

EUROPEAN COMMUNITIES – MEASURES AFFECTING TRADE IN COMMERCIAL VESSELS

Request for Consultations by Korea

The following communication, dated 3 September 2003, from the Permanent Mission of Korea to the Permanent Delegation of the European Commission and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

The Government of the Republic of Korea hereby requests consultations with the European Communities ("EC") and with the EC Member States referred to below pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article XXIII:1(a) of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), Article XXIII:1(b) of GATT 1994 and Article 5(b) of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and Articles 4, 7 and 30 of the SCM Agreement with regard to measures affecting trade in commercial vessels, as elaborated below.

I. The measures concerned

The Government of the Republic of Korea considers that the following EC and Member State measures establish subsidies that are inconsistent with the obligations of the EC and its Member States under the SCM Agreement. These measures include, among others:

- i. The provisions of EC Regulation 1177/2002 ("TDM Regulation") and EC Regulation 1540/98 as such, as well as the EC Member States' implementing provisions as such. The above measures provide for subsidies in favour of commercial vessels, whether directly to the shipbuilders or indirect aid, including operating aid, restructuring aid, insolvency and closure aid, aid for regional or other investment, research and development aid and aid for environmental protection;
- ii. The EC and Member States have in particular instances, through federal, regional or local authorities and government-owned or government-controlled financial institutions, provided subsidies in direct or indirect support of commercial vessels built in the EC particularly but not exclusively in the form of (a) operating aid granted on a contractual basis in forms such as grants, export credits, guarantees or tax breaks, (b) restructuring aid, (c) regional or other investment aid, (d) research and development aid, (e) environmental protection aid and (f) insolvency and closure aid.

By way of example only, specific reference is made to the following:

- the granting by authorities and financial institutions in Denmark, Finland, Germany, Italy, the Netherlands, Portugal, Spain and the UK of subsidies to beneficiary domestic yards on a vessel-specific and product-related basis;
- export guarantees scheduled to be granted by the Finnish export guarantee institute, Finnerva, in the form of post- and pre-delivery guarantees;
- export subsidies granted under the German Kreditanstalt Fur Weaderausbau Export Financing Programme ("KFW"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits, and including, among others, subsidies resulting from German state aid to special credit institutions such as KFW;
- export subsidies granted under the UK Exports Credit Guarantee Department ("ECGD"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Danish Eksport Kredit Fonden ("EKF"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the French COFACE regime, whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Swedish Export Credits Guarantee Board ("EKN"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Spanish Compania Espanola de Seguros de Credito a la Exportacion ("CESCE"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Italian SACE, whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Dutch Gerling NCM (now "Atradius"), whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits;
- export subsidies granted under the Portugese COSEC, whether or not allegedly in conformity with the OECD Arrangement on Officially Supported Export Credits.
- the guarantee by the Italian Shipbuilding Guarantee Fund for the recovery of loans for the construction and conversion of ships, granted by banks to Italian and foreign shipowners, for works carried out in Italian shipyards;

- the extension by Danish Ship Finance of fixed low-interest, long-term loan facilities to shipowners for the building of new ships at Danish yards;
- the granting by Spain, through the State holding company, Sociedad Estatal de Participaciones Industriales (SEPI) and Astilleros Espanoles (AESAs) – a SEPI subsidiary - of restructuring aid through the establishment of the purchase price for publicly held yards Juliana, Cadiz, Astano, Puerta Real, Sestao, Sevilla sold to military shipbuilding group, Bazan, which later changed its name to IZAR below market price as well as through loans and capital injections by SEPI to the previously publicly-held yards and to IZAR;
- the granting by Spain of research and development subsidies to Spanish shipbuilders;
- the granting by Spain of loan guarantees to Izar through Spains industrial holdings company;
- the granting by Spain through the "tax lease scheme" of subsidies in the form of "tax incentives for renewing merchant fleet" indirectly in support of Spanish shipbuilders;
- the granting by France of subsidies to shipbuilding and industrial group Alstom under the mantle of a rescue plan of at least 2.8 billion euros;
- the granting by France through a tax lease scheme subsidies for Chantiers de l'Atlantique shipbuilding which also appears to receive subsidies under the TDM;
- the granting by France of regional aid subsidies to the Loire Region benefiting shipbuilders;
- the granting by the UK of regional subsidies and operating aid in favour of Kvaerner Govan for the development of its previously run Scottish shipyard;
- the granting by Germany of research and development and investment aid in favor of German shipbuilding;
- the granting by the EU Commission of research and development aid with the stated goal of enhancing competitiveness of the shipbuilding industry.

