

**CIIAI Webinar  
2023**



# How “indirect” could the subsidy be? On the Definition of “Foreign Subsidy”

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**“外国补贴”可以多“间接”？：  
外国补贴的定义问题**



# Contents 内容

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**1** The Definition of “Foreign Subsidy” under the FSR  
《外国补贴条例》下 “外国补贴” 的定义

**2** The “Indirectness” of the Subsidy  
“外国补贴” 的 “间接性”

**3** Perspectives from Chinese scholars  
中国学者的分析视角



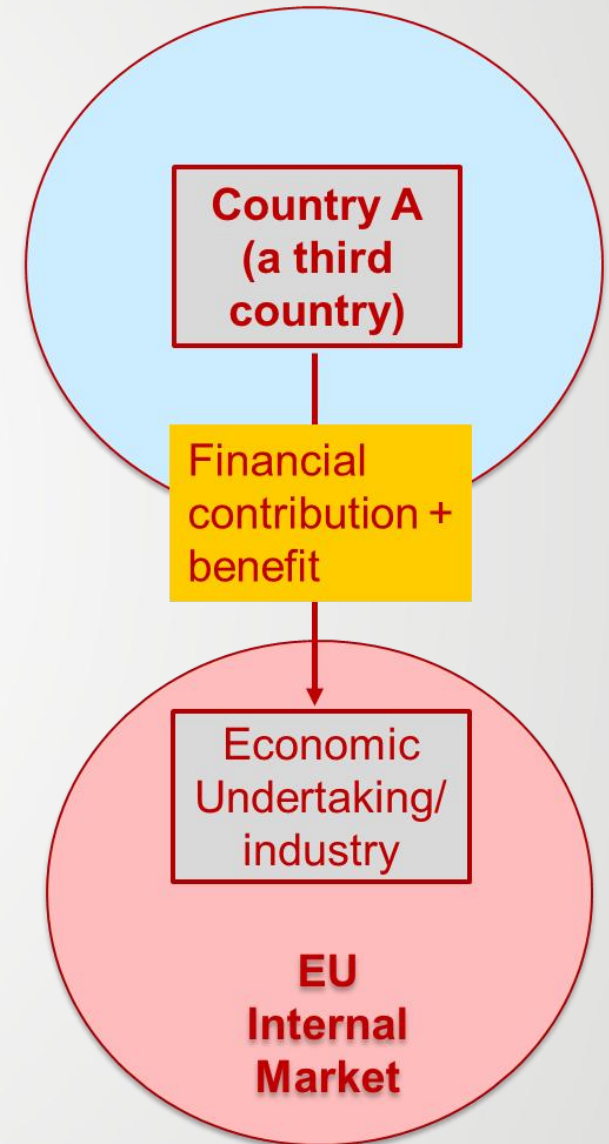
# 1. Definition of Foreign Subsidy 外国补贴的定义

## *EU Foreign Subsidy Regulation* *Article 2 Existence of a foreign subsidy*

1. For the purpose of this Regulation, a foreign subsidy shall be deemed to exist where a third country provides, directly or indirectly, a financial contribution which confers a benefit to an undertaking engaging in an economic activity in the internal market and which is limited, in law or in fact, to an individual undertaking or industry or to several undertakings or industries.

Added into the final version

- Foreign Subsidy



# 1. Definition of Foreign Subsidy 外国补贴的定义

2. For the purpose of this Regulation,

(a) a financial contribution shall include, **inter alia**:

[...]

(b) the financial contribution provided by a third country shall include a financial contribution provided by:

(i) the central government and **public authorities** at all other levels;

(ii) a foreign public entity whose actions **can be attributed to the third country**, taking into account elements such as the characteristics of the entity and the legal and economic environment prevailing in the State in which the entity *operates*, *including the government's role in the economy*; or

(iii) a private entity whose actions **can be attributed to the third country**, taking into account all relevant circumstances.

## Comment 评价:

Based on *EC's practice in anti-subsidy investigations*, these entities (“grantors”) could encompass a wide and variety types of entities:

- (1) Government at all levels;
- (2) Entities charged with governmental authorities;
- (3) Public entities would encompass state-owned/invested enterprises, state-owned commercial banks, state policy banks;
- (4) Private entity would be private companies

**提供财政支持的主体范围非常广:**

- 政府及相关部门; 国有控股企业, 国有参股企业; 私营企业。

## 2. The “Indirectness” of the Subsidy

### “外国补贴”的“间接性”

**What does “provides indirectly a financial contribution” mean in the definition of a “foreign subsidy”?**

“外国补贴”定义中的“间接地”是什么意思？

**- Two cases of the EC’s anti-subsidy investigations under the traditional trade defense rules may provide some hints.**

