44 4
- Commercial sector 31 9
- Commission, powers/competences in the EEA 6 24 et seqq.
- Commission of Permanent Representatives (CRPM) 8 57
- Commitment 14 70, 74 et seqq., 16 119 et seqq.
 - relationship 16 126
- Common commercial policy 22 4
- Common market 8 5
- Common Market Group (GMC) 8 20
- Common trade policy 8 48
- Communication of information, FSR 18 4 et seqq.
- Community of Latin American and Caribbean States (CELAC) 8 1
- Companies 8 64
- Comparative Regional Integration 8 1
- Comparative Regionalism 8 1
- Compensation 31 117 et seqq.
 - amount 31 124
- Compensation of a foregone grant 28 133
- Competence 16 13
- Competence to finance 5 35 et seq.
- Competition 8 14, 18 et seq., 27, 29, 32, 41
 - abuse of dominant position 8 33
 - distortion 31 1
 - vs state-led steering 31 1
- Competition and Consumer Act 2010 (Cth) 37 39
- Competition Court 39 54
- Competition law 41 56 et seqq., 53 29
 - competitive neutrality 37 35 et seqq.

Index

- Hilmer Report 37 37 et seq.
- Competition Principles Agreement 37 40 et seqq.
 - government business enterprises (GBEs) 37 41 et seqq.
- Competitive Markets 52 112 et seqq.
 - trend toward cartelization and monopolization 52 113 et seqq.
- Competitiveness 8 19
- Competitive neutrality 37 35 et seqq.
 - government businesses enterprises (GBEs) 37 42 et seqq.
- Competitive social market economy 5 21 et seqq.
- Competitor's claims 31 101 et seqq.
 - Norway 47 79 et seqq.
- Competitor lawsuit, Austria 25 49 et seqq.
- Complaint 14 42, 16 74
- Compliance 26 13
 - with State aid provisions 31 55 et seqq.
- Compliance with EU state aid rules 27 50, 33 42 et seqq.
- Compound interest formula 31 77
- Concentration 16 1 et seqq., 17 et seqq.
- Concept of an undertaking 14 5 et seq., 8 et seqq., 27 et seqq., 42
 - award procedure 14 6, 9, 11
 - merger 14 6
- Concept of products and goods 12 13
- Conditions for admissibility 33 64
- Confidentiality 14 98
- Congressional Appropriations Act (CAA) USA 52 32
- Connectedness 14 65, 83
- Constitution 39 18 et seqq.
 - cth-Constitution (Australia) 37 1
- Constitutional Court 27 39
 - precedence of EU law 28 33
- Constitutional framework 30 13
- Constitutional law provisions 31 15 et seqq.
- Constitutional limits 30 12, 53 13
- Constitutional rights 41 1
- Constitution of Uzbekistan 53 7
- Construction and service concessions 14 13
- Consultations 11 13
- Consumer benefits 14 58
- Consumption subsidies 44 36, 38
- Contact information 26 37
- Contract 34 30 et seqq.
 - nullity 31 59
 - private law 31 59
- Contract granting subsidies 31 47 et seqq.
- Convention on International Trade in Endangered Species 22 13
- Coordination 44 25
- CORFO 39 8 et seqq.
- Corona pandemic 14 53
- Corona-State aid 32 5
 - Norway 47 6 et seqq.
- Coronavirus Aid, Relief, and Economic Security (CARES) Act 52 22, 26, 58
 - higher education grants 52 58
- Corporate fine 31 33
- Corporate Welfare, USA 52 6
- Corruption 40 26
- Council of State 26 50 et seqq., 71
- Countervailing and anti-dumping duties 49 21, 33
- Countervailing Duties 1 33, 42 29
- Countervailing Duties under NAFTA 7 12 et seqq.
 - conformity with WTO SCM Agreement 7 16
 - implementation 7 17
 - industry Support 7 15
 - injury Determination 7 17
 - petition 7 13
 - remedies 7 18
- Countervailing measure 11 5
 - China 3 22
 - investigation 1 27
 - non-market economies 3 22
 - procedure 1 25
 - review 1 28
- Courts of Audit, ex-post audit of subsidies 31 63
- COVID-19 26 12, 27 2, 6 et seqq., 29 7 et seqq., 18, 31, 30 4, 33 7 et seqq., 35 6, 42 26, 44 6, 35, 46 5, 49 13, 51 21, 53 6
 - aid 34 7 et seqq.
 - bridging loans 50 5
 - distribution of funds in USA 52 28 et seqq.
 - eviction moratorium 52 56
 - Families First Coronavirus Response Act 52 27
 - figures in Germany 31 11 et seqq.
 - fraud 52 34
 - global response 52 25
 - response by USA 52 24
 - small business support 52 32
 - subsidy fraud 31 29
 - timeline 52 26 et seqq.
 - total value of U.S. subsidies 52 27
 - U.S. response 52 26 et seqq.
 - unemployment assistance in USA 52 32
- Credit Linked Capital Subsidy Scheme 42 61
- Credit period, extension 14 24
- Credit subsidies, Brazil 38 15
- Criminal code 41 29 et seqq.
- Criminal law 29 16, 32 13 et seqq., 35 16, 42 42, 46 15, 51 30, 53 17
 - Brazil 38 25

