

Korea – Measures Affecting Trade in Commercial Vessels
(WT/DS273)

**Answers from the United States to the Question from the Panel
Posed to the Third Parties on 21 June 2004**

July 2, 2004

Q: The parties disagree on whether or not APRGs and PSLs constitute export credit guarantees and export credits respectively. The EC submits that they do not, whereas Korea asserts that they do. Would your export credit agency treat APRGs as export credit guarantees, and PSLs as export credits? Please explain and provide relevant documentation.

1. The United States thanks the Panel for the opportunity to reply to this question. As background for its reply, the United States notes that the Export - Import Bank of the United States (Ex-Im) is the principal U.S. export credit agency.

Advance Payment Refund Guarantees (APRGs)

2. It is the understanding of the United States that under the APRG program, the Korean Export-Import Bank (KEXIM) issues guarantees to foreign buyers that Korean exporters will refund any cash down payments made by the buyers in the event that the sales transaction is terminated prior to export. As explained in paragraph 4 of the Oral Statement of the United States (March 9, 2004), while the APRG is a guarantee issued in connection with a proposed export (and which may, therefore, be export-contingent for purposes of Article 3.1(a) of the *Agreement on Subsidies and Countervailing Measures*), it is not a guarantee of an export credit. An export credit typically consists of a loan to the foreign buyer. If the loan is extended by the seller or by a private bank, the export credit agency may guarantee the lender against a default by the buyer regarding repayment. Such a transaction would be an export credit guarantee.

3. Section 9 b) of the OECD Arrangement on Officially Supported Export Credits (the *Arrangement*) provides that “Official support for ... down payments shall only take the form of insurance or guarantee against the usual pre-credit risks.”¹ Ex-Im does not consider the APRG to fall within this definition. Ex-Im’s practice with respect to pre-credit risks is to provide cover to the insured party (U.S. exporter or lender acting on behalf of the U.S. exporter) against the risks of contract cancellation by the foreign buyer, not for the foreign buyer. Moreover, Ex-Im is unaware of any other export credit agency that offers the type of cover to the foreign buyer that Korea provides under the APRG program.

¹ Arrangement on Officially Supported Export Credits, TD/P(2004)12, 11 June 2004.

Pre-Shipment Loans (PSLs)

4. It is the understanding of the United States that under the PSL program, KEXIM provides pre-shipment loans to Korean exporters. Pre-shipment loans are not export credits. Export credits typically are loans to foreign buyers. Although the OECD *Arrangement* does not define “export credits”, Section 5 (Scope of Application) of the *Arrangement* states that:

The Arrangement shall apply to all official support provided by or on behalf of a government for export of goods and/or services, including financial leases, which have a repayment term of two years or more.

a) Official support may be provided in different forms:

1) Export credit guarantee or insurance (pure cover),

2) Official financing support:

– direct credit/financing or refinancing, or

– interest rate support.

3) Any combination of the above.

5. The *Arrangement* definition of “official support” is limited to support provided “for export” of goods and/or services. This definition would preclude pre-export financing to the *exporter*, such as the PSL program. This interpretation is reinforced by language on the OECD’s website, “Export credits, about”, which states as follows:

Governments provide official export credits through Export Credit Agencies (ECAs) in support of national exporters competing for overseas sales. ECAs provide credits to *foreign buyers* either directly or via private financial institutions benefiting from their insurance or guarantee cover. ECAs can be government institutions or private companies operating on behalf of the government.²

While the PSL program involves the extension of credits to Korean exporters that may be export contingent for purposes of the *Agreement on Subsidies and Countervailing Measures*, these credits are not export credits within the meaning of the OECD *Arrangement*.

6. U.S. Ex-Im Bank has a Working Capital Guarantee Program, under which Ex-Im offers a guarantee to the commercial lender providing export-related working capital to the U.S. exporter.

² http://www.oecd.org/about/0,2337,en_2649_34169_1_1_1_1_37431,00.html. Visited June 30, 2004 (emphasis added).

If the U.S. exporter defaults on its commercial bank loan, Ex-Im makes payment on the guarantee, and seeks collection against the U.S. exporter. Because the Ex-Im guarantee covers the risk of the U.S. exporter, rather than the foreign buyer, Ex-Im does not consider this program to be an export credit within the meaning of the OECD *Arrangement*.