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Government Subsidies for Businesses in Accordance with EU State Aid Rules

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I hereby declare that this Master's Thesis on the topic of "Government subsidies for businesses in accordance with EU state aid rules" is my original work and I have acknowledged all sources used.


In Olomouc on the 26.06.2024 ()

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INTRODUCTION

Introduction and Background

Government aid and government subsidies play a significant role in the economic and political activities of many countries. They are used to support national economies, provide incentives for the development of strategically important industries, and also help mitigate the possible consequences of economic crises. Historically, government subsidies have deep roots and date back to the era of mercantilism, when the accumulation of wealth and the protection of domestic producers were the primary objectives of economic policy. During the Industrial Revolution, subsidies evolved to support rapid technological progress and the development of industrial sectors. In today's world, subsidies continue to be an important public policy tool aimed at supporting scientific research, innovation and sustainable development. However, their application is often controversial, especially in the context of international trade and competition. Unfair use of subsidies by countries outside the European Union affects the competitiveness of production within the EU and the European market.

The relevance of issue

In the context of observed globalization, as well as increased international competition, the issues of regulating government subsidies and state Aid are of particular importance. Subsidies can be a stimulus for the development of national economies, but at the same time they can also cause distortions of competition in the international and European markets. Unregulated and uneven use of subsidies can lead to economic imbalances, trade wars and violations of fair competition principles. In this context, the study of the legal aspects of subsidies, as well as the development of effective mechanisms for their regulation and control, become extremely relevant.

Significance of the Study

Research into the legal and economic aspects of government subsidies and state aid is essential to understanding their impact on economic development, competitiveness and international trade.

For the European Union, which has a single market and common competition rules, effective regulation of public subsidies and state aid plays a key role in ensuring fair competition. Understanding the transformations of the legal framework and introducing new regulatory instruments, such as FRS, allows the EU to adapt to modern challenges and minimize the negative consequences of foreign subsidies.

This research also has implications for practical policy and regulation in the field of international trade. The development and implementation of effective measures to control subsidies help protect the domestic market from unfair competition and support national producers in a global competitive environment. This is especially important for strategically important industries such as the automotive industry, where subsidies can significantly affect the market position and competitiveness of European manufacturers.

In addition, the study highlights the need for transparency, proportionality and fairness in the provision of government subsidies, which promotes sustainable economic development and innovation. Analysis of the legal frameworks and practices of various countries allows us to identify the best approaches and adapt them to the conditions of the European Union.

The objective of the Research and Research Questions

The main purpose of the study is to do a comprehensive analysis of the legal framework for the regulation of public subsidies and state aid both in the European Union and at the international level. The research aims to:

- Study of the historical development and current state of legal regulation of state aid in the form of government subsidies, their goals and principles of subsidization;
- Analysis of the formation and development of the regulatory framework and the effectiveness of the implementation of the Foreign Subsidies Regulation (FSR) in the European Union;
- Studying the impact of subsidies on the electric vehicle market, especially in China;
- Analysis of available tools to protect the European automotive market and industry from unfair competition from foreign subsidies.

The object of the study is the legal and economic aspects of government subsidies and state aid provided to support national economies, and their regulation both at the level of the European Union and in the international trading system.

Methodology

The methodological basis of the study was a special legal method that was used for an in-depth analysis of the legal rules and regulations governing government subsidies and state aid. In particular, documents of the World Trade Organization (WTO) are analyzed, such as The Agreement on Subsidies and Countervailing Measures (SCM Agreement), and regulations of the European Union, including Treaty on the Functioning of the European Union (TFEU). The comparative legal method was also used. It made it possible to compare legal acts and regulations of the EU, WTO and other international organizations. This allows us to determine what approaches and measures are used to regulate government subsidies in different legal systems. We also study specific cases related to subsidies in various sectors of the economy, especially in the field of electric cars. This includes analysis of successful and problematic examples of subsidies and countervailing measures in different countries.

Source base :

The documentary basis of the study was international legal acts that regulate practical activities in the field of state aid and subsidies, including: The General Agreement on Tariffs and Trade (GATT) of 1947, The Agreement on Subsidies and Countervailing Measures of the WTO (SCM Agreement), the Treaty on the Functioning of the European Union (TFEU), EU Subsidies Regulation (Regulation) 2023 and others. The work also used the provisions of the national laws of EU member states regulating the provision of state aid in these countries.

Additionally, the works of outstanding scientists such as Fan, Jing provided significant assistance in writing the work. Macon-Cooney, Lodh, S., Nandy, M., & Chen, J. Kramer, L. Eggett, C.

Chapter 1:

Evolution, goals and basic principles of government subsidies

1.1 Study of the historical development of state aid in the form of subsidies.

Government subsidies today are an integral part of economic activity, which is present in all countries and has a strong influence on the development of both individual enterprises and nationally and even internationally, as well as, accordingly, in international markets. This phenomenon is very contradictory in both economic and political aspects. It is difficult to say that it has exclusively positive or negative consequences of its use.

The need to disclose this factor lies precisely in the fact that the influence and consequences of a country's actions will be located not only within the country that provided the subsidies, but also on all countries participating in the same market.

The subsidy policy, first of all, can make it much more difficult to implement protectionist policies in the presence of subsidized exports from a foreign country that provides its goods. This means that a country that does not use subsidies to gain additional competitive advantages may suffer some damage to local producers, who will find it difficult to provide their goods and services at a similar level without government support compared to enterprises in other countries that receive significant assistance. in the form of subsidies for the conduct of their activities. This complicates the implementation of set goals and plans in such areas as the production of goods, adherence to long-term strategic plans for production and development of enterprises through the achievement and implementation of certain capacities in the enterprise. This, in turn, can lead to losses primarily for these enterprises and, as a result, for the state, due to the receipt of less income, which comes to the country in the form of taxes, the process of providing work for the country's population becomes more complicated. Also, according to scientists, it was indicated that government subsidies can lead firms to depend on the subsidy policy, which leads to a decrease in innovation. ¹If the level of subsidies is significantly high, this may lead to the fact that the motivation to implement technological innovations will rapidly decrease.²

¹ YONGHONG, Ma et al. Government subsidies and total factor productivity of enterprises: A life cycle perspective, 2023, vol. 40, *Economia Politica: Journal of Analytical and Institutional Economics*, pp. 1-13.

² DAVEY, Kelly, FURTAN, Hartley. Factors that affect the adoption decision of conservation tillage in the prairie region of Canada, 2008, vol. 56, No. 3, *Canadian Journal of Agricultural Economics*.

Secondly, the participation of subsidies in international and foreign markets can cause the opposite effect, which consists in receiving retaliatory measures in which other countries also actively and dishonestly provide subsidies for their enterprises, which ultimately can lead to a trade war, an increase in tariffs, threatening market access and functioning, international trade and economic growth.³

Subsidies also have a downside, which plays a positive role, and in some cases the use of subsidies is even necessary. At the moment, we can indicate that subsidies act as a tool that helps support economic activity, create conditions for the possibility of supporting those strategic sectors that states highlight as key in their economic and political activities, or those areas that cannot exist without assistance such as subsidies and the indifference of the state. Also, this procedure provides a number of opportunities in the form of carrying out the necessary research and development to achieve important goals and results that will contribute to the development of a certain company, enterprise or industry, which is necessary for the existence of the people, maintaining the standard of living and its development and the possibility of preserving jobs. ⁴⁵Subsidies facilitate strategic innovation.⁶

First of all, it is necessary to analyze what the concept of subsidy is, how it has changed at different times and in what form it is accepted today.

It is worth noting right away that the definitions of a subsidy are very difficult to provide in one short formulation.⁷ This complexity is primarily due to the fact that the described phenomenon can manifest itself both within the framework of small and simple procedures that have a rather narrow purpose, for example, providing a transfer to a certain enterprise, but at the same time it can also be something larger, for example, part state or international policy that fulfills a set of goals.

Considering this concept within the framework of international law, a subsidy is a financial contribution on behalf of the government, as a result of which the recipient who received this

³ BAGWELL, Kyle, STAIGER, Robert. *The Economics of the World Trading System*. Cambridge: MIT Press, 2004.

⁴ RICKARD, S. J. 'Welfare Versus Subsidies: Governmental Spending Decisions in an Era of Globalization', 2012, vol. 74(4), *The Journal of Politics*, pp. 1171–1183.

⁵ MCGILLIVRAY, Fiona. *Privileging Industry*. Princeton. NJ: Princeton University Press. 2004.

⁶ LAI, W. J. et al. *Substantive innovation or strategic innovation?*, 2016, vol. 51(4), *Economic Research*, pp. 60-73.

⁷ Houthakker, H. S., *The control of special benefit programs*, in US Congress, Joint Economic Committee, *The Economics of Federal Subsidy Programs – A Compendium of Papers*, 92nd Congress, 2nd Session, Washington: Government Printing Office, 1972 pp. 7-12

financial assistance acquires a benefit that, under other conditions, within the existing market, he could not receive.⁸

In turn, state aid can be interpreted in the form of provision by the state or receipt by the enterprise of advantages, regardless of its possible form. From here we get a view of the concept of state aid as the provision either specifically by the state or through various state structures that own the necessary resources, regardless of the form of their provision, which can negatively affect competition by disrupting it, distorting it by creating exceptional favorable conditions for a particular enterprise or a specific product. Also, a state subsidy is a financial contribution that is made on a non-repayable basis in order to ensure financial stability, which helps to increase the efficiency of subsidized enterprises.⁹

Carl Kays described this concept as a process in which demand for products manufactured by an enterprise increases or there is a phenomenon in which the amount of costs were reduced due to factors that are not the result of planned or intentional strategic steps in the form of the influence of preferences or technological aspects. This phenomenon occurs when a given household receives a subsidy, due to which the receiving enterprise gains advantages that could not arise under normal market relations.¹⁰

Also, a subsidy can be considered as a transfer payment and its corresponding characteristics are characteristic of a transfer payment. This is due to the fact that when the state makes this payment, it does not receive in return either the products produced by this enterprise or any service in return.¹¹ A more detailed interpretation of subsidies is indicated in The WTO The Agreement on Subsidies and Countervailing Measures (“SCM Agreement”)¹².