Index

- criminal procedure 49 59
- France 30 19 et seq.
- offence 49 37
- tax offences 49 39
- union funds 32 15
- Criminal law sanctions 31 29 et seq., 40 23, 48 8
 - incorrect use 26 32
- Criminal liability of legal entities 28 40
- Criminal offence 28 39 et seq.
 - bribery 28 52 et seq.
 - corruption 28 51 et seq.
 - distortion of information on the economic situation and assets 28 46 et seq.
 - favouritism in the awards of public contracts 28 47 et seq.
 - grant fraud 28 41 et seq.
 - impairment of the financial interests of the European Union 28 49 et seq.
 - indirect bribery 28 53 et seq.
 - intentional breach of duties in the management of third-party assets 28 43 et seq.
 - jeopardization of official duties 28 50 et seq.
 - machinations in the awards of public contracts 28 48 et seq.
 - money laundering 28 42 et seq.
 - negligent breach of duties in the management of third-party assets 28 44 et seq.
 - Spain 36 25
 - violation of competition rules 28 45 et seq.
- Cross-border subsidies 3 6
- CSAU 32 2, 31 et seq., 35, 40, 43, 46
 - competences 32 18
- Cumulative thresholds 16 41
- Customs 8 16
- Customs Tariff Act 1975 42 29
- Customs Union 8 5, 13
- Cybersecurity Subsidies, USA 52 37 et seq., 42
- Damages 26 79, 32 61 et seq.
 - against the EU 31 125
- Damages, de minimis thresholds 12 35
- Damages calculation 32 63
- Damages claims 31 117 et seq.
 - amount 31 124
 - Norway 47 86 et seq.
- Damages claims against grant authority
 - civil law claims 28 133 et seq.
 - damages caused by a breach of official duty 28 130 et seq.
 - damages caused by an unlawful decision 28 130 et seq.
 - limitation periods 28 133 et seq.
- Danish Bankruptcy Act 29 44
- Danish Competition Act 29 3 et seq.
- Danish Competition and Consumer Authority 29 3 et seq.
- Databases about funding 31 25
- Data Security Subsidies, USA 52 37 et seq.
- Data Storage Subsidies, USA 52 37
- Dawn raid 16 135
- Decarbonization, USA 52 48
- Decision of the REKO/INUM re Swiss Mail. 23 26
- Decision on support 34 26 et seq.
- Decision on the award of the grant or repayable, types of decision 28 76
- Decision on the award of the grant or repayable assistance
 - administrative decision 28 78
 - state aid grant 28 78 et seq.
 - time limits 28 77
- Decision with commitments 16 119 et seq.
- Decision types 16 117
- Deemed approval 16 131
- Defence measures of competitor
 - administrative complaint 28 122
 - administrative court action against a decision granting aid to another undertaking 28 126 et seq.
 - civil court action 28 124
 - complaint to the European Commission 28 123 et seq.
 - interim injunctions 28 124 et seq.
- Definition of EU Aid 5 5 et seq.
- Definition of subsidy
 - BASR 12 19
 - benefit 12 25
 - cross-country subsidies 12 22 et seq.
 - EU anti-subsidy law 12 19
 - financial contribution 12 24
 - government 12 20
 - income support 12 24
 - price support 12 24
 - public body 12 21
- Deggendorf case law 31 99
- Deggendorf principle 31 51
- Degree of severity 16 147
- Degression, subsidies 31 2 et seq.
- Delimitation of the powers of local authorities 30 18
- Demarcation, third country subsidies – competition law 14 47
- De minimis aid 14 52
 - central register of de minimis aid 28 98 et seq.
- De minimis regulation 27 22
- De minimis threshold 16 150 et seq.
- Denouncement
 - audit courts 38 45
 - public attorney's office 38 45
- Deterioration ban 14 72
- Determination of origin 12 15