欧委会在贸易救济规则下的两起反补贴调查可以提供一些借鉴。

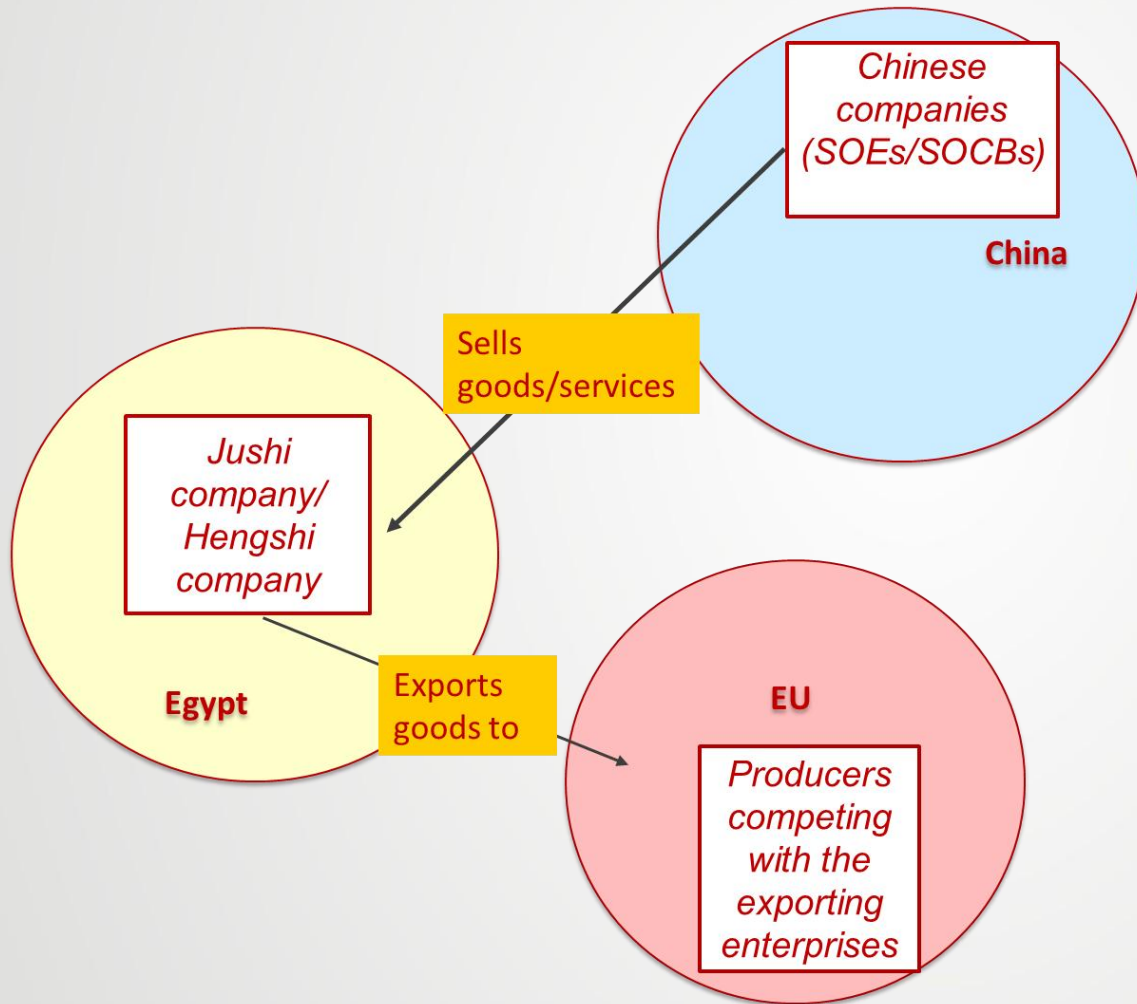
(1) Definitive Countervailing Duties on Imports of Certain Woven and/or Stitched Glass Fibre Fabrics Originating in the People’s Republic of China and Egypt (*Egypt Glass Fibre Fabrics Case*)(2020/776)

(2) Definitive countervailing duties on imports of stainless steel cold-rolled flat products originating in India and Indonesia (*India and Indonesia Cold-rolled Steel Case*) (2022/433)

