

THE AGREEMENT AT A GLANCE

THE MAIN PROVISIONS

The "Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry" aims at establishing, in a legally binding manner, a 'level playing field' in the commercial shipbuilding and repair industry through: (1) a discipline for government support, (2) a legal instrument to deal with injurious pricing actions of shipbuilding companies, and (3) binding dispute settlement before an independent international Panel.

A. GOVERNMENT SUPPORT

Direct support = Support provided directly to the shipbuilder or ship repairer.

Indirect support = Support where the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer, through a shipowner or other third parties.

I. Prohibited Measures of Support

1. The following measures of support, when specifically provided, directly or indirectly, to the commercial shipbuilding and repair industry are prohibited and have to be eliminated at the time the Agreement enters into force (Entry into force scheduled for 15 July 1996)¹:

- a) Export subsidies;
- b) Grants;
- c) Loans on terms and conditions more favourable than those obtainable on the market;
- d) Loan guarantees that support loans on terms and conditions more favourable than those obtainable absent the government guarantee;
- e) Forgiveness of debts;
- f) Provision of equity capital inconsistent with usual investment practice;
- g) Provision of goods and services at less than the adequate remuneration;
- h) Tax policies and practices benefiting the shipbuilding and repair industry;
- i) Assistance to suppliers of goods and services to the shipbuilding and repair industry if such assistance specifically provides benefits to the shipbuilding industry;
- j) Official regulations and practices, incl. domestic build or repair or domestic content requirements that discriminate in favour of the domestic shipbuilding and repair industry, or regulations having similar effects [see, however, Section V. "Treatment of the Jones Act", hereafter].
- k) Other assistance [see, however, Section II: "Permitted Measures of Support", hereafter].

¹ As from the signing of the Final Act of the Agreement, i.e. 21 December 1994, until entry into force of the Agreement, the subsidy level of the terms of existing measures of support shall not be increased, and no new measures of support shall be introduced which would increase the subsidy level. Further, no provision, or undertaking for provision, of support will be permitted with regard to any vessel delivered after 31 December 1998.

II. Permitted Measures of Support

1. Export Credits for Ships

1. Export credit facilities consistent with the provisions of the (revised) Understanding on Export Credits for Ships [i.e. interest at CIRR; 12 year duration of credit; 20 per cent downpayment].
2. Aid credits for commercially viable ships are not permitted.

2. Loans and Loan Guarantees to Domestic Purchasers of New Ships

1. Loans and loan guarantees on the same terms and conditions as may be granted pursuant to the Understanding on Export Credit for Ships. Eligibility for such loans may be limited to purchase of ships from domestic shipyards.

3. Research and Development

1. The following aid intensities are permitted:

- a) Fundamental research: 100 per cent of eligible costs;
- b) Basic industrial research: 50 per cent of the eligible costs;
- c) Applied research: 35 per cent of the eligible costs;
- d) Development: 25 per cent of the eligible costs.

2. Under specific conditions, the maximum allowable aid intensity for research and development related to safety and the environment may be 25 percentage points, or more, higher than the percentages mentioned under b., c. and d. above.

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 the percentages mentioned under b., c. and d. above.

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

5. Detailed provisions define R&D activities (fundamental research, basic industrial research, applied research, and development) as well as the scope of the costs eligible for assistance.

4. Assistance to Workers

1. 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.

5. Restructuring Support

1. Restructuring support may continue to be provided but must be terminated as announced at the conclusion of the Agreement; it concerns: (a) Korea's ongoing programme for Daewoo and KSEC; and (b) restructuring programmes in Belgium, Portugal and Spain.

III. Remedy

1. Collection by the government concerned, from the shipbuilder which has received support prohibited under the Agreement, 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.
2. Violations and amounts are to be determined by an independent international Panel with final and binding effect.²

IV. Sanctions

1. In case of failure to implement the Panel's decision, i.e. non-payment by the shipbuilder of the charge (or non-implementation of agreed alternative measures) or of failure by the government to eliminate an inconsistent measure of support, the following actions may be taken:
 - a) At the decision of the Parties Group, 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(ies) may suspend equivalent concessions under the GATT, with preference to be given to those concessions that are related to the product or products associated with the violation.

V. Treatment of the "Jones Act"

1. Notwithstanding the general prohibition of official regulations and practices which discriminate in favour of the domestic shipbuilding and repair industry, the United States reserves the right to retain the domestic build requirements incorporated in a number of its public laws ("Jones Act") [A detailed list of these laws is contained in the Agreement], with the following proviso:
 - a) The United States estimates that the average annual deliveries for vessels constructed under these laws will not exceed 200,000 gt;
 - b) Until three years after entry into force of the Agreement, if the Parties Group determines that actual or expected deliveries in any year after entry into force of the Agreement exceeds 200,000 gt and that such deliveries significantly undermine the balance of rights and obligations under the Agreement, the Parties Group may authorise one or more affected parties to take responsive measures (e.g. impose a charge or restriction on bids or contracts) with respect to shipyards that in the year in which the threshold is exceeded benefited from the construction of such vessels;
 - c) After three years following entry into force, the same provisions as under b. above apply, but there is no longer the limit of 200,000 gt annually.

