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How the SCA 2022 Shapes the Effectiveness of the TCA: Lessons from EU State Aid and WTO

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After Brexit, European Union (EU) state aid no longer applies in the UK to funding and other forms of support measures granted to businesses by public authorities. The EU-UK Trade and Cooperation Agreement (TCA) envisages new subsidy rules under Chapter 3, Title XI. In particular, Chapter 3 sets out some general principles that apply to the EU and UK but allows each side to retain regulatory autonomy on subsidy control. Consequently, the UK was able to introduce its new domestic regime, the Subsidy Control Act 2022 (SCA). The EU, on the other hand, already had its own framework in place under EU state aid. This article offers a comparative analysis between the TCA's enforcement mechanisms, World Trade Organization (WTO), and EU state aid. In doing so, it examines the tools introduced by the SCA to implement the TCA's requirements. In conclusion, this article suggests that if there is going to be effective control of subsidies between the EU and UK after Brexit, it will be due to the UK domestic subsidy system.

Keywords: subsidy, EU state aid, TCA, Subsidy Control Act, WTO, Brexit, FTAs, dispute settlement, transparency, private enforcement

1 INTRODUCTION

Compliance with any set of rules depends heavily on the effectiveness of its enforcement mechanisms. Without effective enforcement, compliance is unlikely. This principle is evident when we compare the European Union (EU) and World Trade Organization (WTO) subsidy systems. While the EU state aid regime includes rigorous mechanisms for preventing illegal aid, such as the *ex ante* control mechanism and the role of the European Commission (hereinafter the 'Commission') as a formal regulator, these tools are completely absent under the WTO regime.[1] In the case of a lack of voluntary implementation, the only way to enforce WTO subsidy law is for Members to raise complaints.[2] Consequently, if a

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1 *See* Vincent Verouden, *EU State Aid Control: The Quest for Effectiveness*, 14 EStAL (2015).

2 Alan O. Sykes, *The Questionable Case for Subsidies Regulation: A Comparative Perspective*, 2 J. Leg. Anal 473, 520 (2010), doi: 10.1093/jla/2.2.473.

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