In Article 1 of The Agreement on Subsidies and Countervailing Measures describes the general meaning of the concept of subsidy. In this agreement, it acts as a type of financial

⁸ ADAMANTOPOLOUS, Konstantinos, BECK, Jochen. Subsidies, International Restrictions. In WOLFRUM, Rudiger (ed). The Max Planck Encyclopedia of Public International Law. Oxford: Oxford University Press, 2012, vol. ix, pp. 659.

⁹ FAN, JING, A Study on the Impact of Government Subsidies on Business Start-Up Performance, 2022, vol. 6(1), Frontiers in Business, Economics and Management, pp. 191-196, Accessible at: https://www.researchgate.net/publication/365258016_A_Study_on_the_Impact_of_Government_Subsidies_on_Business_Start-Up_Performance.

¹⁰ KAYSEN, Carl, "On Defining a Subsidy," in Public Policy and Yearbook of the Graduate School of Public Administration, Harvard University, 1953, edited by C. J. Friedrich and J. K. Galbraith,.

¹¹ ROLPH, Earl, The Theory of Fiscal Economics, University of California Press, Berkeley and Los Angeles : 1956, pp. 66-67

¹² RUBINI, Luca. The Definition of Subsidy and State Aid: WTO and EC Law in Comparative Perspective. Oxford: Oxford University Press, 2009.

contributions from the state or another government body that was entrusted by the state with providing subsidies in the types that were described in this article of the agreement.

It includes several types of financing available to countries: direct transfer of funds, or potentially direct transfer of funds, which involves the issuance of grants and loans, loan guarantees; government revenues otherwise due, or lost or waived for collection; the provision of certain goods or services necessary to support, develop a certain area of activity or enterprise, but this does not take into account the provision of infrastructure.

In this document, this concept is characterized by such a financial contribution that can provide certain benefits to the selected enterprise, which is engaged in activities of an economic nature in the domestic market and has certain restrictions.

In order to fully understand what a government subsidy is at the moment, necessary consider the development of this process throughout history. We can confidently report that the beginnings of government subsidies are deeply rooted in economic policy and its history.

Government subsidies have, in fact, been present to a large extent in providing government policies for centuries. The emergence of this factor, in the form of the provision of government subsidies within the framework of international and European law, can be characterized by several historically important events.

Government subsidies, as a concept, are not a newly invented or new tool, and signs of this concept can be traced back to the times of mercantilism, which in turn preceded the industrial revolution.

In this period of mercantilism, it was customary to adhere to the view that the wealth that was accumulated, primarily gold, as a result of a positive and favorable balance of trade, required the protection of domestic producers. This happened in the 16th-18th centuries, and then the idea of creating an economic policy in which various economic powers would be created within the country with the aim of producing and accumulating the maximum amount of resources for their further sale in the created conditions of one-way trade.¹³

It was with the help of the policy of mercantilism that the foundations were laid for the creation of such economic regulation by the state, in which state power was acquired by obtaining competing advantages among national states. In this time period, those government subsidies that

¹³ LAHAYE, Laura. Mercantilism [online]. Econlib.org, undated. Accessible at <https://www.econlib.org/library/Enc/Mercantilism.html>.

were used by states pursued a narrower goal than government subsidies in modern times. The main goal of states in providing subsidies was limited to protecting their industry from competitors and ensuring its competitiveness. This tactic had the characteristics of a protectionist policy, which was supposed to help keep the trade balance between countries in balance, and also had positive results in the form of an increase in wealth reserves.¹⁴

The next event that brought a change in the characteristics of government subsidies and also contributed to their development happened in the 18th century.

It was in the 18th century that the Industrial Revolution occurred, which transformed government subsidies from, as previously said, a form of protection, to the introduction of policies to support and promote industrial growth, as well as promoting development and innovation. Since during this revolution, technological industrial growth was very rapid and contributed to the emergence of new technologies, which already played a key role in the ability not only to be competitive, but also in ensuring the activities of enterprises. This led to the fact that states had to provide a strategy for their development, including support for new developments, which meant providing assistance in the form of subsidies to those industries that were responsible for the possibility of developing and introducing technological innovations to ensure industrial growth.¹⁵

Just in this period, we can notice that subsidies were already provided in various available forms, such as direct cash grants, also through the issuance of loans at preferential interest rates, or, for example, the creation of favorable tax obligations.

These measures were carried out to encourage investment in both new technologies and new business sectors, which were focused on research and development.

The actions of states during the Industrial Revolution enabled the development of key and necessary industries such as textiles, metallurgy and railways.¹⁶ It was these sectors that were key in the development of industry and played a vital role in the economic growth of each country and are of significant importance today.

¹⁴ ADAMANTOPOLOUS, BECK: Subsidies, International Restrictions, p. 658-659.

¹⁵ MACON-COONEY, Benedict. The Industrial Revolution, Politics and Public Policy [online]. Institute.global.com, 16 December 2019 [cit. on 23 May 2024]. Accessible at: <https://www.institute.global/insights/tech-and-digitalisation/industrial-revolution-politics-and-public-policy>.

¹⁶ WANG, Haiyan, YASINJAN Sawur, "The Relationships between Government Subsidies, Innovation Input, and Innovation, 2022, vol. 14(21):14043, Evidence from the New Generation of Information Technology Industry in China Accessible at: <https://doi.org/10.3390/su142114043>

If we talk about the modern era, the role of subsidies and their importance have only increased and continue to develop. Now the state uses subsidies as a comprehensive tool to not only ensure economic stability, but also to respond to economic crises and minimize their consequences on the country's economy and, if necessary, contribute to the economic recovery process or its individual sectors. There is a change in EU policy on the issue of commercial policy, which is becoming more aggressive compared to previous decades, with special emphasis on new geo-economic instruments.¹⁷

At the same time, similar to the previous stage, government subsidies are issued to stimulate scientific development and conduct research that allows for the development and discovery of new technologies, as a result of which it will be possible to ensure economic growth by subsidizing innovation.¹⁸ With the level of development of enterprises to the scale of corporations, the demand for innovation is very high and is regarded as one of the dominant factors.¹⁹ This activity acquires the character of strategic innovation activity, moving from the category of significant innovations.²⁰

A government subsidy can also be aimed at achieving certain goals, for example, it can help in purchasing necessary goods or services for a household that does not have a high income.

Thus, we can note that government subsidies play a significant role in the economic activities of most countries. They are a tool to support individual enterprises, industries or the implementation of certain public policy goals. Subsidies have both positive and negative consequences.

The concept of government subsidies originated in the era of mercantilism and continued its development during the industrial revolution and in the modern era, subsidies continue their transformation both in acquiring new qualities, meanings and types, as well as in legal regulation.

¹⁷ BASEDOW, Robert, MEUNIER, Sophie, ROEDERER-RYNNING, Christilla. Fair play ?: the politics of evaluating foreign subsidies in the European Union, EUI, RSC, Working Paper, 2023/41, Global Governance Programme-507 Accessible at: <https://hdl.handle.net/1814/75630>.

¹⁸ CHEN, Q., TANG, S., XU, Y., Do government subsidies and financing constraints play a dominant role in the effect of state ownership on corporate innovation?, 2022, vol. 43(8), *Managerial and Decision Economics*, pp. 3698–3714, Accessible at: <https://doi.org/10.1002/mde.3623>.

¹⁹ LODH , S., NANDY , M., & CHEN, J. Innovation and family ownership: Empirical evidence from India, 2014, vol.22(1), *Corporate Governance: An International Review*, pp. 4–23. Accessible at: <https://doi.org/10.1111/corg.12034>

²⁰ LAI, W. J., CHENG, M. N. Substantive innovation or strategic innovation?, 2016, vol.51(4), *Economic Research, The Impact of Macro-Industrial Policy on Micro-Enterprise Innovation*. Economic Research, pp.60-73.

Thus, government subsidies represent a controversial but important element of state economic policy, requiring careful regulation to maximize positive and minimize negative consequences.

1.2 Definition of main goals and principles

In order to conduct further analysis of the activities of government subsidies, it is worth identifying what purpose they pursue and on the basis of what principles their use is possible.

As we can see from the above material, government subsidies are a comprehensive tool for supporting business development in various sectors that are necessary for the economic policy of each state.

State subsidies within the framework of international and European law include multifaceted and versatile goals, which can include:

- stimulating economic growth and financing projects that serve the public interest;
- Providing much-needed resources to small businesses and startups;
- Introduction of new ideas for economic development.

As stated above, one of the goals is to stimulate economic growth and development.²¹

Quite often, grants provided by the state have their purpose in the form of an incentive to stimulate economic growth, as well as its development.

We can attribute this goal to the fundamental goals that most states around the world are trying to implement, since it is the increase in economic growth that proportionally affects the standard of living of citizens, improves the quality of services provided by the state, and also provides more expanded opportunities for both enterprises and for states.²²

The main indicator of economic growth analysis is the increase in gross domestic product, which characterizes the quantity and value of the amount of goods and services that the state produces.²³

²¹ Segal, T. (2021, October 31). How a Government Grant Works, How to Apply, With an Example. Investopedia. Accessible at: <https://www.investopedia.com/terms/g/government-grant.asp>

²² CHESLOCK, JOHN J. "Research Grants and Indirect Costs. " Encyclopedia of Education . . Retrieved March 19, 2024 from Encyclopedia.com . Accessible at: <https://www.encyclopedia.com/education/encyclopedias-almanacs-transcripts-and-maps/research-grants-and-indirect-costs>

²³Kramer, L. (2024, February 29). What Is GDP and Why Is It So Important to Economists and Investors? Investopedia. Accessible at: <https://www.investopedia.com/ask/answers/what-is-gdp-why-its-important-to-economists-investors/>

As a result, providing support to business can increase the country's gross domestic product, which in turn leads to the emergence of new projects, the development of new highly qualified personnel and increased production.

In addition to the positive factor in the form of economic growth with the help of the subsidies that the state has allocated, subsidies also play an important role in social development. The difference between economic development and economic growth is that economic development is focused only on the possibility of increasing production volume, when, in turn, economic development includes improving additional factors such as healthcare, education, the level and quality of life of citizens. In this case, economic development can be achieved by supporting projects that provide both public services and the opportunity to promote innovation.

A striking example of these words is a situation in which the state allocates humanitarian assistance in the development of technologies that improve the quality of public transport.²⁴ In this case, the state receives bonuses both from the economic side, by increasing economic benefits due to reduced traffic congestion, improved air quality, increased road capacity, and also increases the level of support from the people due to improved accessibility to urban infrastructure.

