

## KOREA – MEASURES AFFECTING TRADE IN COMMERCIAL VESSELS

### Request for Consultations by the European Communities

The following communication, dated 21 October 2002, from the Permanent Delegation of the European Commission to the Permanent Mission of Korea and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

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

The European Communities considers that the following measures establish subsidies that are inconsistent with Korea's obligations under the *SCM Agreement*:

- Korea, through government-owned and government-controlled banks, provided corporate restructuring subsidies in the form of debt forgiveness, debt and interest relief and debt-to-equity swaps. These subsidies were granted to at least three shipyards (Daewoo Shipbuilding and Marine Engineering, Samho Heavy Industries, Daedong Shipbuilding Co).
- The Special Tax Treatment Control Law, more specifically, the special taxation on in-kind contribution (Article 38) and the special taxation on spin-off (Article 45-2) scheme, establishes two tax programmes limited to companies under corporate restructuring and provided tax concessions to Daewoo, the combined benefit of which is estimated at won 78 billion.
- The state-owned Export-Import Bank of Korea ("KEXIM") provides all Korean shipyards with (i) *pre-shipment loans*, i.e., pre-delivery loans at preferential rates to finance shipbuilding production costs of export contracts, such as raw material cost, labour and overheads until delivery of the ships, (ii) *advance payment refund guarantees*, i.e., a guarantee at preferential premium rates that a foreign buyer will be refunded any advance payments given to a Korean shipyard, including any accrued interest on the advance payments, in case the Korean shipyard fails to perform its obligations under the relevant export contract.
- The subsidies in question were granted with respect to the production of commercial vessels for international commerce, including: bulk carriers, container ships, oil

tankers, product and chemical tankers, LNG/LPG carriers, passenger and RoRo ferries and other non-cargo vessels (including offshore units).

- The Korean shipbuilding enterprises which have benefited from these subsidies include Samho Heavy Industries, Daedong Shipbuilding Co., Daewoo Shipbuilding and Marine Engineering, Hyundai Heavy Industries, Hyundai Mipo, Samsung Heavy Industries and Hanjin Heavy Industries & Construction Co.

The European Communities considers that the Korean measures are in breach of Korea's obligations under the provisions of the *SCM Agreement*, in particular, but not necessarily exclusively of:

- Articles 3.1, 1 and 2 of the *SCM Agreement*, because, *inter alia*, the advance payment refund guarantees and the pre-shipment loans provided by KEXIM are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* and are *de jure* export contingent.
- Articles 5 (a), 1, and 2 of the *SCM Agreement*, because, *inter alia*, the corporate restructuring packages and tax concessions are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* and an evaluation of all relevant economic factors has shown that their effects are causing injury to the Community industry, in particular in the market for container ships, product and chemical tankers.
- Articles 5 (c), 1, 2, and 6.3 and 6.5 of the *SCM Agreement*, because, *inter alia*, the corporate restructuring packages and tax concessions are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* and cause serious prejudice to the interests of the European Communities, in particular through significant price undercutting, price suppression, price depression or lost sales, in particular in the market for container ships, product and chemical tankers.

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

## Statement of Available Evidence

### ***KEXIM Programmes***

- (i) *Pre-shipment Loans*
- (ii) *Advance payment refund guarantees*
- The KEXIM ACT and its Enforcement Decree
- Financial statements of KEXIM 1997-1999
- Financing Programmes Manual by KEXIM
- Questionnaire response of Government of Korea
- Questionnaire response of Samho Heavy Industries
- Questionnaire response of Daewoo Shipbuilding and Marine Engineering
- Questionnaire response of Samsung Heavy Industries
- Questionnaire response of Hanjin Heavy Industries & Construction Co.
- Questionnaire response of Hyundai Heavy Industries
- Questionnaire response of Hyundai Mipo
- ***Debt forgiveness, debt-for-equity-swaps and interest relief by government-owned and government-controlled banks.***
- Letter of Intent (IMF Policy Matrix) by the Republic of Korea (ROK) to IMF dated 3 December 1997
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 24 December 1997
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 7 February 1998
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 2 May 1998
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 24 July 1998
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 24 September 1998
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 13 November 1998
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 10 March 1999
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 24 November 1999
- Letter of Intent (IMF Policy Matrix) by the ROK to IMF dated 12 July 2000
- Memorandum of Understanding with the World Bank dated 23 July 1998
- Memorandum of Understanding with the World Bank dated 18 November 1999
- GOK's shareholdings of financial institutions
- Corporate Restructuring Agreement of 25 June 1998 including its Enforcement Regulation and its Operational Guidelines
- Questionnaire response of Government of Korea
- Questionnaire response of Korean Development Bank
- Questionnaire response of Korean Exchange Bank

### ***DSME***

- Comprehensive Agreement on Corporate Workout of Daewoo Heavy Industries dated 20 January 2000
- Spin-Off Plan of DHI dated 12 May 2000 (executed on 23 October 2000)
- Decision of Creditor Financial Institution Committee of 4 December 2000

- Questionnaire response of Daewoo Shipbuilding and Marine Engineering
- Audited financial statements 1997 to 2000

*Samho*

- Corporate Restructuring Plan dated 22 October 1998
- Revised Corporate Restructuring Plan dated 9 August 1999
- Questionnaire response of Samho Heavy Industries
- Audited financial statements 1997 to 2000

*Daedong*

- Liquidation plan for Daedong, Seoul District Court

***Tax programmes***

Special Tax Treatment Control Law of 1 January 1999 and its Enforcement Decree.

***Adverse Effects***

- Commission's monthly market monitoring reports for the period April 1999 through to and including December 2001.
- OECD report on "Recent newbuilding price development", C/WP6(2002)6, 25.03.2000, p 7
- Lloyd's register list of shipping – market data
- Questionnaire responses from the following EU shipyards:

G. Assereto Fincantieri - IT;  
Astilleros Españoles Group - IZAR Construcciones Navales - ES;  
Aker Finnyards Oy - FIN;  
Ørskov Staalskibsvaerft A/S - DK;  
Odense Steel Shipyard Ltd. - DK;  
ALSTOM Chantiers de l'Atlantique - F;  
SSW Fähr-und Spezialschiffbau GmbH - D;  
Lloyd Werft Bremerhaven GmbH - D;  
J.L. Meyer GmbH - D;  
Blohm&Voss GmbH - D;  
Volkswerft Stralsund - GmbH - D;  
Peene-Werft GmbH - D;  
Lindenau GmbH - D;  
Thyssen Nordseewerke - GmbH - D;  
Kvaerner Warnow Werft GmbH - D;  
Aker MTW Werft GmbH - D;  
Kröger Werft GmbH&Co.KG - D;  
Flender Werft AG - D;  
Flensburger Schiffbau- GmbH&Co.KG - D;  
Howaldtswerke-Deutsche Werft AG – D;  
Merwede – NL.

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