Bungenberg/Soltész

Foreign Subsidies Regulation

Article-by-Article Commentary

BECK • HART • NOMOS

Bungenberg / Soltész

Foreign Subsidies Regulation

Foreign Subsidies Regulation

Article-by-Article Commentary

edited by

Marc Bungenberg
Ulrich Soltész

2026

BECK • HART • NOMOS

Published by
Nomos Verlagsgesellschaft mbH & Co. KG, Waldseestraße 3-5, 76530 Baden-Baden, Germany,
email: service@nomos.de

Co-published by
Verlag C.H.Beck oHG, Wilhelmstraße 9, 80801 München, Germany,
email: bestellung@beck.de

and

Hart Publishing, Kemp House, Chawley Park, Cumnor Hill, Oxford, OX2 9PH, United Kingdom,
online at: www.hartpub.co.uk

Published in North America by Hart Publishing,
An Imprint of Bloomsbury Publishing 1385 Broadway, New York, NY 10018, USA
email: mail@hartpub.co.uk

ISBN 978 3 7560 1511 5 (NOMOS Print)
ISBN 978-3-7489-2046-5 (NOMOS ePDF)
ISBN 978 3 406 82778 5 (C.H.BECK)
ISBN 978 1 5099 9382 6 (HART)

First Edition 2026

Preface

General Background of this Volume and the FSR

The adoption of the Foreign Subsidies Regulation (FSR) must be understood against the backdrop of a profoundly changing geopolitical and economic environment. Over the past fifteen years, the European Union has increasingly come to identify China as a systemic rival, not only in geopolitical terms but also in the context of global economic competition. This reassessment has led the Union to reconsider the adequacy of existing legal instruments designed to safeguard the integrity of the internal market.

In several areas of economic law, the EU has responded to the growing influence of companies benefiting from extensive state support outside the Union. Alongside the development of foreign investment screening mechanisms, policymakers increasingly focused on the potential distortive effects of large-scale state subsidies granted by third countries. Particular attention has been paid to the role of Chinese industrial policies and the expansion strategies of state-owned enterprises (SOEs), which are often supported by extensive financial assistance from public authorities.

These concerns were articulated early on in the influential China report of the German Monopolies Commission, which highlighted the structural challenges arising from the interaction between state-driven economic systems and open market economies. Around the same time, the European Commission placed the issue of distortive foreign subsidies affecting competition in the internal market high on its policy agenda. While EU state aid law imposes strict constraints on subsidies granted by Member States, comparable financial interventions by third countries historically remained largely outside the reach of EU competition law. The Commission therefore identified a regulatory gap that could undermine the level playing field within the internal market.

Against this background, the FSR emerged with remarkable speed. Within a comparatively short legislative process, the European Union introduced a new regulatory instrument designed to address distortions caused by foreign financial contributions to companies active within the internal market. The Regulation equips the Commission with investigative and enforcement powers in three principal areas: concentrations, public procurement procedures, and ex officio market investigations.

The practical significance of the Regulation became apparent almost immediately after its entry into force. During the first years of its application, the Commission was confronted with a remarkably high number of notifications and requests for information under the new regime. The substantial volume of cases and the complexity of the legal and economic questions involved quickly demonstrated the need for systematic guidance on the interpretation and application of the Regulation. These developments provided an important impetus for the present project, which seeks to offer a comprehensive and structured analysis of the FSR and its emerging enforcement practice.

The Commission's Emerging Assessment Framework

Although the FSR is still in the early stages of its practical application, the Commission's first decisions already reveal a relatively structured analytical framework guiding the assessment of foreign subsidies. This methodology is most clearly visible in the context of merger control under the Regulation, but its core elements are also relevant for the other enforcement mechanisms provided for by the FSR.

Preface

In merger cases, the Commission's analysis begins with the determination of whether the transaction falls within the scope of the notification regime under Article 20 FSR. For concentrations, two cumulative thresholds must be satisfied. The target undertaking (or at least one of the merging parties) must generate EU turnover exceeding EUR 500 million, and the undertakings concerned must have received aggregate "foreign financial contributions" exceeding EUR 50 million during the preceding three years. In this regard it is important to note that the concept of "foreign financial contributions" is much broader than the concept of a "foreign subsidy" (or the notion of "state aid" under Article 107 TFEU), covering everything from a market-rate contract with a state-owned authority to a tax break. As a result, a large number of mergers with no plausible link to subsidies are caught by the system. Once these conditions are fulfilled, the parties must notify the transaction to the Commission prior to its implementation. After verifying the completeness of the notification, the Commission initiates a preliminary investigation (Phase I). If the initial assessment raises concerns regarding potential distortions of the internal market, the Commission may open an in-depth investigation (Phase II).

The substantive analysis typically unfolds in three main steps. First, the Commission determines whether the financial contributions at issue qualify as foreign subsidies within the meaning of Article 3 FSR. This involves examining whether a financial contribution granted by a third country or a public entity can be attributed to the state and whether it confers an economic advantage on the recipient undertaking. In general, the Commission favors a wide notion of a "foreign subsidy". The concept of financial contribution is interpreted broadly and encompasses instruments such as loans, guarantees, capital injections, tax advantages, or other forms of financial support. The Commission then assesses whether the measure provides a benefit by comparing the conditions of the financial contribution with market benchmarks. Where undertakings fail to provide sufficient information, Article 14 FSR allows the Commission to rely on the "facts available," potentially leading to presumptions regarding the existence of an advantage.

In a second step, the Commission examines whether the identified subsidy distorts the internal market within the meaning of Articles 4 and 5 FSR. Certain categories of subsidies—such as unlimited guarantees or subsidies directly facilitating acquisitions—are presumed to be particularly distortive. Where no such presumption applies, the Commission conducts a broader effects-based analysis, focusing on whether the subsidy improves the competitive position of the beneficiary and whether it is liable to negatively affect competition within the internal market. In the context of concentrations, the Commission may distinguish between the role of the subsidy in facilitating the acquisition itself and the competitive advantages that the subsidised undertaking may enjoy following the completion of the transaction.

The third analytical step is the balancing test under Article 6 FSR, which requires the Commission to weigh the negative effects of the subsidy against any potential positive effects on the development of the relevant economic activity within the internal market. The burden of demonstrating such positive effects lies with the notifying parties. The Commission's early decisional practice suggests that this balancing exercise will rarely outweigh findings of distortion where particularly problematic forms of subsidies are involved. Against this background, it is likely that, similar to the Commission's merger control practice over the last decades, problematic cases will be solved with extensive commitments offered by the parties to offset possible distortions of competition and to avoid a negative decision, i.e., the blocking of the merger.

Where distortions are identified, the Commission may accept commitments designed to remedy the distortion under Article 12 FSR. If suitable commitments are not offered, the Commission may impose redressive measures or ultimately prohibit the transaction under Article 13 FSR.

The new merger mechanism, also referred to as "merger control 2.0", is not entirely uncontroversial. In particular, many stakeholders have deplored the significant administrative burden resulting from the new notification system. This is also against the background that the FSR concentration tool is adding more "red tape" to the existing regulatory framework in M&A transactions. The new mechanism sits alongside national FDI screening regimes and merger control, which can turn many cross-border transactions – particularly those involving sovereign wealth funds, state-owned enterprises, or private equity vehicles with minority public investors – into time-consuming, labor-intensive, and expensive "multi-track" filings. The FSR also contains an innovation. While the EU merger control system normally does not cover transactions below the notification threshold, such transactions are not "out of scope" in the new system. Under the FSR, the Commission has the authority to "call in" transactions (or public procurement bids) for review – even if they do not trigger notification requirements. These far-reaching call-in powers under Articles 21(5) and 29(8) FSR contain virtually no substantive conditions, i.e. any suspicion of third-country subsidies with a certain "impact" in the EU is sufficient to subject below-threshold transactions to the notification requirement and the standstill obligation.

