



THE EUROPEAN COMMISSION'S PROPOSAL ON FOREIGN SUBSIDIES

The Procedural Framework from a Common
Commercial Policy Perspective

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OUTLINE

- Initiation of proceedings (Art. 7 FSR)
- Investigative powers of the Commission (Art. 12, 13 FSR)
- Non-cooperation (Art. 14 FSR)
- Balancing test (Art. 5 FSR)
- Conclusions

ARTICLE 7 FSR

EX OFFICIO REVIEW OF FOREIGN SUBSIDIES

- Module 2 and 3: notification-based
- Module 1: *ex officio* initiation of proceedings
- BASR:
 - Complaint (Art. 10 (1) BASR)
 - *ex officio* initiation of proceedings in special circumstances (Art. 10 (8) BASR)
- Informal consultations also under the FSR?
- Evidentiary threshold:
 - no specific threshold under the FSR
 - higher evidentiary threshold (Article 10 (2) and (8) BASR)

ARTICLES 12 AND 13 FSR

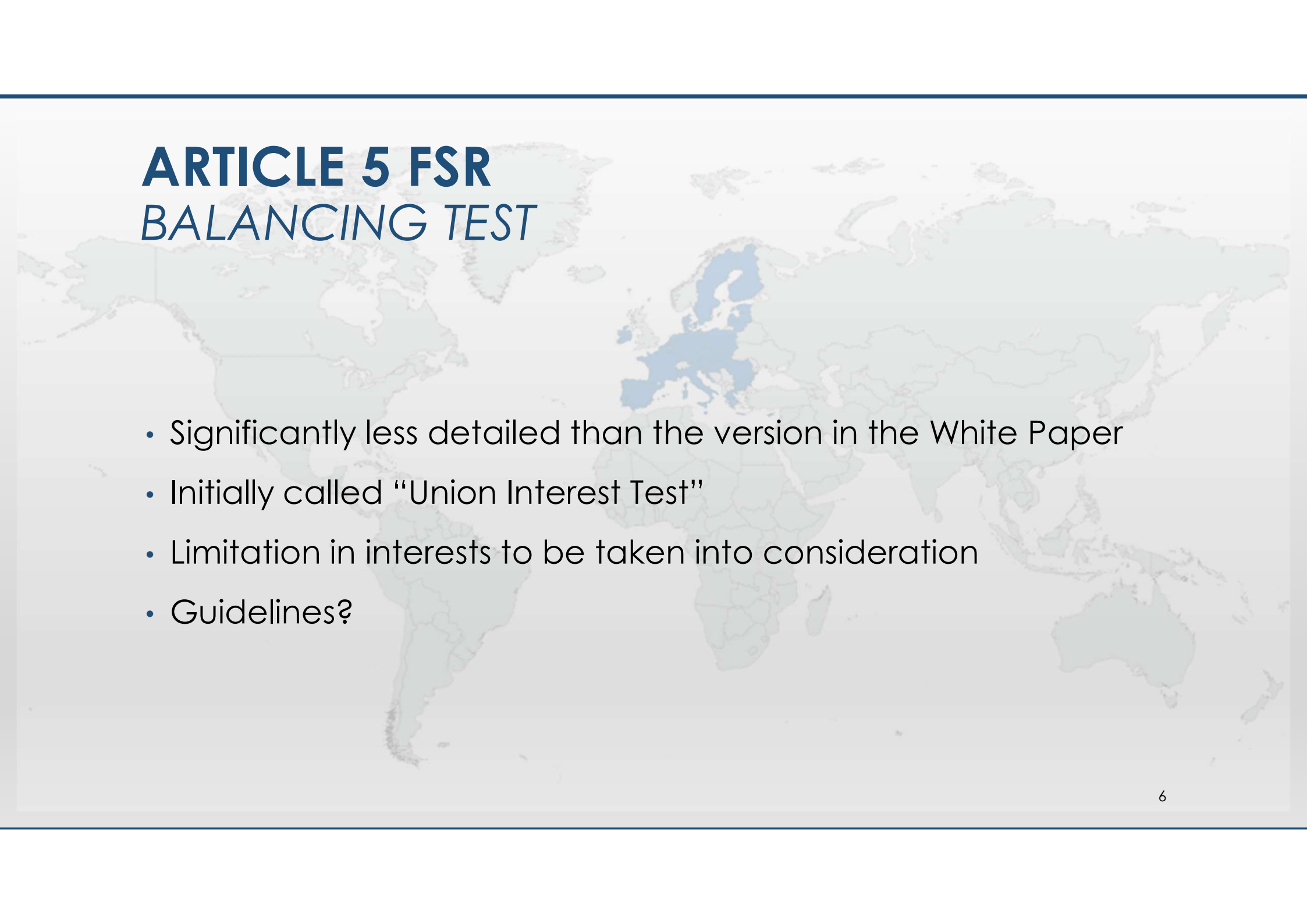
INVESTIGATIONS WITHIN AND OUTSIDE THE UNION

- Requests for information directed at (a) undertakings and (b) third States
- COM may conduct inspections in- and outside the EU
- Where the inspection is carried out in the territory of a third country, the (a) government and (b) the undertaking concerned have to consent to the inspection
 - clear parallel to the rules under the BASR (Art. 11 (4) and Art. 26 (2))
- Information of the undertaking concerned only after the preliminary investigation is concluded
 - relatively late stage in the proceedings
 - no obligation to inform the government of the country concerned
- When compared with the procedural framework under the BASR, the rules on the procedural rights of the parties involved in the investigation are less detailed.

ARTICLE 14 FSR

NON-COOPERATION

- Modelled after the corresponding provisions of the BADR and the BASR (Art. 28 BASR)
- Addresses both the undertakings concerned and the government of the third country
- Draws on experience from investigations under the BASR / the general international trade context
- Refusal to submit to an inspection within **or outside** the Union will also be considered a failure to cooperate
- Explicit rules for SOEs in Article 14 (3) FSR

A light blue world map is visible in the background. The continent of Europe is highlighted in a darker shade of blue. The text is overlaid on the map.

ARTICLE 5 FSR

BALANCING TEST

- Significantly less detailed than the version in the White Paper
- Initially called “Union Interest Test”
- Limitation in interests to be taken into consideration
- Guidelines?

CONCLUSIONS (AND OPEN QUESTIONS?)

- Some aspects of the procedural framework draw on the concepts of the EU's Trade Defence Instruments
- Clear overlaps with EU antitrust / merger control / State aid procedure
- Less detail
- INTA proposals
- Closing the regulatory gap?

A world map with a light green background and thin grey borders for countries. The continent of Europe is highlighted in a solid blue color. The text "Thank You!" is centered over the map.

Thank You!