

Subsidy Control for the 21st Century

Achieving Sustainable Competition in the Post-Crisis World

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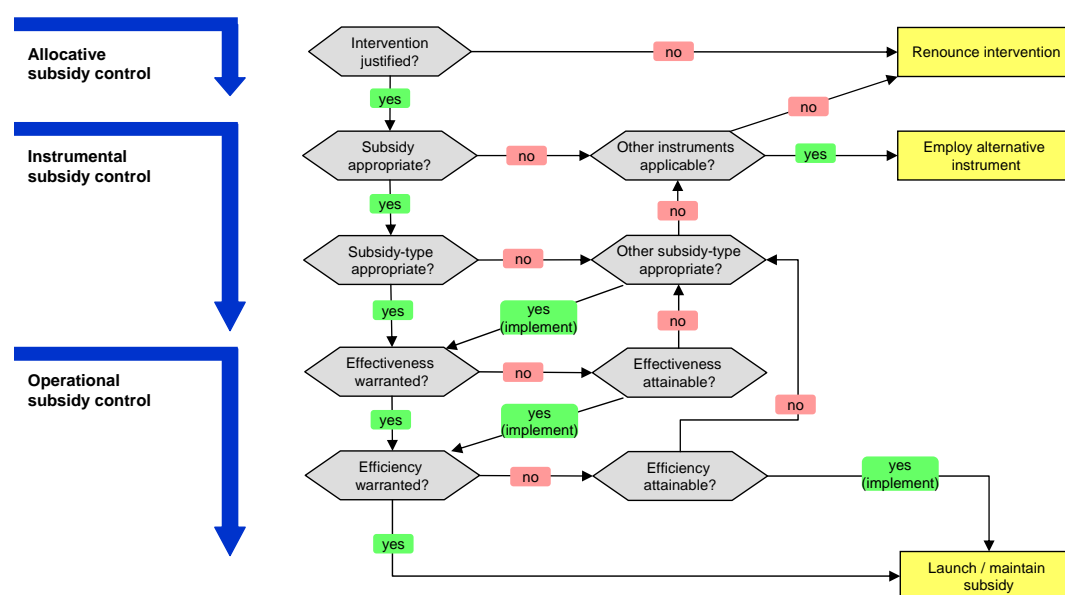
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Present and upcoming challenges

- Economic and financial crisis
 - Gave rise to many new subsidies...
 - ...and problems to reduce them afterwards (the “ratchet effect”)
- Global Integration of production and markets
 - Increasing competition for investment / FDI → More Subsidies
 - Increasing political incentive for protectionism → More Subsidies
- Climate change and sustainable development
 - New factors surface which were not considered a problem previously
 - Subsidization of fossil fuels (→ G20 Initiative)
 - Subsidization of biofuels
 - In the future: Expenses for adaptation to climate change e.g.
 - Ultimately: Which competition is to be protected?
 - Traditional competition (focused on *final* goods and services)?
 - Sustainable competition?
 - I.e. fair competition compatible with sustainable development.
 - Is that the “Opening of Pandora’s Box”?

- National subsidy control has multiple goals. Mainly, it is an evaluation whether
 - Policy goals are justified;
 - Instruments are well-designed;
 - Negative impacts minimized;
 - Subsidies are implemented effectively and efficiently (see next slide).
- Protection of competition only to a limited extent – in two dimensions:
 - Spatial bias: By its very nature, focus on competition on the sub-national or national level, not the international level.
 - Power bias: More often than not, independence and/or resources of the body responsible for subsidy control are rather limited.
- Anyhow, very good practice in some countries:
 - Transparency: Switzerland, Germany, Australia (esp. for Tax Expenditures)
 - Across-The-Board Subsidy Audit: Swiss Subsidy Law
 - Systematic In-Depth Evaluation: UK, Germany (esp. for Tax Expenditures)

Exemplary Scheme of Subsidy Control



Recently applied to 85 per cent of the volume of German tax expenditures; i.e. to 18 bn. Euros. (Thöne et al., 2009)

- Competition turns increasingly regional and global.
- Protection of competition should follow.
 - Institutional subsidy control on the transnational level (EU Art. 87-88, WTO ASCM)
 - Virtual transnational subsidy control: Granting foreign firm the unrestricted power to sue against subsidies in national courts
- Strong mandate needed (*effectively* strong)
 - Successful example: EU State Aid Control (...but it took decades)
 - Unsuccessful example: WTO Agreement on Subsidies and Countervailing Measures (good in theory, insufficient power)
- Factors of Success for regional systems of subsidy control:
 - Strong conviction concerning the mid- and long-term gains from fair competition among homogenous economies.
 - Broad definition of subsidies (advice: start with WTO definition)
 - Permanent delegation of power to the transnational institution
 - Inconsequential willingness to compensate the important losers.

Challenges / Open Questions

- Stronger subsidy control produces “sophisticated subsidies”
 - Pressure on direct subsidies increases tax expenditures
 - “Make one private party subsidize the other”: e.g. Feed-in laws
 - Subsidization is pushed into regulation (or the deferral of regulation)
 - These dynamics reinforce the need for a broad and robust mandate.
 - But they also give rise to a new, unsolved problem:
- Successful transnational subsidy control can interfere with other national policy objectives:
 - Example: The Austrian energy excise (CoJ, of 8. 11. 2001 - C-143/ 99)
 - Distortion of *international* competition is asserted whenever *national* law is not implemented uniformly. Even when the objective circumstances of competition on the relevant market point into the opposite direction.
 - This problem becomes *really* pressing in global context.
 - Solution? → Establishment of rules of sustainable competition?