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The protection against foreign subsidies distorting the internal market

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The Draft Foreign Subsidies Regulation - a Mixed Procedural Heritage

Trade

- The Regulation's legal basis
- The Regulation's context: presence and influence of third countries, retaliation and non-cooperation risk
- Overlaps with trade policy instruments

State aid

- The Regulation's key purpose and source of substantive inspiration
- Structure of the investigation (preliminary/ in-depth)
- Non-discrimination objective

Antitrust

- Merger control
- Inspections within the Union
- Remedies and sanctions
- ...and resulting due process?

A starting point: due process under current State aid and anti-subsidy legal frameworks

Right	State aid	Anti-subsidy
Right to be informed that the Commission is investigating aid in preliminary phase	NO	YES (Commission notice of initiation is systematically published)
Right to submit comments	NO (only in the formal procedure)	YES as soon as investigation is launched
Right of access to the file	NO	YES
Right to be informed of the essential facts before a decision is adopted	NO	YES
Right to be heard	NO (only through the submission of comments)	YES
Right to appeal to hearing officer	NO	YES
Right to meet opponents – confrontation meeting	NO	YES
Obligation to cooperate and provide information requested	YES (possible fines or penalty under Regulation No 2015/1589)	NO
Possible channels of appeal	EU Courts	EU Courts + WTO

Key procedural questions- a non-exhaustive list

Ex officio
investigation

Investigative
powers

Due process

Access to
information

Administrative/
judicial review

Remedies and
recovery



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