Scheme

1. Scope & thresholds: Is the transaction notifiable under Art. 20?
2. Foreign subsidy: Does the financial contribution meet Art. 3 criteria?
3. Distortion Art. 4–5: Is there a (presumed or proven) distortion of the market?
4. Balancing Art. 6: Do positive effects outweigh negative ones?
5. Remedies Art. 12–13: Commitments accepted or redressive measures imposed
6. Cooperation Art. 14: Is the company cooperating? If not → adverse consequences

Beyond concentrations, the Regulation also establishes two additional enforcement mechanisms that significantly broaden the Commission's ability to address distortive foreign subsidies within the internal market.

The first concerns public procurement procedures, governed primarily by Articles 27 to 31 FSR. Under this regime, economic operators participating in large public tenders must notify foreign financial contributions received from third countries where certain thresholds are met. The Commission may then examine whether such subsidies distort the procurement procedure by enabling bidders to submit particularly advantageous offers that would not be sustainable under normal market conditions. Where distortions are identified, the Commission may impose appropriate measures, including commitments by the undertaking concerned or, where necessary, the exclusion of the bidder from the procurement procedure. Some observers say that the FSR has a certain protectionist effect on public procurement. It is not uncommon that, after the opening of an in-depth investigations, non-EU bidders concerned withdraw their offers and pull out from the procurement procedure – a chilling effect to the benefit of EU producers who then have to face less competitive pressure.

The Regulation further empowers the Commission to initiate ex officio investigations under Articles 9 and 10 FSR. This instrument allows the Commission to investigate situations in which foreign subsidies may distort competition in the internal market even where no notification obligation exists. Ex officio investigations may therefore address a wide range of market situations, including investments, market conduct, or other economic activities supported by foreign financial contributions. If distortions are confirmed, the Commission may impose redressive measures or accept commitments designed to neutralise the competitive advantage created by the subsidy. Contrary to general expectations, the Commission has made significant use of the ex officio tool and even conducted some dawn raids.

Taken together, the three enforcement mechanisms established by the FSR—concentration control, scrutiny of public procurement procedures, and ex officio investigations—form a comprehensive regulatory framework aimed at addressing the competitive effects of foreign subsidies across a wide range of economic activities within the internal market. The Regulation thereby closes what the European Commission had identified as a structural enforcement gap: while subsidies granted by Member States are subject to the strict discipline of EU State aid law, comparable financial interventions by third countries had long remained largely beyond the reach of EU competition rules.

From a systemic perspective, the FSR occupies a unique position within the architecture of EU economic law. In certain respects, its analytical framework closely resembles the methodology developed in EU State aid control, particularly in the assessment of financial contributions, the identification of an economic advantage, and the evaluation of distortions of competition. At the same time, the procedural mechanisms established by the Regulation draw heavily on concepts familiar from EU merger control, including notification obligations, phased investigations, and the possibility of commitments designed to remedy competitive concerns. Finally, the broader policy rationale underlying the FSR also reflects elements traditionally associated with EU trade defence and international economic policy, insofar as the Regulation seeks to respond to distortions originating from state-driven economic systems outside the Union.

In this sense, the FSR represents a hybrid regulatory instrument situated at the intersection of competition law, internal market law, and external economic policy. Its adoption illustrates the increasing willingness of the European Union to develop new legal tools capable of addressing the challenges posed by the evolving structure of the global economy and the growing interaction between different models of economic governance.

Given the novelty of the instrument and the rapidly developing decisional practice of the European Commission, the interpretation and practical application of the Regulation raise a number of complex legal and economic questions. The purpose of the present volume is therefore to provide a comprehensive article-by-article commentary on the Foreign Subsidies Regulation, analysing each provision of the Regulation in its legal and economic context and in light of the emerging enforcement practice. Particular attention will be paid to the interaction between the FSR and existing areas of EU economic law, including State aid control, merger regulation, and public procurement law, as well as to the broader implications of the Regulation for the future development of the internal market.

Acknowledgements

The editors would first like to express their sincere gratitude to the authors contributing to this volume, whose expertise, dedication, and willingness to engage with a rapidly evolving field of law made this project possible.

The editors also wish to thank Lars Ruf and Dr. Matthias Knopik of NOMOS Verlag for their outstanding support from the very beginning of this project. Preparing a comprehensive article-by-article analysis of a newly adopted regulatory instrument such as the Foreign Subsidies Regulation would not have been possible without their continued assistance throughout the entire editorial process.

CONTENTS

Contents

Authors

Jan Bonhage, Dr. iur., LL.M. (New York), is a Partner at Hengeler Mueller, Berlin. His expertise covers EU law, constitutional and public law, public procurement and state aid. He advises both national and international companies, as well as the public sector. His professional experience includes major projects in the EU energy sector as well as in traffic and infrastructure, defence and security, finance and health care. He also represents clients before the courts of the European Union and the European Commission.

Marc Bungenberg, Dr. iur., is a professor at Saarland University, Germany (Chair of Public Law, Public International Law, European Law and International Economic Law). He is also the director of the Europa-Institut at Saarland University and a visiting professor at the University of Lausanne, Switzerland since 2011.

Gordon Christian, Dr., is an antitrust lawyer and Principal Counsel Competition in the Legal and Compliance team at Siemens Energy, where he advises on German, European and international antitrust- and related regulatory law, both in operational terms and in relation to M&A transactions (merger control and FDI), internal and external antitrust investigations, as well as related regulatory issues such as state aid law, FSR, trade secret protection, trade law etc. In addition, he is immediate past co-head of the Munich regional group of the Studienvereinigung Kartellrecht (Antitrust Law Study Association), co-head of the ICC Antitrust Compliance Policy Harmoniszation Task Force and a member of the Antitrust Law Committee of the German Federal Bar Association.

Christian Dankerl is a Council at Hengeler Mueller, Brussels. He focuses on M&A-related merger control matters and follow-on damage claims litigation.

Johannes Dittrich, Dr., is a director at CRA's European Antitrust and Competition Practice based in Munich. He advises clients in antitrust, damages, and abuse of dominance cases. His experience covers all aspects of competition and antitrust matters before the European Commission, as well as national competition authorities and national courts.

Caspar Ebrecht, Dr., is a Legal and Policy Officer in Unit H.1 (Construction) of the Directorate-General for Internal Market, Industry, Entrepreneurship and SMEs (DG GROW) of the European Commission. Until September 2024, he worked in the Public Procurement Unit of DG GROW.

Jörn Eickhoff is an antitrust lawyer and Head of Legal Competition & Regulatory in the Legal and Compliance team at Siemens Energy, where he advises on German, European and international antitrust- and related regulatory law law, both in operational terms and in relation to M&A transactions (merger control and FDI), internal and external antitrust investigations, and related regulatory issues such as EU state aid law, FSR, trade secret protection, trade law, etc. The Legal Competition & Regulatory team Mr. Eickhoff heads also handles foreign trade and sanctions law issues. In addition, Mr. Eickhoff chairs the Competition Working Group of Business Europe and is Vice-Chair of the In-House Counsel Committee of the Antitrust Law Section of the American Bar Association.

Authors

Alexander Fritzsche, Dr. iur., LL.M., is a Partner at Gleiss Lutz in Frankfurt am Main. He specializes on German and European competition law including German and European merger control law, cooperation and distribution contracts, cartel proceedings and litigation, as well as competition law compliance. His fields of expertise include Competition/Antitrust, Defense and Security, Compliance and Investigations and Dispute Resolution, Litigation and Arbitration. He is also a member of the German-American Lawyers' Association (DAJV), the International Bar Association and the Studienvereinigung Kartellrecht e.V. (Antitrust Law Study Association).