II. Product coverage of the measures

The subsidies in question were granted directly or indirectly with respect to the production of commercial vessels for international trade, including: bulk carriers, container ships, oil tankers, product and chemical tankers, bulk, car and combined carriers as well as general cargo vessels, reefers, LNG/LPG carriers, passenger and RoRo ferries as well as cruise ships, fishing vessels and other non-cargo vessels (including offshore units).

III. Beneficiary EC shipbuilding companies

The EC shipbuilding companies which have directly or indirectly benefited from these subsidies include, but are not limited to, Odense Steel Shipyard, Meyer Werft Shipyard, Kvaerner Masa Yards, the Italian Cantieri T. Mariotti, IZAR, JJ Sietas, Kvaerner Warnow Werft, Aker MTW, Howaldswerke Werft, Lindenau, Chantiers de l'Atlantique, Volharding.

IV. Breach of obligations

The Government of the Republic of Korea considers that the EC and Member State measures in question are in breach of the obligations of the EC and the EC Member States under provisions of the SCM Agreement, GATT 1994 and the DSU. In particular, but not necessarily exclusively of:

- Articles 3.1, 1 and 2 of the SCM Agreement, because measures such as for example the export guarantees scheduled to be granted by the Finnish export guarantee institute, Finnerva, in the form of post- and pre-delivery guarantees are specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement and are *de jure* export contingent while other measures are *de facto* export contingent;
- Articles, 1, 2, 5(a) and (c), 6.3(a),(b) or (c), 6.4 and 6.5 of the SCM Agreement, because in particular but not exclusively the subsidies referred to in Sections I(i) and (ii) above are specific subsidies within the meaning of Articles 1 and 2 of the SCM Agreement, cause injury to the domestic industry and cause or threaten to cause serious prejudice to the interests of the Republic of Korea;
- Articles I:1 and III:4 of GATT 1994 because the TDM Regulation and Member State implementing measures including, among others, long-term loans at subsidized interest rates extended by Danish Ship Finance to shipowners for the building of new ships at Danish yards, the guarantee by the Italian Shipbuilding Guarantee fund and, *inter alia*, German, Finnish, Dutch and Spanish grants to shipyards on a vessel-specific and product-related basis, adversely modify conditions of competition between Korean commercial vessels and the like vessels built in third countries, or Korean commercial vessels and the like vessels built in the EC;
- Article 23(1) and (2) of the DSU and Article 32(1) of the SCM Agreement, as well as Articles 4 and 7 of the SCM Agreement, because the TDM Regulation and Member States' implementing measures - which are aimed at assisting EC or Member State shipyards in those segments that are claimed to have suffered from unfair competition from Korean yards - have been effectively designed and implemented as unilateral measures seeking redress of a perceived violation of Korea's obligations under the SCM Agreement which should occur through dispute settlement and not through unilateral action. Further, the TDM Regulation and Member State implementing measures constitute specific actions against perceived subsidies of another Member not in accordance with the GATT 1994 as interpreted by the SCM Agreement.

Korea also considers that the above-described measures nullify or impair benefits accruing to Korea under the WTO Agreements, within the meaning of Article XXIII:1(a) of GATT 1994, as well as Article XXIII:1(b) of GATT 1994 and Article 5(b) of the SCM Agreement. The Government of Korea reserves the right to address additional measures and claims under other WTO provisions

during the course of the consultations, taking into account in particular that certain Member States are still in the process of adopting or implementing subsidy schemes pursuant to Regulation 1177/2002.

Korea notes that Annex I contains a list of information available at this time. Korea would like to incorporate the information contained in Annex I into this request for consultation by reference.

The Government of the Republic of Korea looks forward to receiving the reaction of the EC to the present request and to setting a mutually convenient date and place to begin consultations.

Statement of Available Evidence

I. Operating aid

- (i) Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding (Official Journal No L 202, 18 July 1998, p. 1).
- (ii) For the EC Member State implementing measures of Council Regulation (EC) No 1540/98:
 - Denmark

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 3, 18 December 2001.
 - Finland

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 4, 18 December 2001.
 - Germany

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 6, 18 December 2001.
 - Italy

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 9, 18 December 2001.
 - The Netherlands

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 11, 18 December 2001.
 - Portugal

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European

Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 12, 18 December 2001.

– Spain

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 13, 18 December 2001.

– the United Kingdom

New and Full Notification Pursuant to Article XVI:1 of the GATT 1994 and Article 25 of the Agreement on Subsidies and Countervailing Measures, European Communities, Addendum, Document No G/SCM/N/71/EEC/Add. 15, 18 December 2001.

