

ANNEX XII

ON THE INTERPRETATION OF ARTICLE 19

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The EFTA States and Romania agree that the application of Article 19 shall be guided by the following criteria:

- (a) Only those measures can be classified as State aid which result in a net transfer of funds from State sources to the recipient through direct subsidies or which result in tax revenues foregone through tax concession; aid granted under schemes which are fully paid for by the beneficiaries are not State aid in the sense of Article 19; when assessing effects of State aid, the cumulative effects of all types of aid measures awarded to recipients are to be taken into consideration.
- (b) The following measures, in general, fall outside the scope of Article 19:
 - (i) credits and loans from State sources or agencies, if the interest and capital repayments are in accordance with current market conditions;
 - (ii) guarantees given by States or State agencies, if the premiums cover the long-term cost of the scheme;
 - (iii) equity injections by States or State agencies if the rate of return on such investments can reasonably be expected to be at least equal to the cost of State borrowing;
 - (iv) tax measures including social security charges that are part of the general national income norm for tax purposes, available to all enterprises, and uniformly applied in a country.
- (c) The following measures are examples of types of aid normally consistent with the provisions of Article 19:
 - (i) aid to research, development and innovation, provided it is clearly intended for the stimulation of such activities and that such activities are at a pre-competitive level; the pre-competitive level is understood to include applied research and development up to and including the development of a first prototype; such aid may be awarded up to a rate of 50 % of project costs or at differentiated tax rates of equivalent effect; basic research may be aided to a greater extent; the closer to the market place a project is, the lower the degree of subsidizations should be;

¹ Annex XII was deleted by Joint Committee Decision No. 3 of 2004 (1 April 2004). The Decision will enter into force when the instruments of acceptance have been deposited by all Parties with the Depositary. The current Annex XII will then be deleted.

- (ii) aid given to sectors with problems of overcapacity to rationalize the structure of industry by ensuring an orderly downscaling of production and employment; such measures should strictly be limited in duration and be accompanied by an adjustment programme; when evaluating problems of overcapacity the international situation as a whole and not merely in the country in question is to be taken into account;
 - (iii) general aid to export promotion such as national weeks, store promotion, industrial fairs, provided that such aid is not company-specific;
 - (iv) regional development aid to the extent that it does not interfere with conditions of fair competition; its purpose must be to put industries in regional development areas on an equal economic footing with industries in other parts of the country and not to increase capacity in sectors already suffering from problems of overcapacity; the definition of regional development areas, including areas in industrial decline, lies within the sole competence of the State Parties to this Agreement, which may be requested to furnish statistics detailing the reasons for the designation of such areas;
 - (v) the aid in form of general public services to trade and industry on terms and conditions not favouring certain sectors and enterprises;
 - (vi) general aid for the creation of new employment opportunities provided such jobs are not in sectors already suffering from overcapacity;
 - (vii) environmental aid, under the general principle that the polluter-pays-principle is observed; investment specifically designated to reduce pollution may be aided up to a rate of 25 % or at differentiated tax rates of equivalent effect; recognizing the existence of different qualities of legislation or standards in other countries and their potential impact on trade and competition, the degree of subsidizations for specific industries shall be kept under constant review;
 - (viii) aid to small and medium-sized enterprises if intended to offset disadvantages directly linked to the size of the firm in question, such enterprises being understood as employing not more than 100 people and having an annual turnover of less than 10 million ECUs.
- (d) The following measures are examples of types of aid normally not consistent with Article 19:
- (i) aid to set against operating losses of enterprises, either directly or through the foregoing of payments due to public authorities;
 - (ii) the injection of equity capital in firms if it has the same effect as to set aid against operating losses;

- (iii) aid to production in problem sectors suffering from structural overcapacity or to enterprises in difficulties if not accompanied by an adjustment programme and strictly limited in duration;
 - (iv) aid given as a rescue measure to specific firms if not given merely to provide time for the development of long-term solutions and to avoid acute social problems;
 - (v) aid measures, including indirect taxes, that are applied in such a way as to discriminate in favour of domestically-produced goods and against like goods produced in another State Party to this Agreement;
 - (vi) the forms of aid to exports of goods to other State Parties to this Agreement as described in the Appendix.
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APPENDIX

ILLUSTRATIVE LIST OF FORMS OF EXPORT AID

REFERRED TO IN ANNEX XII (d) (vi)

- (a) Currency retention schemes or any similar practices which involve a bonus on exports or re-exports.
 - (b) The provision by governments of direct subsidies to exporters.
 - (c) The remission, calculated in relation to exports, of direct taxes or social welfare charges on industrial or commercial enterprises.
 - (d) The exemption, in respect of exported goods, from charges or taxes, other than charges in connection with importation or indirect taxes levied at one or several stages on the same goods if sold for internal consumption, or the payment, in respect of exported goods, of amounts exceeding those effectively levied at one or several stages on these goods in the form of indirect taxes or of charges in connection with importation or in both forms.
 - (e) In respect of deliveries by governments or governmental agencies of imported raw materials for export business on different terms than for domestic business, the charging of prices below world prices.
 - (f) In respect of government export credit guarantees, the charging of premiums at rates which are manifestly inadequate to cover the long-term operating costs and losses of the credit insurance institutions.
 - (g) The grant by governments (or special institutions controlled by governments) of export credits at rates below those which they have to pay in order to obtain the funds so employed.
 - (h) The government bearing all or part of the costs incurred by exporters in obtaining credit.
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