Elżbieta Glowicka, Dr., is Director at E.CA Economics in Berlin. She has over 15 years of experience in competition economics from her roles in economic consulting, enforcement, and academia. Dr Głowicka advises clients in private litigation cases for damages from cartels, vertical agreements, and abuse of dominance in court proceedings across many European jurisdictions. Besides this, she regularly works as an economic expert in the area of State aid, both for the European Commission, DG Competition, and private clients.

Michael Hahn, Dr., LL.M., is the Managing Director of the Institute for European and International Economic Law of the University of Bern Law School since 2015. He is also a Director at the World Trade Institute. Previous stages of his career include holding the chair of European law at the University of Lausanne and being a Professor of Law at the University of Waikato, Hamilton (New Zealand). He now advises sovereign and private clients in questions of international economic law and EU internal market and foreign relations law.

Christoph Herrmann, Dr., LL.M. European Law (London), is a professor at the University of Passau. He was appointed to the chair for Constitutional and Administrative law, European law, European and International economic law at the University of Passau in 2009. His main areas of expertise are European constitutional and economic law and international economic law. He is a member of the Association of German Constitutional Law Teachers, the Society for Comparative Law/Scientific Society for European Law, the Working Group on European Integration, and the German Society for International Law.

Sofie Holtan Lakså is an Analyst at the economics and finance consultancy Oxera Consulting LLP (Oxera). Sofie is a member of Oxera's Competition practice and is based in Brussels.

Hubert Klinger, Dr., LL.M. Eur., is a senior competition counsel at Siemens, Munich, Germany. He advises Siemens group companies globally on antitrust law, merger control, FDI, FSR, internal and external investigations, private antitrust litigation, state aid law and trade secret protection. He holds law degrees of the Ludwig-Maximilians-Universität, Munich, and the Université Panthéon-Assas, Paris, and was admitted to the German bar in 2006.

Christian von Köckritz, Dr., is a Partner at Gleiss Lutz based in Brussels, Belgium. His expertise includes European and German antitrust and merger control law, EU-state aid law, as well as other areas of EU law. He represents German and international companies in proceedings before the European Commission, the Federal Cartel Office and before the German and European Courts. Other career steps include his time as a notary in training in several Bavarian notary offices as well as at the German Notary Institute. He is a member of the Association for the Study of Antitrust Law.

Authors

Benjamin Linke, Dr., LL.M. (Edinburgh), is working as a lawyer in the legal department of Deutsche Bahn AG in Frankfurt am Main (Germany). He specializes in Public Procurement Law, State Aid Law and Public Commercial Law and he regularly publishes in the aforementioned fields. He acquired law degrees from the Universities of Tübingen (Germany) and Edinburgh (UK). He wrote his Ph.D. thesis on State aid law in the public passenger transport sector.

Anselm Mattes, Dr., is a Director at E.CA Economics in Berlin. He has close to 20 years of experience in economic consulting with a focus on competition economics and empirical analyses. He provides economic advice in merger cases and private litigation as well as State aid proceedings and regulatory matters. In addition to his work for private clients, he supports the European Commission with ex-post evaluations and impact assessment studies on various competition policy issues.

Simon A. Miller, LL.M., MBA, is PhD candidate in European Economic Law at the Chair of Constitutional and Administrative Law, European Law, European and International Economic Law, held by Prof. Dr. Christoph Herrmann at the University of Passau; additionally lecturing at universities of applied sciences with a teaching focus on Public and European Law.

Till Müller-Ibold, Dr., is a Honorarprofessor at the Law School of the University of Passau, where he teaches European law (competition and EU foreign relations and trade law). He recently retired as a partner of Cleary Gottlieb Steen & Hamilton in Brussels. He specializes in EU competition and trade law (including State aid and FSR rules) and has extensive experience in representing corporations and sovereign clients with respect to these matters, both vis-à-vis the European Commission and in the European Courts.

Matthias Nordmann, Dr., LL.M., is a competition lawyer, based in Munich, Germany. He supports and represents companies in merger control proceedings and advises clients on further aspects of competition law including cartel proceedings, dominance cases, compliance and State aid. He is a frequent speaker at conferences and regularly publishes in jounals and books.

Eckhard Pache, Dr., is a professor at the Faculty of Law of the University of Würzburg, Germany, and since 2002 holds the chair in the fields of Constitutional Law, International Law, International Business Law and Economic Administrative Law. He is a member of the Association of German Constitutional Law Professors, the German Society for International Law, the Working Committee on European Integration and the Association of German, Italian and French Administrative Judges.

Philipp Reinhold, Dr., is a lecturer and senior research assistant at the Chair of Public Law, European Law, Public International Law, European Law and International Business Law of Prof. Dr. Marc Bungenberg, LL.M. (Lausanne) and at the Europa-Institut at Saarland University.

Martin Rérolle is a Case Handler for the European Commission, DG Competition, Task Force Foreign Subsidies, since 2023 based in Brussels, Belgium. Before, he was a Case Handler for the DG Competition, Unit H.5, Tax Planning Practices. He specializes in Tax and Competition law.

Authors

Nicole Robins is a Partner at the economics and finance consultancy Oxera Consulting LLP (Oxera). Nicole is the head of Oxera's State Aid & Subsidy Control practice and is based in Brussels.

Lars Ruf, LL.M. (Exeter) currently works as a trainee lawyer in the Antitrust/Competition practice group of a major international law firm in Düsseldorf, Germany. As part of his legal traineeship, he has gained practical experience inter alia in the fields of competition and state aid law in court, public administration, and private practice. Prior to that, he worked as a research assistant at the chair of Prof. Dr. Marc Bungenberg LL.M. at the Europa-Institut of Saarland University and served as the Assistant Editor of this book.

Stefan Schelhaas, Dr., LL.M., was a research assistant at the chair of Prof. Dr. iur. Marc Bungenberg, LL.M. at Saarland University and the Europa-Institute from 2015-2025. Since 2026, he is a legal associate at aconium GmbH. His research covers European and International commercial law, which includes public economic law as well as European state aid and public procurement law. He gives the lecture about European Public Procurement Law at the University of Siegen during winter semester.

Caroline Scholke, LL.M., is Partner at Clifford Chance based in Düsseldorf, Germany. She advises a wide range of national and international clients in various sectors on all areas of European and German antitrust law, including European State aid law and the EU Foreign Subsidies Regulation, and foreign direct investment rules.

Ulrich Soltész, Dr., LL.M., is a Partner at Gleiss Lutz based in Brussels, Belgium, since 2002. His expertise covers European antitrust and state aid law, merger control, FSR and general European law. He represents his clients, including German and foreign companies and public bodies, before the European Commission and national competition authorities. He speaks frequently as an expert at various international conferences and is the co-editor of the European Journal of Business Law (EuZW) as well as of the New Journal of Antitrust Law (NZKart).

Laurence Van Mullem, LL.M., is an in-house antitrust counsel. She previously worked for the Brussels office of Jones Day. She is specialised in antitrust and competition law as well as EU law and advises on anticompetitive agreements and conducts, and merger control. She is admitted to the bar in Brussels, Belgium and holds two Masters of Laws from the University of Chicago Law School and the College of Europe.

Amelie Volkert, LL.M. Eur., Ass. iur., is an Associate at Gleiss Lutz in Brussels, Belgium. She is admitted to the Bar Frankfurt, a. M., Germany. She advises clients especially on German and European competition law, including merger control and Foreign Subsidies Regulation (FSR), as well as state aid law and general EU law. Her work experience also encompasses many years as a research associate at the University of Wuerzburg, specializing in European economic law, with a particular focus on international economic law and European procedural law.

