SELECTED PAST APPROACHES TO ADDRESS MARKET DISTORTING POLICIES

Workshop on Factors Which Are Impacting Costs and Distorting the Shipbuilding Market
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1) BACKGROUND ON THE EXPLORATION OF SECTORAL TRADE RULES FOR THE SHIPBUILDING SECTOR
Background

• With the objective of establishing normal competitive conditions in the shipbuilding industry, the WP6 has tried several times to conclude a binding Shipbuilding Agreement.

• The SBA was signed in 1994 but was not ratified by the US and never entered into force,

• the negotiations in 2002 to 2005 were paused due to insurmountable disagreements.
• These past experiences help us to discuss possible effective remedies against market distorting factors in the shipbuilding sector.

• This presentation aims to provide the main findings of the past approaches to address market distorting policies.
2) 1994 AGREEMENT
The Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (1994 Agreement):

- aimed at establishing a level playing field in the shipbuilding industry in a legally binding manner,
- was signed in 1994 after five years of negotiation;
- has never entered into force as the U.S. was unable to ratify the Agreement.
1994 SBA

• Participants:
  – the Commission of the European Communities, Finland, Japan, Korea, Norway, Sweden and the United States

• Agreement covered about 80% of the world’s shipbuilding industry in terms of output at the time.
1994 Agreement included:

- a discipline for government support
- legal instrument to deal with injurious pricing actions of shipbuilding companies
- binding dispute settlement mechanism
Discipline for government support

• Prohibited Measures of Support
  – Ex) Export subsidies, Grants, Loans on terms and conditions more favourable than those obtainable on the market, Forgiveness of debts

• Permitted Measures of Support
  – Ex) Export Credits for Ships, Research and Development, Assistance to Workers, Restructuring Support
• Remedy
  – Collection of a charge equal to the benefit received plus interest there-upon,
  – or, if collection is not legally possible, taking of other appropriate action to remove or offset the benefits obtained.
  – Violations and amounts of a charge are to be determined by an independent international Panel.
Discipline for government support

- **Sanctions**
  - In case of failure to implement the Panel’s decision,
    - a) the shipbuilder which received the improper benefit may be made ineligible to be considered injured by injuriously priced vessels sold by other shipbuilders;
    - b) The adversely affected party may suspend equivalent concessions under the GATT.
A vessel is to be considered as being injuriously priced, if the export price of the vessel is less than the comparable price for the like vessel when sold to a buyer of the exporting country, in the ordinary course of trade. The injurious pricing code closely resembled the according regulation in GATT 1994.
Injurious Pricing Charges

• Remedy
  – According to the result of investigation, the shipbuilder has to pay Injurious Pricing Charges within 180 days to the Party conducting the investigation.

• Sanctions (Countermeasures)
  – The country of the investigating authorities may deny onloading and offloading privileges to vessels built by the shipbuilder in question.
3) 2002-2005 NEGOTIATIONS
Industry hearing in 2002 indicated that the 1994 Agreement would not be sufficient to address all relevant questions, making necessary a more comprehensive overhaul, which should also include major non-OECD shipbuilding economies.
In 2002, the OECD Council gave the Special Negotiating Group (SNG) a mandate for discussions aiming to negotiate a Shipbuilding Agreement until the end of 2005.

At the 12th session of the SNG, the Chairman reported that there was little likelihood of concluding an agreement and concluded to suspend the negotiation.
Issues discussed

• Coverage and entry into force
• Differential Treatment and Eligibility Criteria
• Subsidies
• Other prohibited support measures
• Notifications
• Dispute settlement and remedies
• Export and home credits
• Pricing
Main disagreement about WTO+ approach

Eventual split into three categories:

- Prohibited subsidies: Production of ships [shipyard operation, investment and modernisation]
- Actionable subsidies (similar to GATT 1994: injury, nullification and impairment, serious prejudice)
- Non-actionable subsidies: closure aid [R&D, privatisation]
Dispute settlement and remedies

• Own dispute settlement body within the agreement, until it was integrated into the WTO framework

• Remedies:
  – Prohibited subsidy: withdrawal
  – Actionable subsidy: withdrawal or removal of adverse effects
• EU’s proposal:
  – Remedies can be implemented based on the result of the investigation
  – Remedies: Injurious Pricing Charge
  – Countermeasures: Suspension of concessions or obligations (e.g. 1994 GATT) or prohibition of loading and offloading privileges to vessels built by the shipbuilder in question
• Japan’s proposal:
  – Contracting Party may request a review of the situation by the Parties’ Group
  – Contract prices which is significantly lower than the price trend calculated by the Secretariat based on regular reports from Contracting Parties are deemed market distorting prices
  – Remedies: Recommendations calling for the measures to be taken by the Contracting Party
4) POSSIBLE REMEDIES AGAINST MARKET DISTORTING FACTORS
Possible remedies

• The following remedies have been discussed in past negotiations.
  – Recommendations
  – Charge corresponding to the market distorting prices
  – Suspension of concessions or obligations (e.g. 1994 GATT)
  – Prohibition of loading and offloading privileges to vessels built by the shipbuilder in question

• Effectiveness, Stringency and Burden for governments and shipbuilders should be considered to adequately address market distorting factors.
Thank you.