## Replies to the questions sent by the Task Force on Foreign Subsidies

*Meeting of 30 November 2020*

We thank the European Commission for our meeting. We appreciate that you invited us for additional discussion and consultation on this matter.

As an active promotor of Sino-European economic cooperation, the China Chamber of Commerce to the EU (CCCEU) strives to increase mutual understanding and dialogue, and to explore ways to enhance the collaboration of Chinese businesses in Europe.

Yet, our members have expressed serious concerns since the publication of the White Paper. They are concerned in particular:

- about the market openness in the EU towards foreign investments,
- about the sound justification for any new and separate legal instruments in addition to the existing mechanisms,
- about the legal certainty that the new instruments could provide,
- about the disproportional burdens the new instrument would impose on them, which would unjustifiably hinder their activities or unnecessarily increase transitional costs.

In parallel, we would like to raise one point, which we have noticed in different discussions and opinions presented to the broader public. Many commentators addressed the content of the White Paper as a specific measure against Chinese companies. We would like to highlight that we do not see it this way.

This White Paper deals with a matter relevant for all the non-EU enterprises conducting activities in the EU. We understand that the EU is willing to strengthen the level-playing field, but it has to do so for *all* the non-EU companies in the EU market.

*In the following paragraphs, we will transcribe the questions we received in the ppt (in italics) and reply to them. As agreed, the reply to these questions is provided to you for your transparent use.*

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### *A. The most distortive subsidies*

1. *Which are the predominant types of foreign subsidies and which countries tend to grant them (tax rebates, preferential loans etc.)?*
2. *Which types of foreign subsidies are most distortive of the internal market?*
3. *Based on your experience, which kind of sectors are particularly affected by foreign subsidies?*

4. *Which third countries tend to grant the most distortive subsidies (in terms of frequency/volume)?*

The CCCEU did not receive specific complaints from its members about foreign subsidies distorting competition in the EU market. This leaves us with little data collection from primary sources. Yet, from our members we received many comments expressing concern about the implementation of the White Paper on foreign subsidies and fear about discriminatory treatment towards investment activities, which in turn would destroy their level-playing field.

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***B. Consequences of foreign subsidies***

5. *Which types of distortions can be observed due to foreign subsidies?*
    1. *Beneficiaries can offer better prices than competitors;*
    2. *Beneficiaries can more easily expand their operations in the EU thanks to subsidised acquisitions or subsidised investments more broadly;*
    3. *Beneficiaries can more easily get access to key technologies;*
    4. *Beneficiaries move activities from the EU to subsidising third countries ('delocalisation');*
    5. *Beneficiaries can undercut non-subsidised companies in public procurement tenders.*
    6. *Any other type of distortion? Please refer to specific cases where possible.*
6. *How strongly do possible distortions caused by foreign subsidies affect your company/sector as whole?*
    1. *Please quantify the impact where possible (e.g., impact on market share, revenues, profit etc.).*

Actually, not all the phenomena mentioned in questions 5 and 6 are the direct result of subsidies.
In case of delocalisation and better price offers, for instance, we would like to highlight that it is often driven by other factors rather than by subsidies. Availability of materials and production inputs, technology, skilled or cheaper labour force, efficient decision-making processes, and overall investment conditions might be more pressing elements for a company's decision. Other factors producing a similar impact are the international industrial and trade division systems, the different stages of economic development in each country, quality of labour, other incentives, etc.

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***C. Policy options***

7. *The inception impact assessment proposes different policy options that could be pursued to tackle distortions caused by foreign subsidies in the internal market:*
    - *Do nothing (baseline)*
    - *Better Guidance for: State aid rules, merger control, public procurement and/or trade policy*

- *Adapt existing rules: State aid rules, merger control, public procurement and/or trade policy*
- *New EU legislation: State aid rules, merger control, public procurement and/or trade policy*
- *Better international rules: Free Trade Agreements and/or WTO rules*

*Do you see any other possible policy options and/or should the Commission discard any of these options?*