Harald Weiß, Dr., is a Counsel for Gleiss Lutz in Brussels, Belgium, since 2013. He advises on German and European competition law, including antitrust, private antitrust litigation, merger control, EU state aid law and Foreign Subsidies Regulation (FSR), as well as on EU law. He represents clients before the European Commission and the Court of Justice of the EU. He has been admitted as a lawyer at the Bar of Munich, Germany, and is registered as a European lawyer at the Barreau de Bruxelles. His doctoral thesis gained several awards. He is a member of the Studienvereinigung Kartellrecht (Antitrust Law Study Association) and a member of the advisory board of the Berliner Gesprächskreis zum Europäischen Beihilfenrecht (Berlin Discussion Group on European State Aid Law).

Wolfgang Weiß, Dr., is a university professor at the German University of Administrative Sciences Speyer. He holds the Chair of Public Law, European Law and Public International Law. He specializes in Public Law, European Law, Public International Law with focus on German and European Commercial Law, European and German Constitutional Law and Administrative Law, WTO Law, UN Law.

Philipp Werner, LL.M., is a Partner in Jones Day's Brussels office where he focuses on German and EU competition law, merger control, State aid law, and the Foreign Subsidies Regulation (FSR). He leads the Firm's FSR Task Force. Philipp has been recognized by all major publications including by Lexology Index (formerly Who is Who Legal) as a "Thought Leader – Global Elite" in Competition law and State aid law. He is the co-editor of "EU State Aid Control: Law and Economics" (Wolters Kluwer, 2d ed. 2025) and regularly publishes and speaks about competition law.

Lars Wiethaus, Dr., is a Vice President for CRA since 2016 and is based both in Brussels, Belgium and in Munich, Germany. Before, he was a Director and head of the Brussels office at E.CA Economics. His expertise includes the application of economic and quantitative techniques in the space of competition law and litigation, including merger control, abuse of dominance and damage estimations. He represented clients in front of the European Commission, German Federal Cartel Office, Austrian Federal Competition Authority, Swiss Competition Commission, as well as German and Austrian courts. Moreover, he is a co-editor of the Journal of European Competition Law and Practice and Competition Law & Policy Debate.

Simon Yarak is a Managing Consultant at the economics and finance consultancy Oxera Consulting LLP (Oxera). Simon is a member of Oxera's State Aid & Subsidy Control practice and is based in Brussels.

Johannes Zöttl, Dr., is a Partner at Jones Day based in Düsseldorf, Germany. He advises on German and European antitrust law, from structural and contractual design to issues of abuse of market power to merger control before the Federal Cartel Office and the European Commission. His expertise includes representation and defence before antitrust authorities. Furthermore, he advises in particular on compliance under the new EU Regulation on third-country subsidies (FSR). He publishes regularly in specialist journals and newspapers.

Introduction 1
Geoeconomic Background to the Foreign Subsidies Regulation

Literature: Amiti, Mary/Dai, Mi/Feenstra, Robert C./Romalis, John, How did China's WTO entry affect U.S. prices?, JIE 2020/103339, 1; Arnold, Gideon, Das geoökonomische Potenzial der EU – Unionsrechtlicher Kompetenzrahmen für geoökonomische Zielsetzungen in der gemeinsamen Handelspolitik, Berlin 2025; Autor, David H./Dorn, David/Hanson, Gordon H., The China Syndrome: Local Labor Market Effects of Import Competition in the United States, AER 2013, 2121; Baldwin, Richard, The World Trade Organization and the Future of Multilateralism, JEP 30/2016, 95; Boughton, James M., The IMF and the force of History: Ten Events and Ten Ideas that Have Shaped the Institution, IMF Working Papers 75/2004, 1 May 2004, https://www.elibrary.imf.org/view/journals/001/2004/075/001.2004.issue-075-en.xml (last accessed: 25 May 2025); Brown, Chad P., The US–China trade war and Phase One agreement, JPO 43/2021, 805; Brühl, Volker, The economic rise of China – an analysis of China's growth drivers, IEEP 16/2025; 3 December 2024, https://link.springer.com/article/10.1007/s10368-024-00640-w (last accessed: 25 May 2025); Capobianco, Antonio/Christiansen, Hans, Competitive Neutrality and State-Owned Enterprises: Challenges and Policy Options, OECD Corporate Governance Working Papers No. 1, 1 May 2011, https://www.oecd.org/en/publications/competitive-neutrality-and-state-owned-enterprises_5kg9xfgjdhg6-en.html (last accessed: 25 May 2025); Caspari, Volker, A History of Economics – The Co-Evolution of Economics and the Economy, Berlin 2024; Chow, Gregory, Economic Planning in China, CEPS Working Paper No. 219, June 2011, https://gceps.princeton.edu/wp-content/uploads/2017/01/219chow.pdf (last accessed: 25 May 2025); Condon, Bradly J., Climate Change and Unresolved Issues in WTO Law, JIEL 2009, 895; Crochet, Victor/ Gustafsson, Marcus, Lawful Remedy or Illegal Response? Resolving the Issue of Foreign Subsidization under WTO Law, WTRev 2021, 343; Deane, Felicity/Woolmer, Emily/Cao, Shoufeng/Tranter, Kieran, Trade in the Digital Age: Agreements to Mitigate Fragmentation, AJIL 2024, 154; Du, Ming, China's State Capitalism and World Trade Law, ICLQ 63/2, 409; Evenett, Simon J., Taming the Chinese Dragon: A Promising Cornerstone for Transatlantic Trade Cooperation?, Intereconomics 2021, 8; Frank, Malte, The EU's New Foreign Subsidy Regulation on Collision Course with the WTO, CMLRev 2023, 925; Gavin, Brigid, China's Growing Conflict with the WTO – The Case of Export Restrictions on Rare Earth Resources, Intereconomics 2013, 254; Gregori, Tullio, Protectionism and international trade: A long-run view, International Economics 165/2021, 1; Guilliard, Simon, Herausforderung China – beihilfenrechtliche Implikationen und Ansatzpunkte für legislative Konsequenzen, ZEuS 2020, 295; Herrmann, Christoph, "Open Strategic Autonomy" – Die gemeinsame Handelspolitik der EU vor neuen Herausforderungen, in Pechstein et al. (eds), Zur Verwirklichung eines vereinten Europas: Festschrift für Rudolf Streinz, Munich 2023, p. 115; Herrmann, Christoph, Open Strategic Autonomy – New challenges for the EU's Common Commercial Policy, Swedish Institute for European Policy Studies (SIEPS), June 2023, https://sieps.se/en/publications/2023/open-strategic-autonomy-new-challenges-for-the-eu-s-common-commercial-policy/ (last accessed: 25 May 2025); Herrmann, Christoph/Ellemann, Tim, Die neue Verordnung über den Binnenmarkt verzerrende drittstaatliche Subventionen – Ein Brussels Effect in Zeiten geoökonomischer Subventionswettläufe?, ZEuP 2024, 64; Herrmann, Christoph/Streinz, Thomas, Die EU als Mitglied der WTO, in von Arnauld/Bungenberg (eds), Enzyklopädie Europarecht Band 12: Europäische Außenbeziehungen, § 13; Hornkohl, Lena, Protecting the Internal Market From Subsidisation With the EU State Aid Regime and the Foreign Subsidies Regulation: Two Sides of the Same Coin?, JECLAP 2023, 137; Howse, Robert, Making the WTO (Not So) Great Again: The Case Against Responding to the Trump Trade Agenda Through Reform of WTO Rules on Subsidies and State Enterprises, JIEL 2020, 371 Huang, Qiuyue/Li, Zhiyuan, Trade and peace: The WTO case, CER 2024/192972, 1; Kowalski, Przemyslaw/Büge, Max/Sztajerowska, Monika/Egeland, Matias, State-Owned Enterprises: Trade Effects and Policy Implications, OECD Trade Policy Papers No. 147, 24 April 2013, https://www.oecd.org/en/publications/state-owned-enterprises_5k4869ckqk7l-en.html (last accessed: 25 May 2025); Krenzler, Horst Günter/Herrmann, Christoph/Niestedt, Marian (eds), EU-Außenwirtschafts- und Zollrecht, 24th edn, Munich 2024; Kühling, Jürgen/Weck, Thomas/Reinhold, Philipp, Third-Country State Aid Regulation: The European Debate on Foreign Subsidies – Necessity and Possibilities of a Reform, in Chi/Bungenberg/Bjorklund (eds), Asian Yearbook of International Economic Law, Cham 2022, p. 149; Luja, Raymond, The Foreign Subsidies Regulation: Countering State Aid Beyond the European Union, EStAL 2021, 187; Mavroidis, Petros C./Sapir, André, China in the WTO Twenty Years On: How to Mend a Broken Relationship?, GLJ 2023, 227; Merola, Massimo/Cogoni, Alessandro, Foreign subsidies and financial contributions: much fine-tuning ahead, CLPD 2023, 3; Miller, Simon, Der Umweltschutz in der EU-Wirtschaftsverfassung, EurUP 2024, 390; Miller, Simon, Faire Wettbewerbsbedingungen im Binnenmarkt – Die neue EU-VO über den Binnenmarkt verzerrende drittstaatliche Subventionen, ecolex 2023, 718; Monopolkommission, XXIII. Hauptgutachten der Monopolkommission: Wettbewerb 2020, Baden-Baden 2020; Müller, Thomas/Wimmer, Norbert, Wirtschaftsrecht. International – Europäisch – National, 3rd edn, Vienna 2018; Müller-Ibold, Till, Der Einfluss Chinas auf die Wirtschaft – Konsequenzen für die europäische