Index

- Developmental Expenditure 42 4 et seq.
- Devolved Administrations 51 7
- Dialogue with third countries 14 43
- Direct and individual concern 31 102
- Direct applicability of Art. 23 FTA 23 21
 - practice EU 23 27
 - statement of the Swiss Federal Council 23 23
- Direct Benefit Transfer 42 25
- Direct effect 22 3, 26 75
- Direct subsidy 31 44
- Disclosure of information 48 23
- Discretion 5 42 et seq., 14 53, 68, 73, 79 et seq., 83
 - Recovery 31 70
- Discretionary errors 31 21, 94
- Discretionary power 44 19
- Discrimination 14 59, 26 17
 - and subsidies 37 19
 - of Australian citizens 37 17 et seqq.
 - prohibition of 37 8
- Dispute resolution 11 9
- Dissolution 34 47 et seqq.
- Distorting effects on the internal market 5 22 et seq.
- Distortion of competition 31 4
- Distortion of competition and affect inter-state trade 5 20 et seq.
- Distortion of the internal market 14 41, 44 et seqq., 80 et seq., 16 146 et seqq.
- Distressed undertaking 14 55
- Distribution of aid 30 5
- Distributive Justice 52 4
- Division of powers 26 2, 18 et seq., 36
- Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, USA 52 22
- Doha Round negotiations 1 43
- Dolus eventualis 31 32
- Domestic subsidy 44 2
- Domestic supports 44 34
- Drug Price Negotiation Program, USA 52 47
- DSAU 32 19, 29 et seq., 31, 35 et seq., 43, 46 et seq.
- DSB, blockade by the U.S. 7 2, 31 et seq.
- Dumping 8 14, 21, 23
- Dumping Commodity Register 37 58
- Duty to inform 14 69, 100 et seqq.
 - Spain 36 6
- Duty to notify, legal consequences of the infringement 25 34
- Early notification 16 78
- East Coast Economic Region 44 23
- Eastern Neighbourhood Policy
 - Armenia 22 37
 - Azerbaijan 22 37
 - Belarus 22 37, 39
 - candidate countries 22 38
 - Georgia 22 37
 - Republic of Moldova 22 37
 - Ukraine 22 37
- Economic activity 14 5 et seq., 8, 27
- Economic complexity 44 6
- Economic constitution, Brazil 38 20 et seq.
- Economic corridors 44 21
- Economic Development Administration (EDA)
 - subsidies 52 51 et seqq.
 - USA 52 51 et seqq.
- Economic Development Corporation
 - Los Angeles, USA 52 69
 - Texas 52 99
- Economic Freedom 39 15, 50 21
 - conformity with the market economy principles 50 22
 - right to equal treatment of competitors 50 24
- Economic importance 30 4
- Economic integration 9 2 et seq., 20
 - ASEAN Economic Community 9 4 et seq.
 - ASEAN Economic Community Blueprint 9 4 et seq.
 - ASEAN Economic Community ministerial meeting 9 5
 - ASEAN Free Trade Area 9 3 et seq.
- Economic nationalism, USA 52 43, 116 et seq.
- Economic Partnership Agreement 22 12
- Economic significance of distributing subsidies 50 3
- Economic Stimulus Act of 2008, USA 52 22
- EEA
 - EEA Agreement 47 3 et seq.
 - membership 23 1
- EEA Act 47 17 et seq.
- EEA Agreement
 - FSR relevance 19 54
 - mixed agreement 6 2
- EEA State aid law 6 1 et seqq.
 - antitrust law 6 5
 - aquis communautaire 6 19
 - association relationship 6 3
 - EEA Agreement 6 2
 - EEA Council 6 12
 - EEA Joint Committee 6 13
 - EEA Joint Parliamentary Committee 6 14
 - EFTA Court 6 10, 18
 - EFTA Surveillance Authority 6 16
 - European Free Trade Area (EFTA) 6 1
 - interpretation in conformity with EU law 6 8
 - legal protection and dispute settlement 6 29 et seqq.

