

Korea - Measures Affecting Trade in Commercial Vessels

WT/DS273

ORAL STATEMENT OF THE UNITED STATES OF AMERICA

March 9, 2004

Introduction

1. Mr. Chairman, members of the Panel, it is my privilege to appear before you to present the views of the United States in this dispute. Today, I intend to discuss certain issues that were not addressed in the U.S. written submission. These issues are KEXIM financing, and changes in ownership of companies.

KEXIM Financing

2. Turning first to KEXIM financing, the United States disagrees with Korea's assertion that KEXIM's Advance Payment Refund Guarantees (APRG) and pre-shipment loans are protected by items (j) and (k), respectively, of Annex I to the SCM Agreement.¹

APRG

3. With respect to the APRG, item (j) of Annex I covers insurance or guarantee programs pertaining to the following: (1) export credits; (2) increases in the cost of exported products; and (3) exchange risks. The APRG does not fall within any of these three categories of programs.

4. The APRG does not involve the guarantee of an export credit. Export credit guarantee programs typically consist of a contingent obligation by an export credit agency to pay a private lender in the event of a default by the foreign buyer. By contrast, the APRG does not refer to the

¹ Korea Submission, Sections V. 5 and V.6.

extension of credit. Instead, the APRG consists of a guarantee of the obligation of the exporter to refund the foreign buyer's cash down payment in the event that the sales transaction is terminated. The cash down payment is the element of an export sales transaction that does *not* represent the extension of credit.

5. In addition, the APRG does not address increases in the price of the exported product or foreign exchange risk. Instead, the APRG addresses only the obligation on the part of the exporter to refund the down payment in the event that the sales transaction is terminated. However, there is no suggestion that the guarantee applies only to export sales contracts that were terminated because of the increased cost of the exported product or because of exchange rate fluctuations.

Pre-shipment Loans

6. Turning to the KEXIM pre-shipment loans, the EC asserts that they are available to Korean exporters, manufacturers and raw materials providers.² However, they do not appear to fall within the scope of item (k), because they are neither "export credits" nor "the payment . . . of all or part of the costs incurred by exporters or financial institutions in obtaining credits."

7. First, these loans do not come within the description of "export credits" on the OECD website cited by Korea, which provides that "an export credit arises whenever a foreign buyer of exported goods and services is allowed to *defer payment*."³ The OECD description mentions two types of export credits: "supplier credits" and "buyer credits." "Supplier credits" are extended by an exporter directly to an overseas buyer. "Buyer credits" are extended by an

² EC Submission, para. 155.

³ Korea Submission, para. 266 (emphasis added).

exporter's bank or another financial institution as loans to the buyer (or the buyer's bank). Both types of credits are extended to the buyer or its bank. By contrast, the KEXIM pre-shipment loans are extended not to the buyer, but to the exporter. While such credits may be export-contingent, in that they would not be made by KEXIM but for the contemplated export, they are not export credits in that they do not finance the actual export.

8. Second, the pre-shipment loans do not appear to involve "the payment . . . of all or part of the costs incurred by exporters or financial institutions in obtaining credits." While the loans are made to exporters, there is no indication that they are at all related to "costs incurred . . . in obtaining credits."

Existence of a "Benefit"

9. Before leaving the topic of KEXIM financing, the United States would like to comment on one point made by Norway in its third-party submission. As the United States understands it, Norway argues that Article 26 of the KEXIM Act allows KEXIM to sometimes lend below its cost where concerns of "international competitiveness" make it necessary to do so. According to Norway, this proves that KEXIM financing allows for the conferral of a benefit on a *de facto* basis.⁴ The implication in this statement, however, is that KEXIM financing does not confer a benefit in the non-exceptional situation where Article 26 requires KEXIM to cover its operating expenses.

10. Assuming we have understood Norway's argument correctly, then the United States must disagree with the standard that Norway suggests. The Appellate Body has indicated previously

⁴ Norway Third-Party Submission, paras. 18-19.

that “the marketplace provides an appropriate basis for comparison in determining whether a ‘benefit’ has been conferred”⁵ Actors in the marketplace seek to earn a profit and not merely cover their costs. Therefore, even in non-exceptional situations, KEXIM financing confers a benefit because, as a general requirement, Article 26 requires KEXIM to lend at cost.

Changes in Ownership

11. We now turn briefly to the second topic that we wish to discuss in this afternoon’s statement. At various places in its first submission, Korea argues that the EC has failed to take into account the effects of changes in ownership on the existence and amount of subsidization.⁶ With respect to this argument, the United States simply notes that the Appellate Body has found that under certain circumstances, the privatization of a government-owned or -controlled company may have an effect on certain types of subsidy benefits that the company had received prior to its privatization.⁷ According to the Appellate Body, the precise effect depends upon the nature of the privatization transaction, and may include the complete extinguishment of prior subsidies. However, an analysis of the facts and circumstances of the privatization transaction is critical in determining whether certain subsidy benefits have, in fact, been extinguished.

Conclusion

12. Mr. Chairman, that concludes the third-party statement of the United States. Thank you for your attention.

⁵ *Canada - Measures Affecting the Export of Civilian Aircraft*, WT/DS70/AB/R, Report of the Appellate Body adopted 20 August 1999, para. 157.

⁶ See Korea Submission, paras. 27-30 (Introduction), 374-375, 441 and 449.

⁷ See *United States - Countervailing Measures Concerning Certain Products from the European Communities*, WT/DS212/AB/R, Report of the Appellate Body adopted 8 January 2003.