Don't forget that there are market participants such as startups and small businesses. These participants have difficulty entering the market due to high barriers to entry into the market and insufficient financial capabilities. In this case, the state provides an opportunity through financial support to overcome these barriers, as a result of which new ideas and entrepreneurial activities can appear and be implemented.²⁵

By supporting new participants, the chance of innovation and competition increases, which can change the concept of existing markets and in their place create new, more functional ones with new and better goods and services. This will contribute to a dynamic and competitive business environment, thereby combating poverty, redistributing national wealth, and generating income.²⁶

But despite the possible benefits, this activity is also associated with problems and certain risks.

²⁴ PETTINGER, Tejvan. Effect of Government Subsidies - Economics Help. Economicshelp.org, 30 November 2019 [online]. Accessible at: www.economicshelp.org/blog/915/economics/effect-of-government-subsidies/.

²⁵ZHOU Y, WANG L, REN H, WANG L, ZHANG S and AAMIR M., Influence of financial subsidies on innovation efficiency of start-up enterprises. *Front. Environ. Sci.* [online]. 17 November 2022, vol. 10, Accessible at: <https://www.frontiersin.org/articles/10.3389/fenvs.2022.1060334/full>

²⁶COMMANDER, S. 2012. A guide to the political economy of reforming energy subsidies. Institute for the Study of Labor, Bonn, Germany. [online], 2012, vol. 22, Accessible at: <https://www.econstor.eu/handle/10419/91797>

These actions can distort markets if they are not designed and implemented properly, so states have a responsibility to carefully design and implement the subsidy in accordance with international and European law, in order to ensure that, on the one hand, they will be able to achieve all their goals and, on the other hand, as a result there will be no negative consequences.

In order to successfully develop and implement any legal regulation in the field of state subsidies, it is first necessary to find out on what principles the policy of state subsidies for business can be correctly built.

It should be pointed out that the role of principles in international law is important in connection with the consolidation of fundamental norms, thanks to which it is possible to determine and regulate more correct behavior of states and other subjects of international law.²⁷

Generally recognized principles include the principle of sovereignty, the principle of non-interference, the principle of peaceful resolution of disputes, the principle of legality, and the principle of transparency.²⁸

In this case, the principles are instruments of international law, thanks to which it is possible to fill both already identified gaps in the regulation of legal aspects, as well as possible legal problems in the future, which were previously impossible to foresee, but for certain reasons still arose.²⁹

In European law, principles take a key role. They are a source of law and a tool for judicial control and strengthening accountability for offenses committed.³⁰

It is almost impossible to imagine the functioning of international and European law without the principles that give it the foundation for the implementation of the rule of law.

In the case of the process of providing government subsidies to businesses, it is necessary and especially important to be guided by certain principles, due to the fact that subsidies play a very important role both in the political, economic and social spheres. Without correctly defined principles and norms, it is difficult and impossible to imagine competent management of such a

²⁷ EGGETT, C., et al C. The Role of Principles and General Principles in the 'Constitutional Processes' of International Law.,2019, vol. 66, Netherlands International Law Review, pp. 197–217. Accessible at: <https://link.springer.com/article/10.1007/s40802-019-00139-1> pp. 197–217.

²⁸ Briefing, Protecting the rule of law in the EU: Existing mechanisms and possible improvement, 06.11.2019, [Accessible at: [https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI\(2019\)642280](https://www.europarl.europa.eu/thinktank/en/document/EPRS_BRI(2019)642280)

²⁹KOHEN, Marcelo, SCHRAMM, Bérénice, General Principles of Law. obo in International Law, [online]. Oxford Bibliographies Online, 2013 [cit. on 18th May 2024]. Accessible at: <https://www.oxfordbibliographies.com/display/document/obo-9780199796953/obo-9780199796953-0063.xml>

³⁰ EGGETT: The Role of Principles.

complex mechanism, on which political relations between countries, the functioning of the state, ensuring its strategic areas, as well as ensuring the well-being of the country's population depend.

To analyze the principles that could regulate the provision of government subsidies, it is worth starting with a principle that we can call key and provides the foundation for the implementation of the provision of government subsidies

This principle is the principle of *pacta sunt servanda*.³¹ It implies that to a general principle of law that is recognized by the international community lies the obligation to comply with the agreement. This compliance with the agreement continues until the termination of this agreement or the withdrawal of the state from it.

At the moment when the state decides to provide a particular subsidy, special conditions are created that take the form of an agreement or contract. Just in such a situation, the principle of *pacta sunt servanda* acts as a guarantor that the concluded agreements will be fulfilled and the obligations assumed will be observed; otherwise, these agreements would not be binding and would most likely not be fulfilled.³² The presence of this principle makes it possible to create an environment of certainty and predictability and increase the level of confidence of enterprises to rely on receiving subsidies that can contribute to their development.

This principle also ensures the regulation and compliance by Member States with the approved procedure for subsidies in the context of the European Union. This procedure consists of sending a notification of the provision of a subsidy or its change. Using this principle, the Commission has the opportunity to verify the compatibility of a subsidy with the internal market and obtain guarantees of compliance by the European state with international rights by member states.

It is necessary to consider and analyze what principles could be formed as a basis for regulating the provision of subsidies to businesses in order to ensure the effective operation of this mechanism, while respecting the rule of law in accordance with international and European law. We can emphasize that the principles in the field of granting subsidies are of more controlling nature.

One of the principles in the provision of government subsidies can be the principle of common interest. It is characterized by the pursuit of a specific and specific policy goal to create

³¹ SCHMALENBACH , K. Article 26. In: Dörr , O., Schmalenbach , K. (eds) Vienna Convention on the Law of Treaties. Springer, Berlin, Heidelberg. 2018, pp 465-492

³² SHAW, Malcolm. International Law. Cambridge: Cambridge University Press, 2014. 67 p.

the possibility of correcting inherent market failures. This highlights that subsidies were designed to achieve specific objectives. This principle includes assistance for both the entire industry and the individual enterprise, but it is focused on serving common interests.

It should also highlight the principle that follows from the Treaty on European Union, namely the principle of proportionality, which can also be applied when providing a subsidy.³³ Its idea is that the state that issues the subsidy must calculate and issue the amount of support that is necessary to achieve the goal. This is what provides a guarantee to ensure the efficient use of resources owned by the state, making this process more fair, efficient and effective. This principle helps to balance the benefits of the subsidies provided against the economic costs. The principle of proportionality has the characteristics of being suitable and necessary to achieve the desired purpose, without causing a burden that is unnecessary in the context of the purpose.³⁴ But if this principle is observed, the question arises of how exactly it is necessary to measure proportionality within the framework of providing a subsidy for business. This, in turn, pushes for the creation of a unified procedure by which various stakeholders could assess the proportionality of the provision and use of government subsidies in an acceptable, unified form.

The next important aspect that should be enshrined in the subsequent principle is the consistency in which the subsidy is mainly directed to the beneficiary with the aim of changing the economic behavior of the beneficiary, giving support and improving financial stability through the opportunity to invest in new technologies and developments, achieving previously impossible goals without receiving subsidies.³⁵

It is also worth paying attention to the formation of a principle closely related to it, thanks to which it will be impossible to use other instruments that would have a higher level of distortions in the markets. This is what ensures that subsidies are transferred and received only in cases where this is an extreme, necessary measure.

At the same time, based on the previous aspect, we obtain an inversely proportional principle, which ensures that a subsidy is not provided to compensate for types of enterprise costs that the beneficiary has the ability to cover independently. This principle may be necessary to be

³³Consolidated version of the Treaty on European union. Art.5

³⁴ Principle of proportionality .[online] EUR-Lex.[cit. on 14th. on May 2024]. Accessible at: <https://eur-lex.europa.eu/EN/legal-content/glossary/principle-of-proportionality.html>

³⁵ REYNOLDS, Edward. Subsidy Control Bill - The General Principles [online]. Bevanbrittan.com. [cit. on 24 April 2024]Accessible at: <https://www.bevanbrittan.com/insights/articles/2021/pt-1-subsidy-control-bill-the-general-principles/>.

able to prevent and suppress the improper receipt and use of subsidies for the purpose of exploiting some additional activity of the enterprise, and not as a substitute for investment for the private sector.

It should not be overlooked that the subsidies provided must ensure that the choice of policy instrument is consistent with the achievement of the goal that was established in the absence of other ways of achieving it with a higher level of distortion. This indicates an obligation to match the subsidy with the policy strategy being pursued and can also be stated as a principle. This provides certain guarantees for obtaining subsidy support in the direction of strengthening management efforts and the absence of contradictions that could undermine them.³⁶

It must be taken into account that the principle of the need for a subsidy must be designed in such a way that specific and precise policy objectives are achieved while minimizing the negative impact on existing and established competition. This principle ensures that the subsidy is applied effectively and fairly.

Thus, government subsidies are a comprehensive tool that has multifaceted goals in the areas of economic development, supporting small businesses, introducing innovation and stimulating growth. The key goals are to stimulate economic growth through increasing GDP, financing socially significant projects, supporting small businesses and start-ups, and introducing new ideas for economic development.

To effectively regulate the provision of government subsidies to businesses, it is necessary to be guided by certain principles that serve as the foundation and ensure the rule of law in accordance with international and European law. The key principle is *pacta sunt servanda*, which guarantees compliance with concluded agreements and creates an environment of certainty for enterprises.

Other important principles are: the principle of general interest (subsidies must pursue specific policy objectives and serve the general interest); the principle of proportionality (the amount of the subsidy must be sufficient, but not excessive, to achieve the goal); the principle of correspondence (the subsidy must change the economic behavior of the recipient in the desired direction); the principle of necessity (a subsidy should be applied only in the absence of less

³⁶ Subsidy Control rules: quick guide to key requirements for public authorities. 11 November 2022 [online]. Gov.uk.[cit. on 13 May 2024] Accessible at: <https://www.gov.uk/government/publications/subsidy-control-rules-key-requirements-for-public-authorities/subsidy-control-rules-quick-guide-to-key-requirements-for-public-authorities#step-4--design-subsidy-to-ensure-compliance-with-the-subsidy-control-principles>.

market-distorting instruments); the principle of inverse proportionality (subsidies should not compensate for costs that the enterprise can cover on its own); the principle of consistency with political objectives (the subsidy must be consistent with the political strategy being pursued); the principle of minimizing the negative impact on competition.