Index

- merger control 6 6
- part of the Union legal order 6 9
- procedural law 6 23 et seqq.
- prohibition of state aid 6 20 et seqq.
- surveillance and Court Agreement (SCA) 6 15
- two-pillar principle 6 23
- EEC declaration, safeguard measures 23 17
- EEC declaration re application of Art. 23(1) FTA 23 16
- Eesti Pagar 26 53
- Efficiency of subsidies, equity 42 3
- EFTA, EEA EFTA States 47 3
- EFTA Surveillance Authority 47 3
- Electricity 43 13
- Electricity subsidy policy 43 14
- Electric Vehicle Subsidies, USA 52 48 et seqq.
- Electronic management system, rule of law 48 2
- El Nino 43 23
- Emergency Economic Stabilization Act of 2008, USA 52 22
- Employment regional aid 34 13 et seqq.
- Energy 34 10 et seqq., 43 8
- Energy crisis 32 6
- Energy efficiency 40 14
- Energy research 52 40
- Energy sector 43 16
- Energy subsidies 43 9 et seqq.
 - policy 43 11
 - USA 52 37 et seqq.
- Enforcement action 31 94
 - administrative act 31 105
- Engineers case 37 5
- Ensuring the duty to notify 33 32 et seqq.
- Enterprise financing scheme 49 19
- Entitlement to subsidies 31 17, 94 et seqq.
- Entrepreneurial freedom, France 30 17
- Environmental protection 31 12, 34 10 et seqq., 40 14
- Equalisation payments 14 90
- Equality 31 21, 94
- Equality between Member States 5 40 et seqq.
- Equal Protection Clause 52 77
- Equal Treatment, of Economic Actors 52 4
- Essential security interests, FSR 18 65
- Established in the Union 16 43
- EU Aid 5 1 et seqq.
 - programs 5 27 et seqq.
- EU-Armenia-PA
 - duty to inform 22 45
 - granting of subsidies 22 44
 - state aid control 22 43 et seqq.
 - WTO law 22 46
- EU-Association Agreements, FSR relevance 19 55
- EU-Azerbaijan-PA 22 40
- EU Chips Act 5 4 et seqq.
- EU financial resources 5 8 et seqq.
- EU-Georgia-AA
 - legal harmonisation 22 42
 - state aid control 22 41 et seqq.
- EU-law
 - investment protection 21 1 et seqq.
 - public International Law 21 12
- EU-Moldova-AA
 - national control 22 48
 - reporting obligation 22 49
 - state aid control 22 47 et seqq.
- EUMR 16 7 et seqq., 16 et seqq., 42
- EU neighbourhood policy 22 28 et seqq.
 - Art. 8 TEU 22 29
- EU-only agreement 24 1
- Eu recognition, swiss standards 23 2
- EU Recovery and Resilience Facility Fund 35 9
- European Champions 3 2
- European Public Prosecutor's Office 28 54
- European Structural Funds 5 11 et seqq.
- European Union 8 56
 - membership 23 1
- EU state aid law 4 1 et seqq.
 - advantage 4 197 et seqq.
 - aid schemes 4 224
 - antitrust law 4 171 et seqq.
 - ASCM 4 64
 - audiovisual production 4 38
 - basic anti-dumping regulation 4 60
 - basic anti subsidy regulation 4 59
 - best practices code 4 20
 - broadband networks 4 40
 - climate, environmental and energy aid 4 34
 - coal/coal mining 4 44
 - common commercial policy 4 180
 - COVID-19 4 55, 106 et seqq.
 - de minimis aid 4 205
 - de minimis regulation 4 27
 - development 4 66 et seqq.
 - development (fifth phase) 4 94 et seqq.
 - development (first phase) 4 68 et seqq.
 - development (fourth phase) 4 86 et seqq.
 - development (second phase) 4 76 et seqq.
 - development (sixth phase) 4 105 et seqq.
 - development (third phase) 4 83 et seqq.
 - discretionary exepctions 4 210 et seqq.
 - distortion of competition 4 203
 - employment aid 4 31
 - enabling regulation 4 24 et seqq., 80
 - enforcement 4 227 et seqq.
 - european fundamental rights 4 155 et seqq.
 - export credit insurance 4 49
 - financial and economic crisis 4 53 et seqq., 86 et seqq.