Wettbewerbs- und Außenhandelspolitik, ZEuS 2020, 239; Müller-Ibold, Till/Herrmann, Christoph, Die Entwicklung des Europäischen Außenwirtschaftsrechts (2020–2022) Teil 1, EuZW 2022, 1029; Müller-Ibold, Till/Herrmann, Christoph, Die Entwicklung des Europäischen Außenwirtschaftsrechts (2020–2022) Teil 2, EuZW 2022, 1085; Ohmae, Kenichi, The Triad World View, The Journal of Business Strategy 7/1987, 8; Schonberg, Morris, The EU Foreign Subsidies Regulation: Substantive Assessment Issues and Open Questions, EStAL 2022, 143; Shen, Guobing/Shen, Binchao/Wu Ruochen, Internetization, supplier search, and diversification of global supply chains, EER 2025/104951, 1; Soltész, Ulrich, Foreign Subsidies Control: A Bureaucratic Monster?, EStAL 2023, 175; Stas, Karl/Geisel, Benjamin, The Foreign Subsidies Regulation of the European Union: A New Instrument Levelling the Playing Field?, GTCJ 2023, 360; Stoll, Peter-Tobias/Schorkopf, Frank, WTO – Welthandelsordnung und Welthandelsrecht, Cologne 2002; Weiß, Wolfgang, Umsetzung und Durchsetzung der EU-Handelspolitik: Neue Entwicklungen der "Open Strategic Autonomy", EuZW 2020, 787; Weiß, Wolfgang/Ohler, Christoph/Bungenberg, Marc, Welthandelsrecht, 3rd edn, Munich 2022; Yukins, Christopher, State Aid, Protectionism and Public Procurement: An Uneasy New World Order, EStAL 2023, 181.

A. Introduction

1 The European Union's external economic policy has traditionally been characterized by a firm dedication to the principles of openness and a rules-based international trading system. Yet, these foundational tenets are increasingly subjected to mounting pressures, notably arising from the growing prevalence of third-country subsidies and the complex challenges inherent in geoeconomic realities. In this context, the Foreign Subsidies Regulation assumes a pivotal dual function. It operates not only as an instrument for preserving the integrity of the internal market by preventing distortions, but also as a mechanism to bolster the Union's autonomy on the global stage.

2 In order to provide a nuanced understanding of the FSR's geoeconomic context,[1] the discussion first turns to the structure of the contemporary international economy and the emerging geoeconomic pressures it entails. Building upon this foundation, the discussion will proceed to examine the European Union's policy approaches in addressing these developments, placing particular emphasis on the Foreign Subsidies Regulation as a central component of both its economic and geoeconomic toolkit.

[1] For an in-depth discussion of the term and concept of geoeconomics, including the related political and economic condition of the global economy and a particular focus on the European Union context, see Arnold, pp. 33 et seqq. and pp. 385 et seqq.

B. The international economy in 2025

The international economy in 2025 represents the provisional outcome of decades of development, currently shaped by profound shifts and mounting challenges. **3**

I. A brief economic history of the past 80 years

From its earliest occurrences, trade between tribes and nations has manifested in varying degrees of integrative intensity across historical periods. However, well into the first half of the 20th century, international economic activity was frequently shaped by protectionist strategies, national economic doctrines, and a limited degree of external economic openness.[2] The end of World War II marked a decisive turning point in this regard. **4**

The devastating impacts and upheaval caused by the two World Wars precipitated a fundamental shift in the orientation of international relations. In an effort to ensure lasting peace, stability, and economic collaboration, the global community turned to the creation and strengthening of multilateral institutions. As a result, key organizations of the post-war global order emerged, foremost among them the United Nations, the International Monetary Fund, and the International Bank for Reconstruction and Development (also known as 'World Bank').[3] **5**

Simultaneously, international trade received significant impetus through the General Agreement on Tariffs and Trade, which came provisionally into force on January 1, 1948.[4] This multilateral agreement constituted a seminal step in the progressive liberalization of global trade, a path that was subsequently expanded through the General Agreement on Trade in Services and the Agreement on Trade-Related Aspects of Intellectual Property Rights. With its establishment in 1995, the World Trade Organization provided a comprehensive institutional framework for international trade in goods and services, while simultaneously serving as the principal forum for the continued development of multilateral trade law.[5] The multilateral agreements encompassed by the WTO provide the central normative and institutional basis of a **rules-based international economic order**.[6] **6**

The increasing integration of national economies was particularly driven by the growth of trade. In addition, direct investments and portfolio investments gained growing significance, made possible by the advancing liberalization of global capital flows. Since the 1990s, technological innovations have also played a crucial role in accelerating the process of economic integration, alongside the expansion of global production networks. As a result, a highly **interdependent global economic structure** emerged. It is characterized by mutual dependencies within global value chains, thereby creating a complex network of economic interrelations. **7**

From the turn of the millennium onward, the global economy has faced an array of profound disruptions, including the 2008 financial crisis, the sovereign debt crisis in the Eurozone, pandemic-driven interruptions to global supply chains, coupled with **8**

---

[2] Gregori International Economics 165/2021, 1 (1 et seqq.); Müller/Wimmer, mn. 113.

[3] UN/DESA, The Marshall Plan, IMF and First UN Development Decade in the Golden Age of Capitalism: lessons for our time, Policy Brief no. 52, pp. 2 et seqq.; Boughton, IMF Working Paper 75/2004, pp. 6 et seqq.; Weiß/Ohler/Bungenberg, § 6 mn. 91; on this issue in the GATT/WTO context, see Herrmann/Streinz, in von Arnauld/Bungenberg (eds), § 13 mn. 9.

[4] Gregori International Economics 165/2021, 1 (1 et seqq.).

[5] Herrmann/Streinz, in von Arnauld/Bungenberg (eds), § 13 mn. 1.

