

# Unequal playing field: China's Ministry of Commerce concludes that EU Foreign Subsidy Regulation prevents Chinese entry and competitiveness

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On 9 January 2025, China's Ministry of Commerce ("**MOFCOM**") concluded its six-month investigation into the practices of the European Commission ("**Commission**") in relation to the Foreign Subsidy Regulation ("**FSR**") of the European Union ("**EU**") pursuant to China's Foreign Trade Law<sup>1</sup> and the Foreign Trade Barrier Investigation Rules<sup>2</sup>.

Specifically, MOFCOM found that the FSR constituted a "trade barrier" as stipulated in Foreign Trade Barrier Investigation Rules, harming the competitiveness of Chinese enterprises operating in the EU.<sup>3</sup> MOFCOM found that the Commission's practices in conducting FSR reviews and investigations (i) selectively targeted Chinese companies; (ii) relied on ambiguous definitions in the assessment of "foreign subsidies" and "market distortions"; (iii) imposed an overly broad scope for FSR investigations and created burdensome information requirements; (iv) lacked transparency, causing significant uncertainty for notifying or investigated parties; (v) made use of dawn raids that were disproportionate to the subject matter of the investigation; (vi) engaged in other unreasonable practices, including by imposing reversed burden of proof and threatening severe penalties for non-compliance and lack of cooperation. In light of these findings, MOFCOM has stated its intention to pursue bilateral negotiations and other appropriate measures to urge the EU to modify its FSR practices, ensuring that Chinese companies can invest and operate in the EU fairly and without discrimination.<sup>4</sup>

Since the FSR's inception in late 2023, almost all in-depth reviews and investigations initiated by the Commission so far have involved Chinese companies. During this time, the EU has also released a 700+ page report on state-induced distortions on China's economy by focusing on specific sectors, which could act as a blueprint for future investigations.<sup>5</sup> In parallel, the European Commission has also brought investigations under other statutory instruments, including the EU's anti-subsidy rules<sup>6</sup> and the International Procurement Instrument ("**IPI**").

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1. Foreign Trade Law of the People's Republic of China, Decree No. 128 of the President of the People's Republic of China.

2. Order of the Ministry of Commerce of the People's Republic of China No. 4 of 2005.

3. MOFCOM Trade Remedy and Investigation Bureau, Ministry of Commerce Announcement No. 3 of 2025, see: [https://www.mofcom.gov.cn/zcfb/zc/art/2025/art\\_2dca63bcd6b0433ba71c14e9b9885ee6.html](https://www.mofcom.gov.cn/zcfb/zc/art/2025/art_2dca63bcd6b0433ba71c14e9b9885ee6.html).

4. See, <https://www.mofcom.gov.cn/xwfbzt/2025/swbzkjxxwfbh2025n1y9r/index.html>.

5. See, [https://policy.trade.ec.europa.eu/news/commission-updates-report-state-induced-distortions-chinas-economy-2024-04-10\\_en](https://policy.trade.ec.europa.eu/news/commission-updates-report-state-induced-distortions-chinas-economy-2024-04-10_en).

**Background and context**

The FSR came into force on 12 July 2023 with the goal of regulating foreign subsidies that may distort the EU market in the context of M&A transactions, public procurement projects and other market situations. The Commission administers the FSR through three tools as set out in **Table 1** below. The Commission’s practices in relation to administering these tools were heavily criticized in MOFCOM’s decision.

**Table 1: Commission’s FSR tools**

M&A tool	Public procurement tool	General investigations tool
<p>A notification-based tool to investigate M&amp;A transactions involving financial contributions by a non-EU government that meet certain revenue thresholds. Approval from the Commission is required before the M&amp;A transaction can close.</p>	<p>A notification-based tool to investigate bids in public tenders involving financial contributions by a non-EU government that meet certain contract value thresholds. Approval from the Commission is required before the project can proceed.</p>	<p>Ex-officio investigations are investigation activities started by the Commission on its own initiative. The powers allow the Commission to investigate suspicions of distortive foreign subsidies based on complaints or market intelligence.</p>

The review process for M&A and public procurement notifications includes pre-notification, a preliminary review (Phase I), and (if necessary) an in-depth investigation (Phase II). The Commission may initiate an in-depth investigation if there are sufficient “indications” during the Phase I review that a transaction party has been granted a foreign subsidy that distorts the EU market. MOFCOM has expressed criticism regarding the Commission’s decisions so far to initiate in-depth reviews based solely on its views on the presence of “indications” of market distortions.

