

**EUROPEAN COMMUNITIES – MEASURES AFFECTING TRADE  
IN COMMERCIAL VESSELS**

Request for the Establishment of a Panel by Korea

The following communication, dated 5 February 2004, from the delegation of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 3 September 2003, the Republic of Korea ("Korea") requested consultations with the European Communities ("EC") and its Member States pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU)*, Article XXIII:1(a) of *General Agreement on Tariffs and Trade 1994 ("GATT 1994")*, Article XXIII:1(b) of GATT 1994 and Articles 4, 7 and 30 of the *SCM Agreement* with regard to measures affecting trade in commercial vessels, as elaborated below.

Consultations were held on 9 October and 14 November 2003. The consultations held between Korea and the EC related to various EC and Member State measures in relation, *inter alia*, to the following:

- i. The provisions of EC Regulation 1177/2002 (the "TDM Regulation") and EC Regulation 1540/98 as such, as well as the EC Member States' implementing provisions as such. The above provisions provides for granting of 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 its 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.

Unfortunately, these consultations have failed to resolve the dispute between parties as regards the TDM Regulation (and proposed extension) and the EC Member States' implementing provisions. Korea hereby requests that a panel be established pursuant to Articles 6 of the *DSU* and Article XXIII:2 of *GATT 1994* with respect to the measures described as below.

The measures that are subject of this request are the EC and its Member States' legal provisions and decisions providing for the supply of grants to shipbuilders for containerships, product tankers, chemical tankers and liquid natural gas carriers ("LNGs") adversely affecting the conditions of competition and seeking a unilateral redress of a perceived violation of Korea's obligations under

the *SCM Agreements*. In particular, Korea considers that the following measures are inconsistent with the EC's obligations under the *SCM Agreement*:

- (i) The provisions of the TDM Regulation as extended to cover LNGs by Notice 2003/C 148/10 published on 25 June 2003 (currently proposed to be extended until 31 March 2005 pursuant to European Commission proposal COM(2004)26 final of 21 January 2004);
- (ii) The EC Member State implementing provisions of the TDM Regulation and the European Commission Decisions approving these implementing provisions, including:
  - 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 March 2003.
  - Denmark

"Lov om midlertidig, kontraktbetinget driftsstøtte til bygning af visse skibstyper, LOV No 305", dated 30 April 2003;

Case N 141/2003, Commission Decision (2003)1765 fin of 24 June 2003.
  - The Netherlands

"Tijdelijke regeling ordersteun scheepsnieuwbouw, Regeling van de Staatssecretaris van Economische Zaken, No WJZ3040972", 17 July 2003;

Case N 780/2002, Commission Decision (2002)2019 fin of 9 July 2003 and Case N 339/03, Commission Decision (2003)3378 of 18 September 2003.
  - France

Application du Règlement N° 1177/2002 du Conseil par la décision d'une commission interministérielle (as referred to by the European Commission in the publication of the approval of the French aid for LNGs).

Case N 232/03, Commission Decision (2003)3234 fin of 17 September 2003.
  - Spain

Real Decreto 442/1994 of 11 March 1994 as amended by Real Decreto 1274/2003 of 10 October 2003;

Case N 812/02, Commission Decision (2003)4079 fin of 11 November 2003.

Korea considers that the EC and its Member State measures referred to above are in breach of the EC and its Member State obligations under the following provisions:

- Articles I:1 and III:4 of *GATT 1994* because the TDM Regulation and Member State implementing measures involving the bestowal of German, Danish, Dutch, French 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 and Korean commercial vessels and the like vessels built in the EC, respectively;
- Article 23(1) and (2) of the *DSU*, 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 its Member State shipyards in those segments that are claimed to have suffered from subsidies allegedly granted to Korean shipyards - 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 exclusively through dispute settlement and not through unilateral action;
- Article 32(1) of the *SCM Agreement*, as well as Articles 4 and 7 of the *SCM Agreement*, because 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 requests that a panel be immediately established with standard terms of reference, in accordance with Articles 6 and 7 of the *DSU* and Article 30 of the *SCM Agreement*.

Korea asks that this request for establishment of a panel be placed on the agenda for the next meeting of the Dispute Settlement Body, which is scheduled to take place on 17 February 2004.

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