

## Trade and Investment

ICC Global Commission on Competition

### **ICC TASK FORCE ON INTERNATIONAL TRADE AND STATE AID**

#### **Terms of Reference**

##### **Context**

Over the past year, the EU Commission (“EC”) has been working on a new proposed instrument to regulate foreign<sup>1</sup> subsidies that cause distortions and undermine the level playing field in the Single Market. In the EU, subsidies granted to companies by EU Member States, known as State Aid, are in principle forbidden unless they are notified and authorised by the EC. This new regulation on foreign subsidies would allow the EC to apply the EU State Aid principles beyond Europe: companies receiving financial support from a non-EU country may face scrutiny from the EC if these foreign subsidies are considered to have a distortive effect on the EU internal market.

The current draft regulation includes: (i) the right for the EC to investigate *ex-officio* and to impose redressive measures, (ii) the obligation to notify the subsidies when a company acquires the control of another one (independently of EUMR filings), and the (iii) the obligation to notify the subsidies when a company decides to participate in a public procurement procedure within the EU.

##### **Importance to global business**

The new trend in EU State Aid and foreign subsidies will raise serious considerations for businesses operating, or planning to operate, in the EU, on the one hand. On the other, what is viewed as a major legislative development occurring in Europe could influence the way countries outside the block will respond to safeguard their economies and regulate trade, adding more complexity to the global regulatory landscape while potentially creating a chilling effect on foreign investments.

##### **Alignment with strategic ICC priorities**

ICC’s public policy engagement and standards setting activities include re-invigorating global trade, speeding industry digitalisation, and advancing sustainability. This initiative seeks to support some of the organisation’s priorities by monitoring new reforms and developments related to competition law enforcement and how they can

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<sup>1</sup> Here to mean “non-EU”.

have a direct effect on cross-border trade and investments.

### **Envisaged output**

The Task Force will produce a paper on the basis that global business is not against the entry into force of the new EU regulation so long as the control mechanisms applied to foreign subsidies are implemented in a sensible and careful manner.

The Task Force will look at the following issues through a geopolitical lens:

- the renewal of state aid law in the European Union in relation to the [new regulation on foreign subsidies in the EU](#) to support companies and preserve economic sovereignty.
- the role of public procurement rules at global level to preserve economic growth while maintaining a welcoming environment for foreign investments.

### **Objectives**

The Task Force aims to publish a paper encapsulating the views and concerns of the global business community and engage with the EC, antitrust enforcers and practitioners, governments and intergovernmental organisations on the practical issues raised by the new EU proposal as much as on the geopolitical implications for trade and investments across the globe.

### **Audience**

This project will be of interest to a wide range of private and public stakeholders (EU and non-EU alike), including competition law as well as trade law experts. In this instance, insights and contributions from non-EU countries, particularly from Japan, Korea, China, US, UK, Uruguay, Brazil, Mexico, and Argentina, will be essential in shaping the content and broadening the scope of the paper.

### **Timeframe**

The Task Force aims to publish the paper by Q3 2022.