Compliance with these principles helps ensure that government subsidies are used effectively, targeted and equitably, achieving the desired positive effects while minimizing distortions and negative consequences for the market.

Thus, the study shows the importance of government subsidies in economic policy, their historical development and modern legal aspects. Since the era of mercantilism and the Industrial Revolution, subsidies have become a key tool to support the economy and innovation. Subsidies have deep historical roots and continue to play an important role in modern economies. Current international and European legal acts such as The Agreement on Subsidies and Countervailing Measures (SCM Agreement) WTO and Treaty on the Functioning of the European Union (TFEU) regulate their use, preventing distortion of competition.

Subsidies pursue multifaceted goals: stimulating economic growth, financing socially significant projects, supporting small businesses and introducing innovation. To effectively regulate subsidies, it is necessary to follow key principles such as compliance with agreements (*pacta sunt servanda*), common interests, proportionality, consistency with economic behavior, necessity, inverse proportionality, consistency with political objectives and minimizing adverse effects on competition.

Chapter 2:

Analysis of the legislative framework for regulating subsidies and development of state tools aid in the European Union

2.1 Transformation of the legal framework for regulating state aid in the form of subsidies.

In connection to the development, increase in the volume and number of government subsidies, both domestic and foreign, they began to occupy a significant role in the conduct of economic and political activities. This has led to the need to regulate subsidies and state aid in the European Union and in international law. This was intended to help create a level playing field in the single market by eliminating the possibility of any distortion of competition and trade that might arise from an uncontrolled subsidy race between different countries.

To analyze the formation of legislation of regulate subsidies, it is worth first turning to the basics that laid the foundation for the gradual construction of a legal framework in this area of law.

At the international level, subsidies have been considered several times. Opinions and views regarding the regulation of subsidies have been transformed and supplemented each time, which is very clearly visible in the comparison of the The General Agreement on Tariffs negotiations and the further transformation of legislation in relation to foreign (transnational) subsidies and state aid.

When analyzing the first international meetings, which included the issue of subsidies and state aid , countries were not very wary of subsidies, both domestic and foreign, while viewing them as a tool to promote economic development. We can highlight this policy from the words of the US delegation during a meeting of the UN Economic and Social Council in 1946. At that time, it was announced that even the introduction of certain restrictions on tariffs or imports may be inferior in efficiency and preference compared to the use of subsidies.³⁷ But despite this, a number of countries insisted on resolving this issue due to fears that increasing subsidies could damage their economies.

The presence of such views influenced the inclusion of certain rules in The General Agreement on Tariffs and Trade, which was one of the first documents that formed the basis for

³⁷ UN Economic and Social Council, UN Doc. E/FC/T/ C.II /37.

regulating state aid. The General Agreement on Tariffs included several articles on subsidies, which had the main goal of enabling the creation and operation of a trading system that was multilateral as well as liberal and had the ability to reduce tariff barriers. We can note that The General Agreement on Tariffs was able to introduce as a restriction on the use of export subsidies, which had the potential to provide the opportunity to be more competitive in one country at the expense of another. It also created a requirement to report subsidies that are likely to have a negative impact on international trade, as reflected in Article 16 of The General Agreement on Tariffs.³⁸ It is precisely such actions could have a positive impact on transparency and the construction of a consultative dialogue in the event of problems arising with their further solution.

The next point that has been achieved with the help of The General Agreement on Tariffs is the development of non-infringement complaints, which are recorded in Article XXIII.³⁹

This article is aimed at developing a special mechanism through which it was possible to file a complaint about the actions of a country that did not directly violate the The General Agreement on Tariffs agreement but nevertheless could weaken the economic development of another country or the fair sale of products.

This mechanism was supposed to help maintain the level of market access by filing a complaint against unfair actions of a country, for example, which reduced tariffs but at the same time introduced or increased subsidies, which ultimately did not affect the actual implementation of tariff concessions and the development of the international market.

An example of a successful application is the case of European Commission DS27 - Regime for the Importation, Sale and Distribution of Bananas.⁴⁰ Several Latin American countries and the United States brought a complaint against the European Communities' regime for the importation, sale, and distribution of bananas. The complainants discussed that the regime violated The General Agreement on Tariffs Articles I, II, III, X, XI, and XIII.

The Panel and Appellate Body found that the EC's banana import regime violated several provisions of the The General Agreement on Tariffs, including Article XIII, which pertains to non-discriminatory administration of quantitative restrictions. This case is a classic example of a violation complaint under Article XXIII:1(a), where the EC's measures were found to be

³⁸ Article 16, General Agreement on Tariffs and Trade

³⁹ Article 23, General Agreement on Tariffs and Trade

⁴⁰ WTO doc. WT/DS27/AB/RW2/ECUoIWT/DS27/AB/RW/USA (26 November 2008) Accessible at: https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds27_e.htm

inconsistent with its obligations under the The General Agreement on Tariffs thus nullifying or impairing benefits expected by the complainants .

In practice, the implementation of this mechanism has become problematic due to the fact that the country that is affected takes on the obligation that another country used subsidies or other possible measures that weakened or completely canceled the benefits. Due to the complexity of constructing a cause-and-effect relationship between the subsidy and the cancellation of benefits, this mechanism, although necessary, was incomplete for the full regulation of subsidies. ⁴¹An example is the case of Non- Violation Complaint : Japan – Film (1998). The United States brought a complaint against Japan regarding measures affecting the distribution and sale of photographic film and paper . The US claimed that Japan's distribution practices , although not violating specific The General Agreement on Tariffs provisions , nullified or improved benefits expected under the agreement. The Panel found that the US failed to demonstrate that Japan's measures nullified or improved benefits under Article XXIII:1(b). The case highlighted the high burden of proof required for non-violation complaints , necessitating clear evidence that the benefits reasonably expected by the complaining party were indeed nullified or impaired .⁴²

With the help of The General Agreement on Tariffs, standards were established for the participation of parties in trade on an international scale. Having analyzed what legal instruments were developed and implemented by The General Agreement on Tariffs, we can say that this contributed to achieving the set goals of building international trade without discrimination, as well as reducing tariffs and laying the foundation for regulating subsidies. The overall reduction in tariffs was about 37%.⁴³

As a result of a series of negotiations with the final Uruguay Round negotiated, the creation of a new international organization based on The General Agreement on Tariffs was achieved,

⁴¹BAGWELL, K. and R. W. STAIGER "Domestic Policies, National Sovereignty, and International Economic Institutions," 2001, vol. 116, issue 2, Quarterly Journal of Economics, pp. 519-62. Accessible at: https://econpapers.repec.org/article/oupqjecon/v_3a116_3ay_3a2001_3ai_3a2_3ap_3a519-562..htm

⁴² WTO Doc. WT/DS44/R (31 March 1998) Accessible at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/44R00.pdf&Open=True>

⁴³ "Role of THE GENERAL AGREEMENT ON TARIFFS AND TRADE and WTO in International Trade." [online] LawTeacher.net. 23rd Sep 2021 [cit. on 11 February 2024]. Accessible at: <https://www.lawteacher.net/free-law-essays/international-law/role-of-The-General-Agreement-on-Tariffs-and-Trade-in-promoting-international-trade-international-law-essay.php?vref=1>

which had great power in the field of regulation and monitoring of international trade, in particular in the field of subsidies.⁴⁴

One of the components of the WTO structure is The Agreement on Subsidies and Countervailing Measures .

One of the main tasks set for this agreement is to regulate the use of subsidies by establishing rules for their use or a complete ban. We can note that this document takes as its basis the provisions of The General Agreement on Tariffs and is aimed at solving similar goals set by The General Agreement on Tariffs, but at the same time the document complements and expands the rules with the help of which it becomes possible to build clearer regulations for responding to subsidies.

The Agreement on Subsidies and Countervailing Measures provides the opportunity for market integration of domestic policies and is also a stepping stone for the development of new literature to achieve the goal of maintaining countries' access to international markets.⁴⁵

To assess the importance, opportunities and problems of this treaty, we will conduct a comparative analysis of it with its predecessor The General Agreement on Tariffs.

We can note that both documents have some structural similarities, such as: interpretation of the concept of a subsidy, attitude towards export subsidies, transparency and notification of the application of a subsidy.

But despite the fact that there are similarities in these aspects, The Agreement on Subsidies and Countervailing Measures has some more detailed clarifications. For example, the concept of a subsidy in The General Agreement on Tariffs is more broadly defined, while The Agreement on Subsidies and Countervailing Measures already has a more detailed definition and divides them into prohibited subsidies (this includes export subsidies as well as subsidies for local content) and subsidies requiring action , which is a positive step for the ability to interpret these phenomena more clearly and without fear of perceiving them ambiguously.

We can also note that both documents prohibit export subsidies, which may lead to trade distortions, but at the same time, The Agreement on Subsidies and Countervailing Measures

⁴⁴ BENEDEK, Wolfgang. General Agreement on Tariffs and Trade. In WOLFRUM, Rudiger (ed), Max Planck Encyclopedia of Public International Law [online] opil.ouplaw.com March 2015 [cit. on 22 March 2024] . Accessible at: <https://opil.ouplaw.com/display/10.1093/law:epil/9780199231690/law-9780199231690-e1526?rskey=Jd6742&result=2&prd=MPIL>.

⁴⁵ LEE, Gea. Subsidies and countervailing duties. SMU Economics and Statistics Working Paper, 2016, pp. 161-210.

contains listed and classified export subsidies that will be prohibited with a description of certain conditions. This leads to increased enforcement and compliance, resulting in developments that are more positive than they were under the broader, less precise The General Agreement on Tariffs And Trade Subsidy regulation of 1947.

The Agreement On Subsidies And Countervailing Measures has certainly included mandatory provisions on transparency and notification of subsidy applications. As in previous cases, this agreement has introduced more criteria about exactly what such notifications look like. items such as the need to provide more detailed notifications have been added. which will be the nature of the scale and impact of the subsidy.