The introduction of any new legal tools should **avoid the creation of overlapping or even conflicting legal norms or procedures** and bring about uncertainty to the business environment, to the detriment of EU economy overall.
For this reason, we think that the **existing system** (i.e., FDI screening and antitrust review) **is already appropriate**. Better guidance on the rules on state aid rules, merger control, public procurement and trade policy can be beneficial for companies to understand the EU Single Market: in particular, **better coordination between the EU and its member states** can ensure that the procedures are well-functioning and the overburden for companies is reduced to the minimum.
In addition, exploring new rules at WTO level and in bilateral FTA negotiations would allow the formulation of instruments and norms compliant with the EU's international obligations. We also argue that the final architecture must be conceived to address the problem of overlapping reviews for antitrust, FDI and subsidies.

8. *The inception impact assessment proposes to assess the following elements of the various policy options:*
    - *Scope of action*
    - *Sources of information*
    - *Assessment criteria of the distortion*
    - *Competence level*
    - *Redressive measures*
    - *EU interest test*

*Do you see any other possible elements that should be considered, i.e., any element that is particularly important or that should be discarded?*

The new instrument must include **clear assessment criteria**, measurable quantitively and qualitatively, and definite benchmarks for the entity assessing the distortion. These elements would increase the legal certainty and are therefore a practical requirement to ensure predictability for the companies.
We expect the **scope of action** to be appropriate and based on an objective criteria-based threshold, proportionate to the business scale of the sector concerned and to the transaction in question.
As regards the **source of information**, the burden of proof should not be reversed and imposed on the economic operators under any presumption (in particular in the case of State-owned enterprises)

**Transparency** is another vital principle in the EU legal system. As the enforcement of the proposed legal instruments involves a multitude of cross-lingual, cross-jurisdictional and extraterritorial factors, we contend that transparency should be further emphasized as one of the founding principles of the new legal instruments.

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***D. Impacts of policy options***

9. *How do you see the economic impact of the various policy options (see slide 6)?*
    - *Functioning of the internal market and competition*
    - *Economic growth and productivity*
    - *Trade and investment flows*
    - *SMEs*
    - *Consumers*

The economic impact of new legislation would be significant in that it will discourage many foreign economic operators, which originally would like to participate in the EU business project and invest in the EU, simply because of concerns about barriers and uncertainty. With fewer economic operators in the market, diversification will be hindered, and competition will subsequently suffer. In turn, this would reflect negatively on economic growth and the overall productivity of the market.

Any policy option should ensure that economic growth and a productivity increase in the EU market are achieved, as these are the main goals for the EU's economic recovery after Covid-19. Likewise, foreign trade and investment flows shall be encouraged because they help restart and reinforce the European economy. We believe that the White Paper shall be implemented with these principles in mind.

10. How do you see the social impact of the various policy options?
    - E.g., on employment, labour markets, income distribution/economic inequality

If a new instrument favours a discouraging business environment in the EU Market, foreign companies might redirect their operations to other countries. For the EU's economy, this would translate into a lack of new job opportunities, and fewer products and services available, and it must be avoided. We argue that a decreased engagement of foreign companies in Europe does not lead *per se* to economic inequality, but it takes away one major source of income distribution.

11. How do you see the environmental impact of the various policy options?
    - E.g., on climate neutrality/greenhouse gas emissions, other environmental impacts

Climate neutrality and sustainable development are common priorities worldwide. We expect any new instrument to be compliant with the principles of the green economy, and we trust that non-EU companies will subscribe to these goals.

***E. Administrative burden (public/private)***

*12. Administrative burden for your organisation*

- *Can you give an indication of the enforcement/compliance costs that may arise for your organisation according to the various policy options?*

If implemented as proposed, the new tools will increase the administrative burden of undertakings already present in the EU market or will constitute new barriers for foreign companies to enter the EU internal market, as well as the upsurge the management costs for administration.
A major issue lies within the **limited coordination and coherence** arising from different review mechanisms at EU and member states' levels.
In particular, companies fear the possible effects of uncoordinated reviews under the mechanisms for subsidies, antitrust and/or FDI screening. If a company faces multiple uncoordinated reviews, the prolonged period of time for its operations and the increased legal uncertainty will halt and hinder the company's willingness to invest and conduct business activities.