[6] Baldwin JEP 30/2016, 95 (95); Stoll/Schorkopf, mn. 48 and mn. 84.

rising geopolitical tensions and increasing trade disputes among the world's leading economies.[7] These crises have presented significant challenges to the highly interconnected economy, the management of which remains inadequate to this day. In light of this evolving situation, the **growing prominence of geoeconomics** becomes evident – conceived as the deliberate and strategic deployment of economic instruments to extend influence beyond sovereign borders, with the purpose of defending fundamental values and assertively advancing national interests.[8]

II. The economic pivot to Asia in the 21st century

9 Over the span of several decades, transatlantic relations significantly influenced the structure and trajectory of the global economy. Japan complemented this bilateral architecture as an economically significant actor, and, alongside the United States and Western Europe, formed the so-called (at the time) Triad.[9] A profound shift in global power dynamics is currently underway, in which the traditional centers of Europe and North America are increasingly confronted by the **emerging economies of Asia, particularly China**.[10]

10 Since its accession to the World Trade Organization in 2001, China's share of global trade has increased significantly, propelling the People's Republic into the ranks of the world's leading trading nations.[11] In the years following, China's share of global goods exports increased markedly, while the corresponding shares of the European Union and the United States declined over the same period.[12] At present, China stands as the European Union's second-largest trading partner, while the EU continues to be China's foremost trading partner.[13] In 2023, the value of trade in goods and services between the European Union and China exceeded 840 billion euros.[14]

11 Over the past decades, the bilateral volume of direct investments between the two economic regions has also experienced a significant expansion. The cumulative value of European Union foreign direct investment stock in China since the year 2000 amounted to €177 billion as of the first quarter of 2024.[15] Conversely, the total stock of Chinese foreign direct investment accumulated in the EU since 2000 amounted to €143 billion by the first quarter of 2024.[16]

12 The global ascent of China has precipitated a profound erosion in the economic conditions across a great number of regions worldwide, not least due to low labor and environmental standards as well as unfair trade practices such as dumping and

---

[7] Herrmann, SIEPS, June 2023, p. 2; Herrmann, in Pechstein et al. (eds), p. 117 (117 et seq.).

[8] A congruent understanding has been developed and presented by Arnold, p. 396.

[9] See Ohmae, The Journal of Business Strategy 7/1987, 8 (8); Boughton, IMF Working Paper 75/2004, p. 7. On Japan's membership in the WTO and its bilateral agreements, see Streinz/Hobmaier/Nakanishi, in Krenzler/Herrmann/Niested (eds), 133c. mn. 3.

[10] Brühl IEEP 16/2025, pp. 3 et seqq.; from a more legal perspective, see Weiß/Ohler/Bungenberg, § 1 mn. 2.

[11] Amiti/Dai/Feenstra/Romalis JIE 2020/103339, 1 (1 et seq.); Gavin Intereconomics 2013, 254 (254).

[12] Amiti/Dai/Feenstra/Romalis JIE 2020/103339, 1 (1 et seq.); Brühl IEEP 16/2025, pp. 3 et seqq.; Monopolkommission, mn. 568.

[13] European Commission, EU trade relations with China, available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china_en (last accessed: 15 May 2025).

[14] European Council, EU-China trade: facts and figures, available at: https://www.consilium.europa.eu/en/infographics/eu-china-trade/ (last accessed: 15 May 2025).

[15] European Commission, EU trade relations with China, available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china_en (last accessed: 15 May 2025).

[16] European Commission, EU trade relations with China, available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china_en (last accessed: 15 May 2025).

violations of intellectual property rights.[17] In numerous countries, the growing competition with China has posed significant challenges to domestic industries, with many companies unable to remain competitive with the pricing of Chinese products.[18] In particular, the United States has experienced a marked displacement of jobs towards China.[19] Chinese trade and investment practices undoubtedly have **repercussions for the European internal market**, with implications extending to other policy areas such as the Common Foreign and Security Policy.[20]

III. Digitalization, AI and the decarbonization of the economy

The trade policy environment of the European Union is increasingly complex and dynamic.[21] Within the internal market, the economy is experiencing a fundamental transition as a result of the so-called 'dual transformation', which encompasses both an ecological realignment through decarbonisation and a comprehensive digital restructuring of the economy.[22] Moreover, the rapid advancement of Artificial Intelligence acts as an additional catalyst for economic transformation, posing fundamental challenges to both existing regulatory frameworks and economic structures. Given these circumstances, **the European economy is undergoing profound structural transitions, necessitating strategic adjustments** within an increasingly multifaceted and volatile global context. 13

Amid the ongoing global reconfigurations of power, these transformations function as decisive benchmarks for the European Union's ability to sustain its economic autonomy and normative shaping power. WTO law (as of yet) provides insufficient answers to the demands for a climate-neutral economy and the digitalization of economic processes.[23] Thus, it is the responsibility of the EU to steer its dependence on imports in critical areas of industrial production, particularly with regard to the digital transformation and the decarbonization of the economy.[24] The European Union's significant external dependencies – notably on Russia in the energy sector and on China with regard to rare earths and other strategic raw materials – are increasingly coming under critical scrutiny, set against the backdrop of autocratic governance structures and the progressively expansionist geopolitical ambitions of these states.[25] 14

In response to dependencies and vulnerabilities, the European Union is adopting a comprehensive set of measures, including efforts to enhance European production 15

---

[17] Amiti/Dai/Feenstra/Romalis JIE 2020/103339, 1 (1); Brühl IEEP 16/2025, p. 2; Monopolkommission, mn. 569.

[18] Amiti/Dai/Feenstra/Romalis JIE 2020/103339, 1 (1 et seqq.); Monopolkommission, mn. 569.

[19] Autor/Dorn/Hanson AER 2013, 2121 (2121 et seqq.); Amiti/Dai/Feenstra/Romalis JIE 2020/103339, 1 (2).

[20] Herrmann, SIEPS, June 2023, p. 3.

[21] See Herrmann, SIEPS, June 2023, pp. 2 et seq.; Weiß EuZW 2020, 787 (787).

[22] European Commission, Commission Communication – A New Industrial Strategy for Europe, 10 March 2020, COM(2020) 102 final: 'The twin ecological and digital transition'. See also Herrmann, in Pechstein et al. (eds) p. 117 (117 et seq.); Müller-Ibold/Herrmann EuZW 2022, 1085 (1091).

[23] Condon JIEL 2009, 895 (895 et seqq.); Deane/Woolmer/Cao/Tranter AJIL 2024, 154 (166); Weiß/Ohler/Bungenberg § 1 mn. 1 and § 25 mn. 1143.

[24] European Commission, Commission Communication – Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, 18 February 2021, COM(2021) 66 final. Cf. also Müller-Ibold/Herrmann EuZW 2022, 1085 (1091).

[25] Gavin Intereconomics 2013, 254 (254); Müller-Ibold/Herrmann EuZW 2022, 1085 (1091). Cf. also European Commission, Commission Communication – Critical Raw Materials Resilience: Charting a Path towards greater Security and Sustainability, 3 September 2020, COM(2020) 474 final.

capabilities and the strengthening of international supply chain resilience.[26] Despite the growing demands of digitalization – including artificial intelligence – and decarbonization, alongside intensifying global competition, the ongoing economic transition offers substantial opportunities for sustainable and long-term prosperity within the European internal market.[27]

IV. From efficiency and global value chains to resilience and reliability

16 Over the past decades, economic activity has been predominantly shaped by a pronounced focus on efficiency maximization and the optimization of value chains. This orientation precipitated a progressive internationalization of production structures, which notably manifested in the emergence of increasingly complex and **globally interwoven supply chains**.

17 This trajectory corresponded with a significant growth in the dependence of European enterprises and economies on transnational supply networks. Notably, the COVID-19 pandemic and the Russian war of aggression against Ukraine have compellingly unveiled the profound and intricate mutual interdependencies.[28] Beyond the considerable economic repercussions for the internal market, these dynamics give rise to a pronounced **geoeconomic risk**.[29]

18 In recent times, supply chains have consequently experienced significant diversification.[30] This development has been accompanied by a rise in legislative initiatives addressing supply chain issues. Whereas early regulatory efforts were primarily directed toward the protection of human rights, labor conditions, and environmental sustainability, the concept of resilience has meanwhile assumed a progressively central role.[31]

19 In response to growing (geo)economic uncertainties, an ever greater number of enterprises, national governments, and the European Union are placing renewed emphasis on economic security as a strategic priority. This shift toward robust and steady value chains may, in the long term, usher in a new phase of economic organization in which **resilience and reliability are accorded greater strategic importance than the singular pursuit of efficiency maximization**.

