

ANNEX I

MEASURES OF SUPPORT INCONSISTENT WITH NORMAL COMPETITIVE CONDITIONS IN THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY

The following measures of support ⁽¹⁾ are inconsistent with normal competitive conditions when specifically provided ⁽²⁾, directly or indirectly, to the commercial shipbuilding and repair industry by a Party, including the constituent states or regional or local authorities of a Party or their agencies or instrumentalities, or through public resources or public intervention in any form:

A. EXPORT SUBSIDIES**1. Officially supported export credits ⁽³⁾**

Export credit facilities inconsistent with the provisions of the Understanding on Export Credits for Ships, as set out in C/WP6 (94) 6, and amendments thereto adopted in accordance with clause 14 of that Understanding.

2. Export subsidies

Subsidies contingent, in law or in fact ⁽⁴⁾, whether solely or as one of several other conditions, upon export performance, including those illustrated in accompanying note 8 to this Annex ⁽⁵⁾.

B. DOMESTIC SUPPORT ⁽⁶⁾**1. Direct domestic support**

The following measures of support are inconsistent when provided directly to the shipbuilder or ship repairer:

- (a) grants;
- (b) loans on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;
- (c) loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;
- (d) forgiveness of debts;
- (e) provision of equity capital inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Party;
- (f) provision of goods and services at less than the adequate remuneration;
- (g) tax policies and practices benefiting the shipbuilding and repair industry, such as tax credits;

⁽¹⁾ See accompanying note 1 to this Annex.

⁽²⁾ Specificity shall be determined in accordance with the principle set out in Article 2 of the GATT Agreement on Subsidies and Countervailing Measures.

⁽³⁾ See accompanying note 3 to this Annex.

⁽⁴⁾ This standard is met when the facts demonstrate that the granting of a subsidy, without having been legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

⁽⁵⁾ Measures referred to in the accompanying note 8 to this Annex as not constituting export subsidies shall not be prohibited under this Agreement.

⁽⁶⁾ See accompanying note 2 to this Annex.

- (h) other assistance except for: (i) assistance to cover the cost of measures for the exclusive benefit of workers who lose retirement benefits or who are made redundant or otherwise separated permanently from employment in the respective shipbuilding enterprise, when such assistance is related to the discontinuance or curtailment of shipyards, bankruptcy, or change of activities away from shipbuilding; and (ii) research and development assistance granted in accordance with the provisions in Section B.3.

2. Indirect domestic support ⁽¹⁾

(1) The following measures of support are inconsistent where the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer indirectly, through a shipowner or other third parties ⁽²⁾. Domestic build requirements, in law or in fact, are inconsistent.

- (a) grants;
- (b) loans and loan guarantees:
- (i) home credits, linked to the contract value of a new vessel, granted to a domestic shipowner or other domestic third parties placing orders for such vessel on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market, subject to paragraph 2 and paragraph 3 below;
 - (ii) other loans, on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;
 - (iii) loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;
- (c) forgiveness of debts;
- (d) tax policies and practices benefiting the shipbuilding and repair industry such as tax credits;
- (e) any assistance provided to suppliers of goods and services to the shipbuilding and repair industry if such assistance specifically provides benefits to that industry of a country; or
- (f) any indirect assistance that is similar to measures and practices (a) to (e) of this paragraph, except for research and development which is dealt with under Section 3 below.

(2) Paragraph 1 (b) (i) and (iii) shall not apply to loans and loan guarantees to domestic purchasers on the same terms and conditions as may be granted pursuant to the Understanding on Export Credit for Ships [C/WP6 (94) 6], including, *inter alia*, terms and conditions regarding interest rate, downpayment, grace period, duration, equal instalments and guarantee premiums. Eligibility for such loans and loan guarantees may be limited to purchase of ships from domestic shipyards.

(3) In accordance with terms and conditions to be agreed upon by the Council Working Party, paragraph 1 (b) (i) and (iii) above shall also not apply to loans and loan guarantees which:

- (a) provide more favourable terms and conditions for a domestic shipowner placing an order for a new vessel at a foreign shipyard than those placing an order at a domestic shipyard; or
- (b) make such schemes subject to an open international bidding procedure;
- (c) provide a total 'soft' or concessional element no greater than that of the loans permitted under paragraph 2 above.

