

WHITE & CASE
119th GCLC Virtual Lunch
Talk:

**European proposal on
foreign subsidies**

James Killick
27 May 2021

A Chimera



- Brings together the toughest elements from EU antitrust, merger control, state aid and trade investigations
 - Facts available ( Trade experience)
 - Foreign verifications ( Trade experience) / EU dawn raids
 - RFIs and fines for incomplete/incorrect/misleading info (compulsory replies seen in merger control and antitrust –  compare to voluntary responses in Trade cases)
 - Sector inquiries
 - Interim measures
 - Prohibitions/Remedies/Commitments to offset the distortion
 - How far can this go?

Potential to catch a lot of things...

- Wide definition of subsidies under WTO rules, can go beyond EU state aid rules
 - On Tuesday, the US found currency undervaluation to be a subsidy
 - Other broad precedents, e.g. non-enforcement of environmental rules = a subsidy

Press Release



U.S. DEPARTMENT OF COMMERCE ISSUES FIRST ANALYSIS OF CURRENCY UNDERVALUATION AS A COUNTERAVAILABLE SUBSIDY

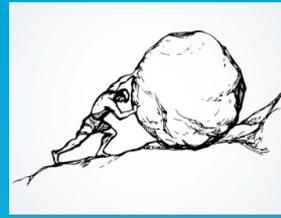
WASHINGTON – Today, the U.S. Department of Commerce announced affirmative final determinations in the antidumping duty (AD) investigations of passenger vehicle and light truck (PVL) tires from South Korea, Taiwan, Thailand, and Vietnam; and the countervailing duty (CVD) investigation of PVL tires from Vietnam.

Potentially Sisyphean for mergers



- Need to file a complete notification, like Form CO – contrast Trade cases
- EUR 50 m foreign financial contribution over 3 years threshold is low
- Difficulty of identifying and quantifying subsidies
 - When we're talking about all third country subsidies worldwide
 - Global operators will have received qualifying subsidies in many places
 - C.f. EU anti-subsidy rules only catch subsidies from the State of origin of goods
 - Need for simplification / notification derogations?
- Needless notifications of non-EU JVs if one parent active inside the EU?

Investigations could be broad in scope



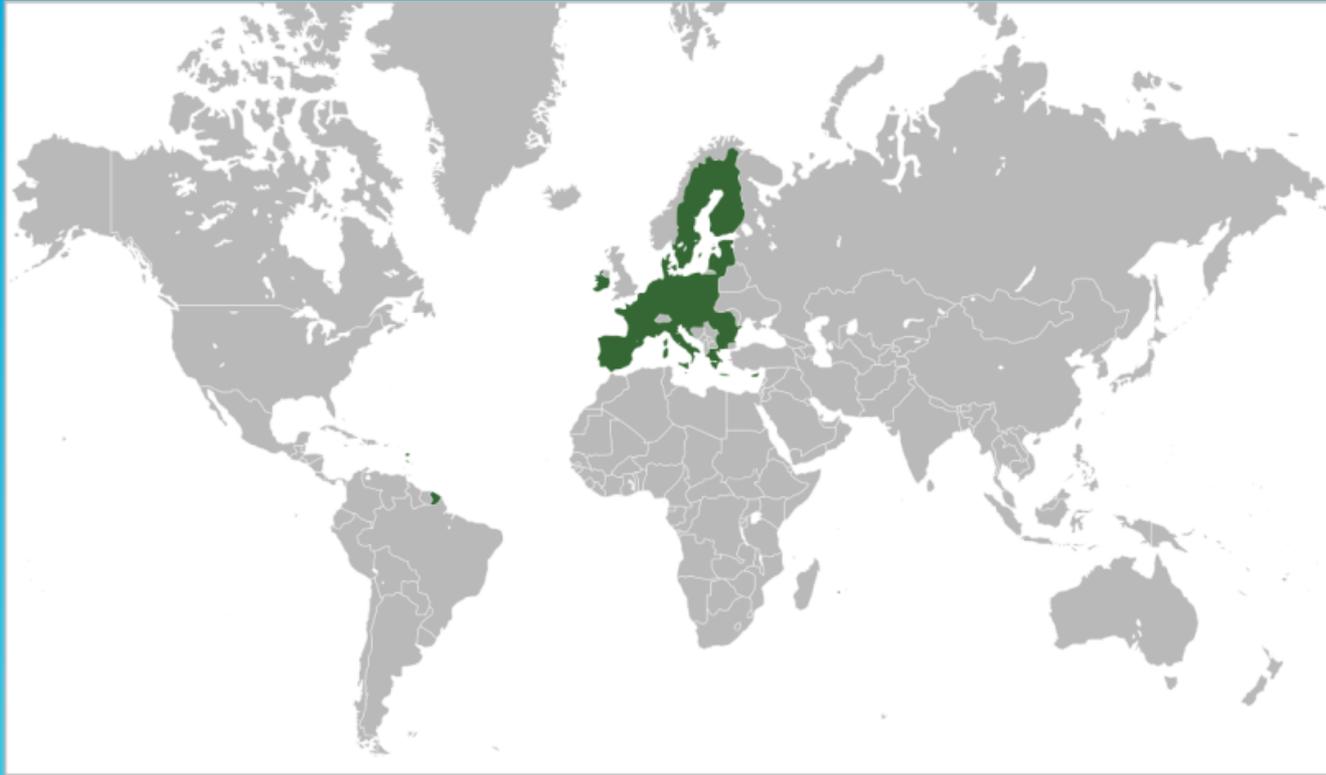
- Far-reaching limitation period of 10 years
- *De minimis* threshold is very low (EUR 5m over 3 years...)
 - c.f. *de minimis* threshold under the anti-subsidy rules
- Large staffing of new unit suggests intensive process of investigation and review
 - More officials than total in DG Trade TDI units (subsidy, dumping and safeguards)
- How will the test of distortion of internal market be applied?
 - Improve competitive position of recipient
 - Potential to negatively affect competition

What will happen on Day 1?



- Some mergers will be much more complicated – even in pre-notification
 - New opportunities for strategic complaints by competitors
 - More litigation in public procurement proceedings
 - What will be the first case under the ex officio review regime?
-
- Overall: an ambitious tool, accompanied by significant resources
 - But implementing regulation plus guidelines needed to make process work efficiently

Who will this impact most?



WHITE & CASE