

## KOREA – MEASURES AFFECTING TRADE IN COMMERCIAL VESSELS

### Request for the Establishment of a Panel by the European Communities

The following communication, dated 11 June 2003, from the Permanent Delegation of the European Commission to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 21 October 2002, the European Communities requested 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. This request was circulated to the WTO Members on 24 October 2002 as document WT/DS273/1, "*Korea – Measures Affecting Trade in Commercial Vessels*".

Consultations were held on 22 November, 13 December 2002 and 7 May 2003. Unfortunately, these consultations failed to settle the dispute.

The European Communities therefore requests that a panel be established pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994, Articles 4, 7 and 30 of the *SCM Agreement* (to the extent that Article 30 incorporates by reference Article XXIII of GATT 1994).

The measures that are the subject of this request are prohibited and actionable subsidies. In particular, the European Communities considers that the following measures are inconsistent with Korea's obligations under the *SCM Agreement*:

- The Act Establishing the Export-Import Bank of Korea ("KEXIM"), any implementing decrees and other regulations, that specifically allow and enable KEXIM to provide Korean exporters of capital goods with financing at preferential rates.
- The pre-shipment loan and advance payment refund guarantee schemes established by KEXIM. Under the *pre-shipment loans programme*, KEXIM provides pre-delivery loans at preferential rates to finance production costs of export contracts, such as raw material cost, labour and overheads until delivery of the goods. Under the *advance payment refund guarantees programme*, KEXIM provides guarantees at preferential premium rates that a foreign buyer will be refunded any advance payments given to a Korean exporter, including any accrued interest on the advance payments, if the Korean exporter fails to perform his obligations under the relevant export contract.

The individual granting of pre-shipment loans and advance payment refund guarantees by KEXIM to Korean shipyards, including 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 provision by the Korean Government, through government-owned and government-controlled banks, of 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 provides tax concessions to Daewoo, the combined benefit of which is estimated at won 78 billion.

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(a) and 3.2 of the *SCM Agreement*, because, *inter alia*, the KEXIM Act, the advance payment refund guarantees and the pre-shipment loans provided by KEXIM and the corporate restructuring packages and tax concessions are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* and are *de jure* or *de facto* export contingent.
- Article 5(a) of the *SCM Agreement*, because, *inter alia*, the above-mentioned KEXIM subsidies, the corporate restructuring packages and tax concessions are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* and are causing injury to the Community industry.
- Article 5(c) of the *SCM Agreement*, because, *inter alia*, the above-mentioned KEXIM subsidies, 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 within the meaning of Articles 6.3 and 6.5 of the *SCM Agreement*.

The European Communities requests that a Panel be immediately established with standard terms of reference, in accordance with Articles 4.4 and 7.4 of the *SCM Agreement* and Article 7 of the DSU.

The European Communities asks that this request for the 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 24 June 2003.

The European Communities further requests that the DSB at that meeting initiate the procedures provided for in Annex V of the *SCM Agreement* pursuant to paragraph 2 of that Annex. In particular, the European Communities requests that the DSB designate a representative to serve the function of facilitating the information-gathering process of Annex V. The European Communities is prepared to propose names to the DSB and is consulting with Korea on this matter. The European

Communities also intends to put forward suggestions as to the information that should be sought under this procedure once the panel is established.

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