The most important thing in these agreements is how the procedure for regulating the subsidy occurs. A comparative analysis will allow us to see what advantages each of the regulatory laws have. It is immediately worth noting that The General Agreement on Tariffs has a broader definition of a subsidy, while within the framework of the WTO agreement there is a more detailed, precise definition of a subsidy. The advantage for The General Agreement on Tariffs is the flexibility of interpretation, but at the same time there is ambiguity that can lead to inconsistency. While The Agreement On Subsidies And Countervailing Measures thanks to its high categorization, it is possible to quickly identify and regulate the case on the one hand, but this can also lead to difficulties in resolving the case due to the need to subsidize exact compliance with the law.

In order to initiate the review process, the party affected by the subsidy must submit a notification, and here we immediately see the superior transparency and accuracy of the application from the WTO regulation over The General Agreement On Tariffs And Trade due to the more comprehensive notification requirement that must include the policy objective form and other necessary indicators.

The development of regulation of disputes about subsidies has shown its result in that THE Agreement On Subsidies And Countervailing Measures has developed certain requirements for consultations on issues that have arisen, which are limited by precise deadlines and regulated by a process with a clear structure, which provides quick deadlines and specific steps to resolve the issues that have arisen.

An important factor that is an advantage for WTO is the possibility of a country turning to The Dispute Settlement Body as a result of unsuccessful preliminary consultations with the country

that introduced the subsidy. This makes it possible to resolve issues that arise in a structured, transparent and diplomatic manner. This is a big advantage compared to The General Agreement on Tariffs, which was limited to almost only consultative procedural actions of the injured party with the respondent country.

The effectiveness of case review is confirmed by the following case DS70: Canada - Measures Affecting the Export of Civilian Aircraft.⁴⁶

Canada raised concerns about Brazil's export financing program, known as PROEX. This program was designed to support Brazilian aircraft manufacturers, notably Embraer, by providing subsidies that Canada claimed were contingent upon export performance. Canada argued that these subsidies violated Article 3.1(a) of the SCM Agreement, which explicitly prohibits subsidies tied to export performance.

This provision prohibits subsidies that are explicitly or implicitly tied to the export of goods, as such subsidies can distort international trade and provide an unfair advantage to the subsidized producers.

Brazil defended its program by asserting that the subsidies were essential for its aircraft industry to compete on a level playing field in the global market. Brazil discussed that the subsidies were within permissible limits under The Agreement on Subsidies and Countervailing Measures and were necessary to counteract similar subsidies provided by other countries to their own aerospace industries.

In 1996, Canada requested consultations with Brazil as the first step in the dispute resolution process. These consultations aimed to resolve the issue amicably but ultimately failed to produce a mutually acceptable solution.

After the consultations failed, Canada requested the establishment of a panel. The WTO Dispute Settlement Body (DSB) established the panel to investigate the matter. In 1999, the panel issued its report, finding that the export subsidies provided by Brazil under the PROEX program were inconsistent with Article 3.1(a) of The General Agreement on Tariffs and Trade Subsidy.

Dissatisfied with the panel's findings, Brazil appealed the decision to the WTO Appellate Body. In August 1999, the Appellate Body upheld the panel's conclusions, confirming that the subsidies were indeed prohibited under The Agreement on Subsidies and Countervailing Measures.

⁴⁶ WTO Doc. WT/DS46/RW/2 (26 July 2001). Accessible at: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/WT/DS/46RW2-00.pdf&Open=True>.

.The DSB adopted both the Appellate Body's report and the panel's report , as modified by the Appellate Body, in August 1999. This adoption formalized the requirement for Brazil to bring its measures into conformity with WTO rules .

Brazil was given a reasonable period to implement the DSB's recommendations and bring its export financing program into compliance . However , Canada remained unsatisfied with Brazil's modifications to the PROEX program , leading to further consultations and additional panel and Appellate Body proceedings in 2001.

Following continued non-compliance by Brazil , the DSB authorized Canada to impose countermeasures . Canada subsequently imposed retaliatory tariffs on Brazilian goods , demonstrating the DSB's enforcement capabilities .

Brazil eventually made adjustments to the PROEX program to align with WTO rules , although compliance issues persisted for some time .

This case set a significant precedent for interpreting and enforcing the SCM Agreement's provisions on export subsidies . It underscored the DSB's role in maintaining the integrity of international trade laws .⁴⁷

In addition to the international level, there are special agreements that regulate the provision of subsidies and state aid at the European level. Such regulatory documents include the Treaty on the Functioning of the European Union. The main goal of this agreement is to prevent any distortion of competition within the European market.

As well as preventing preferential conditions in the country , which could result in a negative impact on the market. ⁴⁸The fundamental ban on providing state aid to enterprises lies at the heart of Article 107 of the Treaty on the Functioning of the European Union.⁴⁹

To be able to determine whether state aid is provided or not, certain characteristics have been developed and if they coincide with what the state did, this will be considered the basis for the fact that such unlawful assistance was provided.

The characteristics are based on the following criteria: firstly , this assistance was provided by a Member State, this makes it possible to consider this precedent further. Due to the provision

⁴⁷ WTO Doc. WT/DS46/AB/R (2 August 1999). Accessible at: <https://www.wto-ilibrary.org/content/reports/25189840/17/read> .

⁴⁸ GRABITZ, Hilf , Nettesheim (ed.) (2016), *Das Recht der Europäischen Union*, Werkstand : 59. Ergänzungslieferung July 2016.

⁴⁹ Consolidated version of the Treaty on European union. Art.107.Accessible at: http://data.europa.eu/eli/treaty/tfeu_2012/oj

of such a measure by a member state, it must constitute an advantage or favorable treatment which is characterized by a selective nature and is manifested by the fact that the assistance was allocated for a specific enterprise. The extreme point of confirmation is that such assistance could contribute to the distortion of competition in the market or the creation of such possibility with the prospect that trade could be impaired between communities.⁵⁰

We can note that in accordance with this treaty and the case law of the European Court, the concept of considering the provision of assistance has been expanded to such a form in which there is a likelihood that it will be provided by public or private organizations, but with the condition that the appointment itself has been regulated and established by namely the state. This is possible subject to such criteria as confirmation that the product was of state origin, as well as the imputability to the state of these means on the other .⁵¹

An example is case C-256/97 - DM Transport. DMT is a transportation company , received payment facilities from the Belgian National Social Security Office (ONSS) to cover social security contributions . This support allowed DMT to continue operations despite financial difficulties . The Commercial Court in Brussels questioned whether this aid constituted state aid under Article 107 TFEU.

The key issue was whether the payment facilities granted by the ONSS constituted state aid under Article 107(1) TFEU and if they were compatible with the internal market .

The CJEU rules that the payment facilities provided by the ONSS constituted state aid under Article 107(1) TFEU. The aid involved state resources and conferred a selective advantage to DMT, distorting competition and affecting trade within the EU.

The Court found that the aid was personal as it was granted without prior notification to the European Commission and without the necessary approval , violating Article 108(3) TFEU.

This case underscores the importance of procedural compliance in state aid measures to ensure fair competition within the EU.⁵²

It is worth noting that despite the fact that the goals of TFEU, The General Agreement on Tariffs and WTO are similar, there are differences in the interpretation of subsidies and the

⁵⁰ CALLIES, Ruffert, TEU/TFEU, 5. Auflage 2016.

⁵¹ OECD (2022). Continuing Education and Training and the EU Framework on State Aid: Implications for the Public Higher Education Sector in Brandenburg. Paris: OECD Publishing. Accessible at: <https://doi.org/10.1787/bf96ce64-en>

⁵² Judgment of 29 June 1999, Tribunal de Commerce, Brussels vs Déménagements-Manutention Transport C-256/97 C-256/97 - DM Transport. <https://curia.europa.eu/juris/liste.jsf?language=en&num=C-256/97>

procedural method of regulation. for example The Agreement On Subsidies And Countervailing Measures refers to Dispute Settlement Body, and TFEU to the European Court of Justice. Both institutions have such common characteristics as multi-layered processes, mandatory implementation of decisions, but it is worth noting that the European Court of Justice may have less political and economic difficulties in implementing decisions, and the ECJ has a decisive influence on the development and application of EU rights, ensuring its unity and compliance while maintaining direct effect is mandatory for the execution of decisions for national courts and authorities.

An analysis of the transformation of the legal framework for regulating subsidies shows that the increase in the volume of government subsidies required strict regulation to prevent distortion of competition. The historical development began with The General Agreement on Tariffs and continued with the creation of the WTO and The Agreement on Subsidies and Countervailing Measures (The Agreement On Subsidies And Countervailing Measures). These acts established the rules for the use of subsidies at the international level.

In the European Union, the legal framework has evolved towards more detailed rules, enshrined in the Treaty on the Functioning of the European Union (TFEU), in order to prevent distortion of competition in the single market.

Thus, the transformation of the legal framework highlights the need for comprehensive regulation to support fair competition and economic development.

2.2 Analysis of the FRS as a new instrument to protect the distortion of market competition and to ensure fair competition of the European Union and respond to new challenges

Having analyzed the evolution of the emergence and development of subsidies, we can see that subsidies provided by the state in order to stimulate, develop and ensure economic prosperity were primarily intended for the internal needs of the country. This can be seen in the analysis of fundamental documents regulating the legal aspect of the provision of subsidies by the state, namely The General Agreement on Tariffs, The Agreement on Subsidies and Countervailing Measures, TFEU. Based on these documents, it is possible to conclude that the main and primary goal was to ensure the possibility of regulating controversial situations that arose precisely during the implementation of allocated subsidies for their own production and sale of manufactured products.⁵³

⁵³ WTO, 'Expert Group Meeting on Trade Financing – Note by the Secretariat', 16 March 2004, WT/GC/W/527, pp. 5.

Drawing attention to the gap in the regulation of foreign subsidies, as well as to the changing situation in which developing countries began to actively participate in subsidies, which entails a violation of fair competition, and also has a direct impact on the European market and, accordingly, on European companies, it was developed the Regulation Foreign Subsidies, which has already entered into force on July 12, 2023. Its purpose is to minimize the possibility of distorting the domestic market and undermining fair competition by regulating incoming foreign subsidies. The main goal of the regulation is to eliminate distortions in the European Union market by controlling foreign subsidies from countries that were not members of the European Union, but at the same time poorly regulating the flow of funds into the European industrial market.

The main purpose of the regulation is to eliminate distortions on the European market by controlling foreign subsidies from countries that are not members of the European Union, as well as to be able to control and regulate the flow of funds that affect the European industrial market.