Index

- financial institutions 4 53
- fitness check 4 104
- foreign subsidies regulation 4 61 et seqq.
- formal investigation procedure 4 218 et seq.
- framework supporting the Clean Industrial Deal 4 112
- fundamental freedoms 4 161 et seqq.
- GATT 4 64 et seq.
- general block exemption regulation (GBER) 4 26, 81, 213 et seq.
- general cross-section polica clauses 4 175 et seqq.
- geographical scope 4 147 et seqq.
- green deal 4 111 et seqq., 183 et seqq.
- greenhouse gas emission allowance trading 4 34
- guarantees 4 47
- history 4 66 et seqq.
- horizontal provisions 4 28 et seqq.
- implementation prohibition 4 216
- implementing regulation 4 19
- international economic law 4 181
- international state aid law 4 58 et seqq.
- investment protection law 4 182
- legal bases 4 8 et seqq.
- legal exeptions 4 207 et seqq.
- legal protection (aid recipient) 4 232 et seqq.
- legal protection (competitors) 4 237 et seqq.
- legal protection (EU level) 4 229 et seqq.
- legal protection (meber state level) 4 242 et seqq.
- legal protection (member states) 4 229 et seqq.
- matching clauses 4 110
- material scope 4 139 et seqq.
- misuse of aid 4 221
- new geopolitical context 4 115 et seqq.
- notification obligation 4 216
- postal services 4 41
- preliminary examination phase 4 217
- primary law 4 13 et seqq.
- procedural Law 4 215 et seqq.
- procedural legal bases 4 17 et seqq.
- procedural regulation 4 18, 77
- procedure for existing aid schemes 4 224 et seqq.
- procedure regarding misuse of aid 4 221
- procedure regarding notified aid 4 216 et seqq.
- procedure regarding unlawful aid 4 220
- production sectors 4 196
- prohibition of state aid 4 191 et seqq.
- public broadcasting 4 39
- public procurement law 4 165 et seqq.
- purpose 22 1
- recovery of misused aid 4 222 et seqq.
- recovery of unlawful aid 4 222 et seqq.
- regional aid 4 32
- rescue and restructuring aid 4 36
- research, development and innovation aid 4 33
- risk finance aid 4 35
- sales of land and buildings 4 48
- sector-specific provisions 4 37 et seqq.
- selectivity 4 202
- services of general economic interest (SGEI) 4 51 et seqq.
- shipbuilding 4 42
- SME aid 4 29
- special aid instruments 4 46 et seqq.
- state aid action plan 2005 4 83 et seqq.
- state aid modernization (Sam) 2012 4 94
- state aid volume 4 125 et seqq.
- state origin 4 199 et seqq.
- steel sector 4 43
- substantive law 4 189 et seqq.
- supranational state aid control 4 121 et seqq.
- systemic competition 4 133 et seqq.
- tax aid 4 50
- temporal scope 4 151 et seqq.
- temporary crisis and transition framework 4 112
- trade between member states 4 204
- training aid 4 30
- transport 4 45
- ukraine 4 56 et seq.
- undertakings 4 195
- unlawful aid 4 220
- wTO 4 64
- EU State Aid Scoreboard 52 9
- EU-Ukraine-AA
 - area of application 22 58
 - dAWI 22 52
 - dispute resolution 22 57
 - interpretation 22 55
 - national control 22 56
 - regional aid 22 51
 - reporting obligations 22 53
 - state aid control 22 50 et seqq.
 - systematics 22 50
 - transparency obligations 22 54
- Exceptional occurences 16 152
- Exceptional provisions 16 136
- Exceptions 16 39 et seqq.
- Exclusion of the operator 48 25
- Exclusions
 - administrative decisions 28 88
 - parliamentary legislation 28 89 et seqq.
 - state aid 28 88
- Exclusive economic zone 12 16
- Exemption regulation, GBER 32 42
- Ex-officio-control 16 12
- Ex-officio procedure 16 168 et seqq.
- Ex officio tool (FSR) 15 1 et seqq.
 - aSCM 15 14 et seqq.
 - commitments 15 84 et seqq.
 - EU anti-subsidy law 15 14 et seqq.
 - EU state aid law 15 10 et seqq.
 - file access 15 73 et seqq.
 - fines 15 83 et seqq.
 - in-depth investigation 15 38 et seqq.

