Subsidy Control Act 2022

2022 CHAPTER 23

PART 2

SUBSIDY CONTROL REQUIREMENTS

CHAPTER 2

PROHIBITIONS AND OTHER REQUIREMENTS

General prohibitions

15 Unlimited guarantees

A subsidy in the form of a guarantee of the debts or liabilities of an enterprise is prohibited by this section if—

(a) there is no limit as to the amount of the debts or liabilities that are guaranteed, or

(b) there is no limit as to the duration of the guarantee.

16 Export performance

(1) A subsidy that is contingent in law or in fact, whether solely or as one of several other conditions, upon export performance relating to goods or services is prohibited by this section.

(2) But this section does not prohibit a subsidy in the form of—

(a) short-term export credit insurance against risks that are not marketable risks, or

(b) an export credit, export credit guarantee or insurance programme that is permissible in accordance with the SCM Agreement.

(3) In this section—

"export credit insurance" means insurance against commercial or political risks relating to the payment obligations of public or non-public customers in export transactions;

"marketable risks" means risks relating to the payment obligations of public or non-public customers in marketable risk countries;

"marketable risk country" means (subject to subsection (4))—

(a) the United Kingdom,
(b) a member State of the European Union,
(c) Australia,
(d) Canada,
(e) Iceland,
(f) Japan,
(g) New Zealand,
(h) Norway,
(i) Switzerland, and
(j) the United States of America;

"short-term export credit insurance" means export credit insurance with a risk period of less than two years;

"the SCM Agreement" means the Agreement on Subsidies and Countervailing Measures, contained in Annex 1A to the Marrakesh Agreement Establishing the World Trade Organization, done at Marrakesh on 15 April 1994 (read with any adjustments necessary for context).

(4) A marketable risk country is to be treated for the purposes of this section as not being a marketable risk country if regulations made by the Secretary of State provide for the marketable risk country to be so treated.

(5) The Secretary of State may make regulations under subsection (4) in respect of a marketable risk country only if satisfied that there is a lack of sufficient private market capacity because of—

(a) a significant contraction of private credit insurance capacity,
(b) a significant deterioration of sovereign sector rating, or
(c) a significant deterioration of corporate sector performance.

(6) The Secretary of State must by further regulations under subsection (4) revoke regulations under that subsection in respect of a marketable risk country if the Secretary of State ceases to be satisfied as mentioned in subsection (5).

(7) Regulations under subsection (4) are subject to the negative procedure.

(8) For the purposes of this section, a subsidy is contingent in fact upon export performance if the giving of the subsidy (without having been made legally contingent upon export performance) is in fact tied to actual or anticipated exportation or export earnings.

(9) For the avoidance of doubt, a subsidy is not prohibited by this section by reason only of the fact that it is given to an enterprise that is engaged in an economic activity that entails exporting goods or services.

17 Use of domestic goods or services

(1) A subsidy that is contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services is prohibited by this section.

(2) The prohibition in subsection (1) does not apply so far as relating to subsidies given in relation to the audiovisual sector.

(3) This section is without prejudice to—

(a) Article 132 of the Trade and Cooperation Agreement (investment liberalisation: performance requirements), or

(b) Article 133 of that Agreement (investment liberalisation: non-conforming measures and exceptions).

18 Relocation of activities

(1) A subsidy is prohibited by this section if—

(a) it is given to an enterprise subject to a condition that the enterprise relocates all or part of its existing economic activities, and

(b) the relocation of those activities would not occur but for the giving of the subsidy.

(2) For the purpose of subsection (1), an enterprise relocates existing activities if—

(a) it is carrying on activities in an area of the United Kingdom before the subsidy is given, and

(b) it ceases to carry on those activities in that area after the subsidy is given and instead carries them on in another area of the United Kingdom.

(3) The reference in subsection (1) to economic activities is a reference to any economic activity that entails offering goods or services on a market.

(4) The prohibition in subsection (1) does not apply if the public authority giving the subsidy is satisfied that the conditions in subsections (5) to (7) are met.

(5) The condition in this subsection is that the effect of the subsidy is to reduce the social or economic disadvantages of the area that would benefit from the giving of the subsidy.

(6) The condition in this subsection is that the giving of the subsidy results in an overall reduction in the social or economic disadvantages within the United Kingdom generally.

(7) The condition in this subsection is that the subsidy is designed to bring about a change in the size, scope or nature of the existing economic activities referred to in subsection (1)(a).