² Exceptionally, export credit disputes are to be dealt with under the methods of the Export Credit Understanding which are not binding. If, however, any such dispute is not satisfactorily resolved through the full use of those methods, review of the matter by the Parties Group may be sought.

2. The United States will co-operate in an annual review by the Parties Group and ensure full transparency regarding the construction of such vessels, and provide information on new orders and ratified contracts. Such information will be provided no less than annually, or more frequently when requested or appropriate. The Parties Group will carefully monitor the information provided.

3. If the United States believes that the level, kind or duration of the measures taken by a Party or Parties under item 1.b. and 1.c. above result in a loss of sales opportunities for its shipbuilders greater than that caused by the delivery of 'Jones Act' vessels, it may invoke dispute panel proceedings under the Agreement.

4. As part of its first triennial review, the Parties Group shall examine whether the conditions which created the need for the particular provisions for the 'Jones Act' still prevail and whether the measures mentioned under item 1.b. and 1.c. above are adequate to maintain the balance of rights and obligations under the Agreement. On the basis of that review, the Parties Group may take appropriate decisions.

B. INJURIOUS PRICING CHARGES

I. Purpose of Injurious Pricing Charges

1. Injurious pricing, by which vessels of one Party are sold at less than their normal value to a national in another Party is to be condemned if it causes or threatens material injury to an established industry in the territory of a Party or materially retards the establishment of a domestic industry. In order to remedy or prevent injurious pricing, an injurious pricing charge may be imposed on the vessel.

II. Injurious Pricing Investigations

1. Initiation of Investigation

1. An injurious pricing investigation will, generally, be initiated upon a written application by or on behalf of the domestic industry, filed within specific deadlines, and not later than six months from the delivery of the vessel in question.

2. The application shall include evidence of the essential elements, e.g. the existence of the domestic "buyer", the injury, the causal link between the injuriously priced sale and the alleged injury; simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient. The application shall contain such information as is reasonably available on: a complete description of the allegedly injuriously priced vessel, prices at which such vessels are sold in the domestic market of the country of origin or export, the effect of the allegedly injuriously priced sale on prices of the like vessel in the domestic market and the consequent impact of the sale on the domestic industry, and others.

3. The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

2. Determination of Injurious Pricing

1. A vessel is to be considered as being injuriously priced if the export price of the vessel is less than the comparable price, in the ordinary course of trade, for the like vessel³ when sold to a buyer of the exporting country.

³ "Like vessel" means a vessel of the same type, purpose and approximate size as the vessel under consideration and possessing characteristics closely resembling those of the vessel under consideration.

2. When there are no sales of the like vessel in the ordinary course of trade in the domestic market of the exporting country, the margin of injurious pricing shall be determined:

- a) by comparison with a comparable price of the like vessel when exported to an appropriate third country; or
- b) if sales to a third country do not exist, by comparison with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

3. Sales of the like vessel at prices below per unit costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time [five years].

3. Determination of Injury

1. Determination of injury shall be based on positive evidence and involve an objective examination of both (a) the effect of the sale at less than normal value on prices in the domestic market for like vessels, and (b) the consequent impact of that sale on domestic producers of like vessels. With regard to the effect on prices, the investigating authorities shall consider whether there has been a significant price undercutting, or whether the effect of such sale is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

2. The examination of the impact of the sale on the domestic industry shall include an evaluation of all relevant economic factors having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of injurious pricing; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3. It must be demonstrated that the sale at less than normal value is causing or has caused injury within the meaning of the Injurious Pricing Code.

4. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

4. Definition of 'Domestic Industry'

1. 'Domestic industry' means the domestic producers as a whole of the like vessels or those of them whose collective capability to produce a like vessel constitutes a major proportion of the total domestic capability to produce a like vessel.

III. Remedy (= Imposition of an Injurious Pricing Charge)

(To be determined by the investigating authorities)

1. The amount of the injurious pricing charge shall not exceed the margin of injurious pricing. It is desirable that the charge be less than the margin, if such lesser charge would be adequate to remove the injury to the domestic industry.

2. If an injurious pricing charge is warranted, the shipbuilder has to pay that charge within 180 days to the Party conducting the investigation. The shipbuilder shall be given a reasonably extended period where payment in 180 days would render it insolvent. The shipbuilder may, as an alternative, void the sale on which the charge was based or comply with an alternative equivalent remedy accepted by the investigating authority.

IV. Sanctions (Countermeasures)

1. In the event the shipbuilder does not pay the injurious pricing charge, void the sale of the vessel, or comply with another lawful alternative equivalent remedy, the country of the investigating authorities may deny onloading and offloading privileges to vessels built by the shipbuilder in question. This countermeasure may initially be imposed, subject to thirty days prior public notice, for a maximum period of 4 years after delivery of vessels contracted for during a maximum period of 4 years from the end of the public notice period.

2. A Panel can review the countermeasure and limit or extend it.

3. A list of the vessels that are subject to countermeasures or remedial action will be maintained, updated periodically and circulated by the OECD Secretariat.