Index

- information obligation 15 35
- information requests 15 52 et seqq.
- inspections 15 59 et seqq.
- interim measures 15 90 et seqq.
- interviews 15 64 et seq.
- investigation framework 15 27 et seqq.
- investigation phases 15 27 et seqq.
- investigatory powers of the Commission 15 49 et seqq.
- list of activities concerned 15 21 et seq.
- potential areas of interest 15 23 et seqq.
- preliminary review 15 28 et seqq.
- principle of confidentiality 15 70 et seqq.
- procedural rights 15 66 et seqq.
- redressive measures 15 84 et seqq.
- relationship with other EU regimes 15 8 et seqq.
- relationship with the notification tools 15 17 et seqq.
- remedies 15 83 et seqq.
- revocation of a decision 15 46 et seqq.
- right to submit observations 15 67 et seqq.
- sanctions 15 97 et seqq.
- sources of information 15 32 et seqq.
- subsidies that can be investigated 15 21 et seqq.
- timeframe 15 36 et seqq., 44 et seq.
- Export 8 24 et seq.
- Export distorting subsidies 44 38
- Export financing measures 14 54
- Export of state aid law 22 2
- Export processing zone 44 9
- Export Subsidies 1 21, 52 5
- Ex-post audit of subsidies 31 63
- External customs duty 6 3
- Externalities 52 1 et seqq.
- Facilitate 44 13
- Facilitation function 44 23
- Failure to notify state aid to the European Commission
 - no fines 28 90 et seq.
 - violation of budgetary discipline 28 91
- Failure to register de minimis aid by the grant authority, fines 28 99 et seqq.
- Fair Competition 39 19
- Fairness 40 4
- Farmer 43 19, 22
- Favoring certain companies or production sectors 5 19 et seq.
- Favoring local businesses 5 20 et seq.
- Favouring an undertaking by public authority, administrative offence 28 87
- FDI policy 42 43
- FDI regulations 16 8 et seqq.
- FDI Screening Regulation 13 50 et seqq., 104
- Federalism
 - Australia 37 2
 - engineers case 37 5
 - financial 37 7
 - grants power 37 7
 - Work Choices case 37 6
- Federalism in Brazil 38 1
 - competences 38 2 et seq.
 - judicial review 38 4
 - legislative matters 38 3
- Federal law of 16 May 2003, general principles 26 30
- Federal Property and Administrative Services Act of 1949 (FPASA), USA 52 16
- Federal Reserve Bank, USA 52 23
- Fertiliser industry 42 12
- Fertilizer subsidy 43 7, 17, 20 et seqq., 24
- Fictitious exports or imports 41 29
- Figures on subsidies, Germany 31 7 et seqq.
- Film subsidies 31 26 et seq.
- FINAGRO 41 37
- Financial contribution
 - aggregating 16 66 et seqq.
 - contributions by EEA countries, the U.K. or Western Balkan countries 19 57
 - contributions for ASCM covered subsidies 19 50
 - contributions supporting trade in goods 19 50
 - threshold 16 41, 56 et seqq., 111
- Financial crisis 26 5
- Financial strength 14 66 et seq.
- Financing theories 5 12 et seq.
- Fines 14 99, 107, 16 139, 163 et seq.
- Fiscal incentives 44 15
- Fiscal policy 42 2
- Fiscal responsibility, Brazil 38 23
- Fiscal Responsibility and Management Act 42 38
- Fiscal State aid 26 15
- Fiscal war, role of the Supreme Court 38 30
- Fisheries 43 27 et seq.
- Fisheries subsidies 43 7, 25, 29, 34, 44 2
- Fishermen 43 34
- Foreign direct investment, framework
 - Agreement on the ASEAN Investment Area 9 3 et seq.
- Foreign Direct Investment screening (FDI Screening) 20 2
- Foreigners 31 37
- Foreign financial contributions 16 56 et seqq.
- Foreign subsidies, FSR and other rules 19 1
- Foreign Subsidies Regulation (FSR) 1 44 et seqq., 5 2 et seqq., 18 1 et seqq.
 - additional burden 19 3 et seqq.