(iii) With regard to extensions of the three-year delivery date for commercial vessels provided for under Council Regulation (EC) No 1540/98 and extending the deadline for the payment of the State aid accordingly:

- Commission Decision of 5 June 2002 concerning aid No N 843/01 regarding Meyer Shipyard (Germany) and *Commission approves extension of delivery limit for cruise ship being built at Meyer Shipyard (Germany) – State aid may therefore still be paid, Commission Press Release IP/02/815*, 5 June 2002;
- Decision of the European Commission dated 19 June 2002, Document C(2002)2139fin as regards Odense;
- Decision of the European Commission dated 13 November 2002, Document C(2002)3768fin as regards Kvaerner Masa yards;
- Decision on Aid No N 751/02 dated 19 March 2003 (Official Journal No C 108, 7 May 2003, p. 9) as regards Italian yard Cantieri T. Mariotti SpA;
- Commission Notice inviting interested parties to comment (Official Journal No C 238, 3 October 2002, p. 2) with regard to the request for extension by Spanish IZAR for several LNG vessels.

(iv) The EU's Surveys on State Aid and State Aid Scoreboards, i.e.:

- Seventh Survey on State Aid in the European Union in the manufacturing and certain other sectors, Brussels, 30 March 1999, p. 11 and following, p. 20, p. 67 and following;
- Eighth Survey on State Aid in the European Union in the manufacturing and certain other sectors, Brussels, 11 April 2000, p. 17, p. 22 and following, p. 94;
- Ninth Survey on State Aid in the European Union in the manufacturing and certain other sectors, Brussels, 18 July 2001, p. 37 and following, p. 94;

- State Aid Scoreboard, Brussels, 18 July 2001, Document COM(2001)412 final, p. 27, 28, 51;
 - State Aid Scoreboard, Brussels, 30 April 2001, Document COM(2003)225 final, p. 18;
 - Third report from the Commission to the Council on the situation in World shipbuilding, Brussels, 15 November 2002, Document COM(2000)730 final, p. 21 and following.
- (v) Council Regulation (EC) No 1172/2002 of 27 June 2002 concerning a temporary defensive mechanism to shipbuilding (Official Journal No L 172, 2 July 2002, p. 1).
- (vi) For the EC Member State implementing measures of Council Regulation (EC) No 1172/2002:
- Germany:

"Richtlinien des Bundesministerium für Wirtschaft und Arbeit zu befristeten Schutzmassnahmen für den Schiffbau", 24 October 2002;

Case N 744/2002, Commission Decision (2003)788 fin of 19.3.2003;

Commission authorizes "Temporary Defensive Mechanisms" for the German shipbuilding industry, Commission Press Release IP/03/405, 19.3.2003;

Sietas attacks Hamburg government, Lloyd's List, 24 December 2002; German Hamburg approves 4.0 Mln EURO subsidy for Shipyard, German News Digest, 13 November 2002;

Subsidy gives Aker and Kvaerner boxship trio boost, Lloyd's List, 12 June 2003; German yards feel pinch as competition bites, Lloyd's List, 15 April 2003;

HDW lines up four-ship boxship order, Lloyd's List, 26 June 2003;

Lindenau warns of lay-offs ahead, Fairplay Daily News, 27 January 2003.
 - Denmark

Lov om midlertidig, kontraktbetinget driftsstøtte til bygning af visse skibstyper, LOV No 305 dated 30 April 2004;

Case N 141/2003, Commission Decision of 24.6.2003;

Financing deal aids Danish shipyards, Lloyd's List, 12 February 2003;

Aftale mellem Skibskreditfonden og regeringen endeligt på plads (Agreement between the ship finance fund and government is finally in place), Press Release of Danish government, 7.2.2003.

- Finland

Aker Kvaerner thrown lifeline, Lloyd's List, 22 May 2003;

State guarantees Masa-Yards \$2.9bn, Lloyd's List, 22 May 2003.
 - France

LNG order driven by French politics, TradeWinds, 27 June 2003;

SeaFrance car ferry order goes to Chantiers yard, Lloyd's List, 26 June 2003;

Gaz de France in gas tanker deal, Lloyds, 22 January 2002;

Gas brings relief for Alstom, Fairplay Daily News, 21 January 2002;

EC rapid response to Alstom, Lloyds, 22 August 2003.
 - The Netherlands

Subsidy saves shipyard subsidiary and All is well at Volharding, Fairplay Daily News, 8 November 2002;

Tijdelijke regeling ordersteun scheepsnieuwbouw, Regeling van de Staatssecretaris van Economische Zaken van 17 juli 2003 No WJZ3040972 with regard to the provisions for affording subsidies to the shipbuilding sector as temporary defensive aid.
 - Spain

PDV picks Izar for tanker trio, Fairplay Daily News, 25 February 2003;

Dutch group protests over 'Spanish handout', Lloyd's List, 9 December 2002;

Dutch anger over alleged subsidy, Fairplay Daily News, 4 December 2002;

EU/State aid: Spain hopes to give temporary support to its shipyards, Agence Europe, 19 July 2003, p. 15;