V. The rise of State capitalism and new industrial policies

20 With China's economic ascent, a pivotal actor emerged on the international stage whose economic order continues to be shaped by **various elements of a planned econo-**

[26] European Commission, Commission Communication – Updating the 2020 New Industrial Strategy: Building a stronger Single Market for Europe's recovery, 5 May 2021, COM(2021) 350 final.

[27] For a detailed discussion of the environmental dimension of the European internal market, see Miller EurUP 2024, 390 (390). Cf. also European Parliamentary Research Service, Economic impacts of the green transition, September 2022, available at: https://www.europarl.europa.eu/RegData/etudes/BRIE/2022/733623/EPRS_BRI(2022)733623_EN.pdf (last accessed: 25 May 2025).

[28] European Commission, Commission Communication – Europe's moment: Repair and Prepare for the Next Generation, 27 May 2020, COM(2020) 456 final.

[29] Arnold, pp. 280 et seqq.; Weiß/Ohler/Bungenberg § 25 mn. 1144.

[30] Shen/Shen/Wu EER 2025/104951, 1 (1).

[31] Müller-Ibold/Herrmann EuZW 2022, 1085 (1090). Cf. for example European Commission, Commission Communication – Europe's moment: Repair and Prepare for the Next Generation, 27 May 2020, COM(2020) 456 final.

my.[32] While private entrepreneurial initiatives and enterprises are not prohibited, they remain subject to the extensive influence and directives of the Chinese state and, more specifically, the ruling Communist Party of China (CPC).[33] Accordingly, the characterization of the Chinese economic structure as 'state capitalism' enjoys broad acceptance.[34]

Within this system, **state-owned enterprises (SOEs)** – of which an estimated 150,000 exist outside the financial sector alone –[35] occupy a distinctive and strategically significant role.[36] They function as instruments of state-directed industrial policy and dominate key sectors deemed critical to national interests.[37] Their privileged position is reflected in preferential access to financial resources, regulatory advantages, and consistent political support.[38] Moreover, SOEs frequently operate within the framework of long-term national development plans, which channel their activities into technology-intensive and geopolitically sensitive industries, including those beyond China's borders.[39] This close entanglement of state control and corporate activity imparts a hybrid logic to their operations – one that fundamentally diverges from the market-driven autonomy characteristic of Western firms. **21**

In addition to their dominant market presence, state-owned enterprises stand at the center of another defining feature of Chinese state capitalism, namely the **broad-based subsidization** of enterprises. These subsidies are provided both directly, through government financial transfers, and indirectly, via concessional loans from state-owned banks and other forms of financial support, such as tax exemptions.[40] These far-reaching support mechanisms significantly distort international competition and confer substantial cost advantages upon Chinese SOEs in global markets. **22**

Many Western governments and economic actors anticipated that China's accession to the World Trade Organization would set the country on a gradual path toward a rules-based market economy. However, this expectation has so far remained unmet.[41] This is all the more problematic given that the existing international trade law framework – particularly the subsidy disciplines under WTO law – fails to adequately address the competitive distortions resulting from subsidies.[42] **23**

At the latest since the onset of the COVID-19 pandemic, intensified state efforts aimed at preserving, rebuilding, and strategically realigning domestic industries have **24**

---

[32] Chow, CEPS Working Paper No. 219, pp. 1 et seq.; Müller-Ibold ZEuS 2020, 239 (241).

[33] Mavroidis/Sapir GLJ 2023, 227 (239); Chow, CEPS Working Paper No. 219, p. 1; Müller-Ibold ZEuS 2020, 239 (241).

[34] Cf. European Commission, Commission Communication – Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, 18 February 2021, COM(2021) 66 final: 'state-capitalist model'. See also Du ICLQ 63/2, 409 (410).

[35] OECD, State-Owned Enterprises in the Development Process, 2015, p. 147, available at: https://www.oecd.org/en/publications/state-owned-enterprises-in-the-development-process_9789264229617-en.html (last accessed: 17 May 2025); World Bank/the Development Research Center of the State Council, Innovative China – New Drivers of Groth, p. 42, available at: http://documents1.worldbank.org/curated/en/833871568732137448/pdf/Innovative-China-New-Drivers-of-Growth.pdf (last accessed: 17 May 2025).

[36] Chow, CEPS Working Paper No. 219, p. 1; Monopolkommission, mn. 561.

[37] OECD, State-Owned Enterprises in the Development Process, 2015, p. 152 et seq.; Monopolkommission, mn. 561.

[38] Capobianco/Christiansen, OECD Corporate Governance Working Papers No. 1, pp. 5 et seqq.; Du ICLQ 63/2, 409 (422 et seqq.).

[39] Müller-Ibold ZEuS 2020, 239 (244).

[40] Capobianco/Christiansen, OECD Corporate Governance Working Papers No. 1, p. 5; Guilliard ZEuS 2020, 295 (297).

[41] Mavroidis/Sapir GLJ 2023, 227 (228); Brown JPM 43/2021, 805 (808): 'China was never on a path towards becoming a Western-style market economy'; cf. also Weiß/Ohler/Bungenberg § 1 mn. 5; Monopolkommission, mn. 554.

[42] Stas/Geisel GTCJ 2023, 360 (360); Herrmann/Ellemann ZEuP 2024, 64 (71 et seq.).

become increasingly evident in countries other than China.[43] Substantial industrial policy subsidies often constitute a central component of these efforts. Prominent examples include the *Inflation Reduction Act* and *the CHIPS and Science Act* in the United States, while the European Union pursues comparable industrial policy initiatives through programs such as *InvestEU*, the *Just Transition Fund* under the *European Green Deal*, and the *European Chips Act*.[44] In light of this, concerns have been raised about the emergence of a global subsidy race (→ Introduction 2 mn. 1 et seqq.).

C. The international economic system in 2025

25 Following the collapse of the Eastern Bloc, the fall of the Berlin Wall, and the consequent dissolution of Soviet-style state socialism, the world witnessed profound political and economic transformations. This shift, accompanied by a widespread wave of trade liberalizations, paved the way for the (social) market economy to establish itself in the 1990s as the virtually hegemonic model of economic organization.[45] The concept of an 'open international economic system', as articulated in Article 12 of the Rio Declaration as the foundational principle for economic growth and sustainable development, ascended to the status of a preeminent regulatory ideal. Of particular significance is the multilateral trade architecture established through the WTO legal framework and the external economic order of the European Union (cf. Art. 119 para. 1 TFEU), both of which rest fundamentally upon the **principle of open markets**.

26 This guiding paradigm, however, is facing growing pressure. Above all, the rise of China as a major economic power, characterized by its state capitalism, poses substantial challenges to the liberal market paradigm. On the one hand, these challenges stem from the non-market economic interventions of the Chinese state, such as the heavily subsidized SOEs (→ mn. 21). On the other hand, there exist systematic mechanisms of market closure that stand in stark opposition to the principles of open, liberalized, and reciprocal markets.[46] Against the backdrop of broadly unrestricted access granted to Chinese economic actors within the European Single Market, and in contrast to the limited opportunities available to European companies in China, a structural **asymmetry in market access** has emerged.[47]

27 The current re-politicization of economic interactions reflects a strategic realignment by state actors, who are increasingly leveraging economic instruments to advance particular national interests.[48] This shift marks a significant change in the international economic order, wherein state interventionist ambitions are experiencing a resurgence, and the principles of liberal market economies are progressively challenged by geopo-

[43] OECD, Government support in industrial sectors – A synthesis report, 7 April 2023, p. 3, available at: https://www.oecd.org/en/publications/government-support-in-industrial-sectors_1d28d299-en.html (last accessed: 17 May 2025).