In terms of the general investigations tool, the Commission can issue information requests and conduct interviews relating to the subject matter of the investigation. The Commission can also conduct dawn raids and other inspections within the EU but also within the territory of the third-country such as China (but only with the consent of the government). MOFCOM’s decision highlights concerns regarding the broad scope of investigations, including the use of dawn raids and information requests that seem disproportionate to the subject matter being investigated.






**Key FSR investigations and related developments**

Since its inception, almost all in-depth reviews and ex officio investigations under the FSR involved Chinese companies, which MOFCOM has criticized as selective enforcement against Chinese firms.

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6. REGULATION (EU) 2016/1037 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 8 June 2016 on protection against subsidised imports from countries not members of the European Union.

**Table 2: In-depth FSR investigations to date**

Case	Date	FSR tool	Sector	Status
 In-depth review of bid by China state-owned train manufacturer for Bulgaria's public procurement tender for electric "push-pull" trains <sup>7</sup>	Feb 2024	Public procurement tool	Rolling stock	Closed after withdrawal of Chinese bids from tender
 Two separate in-depth reviews into bids by Chinese companies for Romania's public procurement tenders for the design/construction of a solar photovoltaic park <sup>8</sup>	Apr 2024	Public procurement tool	Solar	Closed after withdrawal of Chinese bids from tender
 First ex officio investigation of wind turbine sector, focusing on Chinese suppliers of wind turbines and expansion of wind farms in Spain, Greece, France, etc. <sup>9</sup>	Apr 2024	General investigations tool	Wind turbines	Ongoing
 Dawn raids of Dutch and Polish premises of Chinese firm active in the production and sale of security equipment <sup>10</sup>	Apr 2024	General investigations tool	Security equipment	Ongoing (subject to appeal of the EU General Court's rejection of an application for interim measures to suspend data provisions from China, etc.) <sup>11</sup>
 In-depth review of Emirates Telecommunications (e&)'s acquisition of PPF Telecom Group, a European telecoms operator <sup>12</sup>	Jun 2024	M&A tool	Telecommunications	Cleared with conditions

### Other related developments

In addition to the reviews and investigations initiated by the Commission under the FSR to date:

- in October 2023, the EU launched related investigations into China's electric vehicles under the WTO Agreement on Subsidies and Countervailing Measures;
- in April 2024, the Commission released a 700+ page report on state-induced distortions on China's economy in a range of sectors, including iron and steel, aluminium, chemicals, ceramics, telecommunications, semiconductors, rail vehicles, environmentally friendly products (renewable energy), and new energy vehicles.
- in April 2024, the EU also launched an IPI investigation into the public procurement arrangement of medical equipment in China, which, according to the EC press release, was in response to measures and practices in the Chinese procurement market for medical devices which discriminate unfairly against EU companies and products.

7. See, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_887](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_887).

8. See, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_1803](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_1803).

9. See, [https://ec.europa.eu/commission/presscorner/detail/en/speech\\_24\\_1927](https://ec.europa.eu/commission/presscorner/detail/en/speech_24_1927).

10. See, [https://ec.europa.eu/commission/presscorner/detail/en/mex\\_24\\_2247](https://ec.europa.eu/commission/presscorner/detail/en/mex_24_2247).

11. See, <https://eur-lex.europa.eu/eli/C/2024/5824/oj/eng>.

12. See, [https://ec.europa.eu/commission/presscorner/detail/en/ip\\_24\\_3166](https://ec.europa.eu/commission/presscorner/detail/en/ip_24_3166).

## Legal basis of MOFCOM investigation

China's Foreign Trade Law has the goal of developing foreign trade, maintaining a foreign trade order, and protecting the legal rights of foreign trade dealers.

Articles 36 and 37 of the Foreign Trade Law provide that the foreign trade department of the State Council may investigate trade barriers of relevant countries or regions by way of written questionnaires, hearings, on-site investigations, commissioned investigations, etc. The foreign trade department must announce the start of a foreign trade investigation and report on its findings.

### What is a "trade barrier"?

Based on China's Foreign Trade Law, MOFCOM has formulated Foreign Trade Barrier Investigation Rules, which provide details of the definition of a "trade barrier" and the procedure for conducting related investigations.