Third LNG carrier launched at Izar, Lloyds, 18 August 2003.
- (vii) As regards the German State guarantees:
- Mr. Monti and Mr. Clement meet to discuss State guarantees for German shipyards*, Agence Europe, 5.3.2003;
- EC turns sights on German loans*, Fairplay, 24.1.2003;
- German loans under scrutiny*, Lloyd's List, 24.1.2003;

Mario Monti expresses concern about impact of State guarantees on shipbuilding, Agence Europe, 24.1.2003;

Monti hat Subventionsverdacht EU-Kommission erhöht Druck auf Deutsche Werftindustrie, Handelsblatt, 23.1.2003;

Commissioner Monti welcomes formal acceptance by Germany of the abolition of state aid to public banks, Rapid press release IP/02/634, 26 April 2002;

Common press statement on the understanding on Anstaltslast and Gewährträgerhaftung for special credit institutions, Rapid press release IP/02/354, 4 March 2003;

Commission approves state aid administered by the KfW, Rapid press release IP/94/670, 19 July 1994.

- (vii) Replies from the European Community to the request from the Republic of Korea to the European Community and its Member States pursuant to Article 25.8 of the Agreement on Subsidies and Countervailing Measures.

II. Loan facilities to Danish shipowners

See in I-(vi) above.

III. Guarantee by the Italian Shipbuilding Guarantee Fund

- (i) *Formal investigation into Italian shipbuilding guarantee scheme, Commission Press Release IP/03/604, 30.4.2003.*
- (ii) *State Aid – Italy, Aid C 28/03 (ex N 371/01) – Guarantees for ship financing – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty (2003/C 145/04), Official Journal No C 145, 21 June 2003, p. 48.*

IV. Spanish tax leasing scheme

- (i) *Spanish Act 50/1998 on Tax and Administrative Measures and Social Order, with modifications introduced by Article 3.9 of Act 55/1999 of 29 December 1999, a new supplementary clause (in the form of a regulation) has been introduced to Act 43/1995 on Corporate Tax under the title "Tax incentives for renewing merchant fleet".*

V. Spanish restructuring aid

- (i) *State Aid – Spain, C-40/00 (ex NN 61/00) – Further restructuring of Spanish shipbuilding – Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, Document 2000/C 328/03, Official Journal No C 328, 18 November 2000, p. 16; Document 2002/C 21/03, Official Journal No C 21, 24 January 2002, p. 17;*
- (ii) *Commission by Decision 2000/131/EC of 26 October 1999, Official Journal No L 37, 12 February 2000, p. 22 as upheld in Judgment of 21 March 2002, Case C-36/00, Spain v. Commission, European Court Reports (ECR) 2002 I-3243; Judgment of 26 June 2003, Case C-404/00, Commission v. Spain, not yet published in the ECR;*

- (iii) Commission extends state aid investigation into further restructuring of public shipyards in Spain European Commission Press Release, IP/01/1672, 28 November 2001; also European Commission Press Release, IP/00/760, 12 July 2000;
- (iv) Commission takes two decisions on state aid procedures to public shipyards in Spain, European Commission Press Release, IP/03/754, 27 May 2003.
- (v) State Aid – Spain, Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning document C 38/03 (ex NN 10/03), Official Journal No C 201, 26 August 2003, p. 3.
- (vi) State Aid – Spain, Invitation to submit comments pursuant to Article 88(2) of the EC Treaty, concerning aid C40/2000 (ex NN 61/000), Official Journal No C 199, 23 August 2003, p. 9.

VI. Other aid of the kind illustrated in point I(ii)

- (i) *Commission approves EUR 1,870.9 million assistance package for Loire region* (regional aid), Rapid press release, 11 January 2001;
- (ii) *Commission calls on scientific and industrial communities to apply for EUR 5 billion research funding* (research and development aid), Rapid press release, 16 December 2002;
- (iii) Authorization for state aid pursuant to Articles 87 and 88 of the EC Treaty, (German research and investment aid to shipbuilding) Official Journal C 277, 14 November 2002, p. 2;
- (iv) *Izar breathes more easily*, Lloyds, 8 July 2003;
- (v) *Spanish Government boosts shipbuilding industry with E500 million lifeline*, Lloyds, 1 October 2002;
- (vi) Regions to finance new French ferry, Fairplay Daily News, 8 January 2002;
- (vii) *Kvaerner almost certain to close its Govan shipyard in Scotland*, WWS article (www.wsws.org), 14 July 1999.

VII. Adverse effects

- (i) Lost sales cases reported by the Korean shipyards
 - (ii) Article 2(1) of Council Regulation (EC) No 1177/2002 to the effect that operating aid shall only be granted "*when there has been competition for the contract from a Korean shipyard offering a lower price*", i.e., the aid is granted to prevent the sale of Korean vessel or to cause lost sales for Korean shipyards.
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