[44] Herrmann/Ellemann ZEuP 2024, 64 (68); focusing particularly on the USA, see Yukins EStAL 2023, 181 (182 et seqq.).

[45] Herrmann, SIEPS, June 2023, p. 2; Herrmann, in Pechstein et al. (eds), p. 117. On the end of competing economic systems in Europe after the collapse of the Soviet Union, see Caspari, pp. 159 et seqq.; the persistent incompatibility worldwide between state capitalism and liberal capitalism – both currently and looking ahead – is a central issue in Du ICLQ 63/2, 409 (412).

[46] Kowalski/Büge/Sztajerowska/Egeland, OECD Trade Policy Papers No. 147, 24 April 2013, p. 4; Guilliard ZEuS 2020, 295 (297).

[47] European Commission, EU trade relations with China, available at: https://policy.trade.ec.europa.eu/eu-trade-relationships-country-and-region/countries-and-regions/china_en (last accessed: 15 May 2025); cf. also Müller-Ibold ZEuS 2020, 239 (241).

[48] Arnold, pp. 33 et seqq.

litically motivated interventions. As a result, **the rules-based multilateral system is steadily eroding**. Where once the conviction in 'change through trade' primarily shaped trade policies focused on market liberalization, the pursuit of strategic autonomy and economic security has now taken precedence.[49]

D. 'Taming the dragon'

Since China's accession to the World Trade Organization, tensions and frictions have become evident between the state-capitalist model pursued by the People's Republic and the liberal market economies of the industrialized West, most notably the United States.[50] In recent years, the strategic ambition of the CCP and its leadership to elevate China to the position of a preeminent global and economic power has prompted an increasingly assertive **application of geoeconomic instruments**. Chief among these are the *Belt and Road Initiative* – a large-scale infrastructure and investment program aimed at expanding Chinese influence along global trade routes – and the industrial strategy *Made in China 2025*, which seeks to advance the country's technological self-sufficiency and systematically enhance its position in strategically significant high-technology sectors.[51] These initiatives form the foundation for substantial subsidies directed, among other areas, towards infrastructure development and the acquisition of key technologies abroad.[52] The approaches adopted by various states to confront these geoeconomic challenges are subsumed under the metaphor that is repeatedly referred to as 'Taming the Chinese Dragon'.[53] **28**

The United States confronts this challenge through a multifaceted array of economic policy measures, prominently featuring the progressive intensification of its export control framework followed by substantial strategic investments (→ mn. 24).[54] The objective is to counterbalance China's technological ascendancy and, in particular, to prevent job losses and strategic dependence in critical sectors. While occasional transatlantic cooperative approaches have been proposed,[55] the current U.S. administration has notably been characterized by undermining fundamental trade rules and initiating trade conflicts.[56] **29**

A progressively deepening awareness of the geoeconomic ramifications inherent in China's foreign economic policy has emerged within the European Union. Consequently, the European Commission elected in 2019 has resolutely committed itself to strengthening European industry and to more effectively countering influences emanating from third countries.[57] Furthermore, it is underscored that the prevention of unfair and abusive practices in global trade serves to enhance the EU's strategic autonomy, build **30**

---

[49] Herrmann/Ellemann ZEuP 2024, 64 (69); Müller-Ibold/Herrmann EuZW 2022, 1029 (1030). For a general discussion of this issue in the WTO context, see Huang/Li CER 2024/102072, 1 (1 et seqq.).

[50] Mavroidis/Sapir GLJ 2023, 227 (231); Gavin Intereconomics 2013, 254 (258); Guilliard ZEuS 2020, 295 (297).

[51] Herrmann, SIEPS, June 2023, p. 2; Herrmann, in Pechstein et al. (eds), p. 117; Arnold, pp. 324 et seq.; Weiß/Ohler/Bungenberg § 1 mn. 5.

[52] Herrmann, SIEPS, June 2023, p. 2; Herrmann, in Pechstein et al. (eds), p. 117.

[53] See, for example, Evenett Intereconomics 2021, 8 (8).

[54] Herrmann, SIEPS, June 2023, p. 3; Herrmann, in Pechstein et al. (eds), p. 117.

[55] Evenett Intereconomics 2021, 8 (8).

[56] Howse JIEL Law 2020, 371 (371 et seqq.); Herrmann, SIEPS, June 2023, p. 3; Weiß/Ohler/Bungenberg § 1 mn. 3.

[57] Cf. European Commission, Commission Communication – A New Industrial Strategy for Europe, 10 March 2020, COM(2020) 102 final; European Commission, Commission Communication – Building a stronger Single Market for Europe's recovery, 5 May 2021, COM(2021) 350 final.

essential value chains within Europe, bolster economic security, and promote job creation.[58] Since then, the EU's legislative activity in the field of trade policy has increased significantly, marking a fundamental **shift toward a strategically oriented trade policy** for the European Union.[59]

E. The EU's trade strategy in times of geoeconomics

31 Upon taking office in 2019, the European Commission explicitly positioned itself as a 'geopolitical Commission', tasked with learning and employing the 'language of power'.[60] In the following year, the Commission introduced 'A New Industrial Strategy for Europe'[61], which articulated the ambition to position European industry at the forefront of the dual transformation while simultaneously aiming to enhance its global competitiveness. To this end, the Commission expressed a clear intent to apply existing trade defence instruments fully and rigorously. Furthermore, the Commission signalled the development of new regulatory tools, most notably the Instrument on Foreign Subsidies.

32 In a subsequent communication from the same year, the Commission articulated the objective of strengthening its strategic autonomy, highlighting the close links to key technologies and resilient value chains.[62] At the same time, it acknowledged the fundamental importance of global trade and its integrated value chains for economic growth and prosperity. Against this backdrop, the Commission refined its objective by introducing the concept of '**open strategic autonomy**'. As part of its communication entitled 'Trade Policy Review'[63], the Commission underscored the supportive role of a modern trade policy in realizing this open strategic autonomy. This concept explicitly encompasses the following components:

- resilience and competitiveness to strengthen the EU's economy;
- sustainability and fairness, reflecting the need for responsible and fair EU action;
- assertiveness and rules-based cooperation to showcase the EU's preference for international cooperation and dialogue, but also its readiness to combat unfair practices and use autonomous tools to pursue its interests where needed.[64]

33 The European Commission has arrived at the determination that the effective protection of European interests and values mandates a coherent **dual-pronged strategy: on one hand, active engagement at both bilateral and multilateral levels; on the other hand, development and implementation of autonomous instruments**.[65] Accordingly, the extisting trade defence instruments were recalibrated and, since then, have been

[58] European Commission, Commission Communication – Europe's moment: Repair and Prepare for the Next Generation, 27 May 2020, COM(2020) 456 final.

[59] Herrmann, SIEPS, June 2023, pp. 3 et seqq.; Herrmann, in Pechstein et al. (eds), p. 117 (119 et seqq.).

[60] Herrmann, SIEPS, June 2023, p. 4.

[61] European Commission, Commission Communication – A New Industrial Strategy for Europe, 10 March 2020, COM(2020) 102 final.

[62] European Commission, Commission Communication – Europe's moment: Repair and Prepare for the Next Generation, 27 May 2020, COM(2020) 456 final.

[63] European Commission, Commission Communication – Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, 18 February 2021, COM(2021) 66 final.

[64] So formulated by European Commission, Commission Communication – Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, 18 February 2021, COM(2021) 66 final.

[65] European Commission, Commission Communication – Trade Policy Review – An Open, Sustainable and Assertive Trade Policy, 18 February 2021, COM(2021) 66 final.

Index

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

Index

Index

Index

Index