3. Research and development ⁽³⁾

(1) Assistance provided by public authorities in the form of grants, preferential loans, preferential tax treatment or other means for research and development to the shipbuilding and ship repair industry, except for:

- (a) fundamental research as defined in accompanying note 5 (b);

⁽¹⁾ See accompanying note 3 to this Annex.

⁽²⁾ See accompanying note 4 to this Annex.

⁽³⁾ See accompanying note 5 to this Annex.

- (b) basic industrial research, where the aid intensity is limited to 50 per cent of the eligible costs;
- (c) applied research, where the aid intensity is limited to 35 per cent of the eligible costs;
- (d) development, where the aid intensity is limited to 25 per cent of the eligible costs;

(2) The maximum allowable aid intensity for research and development related to safety and the environment may be 25 percentage points higher than those percentages mentioned under (b), (c) and (d) above under the condition that the Parties Group has approved the project by consensus minus one, or more than 25 percentage points higher if the Parties Group has approved the project by consensus.

(3) The maximum allowable aid intensity for research and development carried out by small and medium-sized shipbuilding enterprises shall be 20 percentage points higher than those percentages mentioned at (b), (c) and (d) above. Small and medium-sized enterprises are those with less than 300 employees whose yearly sales figure does not exceed ECU 20 million and which are not more than 25 per cent owned by a large company.

(4) Information on the results of research and development is to be published promptly, at least annually.

C. OFFICIAL REGULATIONS AND PRACTICES

1. Administrative acts, guidance, or practices which authorize, encourage or require shipbuilders or ship repairers to enter into anti-competitive arrangements with competitors including but not limited to agreements to fix prices, rig bids, allocate markets, restrain production or sales, or engage in predatory practices ⁽¹⁾.

2. Domestic build or repair or domestic content requirements that discriminate in favour of the commercial shipbuilding and repair industry of the Party, or official regulations or practices that have similar effects including, *inter alia*, cargo reservation schemes directly linked with domestic shipbuilding or repair requirements ⁽²⁾.

⁽¹⁾ See accompanying note 6 to this Annex.

⁽²⁾ See accompanying note 7 to this Annex.

ACCOMPANYING NOTES TO ANNEX I

- Note 1** Disciplines in Annex I include measures of support provided to related entities, where a 'related entity' is any natural or juridical person (i) who owns or controls a shipbuilder; or (ii) is owned or controlled by a shipbuilder, directly or indirectly, whether through stock ownership or otherwise. A rebuttable presumption of control arises when a person or shipbuilder owns or controls an interest of 25 per cent in the other.
- Note 2** Section B does not apply to measures of support dealt with in Section A.
- Note 3** Item A (1) and B (2):
- Transparency and review of export and home credit schemes
- Within two years of entry into force of this Agreement, the Parties Group shall set up a Working Group to review the functioning of Annex I, sections A.1 and B.2.2.
- (i) examining the reports submitted each year on the value, tonnage, interest rates, etc. on all ships financed through officially supported export credits and home credit schemes; and
- (ii) evaluating the adequacy of the notification procedures provided for in Article 4.1.c. in terms of revealing measures or practices that are inconsistent with the Agreement.
- The Working Group is to examine whether the use of such measures has significantly undermined the balance of rights and obligations of this Agreement. If this is the case, the Working Group may recommend to the Parties Group appropriate amendments to the Agreement or the Understanding.
- Note 4** Item B (2):
- A measure of support is understood to be provided through a shipowner or other third parties where, e.g. the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer or where the work is required by law or encouraged in fact to be carried out at the yards of a specific country.
- Note 5** Item B (3):
- The following definitions apply to research and development:
- (a) eligible costs:
- (i) costs of instruments, materials, land and buildings to the extent that they are used for the specific research and development project;
- (ii) costs of researchers, technicians and other supporting staff to the extent that they are engaged in the specific research and development project;
- (iii) consultancy and equivalent services including bought in research, technical knowledge, patents, etc;
- (iv) overhead costs (infrastructure and support services) to the extent that they are related to the research and development project, on condition that they do not exceed 45 per cent of the total costs of the project for basic industrial research and 20 per cent for applied research and 10 per cent for development;
- (b) the term 'fundamental research' means research activities independently conducted by higher education or research establishments for the enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives;
- (c) basic industrial research is understood to mean original theoretical and experimental work whose objective is to achieve new and better understanding of the laws of science and engineering in general and as they might apply to an industrial sector or to the activities of a particular undertaking;