It is worth noting the importance of considering and analyzing the question of how this regulation of foreign subsidies can fit into the broader context of European Union policy.

According to the strategic plan 2020-2024 , the trade policy of the European Union is to achieve prosperity, respect solidarity, and ensure security. It is thanks to the trade policy strategy that can be growth is possible, as well as ensuring its sustainability, increasing the number of jobs , and attracting investments that will contribute to innovation. When these elements are achieved, trade policy ensures improvements in the livelihoods of European Union citizens, workers, the protection of weaker sections of the population, as well as the activities of various types of businesses.⁵⁴

At the moment, there is a situation in which the activities of foreign countries in the European Union market have a special advantage, due to the large amount of government support in the form of subsidies, and quite high protectionist measures, while European companies try to adhere to compliance with the law during their activities on the regulation of subsidies. Companies owned by European countries conduct their activities in pursuit of achieving the goals of the European Union, which are to support sustainable development, fair competition, and improve safety.

⁵⁴ Strategic plan 2020-2024 – Trade. (n.d.). European Commission. Accessible at: https://commission.europa.eu/publications/strategic-plan-2020-2024-trade_en

Based on this, we see the whole need for the document foreign subsidies regulation. The instruments developed under this regulation are aimed at combating subsidies, which will lead to the restoration of a specific environment for European Union industry at a time when it is under pressure and suffers from unfair imports. In addition, compliance with trade rules and obligations will be achieved, which will play an important role and significance in protecting and promoting the interests that the European Union puts forward in a complex global trading environment, the ability to effectively implement trade policies and protect rights at a high level during the existence of unfair policies of others countries

Separately, it is necessary to point out that one of the reasons for undermining the implementation of European Union policies in the context of the European international market may be the large number of foreign subsidies that appeared due to limited information about the amount of foreign subsidies provided. This was influenced by a lack of transparency and insufficient compliance with the obligations associated with the notification of the grant of a subsidy, which must be done as part of The Agreement on Subsidies and Countervailing Measures .⁵⁵⁵⁶In this case, the document will be able to introduce observation, analysis of the number and volume of foreign subsidies, assess their criticality and, with the help of this, achieve goals for improving the market within the framework of compliance with trade policy.

It should be noted that the regulation gives the European Commission certain tools within the FRS, such as the powers to investigate mergers and acquisitions, the power to examine applications for public procurement, and market research. The mentioned instruments give the commission quite broad powers both to search and analyze information and to use certain sanctions in the form of fines in relation to those who did not contribute to cooperation. Because of this, the number of obligations and the level of risk for European companies is growing.

As a result, at first, a number of companies that used subsidies in the EU may suspend their activities for some time in order to resolve the issue of compliance with the new legislation. This

⁵⁵A recent background note prepared by the WTO Secretariat (G/SCM/W/546/Rev.10) notes that between 1995 and 2017 the number of members that have failed to make a notification rose sharply. As on April 2019, 77 WTO members had not yet submitted subsidy notifications for 2017, 62 members have still not submitted subsidy notifications for 2015. Accessible at: https://www.wto.org/english/news_e/news19_e/scm_30apr19_e.htm

⁵⁶ WTO Agreement on Subsidies and Countervailing Measures, 15 April 1994; Marrakesh Agreement Establishing the World Trade Organization, Annex 1A, 1869 UNTS 14.

may also affect the area of procurement, during which companies can make multimillion-dollar purchases, since they will have to declare each of them that exceeds the limit.⁵⁷

In addition, there is a risk for individual markets within the European Union. An example is the football market, since it has enormous competitiveness, but at the same time many clubs are financed or partially controlled by other countries; in some cases, it may be that a club receives a subsidy from several countries at the same time. At the level of European law, it is determined by Article 165 of the Treaty on the functioning of the European Union, on promoting the development and promotion of sporting interests.⁵⁸ In addition to building educational and social functions, sport occupies an important place in the economy of the European Union. About 5 million people work in this area and the percentage of the total GDP of the European Union in this market is about 2%.⁵⁹

This may lead to potential adjustments or implementation of additional aspects to the impact of this regulation.

The alternative is that you will have to wait for new court decisions to regulate this issue, as was the case with Bosman case, known as the Bosman decision, is a landmark decision of the European Court of Justice (ECJ) that has had a profound impact on professional sports, especially football, in the European Union. The case examined issues related to the free movement of workers, as well as the legality of transfer rules and citizenship quotas in professional football leagues. The case raised legal questions about the settlement of transfer fees after a contract has expired, and whether requiring transfer payments for players whose contracts have expired violates EU law. The European Court of Justice ruled in favor of Bosman, which led to a number of positive aspects, such as the removal of the requirement for transfer fees for those athletes whose contract had expired and the simplification of the regulation of sports activities. This contributed to the fact that participants in certain markets were able to work fully and in accordance with the new legislation.⁶⁰

Thus, the introduction of Foreign Subsidies Regulation (FSR) in 2023 addresses the problem of insufficient regulation of foreign subsidies that distort the EU market. The new

⁵⁷ BRANTON, J., & ROSE, A., How will international businesses be affected by the new EU Foreign Subsidies Regulation? [online], dwfgroup.com, 2024b, June 21[cit. on 13 March 2024]. Accessible at: <https://dwfgroup.com/en/news-and-insights/insights/2023/1/how-will-international-businesses-be-affected-by-the-new-eu-foreign-subsidies-regulation>.

⁵⁸ Article 165 TFEU.

⁵⁹ Position paper on the impact of the COVID-19 crisis on the sport sector, 2020, The European Platform for Sport Innovation (EPSI). Accessible at: <https://epsi.eu/news/position-paper-on-the-impact-of-the-covid-19-crisis-on-the-sport-sector/>

⁶⁰ Case Document 61993CJ0415 C-415/93 1995 Accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX%3A61993CJ0415>

regulation gives the European Commission powers to investigate and regulate such subsidies, helping to maintain fair competition and protect the internal market.

FSR strengthens the EU's economic position and helps tackle unfair competition, supporting the goals of sustainable development and fair trade.

Thus, the research carried out in these sections emphasizes the importance of the evolution of the legal regulation of subsidies and the introduction of new tools to ensure fair competition in the EU. The analysis showed that key events and legislative changes, from The General Agreement On Tariffs And Trade to The Agreement on Subsidies and Countervailing Measures and the Treaty on the Functioning of the EU (TFEU), have shaped the modern legal framework. These changes are aimed at preventing the induction of competition and creating conditions in the EU internal market. Introduction Foreign Subsidies Regulation (FSR) in 2023 was an important step in the fight against distortion of competition caused by foreign subsidies. The FSR provides the European Commission with the powers to effectively control foreign subsidies, which helps maintain fair competition and protect the EU's economic interests.

Chapter 3:

Assessment of the Situation of the Electric Vehicle Market and Analysis of Available Instruments to Protect the European Automobile Market

3.1 The impact of Chinese subsidies on the EU electric car market.

Today we can see how the European Union faces a new challenge related to the restructuring of the transport industry and at the same time the fight against a new strong competitor in the form of China.

This is due to the Paris climate change agreement of December 12, 2015, as well as the European Green Deal. ⁶¹These agreements were focused on stabilizing climate change and developing steps to solve climate problems through the implementation of certain strategies. ⁶²

The transformation of the automotive industry is driven by the European Commission providing a long-term strategic vision to reduce greenhouse gas emissions to achieve climate neutrality. This document is the starting point for the automotive industry, with particular emphasis on low or zero emission vehicles. ⁶³Due to the fact that, according to estimates, the main source of air pollution is transport, as it accounts for 1/4 of all greenhouse gases in Europe. ⁶⁴

As a result, changes followed in the trade policy of the European Union, in particular in the automotive sector.

In the current situation, third countries, such as China, become the biggest risk. These countries can allocate a large amount of finance and resources to build the automotive industry, with the goal of occupying and becoming the main players in the key industry in terms of income in European countries and the United States.

⁶¹ United Nations. Report of the Conference of the Parties on Its Twenty-first Session, Held in Paris From 30 November to 13 December 2015. UN Doc. FCCC/CP/2015/10/Add.1 Accessible at: <https://unfccc.int/documents/9097>.

⁶² COMMUNICATION FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE EUROPEAN COUNCIL, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS: The European Green Deal. COM/2019/640 final, 2019. Accessible at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=COM%3A2019%3A640%3AFIN>

⁶³ European Commission, Directorate-General for Climate Action, Going climate-neutral by 2050 – A strategic long-term vision for a prosperous, modern, competitive and climate-neutral EU economy, Publications Office, 2019, <https://data.europa.eu/doi/10.2834/02074>

⁶⁴ Overview. (n.d.). Climate Action[online]. climate.ec.europa.eu, undated. Accessible at: https://climate.ec.europa.eu/eu-action/transport/overview_en

China has devoted quite a lot of effort to developing sectors related to technology and transport. Several programs have been initiated for this purpose. In 2009, the first program called “Ten Cities, Thousands of Cars” was launched; the program’s goal was the introduction of electric cars. The main focus was on the creation and launch of about 1000 energy transports in 10 cities, and a number of subsidies are given for this.⁶⁵

China also supported politically and provided financial incentives. The government provided direct subsidies to manufacturers and buyers, including one-time subsidies for private purchases and incentives for battery production and charging infrastructure.⁶⁶

China provided grants, preferential loans, and the launch of special pilot programs for the development of electric buses, medical vehicles, and taxi services with their further implementation in corporate activities. The state also abolished the transport tax in 2012, and in 2014-2017 there was no tax on the purchase of an electric car. One of the unexpected benefits that China received was limiting the registration of vehicles that were associated with deteriorating air conditions.

The next step in the evolution of the subsidy was in 2015, after which it was introduced at the general national level. In the twenties, China developed special loans whose purpose was to combine the necessary standards in order to increase the production of electric cars.⁶⁷

What complicates this situation is that China has committed huge amounts of funds over more than 15 years and may be inclined to use subsidies that already have a significant impact on this market.