Article 3 of the Foreign Trade Barrier Investigation Rules provides that measures or activities made or supported by the governments of foreign countries/regions are trade barriers if the measures or activities (i) cause unreasonable harm to the competitiveness of products/services originating from China in the foreign market; and/or (ii) violate or fail to implement obligations pursuant to bilateral trade agreements with China, among other factors.

### Initiation of MOFCOM investigation

MOFCOM can either initiate the trade barrier investigation at the request of applicants, or initiate the trade barrier investigation by itself.<sup>13</sup>

On 17 June 2024, the China Chamber of Commerce for Import and Export of Machinery and Electronic Products ("**CCCME**") submitted an application to MOFCOM to initiate a trade and investment barrier investigation under China's Foreign Trade Law.<sup>14</sup> The CCCME was concerned that the EU (through the Commission) conducted FSR reviews and investigations that targeted Chinese enterprises in an unreasonable and discriminatory manner, preventing their entry into the EU market and harming their competitiveness.

On July 10, 2024, MOFCOM launched an investigation into the Commission's FSR practices. In the following six months, MOFCOM conducted extensive market testing involving government agencies, relevant Chinese companies, industry associations, and the EU Delegation in China. This included the use of questionnaires, public consultations, and on-site interviews with Chinese firms impacted by the FSR in industries like rolling stock, photovoltaic technologies, wind power, and security inspection equipment.

### Consequences of identifying a "trade barrier"

There are no immediate legal or punitive consequences if MOFCOM makes a finding that certain measures or activities under investigation constitute "trade barriers". MOFCOM's findings often serve as a basis for further negotiations or discussions with foreign governments. Under the Foreign Trade Barrier Investigation Rules, MOFCOM merely has the opportunity to (i) hold bilateral negotiations; (ii) initiate a settlement mechanism of multilateral disputes; or (iii) take other appropriate measures. Therefore, whilst there may not be immediate

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13. Article 4, Foreign Trade Barrier Investigation Rules.

14. See, [https://www.mofcom.gov.cn/cms\\_files/filemanager/1511035453/attach/20247/cf679492333441e88b6044d178b0f39f.pdf](https://www.mofcom.gov.cn/cms_files/filemanager/1511035453/attach/20247/cf679492333441e88b6044d178b0f39f.pdf).

consequences, the findings can have longer-term implications for trade relations and policies.

MOFCOM has typically pursued bilateral negotiations following trade barrier investigations under China’s Foreign Trade Law. This has included restrictions on laser imports into Japan (which the Japanese government later lifted);<sup>15</sup> the treatment of renewable energy products in the United States;<sup>16</sup> and, most recently, Taiwan’s ban on imports from Mainland China, which is reportedly being addressed through bilateral negotiations.<sup>17</sup>

**Assessment and findings**

MOFCOM considered that the Commission’s FSR investigations and practices constituted a “trade barrier” within the meaning of Article 3 of Foreign Trade Barrier Investigation Rules.

<p><b>Selective enforcement against Chinese firms.</b></p>	<p>MOFCOM broadly found that the Commission’s enforcement practices under the FSR selectively targeted Chinese enterprises, which resulted in Chinese products being treated less favorably when exported to the EU compared to other countries.</p> <p>MOFCOM pointed to the Commission’s reviews of bids in public procurement procedures. The Commission never initiated any in-depth reviews against non-Chinese firms, even within the same projects. In the tender to build a photovoltaic park in Romania, only Chinese bids were investigated even though other non-EU and non-Chinese bidding consortiums participated.</p> <p>Additionally, MOFCOM also highlighted that dawn raids were only conducted in relation European affiliates of Chinese companies.</p>
<p><b>Ambiguous definitions and assessments of “foreign subsidies” and “distortive effects”.</b></p>	<p><b>“Foreign subsidies”</b></p> <p>MOFCOM’s investigation revealed that the FSR’s criteria for identifying “foreign subsidies” are too vague and overly broad.</p> <p>The FSR provides that a “foreign subsidy” arises where “a third country provides a financial contribution which confers a benefit to an undertaking engaging in an economic activity [in the EU] to an individual undertaking or industry...”. This can include contributions that do not deviate from competitive market conditions, such as transactions made at market prices, or passive investments like capital injections into private equity funds.</p> <p>Due to this ambiguity, MOFCOM’s found that the Commission relied on unclear “indications” to claim that Chinese companies received financial contributions that could distort the EU market. For instance, the Commission categorized a Chinese firm’s participation in domestic public tenders in China as foreign financial contributions, presuming these could distort the EU market.</p>

15. See, <https://m.mofcom.gov.cn/article/b/c/200502/20050200019196.shtml>.  
 16. See, <https://m.mofcom.gov.cn/article/b/c/201208/20120808293989.shtml>.  
 17. See, <http://file.mofcom.gov.cn/article/zcfb/gpmy/202312/20231203460950.shtml>.