## 2. The “Indirectness” of the Subsidy

### “外国补贴”的“间接性”

#### *Egypt Glass Fibre Fabrics Case*



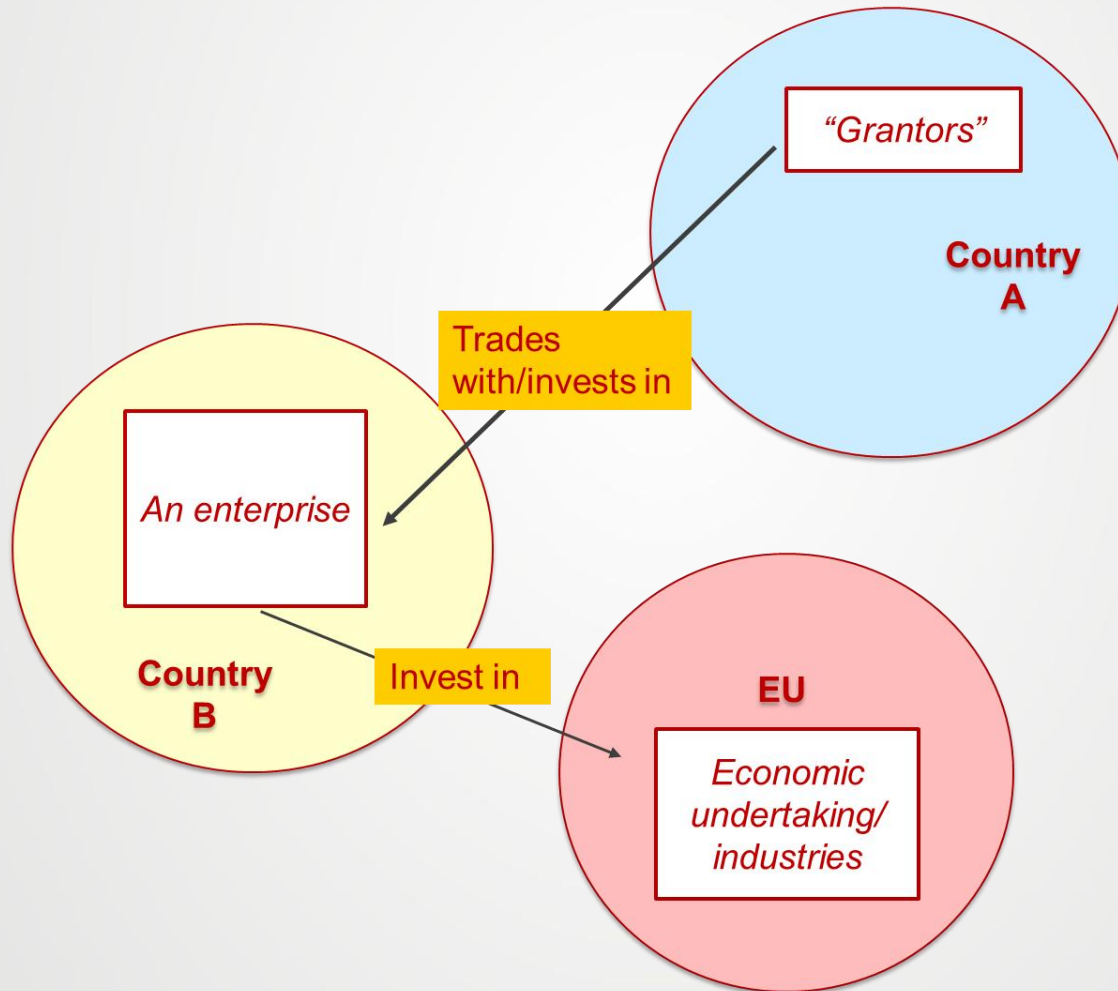
In this case, the EC in its determination considers that Chinese “public bodies” activities may be attributable to the Egyptian government, because there is a cooperation agreement between China and Egypt. The subsidy was thus considered as being provided by the Egyptian government.

本案中，欧委会认为中国“公共机构”的行为可以归责于埃及政府。

## 2. The “Indirectness” of the Subsidy

### “外国补贴”的“间接性”

If a similar analysis applies to the “foreign subsidy” investigation:  
如果类似的分析应用到“外国补贴”的认定中



### 3. Perspectives from Chinese scholars

#### 中国学者的分析视角

1. EC's determination in the *Egypt Glass Fibre Fabrics Case* and *India and Indonesia Cold-rolled Steel Case* are potentially inconsistent with the existing WTO rules under the Agreement of Subsidies and Countervailing Measures. Indonesia has filed a case against EU at the WTO, the case number is DS616.
  2. EU's new regulation on the foreign subsidy can hardly be captured by the existing rules on subsidies and countervailing measures under the WTO or any international agreements.
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1. 欧盟在埃及玻璃纤维织物案以及印度和印尼冷轧钢案中的裁决潜在的违反WTO规则。印尼已经将欧盟的措施提交WTO争端解决机制，案件号DS616。
  2. 欧盟就外国补贴的新条例很难在现有WTO规则或其他国际规则框架下受到约束。



### 3. Perspectives from Chinese scholars

## 中国学者的分析视角

3. The FSR could potentially be used in an “abusive” manner that cause detrimental effects on Chinese and other countries investments both in EU and outside EU.
  4. China should prepare to respond to the impact of FSR under the WTO or any other forums.
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3. 外国补贴条例可能被“滥用”，造成对中国和其他国家在欧以及在其他国家投资的不利影响。
  4. 中国应当准备好应对欧盟外国补贴条例的影响，利用好WTO和其他国际平台。



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**My articles on this topic:**

- 1. 丁如, 《新兴国际投资补贴规则: 分析框架及我国方案构建》 (New Rules on Foreign Investment Subsidies), 《清华法学》, 2022年第5期。**
- 2. Ru Ding, Emerging Rules on Cross-border Subsidies: A Typological Analysis and Proposals for China's Approach, Journal of WTO and China, June 2021, Volume 12, Issue 2.**

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# Thank you!

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