This is noticeable in a study by the Center for Automotive Management. According to which China has the largest BEV market. In 2023, there is a situation in which the Volkswagen Group ranks only third behind the American and Chinese companies. We can notice an increase in the gap between Volkswagen Group and Tesla and BYD sales.⁶⁸ It is worth noting that car production in China has every chance of becoming dominant, while European automakers are facing difficulties of both a financial and legal nature. According to research by Allianz Trade,

⁶⁵ Emission Standards: China: New Energy Vehicle (NEV) Policy. (n.d.). [online]. dieselnet.com, undated. Accessible at:

<https://dieselnet.com/standards/cn/nev.php#:~:text=The%20E2%80%9CTen%20Cities%2C%20Thousand%20Vehicles,cities%20were%20required%20to%20match.>

⁶⁶ Ibidem,

⁶⁷ Ibidem

⁶⁸ Globale Absatztrends der Elektromobilität - Marktbilanz und Ranking der Automobilhersteller [online]. Autoinstitut.de, 11 January 2024 [cit. on 16 March 2024]. Accessible at: <https://autoinstitut.de/automotiveinnovations/emobility/globale-absatztrends-der-elektromobilitaet-marktbilanz-und-ranking-der-automobilhersteller/>

provided that Chinese automobile companies occupy a sufficient part of the market by 2030 , then in this case the losses of European companies will be approximately 7 billion euros annually. It is also possible to reduce added value by 24 billion euros, which will bring with it serious problems for countries such as the Czech Republic, Slovakia, and Germany.⁶⁹

This threatens both car sales in the European market and the already established operations in the Chinese market, which provided the majority of revenue.⁷⁰

Thus, the European electric vehicle market faces serious challenges due to China's aggressive subsidies, which poses a threat to local manufacturers. Chinese subsidies have provided a significant competitive advantage, requiring the EU to develop effective strategies to protect and adapt to the new competitive environment.

3.2 EU trade protection instruments against unfair competition in the automotive industry

In connection with the current situation of an increase in the number of violations of fair competition, the European Union can use a number of tools to protect its own market and production. Trade protection is based on two instruments: anti-dumping and anti-subsidies.⁷¹ It is worth noting that a feature of dumping is the sale of a country's goods for export at a lower cost than on the domestic market.⁷²

At that time, compensatory measures are used if there are facts that the country that produced products for export used subsidies and this has negatively affects on the market and competition.⁷³

⁶⁹ ALLIANZ Trade, The Chinese challenge for the European automotive industry[online]. allianz-trade.com 09 May 2023 [cit. on 17 April 2024] . Accessible at: https://www.allianz-trade.com/en_global/news-insights/economic-insights/china-europe-automotive-electric-vehicles.html

⁷⁰ Why Chinese and European auto manufacturers need to work more closely together. [online]. acea.auto 27 March 2019,[cit. on 30 April2024]. Accessible at: <https://www.acea.auto/message-dg/why-chinese-and-european-auto-manufacturers-need-to-work-more-closely-together/>

⁷¹ Trade defense . [online] policy.trade.ec.europa.eu [cit. on 11 January 2024]. Accessible at: https://policy.trade.ec.europa.eu/enforcement-and-protection/trade-defence_en

⁷²WTO, Anti-dumping – Gateway [online]. wto.org undated eu [cit. on 11 January 2024] Accessible at: https://www.wto.org/english/tratop_e/adp_e/adp_e.htm

⁷³WTO, Subsidies and Countervailing Measures - Gateway. [online]. undated [cit. on 28 March 2024] Accessible at: https://www.wto.org/english/tratop_e/scm_e/scm_e.htm

Such measures are the foundation of the protection of international trade with a focus on protecting European, domestic producers from distorting actions aimed at fair competition by foreign companies.⁷⁴

Dumping is used in a situation where a foreign company exports goods of less value than its normal price. Thanks to the regulation of the WTO agreement in the aspect of anti-dumping, it is possible to determine it, Determination of Injury, and the actual use of dumping duties.⁷⁵

According to Regulation 2016/1036, certain conditions for the introduction of anti-dumping measures are established.⁷⁶The first condition is the fact that the cost of the product from the exporting country is significantly less than its normal cost. The next condition is the receipt of damage to the industry of the European Union that we can qualify as material.⁷⁷The main condition is the existence of a cause-and-effect relationship between dumped imports and material damage. The extreme condition that must be met is that such a measure does not in any way contradict European interests.⁷⁸

In the case of subsidies, it is necessary to consider their classification and specifics. There are also necessary criteria for introducing combination measures.⁷⁹These include the availability of subsidies, material Injury, causal link, also public Interest test in some jurisdictions. Depending on the analysis of the types of subsidies and their impact, a decision is made on the need to introduce compensatory measures.

An example of this is that the European Commission is suspicious that China used subsidies for its activities. And since international law regulates the volume of subsidies and the provision of state aid, and at the moment this affects strategic sectors of both the United States and the European Union and other countries.

⁷⁴ Peter VAN DEN BOSSCHE, Werner ZDOUC VAN DEN BOSSCHE, *The Law and Policy of the World Trade Organization* (4th ed.). Cambridge University Press. Retrieved. ANTI-DUMPING AND COUNTERVAILING DUTIES <https://www.perlego.com/book/3545593/the-law-and-policy-of-the-world-trade-organization-text-cases-and-materials-pdf>

⁷⁵ Anti-dumping and Countervailing Duties, Article VI

⁷⁶ EU monitor, Protection against dumped imports from countries not members of the EU (codification) Regulation 2016/1036 - - EU monitor. (n.d.). Accessible at: [https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vk5fbx25f9yq#:~:text=WHAT%20IS%20THE%20AIM%20OF,\(EU\)%202020%2F1173](https://www.eumonitor.eu/9353000/1/j4nvk6yhcbpeywk_j9vvik7m1c3gyxp/vk5fbx25f9yq#:~:text=WHAT%20IS%20THE%20AIM%20OF,(EU)%202020%2F1173)

⁷⁷ Ibidem

⁷⁸ Ibidem

⁷⁹ WTO, Subsidies and Countervailing Measures overview. [online]. undated [cit. on 16th March 2024]. Accessible at: https://www.wto.org/english/tratop_e/scm_e/subs_e.htm#fnt1

On October 10, 2023, an investigation was launched related to subsidies and the fight against subsidies regarding electronic cars manufactured in China.⁸⁰⁸¹

The commission was able to identify a number of evidence, including grants, loans , several types of loans such as expert or credit lines. These actions were carried out through banks owned by the state, the use of bonds which were also guaranteed by banks that belong to the state and a number of other institutions with a financial direction that provided preferential conditions in the form of exports and insurance for this product.⁸²

Instruments such as subsidies, discounts and VAT exemptions were also noticed. In addition, it was noticed that the state was transferring a number of goods, materials and raw materials for an amount less than the market value, which should have corresponded to its minimum value.

This action is interpreted as the provision of a subsidy, due to the correspondence of the characteristics of the transfer of a financial contribution and the state, in this case, China or trust organizations of the state.⁸³

Such extensive provision of subsidies indicates that a favorable area for the production and sale of the product is being created for this product, continuing to contribute to long-term support for this sector. As a result of this, the quantity of this product on the European market will naturally increase and may lead to a distortion of the industrial market in the union.

At the same time, evidence has also been collected about the presence of a large number of capacities in the Republic of China, which suggests that in the near future there is a high probability of increasing the amount of product. Due to the lack of other markets that could accept the product, the likelihood of a significant increase in subsidized imports is high. The result could be catastrophic for European producers.

In addition to the availability of this information, there is also confirmation that the cost of subsidized imports is actually lower than the European Union industry.

⁸⁰ Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China (C/2023/160). (2023). In Official Journal of the European Union. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202300160.

⁸¹ Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China. (2023). Accessible at : <http://data.europa.eu/eli/C/2023/160/oj>.

⁸² Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China (C/2023/160). (2023). In Official Journal of the European Union. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202300160.

⁸³ Ibidem

This issue is gaining particular relevance as a result of the fact that the Union industry is faced with the task of achieving a much larger volume of BEV product. This has implications for investment activity and remaining competitive during the transition to electrification.⁸⁴

This explains the European Union's concern about the impact on European industry of a wave of Chinese cars, which are much cheaper due to subsidies.

The European Union's approach to ex- investigation officio, is intended to show that the Commission can resort to existing instruments to protect and strengthen competitiveness.⁸⁵

In this case, the EU's preventative measure at the time focused on the potential threat of harm rather than its actual immediate application, with the aim of preventing a repeat of the collapse of the solar photovoltaic sector a decade ago when state-backed Chinese firms flooded the European market.⁸⁶ China's PV production surged in the late 2000s, leading to the introduction of anti-dumping duties in 2013 along with countervailing duties, which temporarily slowed China's growth and its share of global exports of the product, but the downside was only partial restoration of the lost part is already on the part of the EU and the USA.⁸⁷

Firstly, it is worth noting the fact that the Commission gave preference to conducting an anti-subsidy investigation rather than an anti-dumping investigation. This is due to the fact that anti-dumping investigations are most effective in relation to more basic goods, for example, raw materials or solar panels, while BEVs are a highly technical product and, accordingly, it is much more difficult to use anti-doping investigations.⁸⁸ On the other hand, the commission used this tool to inform other countries, such as Germany, that it is necessary to continue to respond to these situations, in this case anti-dumping tools are less acceptable.⁸⁹

At the same time, it is necessary to pay attention that the tools for protecting the activities of European countries in relation to Chinese cars should also include a response to the entire chain of manufacturing components for the car, including batteries.

⁸⁴ Notice of initiation of an anti-subsidy proceeding concerning imports of new battery electric vehicles designed for the transport of persons originating in the People's Republic of China (C/2023/160). (2023). In Official Journal of the European Union. Accessible at https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=OJ:C_202300160.

⁸⁵ Camille BOULLENOIS, Agatha KRATZ and Reva GOJON, Opening Salvo: The EU's Electric Vehicle Probe and What Comes Next[online] rhg.com, October 23 2023 [cit. on 27 February 2024]. Accessible at : <https://rhg.com/research/opening-salvo-the-eus-electric-vehicle-probe-and-what-comes-next/>

⁸⁶ Ibidem

⁸⁷ Ibidem

⁸⁸ Ibidem

⁸⁹ Ibidem

On June 12, 24, a press release was issued about the commission's investigation into the value chain of electric vehicles in China and the possibility of subsidizing them.