### **“Distortive effects”**

The FSR regime adopts a “distortive effects” test, intended to address foreign subsidies that cause distortions in the EU by providing their recipients an unfair advantage to acquire companies or obtain public procurement contracts to the detriment of fair competition. Therefore, a subsidy will be considered “distortive” if it could improve the competitive position of a business in the EU, which, in turn, could negatively impact competition.

Based on MOFCOM’s findings, the Commission’s methods for determining distortive effects of foreign subsidies were often subjective and lacked rigorous quantitative analysis. MOFCOM found that in some cases the Commission used flawed calculation methods to conclude that Chinese companies’ bid prices were substantially lower than procurement budgets and therefore had distortive effects.

Chinese companies argued during the investigation that the Commission ignored their clarifications that showed their bids were legitimate and above industry standards. Despite full financial disclosures, the Commission deemed the evidence insufficient, relying on isolated loss projects to incorrectly characterize the companies as loss-making and claiming they received distortive subsidies.

### **Broad and burdensome information requirements without justification.**

MOFCOM found that Chinese firms were subject to broad and excessive information requests without justification and within limited timeframes:

- **Extensive corporate group disclosures.** The Commission required extensive information from parent companies and their affiliates (including second-tier and third-tier subsidiaries) despite confirmations that no government subsidies were received from parents or other affiliates.
- **Autonomous commercial activities.** The Commission disregarded the commercial autonomy of companies under investigation and the fact that the companies themselves satisfied bidding qualifications. In certain cases, companies without substantive business activities within the EU were still investigated by the Commission.
- **Unnecessary information and data requests.** The Commission asked for very detailed information without justification, such as information on non-EU public procurement projects, personal data of executives, progress of other projects, lost bids, etc., and even projects that didn't exist, Data exports. In some cases, the Commission violated international comity by demanding the disclosure of “important data” that, under Chinese law, could not be transmitted abroad without approval from Chinese authorities. The EC threatened severe penalties if the data was not provided.

	<ul style="list-style-type: none"> <li>• <b>Unreasonable deadlines.</b> The Commission imposed tight deadlines, sometimes only 3 to 7 days, for submitting vast amounts of information.</li> </ul>
<p><b>Lack of transparency and due process.</b></p>	<p>MOFCOM found that the Commission’s FSR investigation procedures lacked transparency, noting that Chinese companies faced significant uncertainty throughout the process, including in relation to review timelines. Specifically:</p> <ul style="list-style-type: none"> <li>• The Commission did not adequately clarify the reasoning behind its decisions. For example, the Commission failed to explain how it calculated financial contributions and the amount of foreign subsidies. Additionally, the Commission did not provide explanations for the rejection of waivers to provide certain information.</li> <li>• The Commission did not offer sufficient opportunities for parties to defend themselves. In some cases, the Commission denied parties the opportunity to request hearings to defend their interests.</li> </ul>
<p><b>Unreasonable dawn raid practices.</b></p>	<p>MOFCOM also noted that the Commission threatened to pursue substantial fines for non-compliance.</p> <p>MOFCOM’s findings indicated that the Commission’s practices during dawn raids were not aligned with FSR principles and were excessively aggressive, especially in situations where there was no evidence of non-cooperation or potential evidence destruction. It pointed out that, unlike antitrust cases, the information sought in FSR investigations can be obtained from financial records, which are not easily destroyed, rendering dawn raids unnecessary.</p>

## Impact of FSR investigations

MOFCOM’s investigation revealed that the Commission’s FSR investigations hindered or restricted the entry of Chinese products into the EU market and damaged their competitiveness. Therefore, the Commission’s practices were considered “trade barriers”. Specifically:

- **Economic losses.** FSR investigations led to both direct and indirect economic losses for Chinese enterprises, with (i) abandoned bidding projects valued at over RMB 7.6 billion (around EUR 1 billion); (ii) other affected projects exceeding RMB 8 billion (around EUR 1.063 billion); and (iii) additional losses related to bid guarantees, compensation payments, and compliance expenses amounting to over RMB 100 million (EUR 13.3 million).
- **Exclusion of Chinese firms.** FSR-related practices led to the exclusion Chinese companies from bidding opportunities in the EU. Some EU member states imposed additional requirements in tenders, disqualifying Chinese firms or their affiliates based on qualifications, technical standards, or “national security threats”. Some EU tenders also included termination clauses targeting Chinese enterprises, providing for contract cancellation without compensation if distortive foreign subsidies were identified.
- **Compliance and reputational costs.** More broadly, the combination of FSR investigations with antitrust



and foreign investment reviews significantly increased compliance costs and legal risks for Chinese firms operating and investing in the EU. Chinese firms were forced to allocate additional manpower, resources and finances to manage FSR compliance. FSR investigations have also led to reputational damage for Chinese firms. For example, delays in contract confirmations stemming from FSR investigations could result in lost customers and missed collaboration opportunities due to increased perceptions of risk and caution.

Industry associations taking part in the MOFCOM investigation observed a decline in exports of photovoltaic products to the EU and that more sectors have been forced to adjust their export and investment plans due to concerns about the impact of the FSR.

## **Concluding remarks**

MOFCOM's criticisms of the FSR are neither new nor unexpected. The original White Paper that introduced the concept of an FSR regime included references to various OECD reports that indicated widespread government interventions in China, in particular (e.g. aluminum; semiconductors). Then, in the lead up to the FSR's implementation, many commentators highlighted various ambiguities and uncertainties related to its practical and procedural elements. This included issues such as the inclusion of financial contributions obtained under normal market conditions or the use of "indicators" for assessing distortive effects, which were scrutinized in the MOFCOM investigation. Some of these aspects were partially clarified by the Commission in a separate Staff Working Document published in July 2024 (see our separate update).

The Commission is required, by law, to publish further guidelines on the FSR's practical application by 12 January 2026. The Commission may have the opportunity to address the concerns raised in MOFCOM's investigation when it next reviews its FSR practices and provides further guidance. Given the number of Chinese firms affected by the FSR and the range of stakeholders and sectors involved in the MOFCOM investigation, it will be difficult to ignore MOFCOM's findings. More broadly, the experience of Chinese firms facing FSR reviews and investigations confirms and underscores the importance of building comprehensive compliance systems to (i) record and count financial contributions centrally; and (ii) assess financial contributions for notifications and investigations. An ongoing internal compliance system will help support credibility of any calculations and reportable financial contributions submitted to the Commission.



## Authors



**Michael Han**  
Antitrust Partner  
michael.han@fangdalaw.com



**Christoph van Opstal**  
Antitrust Partner  
christoph.vanopstal@fangdalaw.com



**Grainne Zhang**  
Counsel  
grainne.zhang@fangdalaw.com



**Lily Guo**  
Associate  
lily.guo@fangdalaw.com

### Beijing

27/F, North Tower  
Beijing Kerry Centre  
1 Guanghua Road  
Chaoyang District  
Beijing 100020, China

Tel: +86 10 5769 5600  
Fax: +86 10 5769 5788

### Guangzhou

66/F, Guangzhou CTF  
Finance Centre  
6 Zhujiang East Road  
Zhujiang New Town  
Guangzhou 510623, China

Tel: +86 20 3225 3888  
Fax: +86 20 3225 3899

### Hong Kong

26/F, One Exchange Square  
8 Connaught Place, Central  
Hong Kong

Tel: +852 3976 8888  
Fax: +852 2110 4285

### Nanjing

38/F, Asia Pacific Business Building  
2 Hanzhong Road  
Gulou District  
Nanjing 210005, China

Tel: +86 25 8690 9999  
Fax: +86 25 8690 9099

### Shanghai

24/F, HKRI Centre Two,  
HKRI Taikoo Hui  
288 Shi Men Yi Road  
Shanghai 200041, China

Tel: +86 21 2208 1166  
Fax: +86 21 5298 5599

### Shenzhen

9/F, Tower One, Kerry Plaza  
1 Zhong Xin Si Road  
Futian District  
Shenzhen 518048, China

Tel: +86 755 8159 3999  
Fax: +86 755 8159 3900

### Singapore

1 Raffles Place #55-00  
One Raffles Place Tower 1  
Singapore 048616

Tel: +65 6859 6789  
Fax: +65 6358 2345