- (d) applied research is understood to mean investigation or experimental work on the basis of the results of the basic research with a view to facilitating the attainment of specific practical objectives such as the creation of new products, production processes and services. It normally ends with the creation of a first prototype and does not include efforts whose principal aim is the design, development or testing of specific items of services to be considered for sale;
- (e) development is understood to mean work based on the systematic use of scientific and technical knowledge in a design, development, testing or evaluation of a potential new product, production processes or service or of an improvement of an existing product or service to meet specific performance requirements and objectives. This stage will normally include pre-production models such as pilot and demonstration projects but does not include industrial application and commercial exploitation;
- (f) public assistance for research and development specifically provided to the shipbuilding and repair industry includes, but is not limited to, the following cases:
 - (i) research and development projects carried out by the shipbuilding or ship repair industry or research institutes controlled by or financed by this industry;
 - (ii) research and development projects carried out by the shipping industry or research institutes controlled by or financed by this industry when the project is directly related to shipbuilding or repair;
 - (iii) research and development projects carried out by universities, public or independent private research institutes and other industrial sectors in collaboration with the shipbuilding industry;
 - (iv) research and development projects carried out by universities, public and independent private research institutions and other industrial sectors, when at the time the project is carried out, it is reasonably anticipated that the results will be of substantial specific importance for the shipbuilding and ship repair industry.

Note 6 Item C (1):

The parties recognize that differences exist among its competition policies or laws and regulations. The provision of Item C (1) is not intended to unify competition policies among the Parties to this Agreement nor to compel a Party to amend its national competition laws and regulations.

Note 7 Item C (2):

While customs duties on newly built vessels or vessel repairs are included within the scope of Item C (2), the Parties do not intend thereby to characterize customs duties as obstacles to normal competitive conditions in the commercial shipbuilding industry.

Note 8 Item A (2):*Illustrative list of export subsidies*

- (a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.
- (b) Currency retention schemes or any similar practices which involve a bonus on exports.
- (c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provisions of like or directly competitive products or services for use in the production

of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available⁽¹⁾ on world markets to their exporters.

- (e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes⁽²⁾ or social welfare charges paid or payable by industrial or commercial enterprises⁽³⁾.
- (f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.
- (g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes⁽²⁾ in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.
- (h) The exemption, remission or deferral of prior stage cumulative indirect taxes⁽²⁾ on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste)⁽⁴⁾. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures.
- (i) The remission or drawback of import charges⁽²⁾ in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III of the Agreement on Subsidies and Countervailing Measures.
- (j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.
- (k) The payment by governments (or by institutions controlled by and/or acting under the authority of governments) of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.
- (l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT 1994.

Footnotes to the illustrative list of export subsidies

⁽¹⁾ The term 'commercially available' means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

⁽²⁾ For the purpose of this Agreement:

the term 'direct taxes' shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property,

the term 'import charges' shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports,

the term 'indirect taxes' shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges,

'prior stage' indirect taxes are those levied on goods or services used directly or indirectly in making the product,

'cumulative' indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production,

'remission' of taxes includes the refund or rebate of taxes,

'remission or drawback' includes the full or partial exemption or deferral of import charges.

- (³) The Parties recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Parties reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Party may draw the attention of another Party to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Parties shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Parties under this Agreement, including the right of consultation created in the preceding sentence. Paragraph (e) is not intended to limit a Party from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another Party.
- (⁴) Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).
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