This release stated that during the investigation, the commission can conclude whether the cost of the BEV and the entire chain of its creation actually received some benefit from subsidies that we can classify as unfair.⁹⁰ In conclusion, the commission decided that in fact unfair subsidies were provided by the Chinese state, as a result of which the risk and threat of economic damage both for BEV manufacturers in the EU and for consumers of this electric vehicle significantly increases.⁹¹

As a result, the commission initiated a meeting with the Chinese authorities to resolve this situation within the WTO.

If negotiations do not take place or an alternative solution is not found, countervailing duties will be introduced from July 4.

Individual duties administered by the commission will primarily be directed to three companies in accordance with BYD: 17.4%; Gili : 20%; SAIC: 38.1%.⁹²

For companies that cooperated and contributed to the investigation but were not included in the previous sample, the countervailing duty will be 21%. For companies that did not contribute to the investigation, the fee will be 38.1%.⁹³

In this example, we can see an effective tool to protect the internal market of the European Union and European manufacturers

One of the tools that can help protect the European market and also support European manufacturers in an unfair competitive environment is The EU Foreign Subsidies Regulation . China's significant subsidies currently provide a competitive advantage to local electric vehicle manufacturers, resulting in these vehicles being priced below market value. With the help of this regulation, the European Commission has the opportunity to investigate subsidies, as well as assess their impact on the market.

⁹⁰ Olof, GILL. Commission investigation provisionally concludes that electric vehicle value chains in China benefit from unfair subsidies [online]. ec.europa.eu, ec.europa.eu [cit. on 14th June of 2024]. Accessible at: https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3231

⁹¹ Ibidem

⁹² Ibidem

⁹³ Ibidem

By using the tools that FRS offers, it is possible to mitigate the advantage in China by allowing the European Commission to investigate all subsidies falling under its regulations, and can respond accordingly to them and assess their impact on the European Union market.

Also, in this situation, the likelihood and opportunity of European companies to acquire conscientious, professional partners, who through their activities will strengthen the position of European manufacturers, increases. This is also due to the fact that companies can see that a fair competitive environment has been created, which means it is more stable and attractive.

Another advantage is that due to the increased attention to market participants, the efficiency of research and development increases accordingly due to the absence of unstable factors.

This tool also includes some disadvantages and risks. As of today, since the work of this document has just begun, a situation has arisen that the European Commission does not have time to consider all incoming notifications. This has already led to an increase in staff and there is a chance that there will be an increase again. Nevertheless, we can see a picture in which certain notifications may be considered late and, because of this, entail the loss of certain benefits or a timely failure to respond to phenomena that would have been applied to help regulate this situation.

A more negative result may be in the form of receiving retaliatory action from the affected country. This could lead to a trade dispute that would affect the broader economy and, as a result, escalate into some kind of trade war. And since both China and the European Union have a lot of investments in each other's market, this regulation must be used very carefully and carefully.

Also, this document should not negatively affect investment activity due to the strong use of trade restrictions.

One aspect worth mentioning is that when using The EU Foreign Subsidies Regulation cannot allow that the use of a car with low carbon dioxide emissions, the consumer will not be able to independently purchase it and independently costs through a reduction in financial receipts from other countries and a weakening of their interaction.

Separately, it is worth revealing how the European Union, with the help of special programs based on European and international law and State aid, helps implement programs that initiate the development of the electric automobile industry, which act as tools in maintaining competition and combating foreign goods that violate fair competition.

The first program we will look at will be CO₂ emission performance standards for cars and vans . Regulation (EU) 2019/631 Creates the basis for establishing clear, strict standards for vehicle CO₂ emissions .

With this regulation, the amount of CO₂ must be reduced significantly, which will be in line with the goals of the European Union under the Paris Agreement. The regulation initially sets strict indicators for the amount of permissible CO₂ emissions, so as to promote the creation and implementation of vehicles aimed at reducing emissions gradually reaching zero.

It is this approach that provides the automotive industry with new innovations by motivating European manufacturers to fund and invest in the development and research of cleaner technologies.

This has a direct impact on the increase in the size of the electric vehicle market, as well as the infrastructure that is necessary for its functioning. This pushes for the fact that this industry sector will be able to gain new jobs with economic opportunities in the sustainable technology market.

Unfortunately, there is a downside. To be able to meet all these criteria, large financial investments are required. that is, the process of developing the implementation of such cars, as well as their implementation, becomes more difficult and costly. This is especially true for new or small companies for which it is quite difficult to carry out development in accordance with these regulations. Realizing that the development of truly new technologies with high financial criteria is costly, eco-innovations are envisaged, which can provide the manufacturer with additional funds in the form of loans.

Regulation (EU) 2019/631 is an instrument that is fully interconnected with the European Union's climate policies, the European Green Deal, the Paris Agreement commitments and the environment.

It should be noted that it applies equally and equally to absolutely all vehicles sold on the European Union market, which puts everyone in the same position and, accordingly, fair competition is observed. Since the European Union and other countries have taken this course seriously, it is easy to predict that this area will develop even in the field of battery technology and the integration of energy sources, which will make it possible to extend the overall use of the car and its characteristics.

Having analyzed this regulation, we can say that it has the potential to lay the foundation for long-term benefits in ensuring and preserving the environment, ensuring technological progress and achieving climate neutrality, while helping the financial side of the manufacturer.

As we may have already noticed, there are a large number of European and international laws and instruments in the field of limiting and regulating government support and subsidies. All of them are focused on ensuring fair competition, the European market and, in our case, supporting the industry of electric cars and components for them.

At the same time, it is necessary to analyze what exceptions there may be in providing such assistance.

Article 107 of the Treaty on the Functioning of the European Union, in its first paragraph, introduces a general ban on state aid.

In this case, we are interested in the exceptional case when subsidies and support would be acceptable for a certain product. This is possible thanks to Article 107 paragraph 3 (b), which makes it possible to provide assistance if necessary for the implementation of an important project of general European interest or to remedy a serious disturbance in the economy of a Member State.

An example of the application of this regulation is the approval by the European Commission under the EU state aid rules of “Important Project of Common European Interest” (“IPCEI”).

This was announced on December 9, 2019 in a press release by the European Commission. In those areas that cannot be implemented due to high risks, but nevertheless remain key, the IPCEI Communication provides an opportunity for government participants to fill this gap by cooperating in order to achieve the goal of reducing and preventing market battles, as well as facilitating the implementation of projects with innovative activities for the purpose of speedy implementation.

The Additional Commission notes that the battery value chain is strategically important for the future of Europe, especially in the context of clean and low-emission mobility.

This project urgently needs government support to be able to stimulate companies to provide investments since the project is large-scale, innovative and develops processes and technologies that are currently unavailable. Upon achieving their implementation, it will be possible to increase productivity while reducing the level of negative impact on the environment.

It is worth noting that due to the fact that the project is being implemented and will be distributed over a fairly wide area among the participants, this has positive side effects for the whole of Europe.

Strict control will also be organized both from the Commission and from a special management structure, which is representatives of government authorities from the seven states that took part in this project.

It is important to note the commission's statement that this assistance is necessary for individual companies. Moreover, it does not violate either proportionality or unfair competition.

The above characteristics provided the basis for the commission to conclude that the EU state aid rules are in compliance.

The Commission also decided that the IPCEI framework is harmoniously complementary to other state aid rules, including the General Tax Exemption Regulations and the Research, Development and Innovation Framework. Which in turn makes it possible to comply with competitive restrictions with the introduction and support of innovation.

The main feature of IPCEI is that while providing specific investments in R& D, it does not cover mass production or commercial activities. And the knowledge gained during this activity will be shared equally throughout the European Union, resulting in minimal possibility of any unjustified distortion of market activity.

Thus, we can notice that in the European Union there is a sufficient number of different tools, methods, approaches and legislation that can ensure the protection of the European market and European industry from unfair competition.

Having analyzed the information from these chapters, we can conclude that in reality there is a threat from China's economic policy to the European market. But the European Union has enough tools and legal capabilities to respond to this challenge.

4. CONCLUSION

4.1. Introduction to the chapter:

This research work is devoted to the analysis of the legal aspects of state aid through government subsidies provided to support national economies and their regulation at the level of the European Union and in the international trading system.

4.2. Research objectives:

The objectives of this study were to study the historical development of state aid in the form of subsidies, analyze the formation and development of the regulatory framework, assess the Foreign Subsidies Regulation (FSR) in the European Union, and study the impact of subsidies on the electric vehicle market, in particular the influence of China and analyze the available tools protecting the European automobile market from unfair competition from foreign subsidies.

4.3. General results:

As Chapter 1 suggests, I have conducted a detailed study of the evolution of government subsidies from the era of mercantilism to the present day. This includes a description of changes in the purposes and methods of granting at different historical stages.

In Chapter 2, in my analysis of the legal framework, I established that effective regulation of subsidies in international trade began with The General Agreement on Tariffs AND TRADE and evolved through the creation of the WTO and The Agreement on Subsidies and Countervailing Measures (The Agreement On Subsidies And Countervailing Measures). In the European Union, the regulatory framework has become more detailed with the introduction of the Treaty on the Functioning of the EU (TFEU) and the Foreign Subsidies Regulation (FSR).

In Chapter 3, examining the impact of Chinese subsidies, I found that China actively uses subsidies to support its auto industry, which poses significant challenges to European electric vehicle manufacturers, increasing competition and putting pressure on the European market.

Finally, by analyzing the protection instruments of the European Union, I found out that the European Union applies anti-dumping and countervailing measures to protect its market from unfair competition. The introduction of the FSR in 2023 gave the European Commission powers to more effectively control foreign subsidies, maintaining fair competition and protecting the EU's economic interests. The European Union also has sufficient tools that can be used to respond to

modern challenges to disrupt competition, the European market and ensure the safety and functionality of the European market.

The contribution of this research study is a detailed, interdisciplinary study that integrates historical analysis, legal context and contemporary economic challenges, bringing together tools for a variety of stakeholders, including governments, international organizations, corporations and the scientific community.

4.4. Limitations and difficulties during writing the article:

The work relies on existing data and sources, which may be limited. Some data may not be available due to restrictions on access to information or lack of published research on some aspects.

But there are still aspects that require further research, such as the Foreign Subsidies settlement Regulation (FSR) with small but important markets like football that may be affected by this regulation. Also relevant is the question of studying how effective FSR will be and assessing the long-term consequences of such measures for the European economy and international trade relations.

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