



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.



Background

- 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



1994 Shipbuilding Agreement (SBA)

- 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 SBA

- 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



Discipline for government 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.



Injurious Pricing Charges

- 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



Background

- 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.



Background

- 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



Subsidies

- 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



Pricing

- 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



Pricing

- 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.