COMMISSION OF THE EUROPEAN COMMUNITIES

COM(94) 460 final

Brussels, 03.11.1994

94/ 0246(ACC)

Communication from the Commission to the Council concerning an "Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry" within the framework of the OECD

Proposal for a

COUNCIL DECISION

on the conclusion of the Agreement respecting normal competitive conditions in the shipbuilding and repair industry

(presented by the Commission)

Communication from the Commission to the Council concerning an "Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry" within the framework of the OECD

On 20 July 1990 the Council gave the Commission a mandate to negotiate an international agreement seeking to re-establish normal competitive conditions in the shipbuilding sector. The objective of the Community, as is clear from the negotiating directives, was to negotiate a balanced agreement which aims to eliminate injurious competition, to introduce an international discipline concerning aids and to provide the means to fight against the unfair pricing practices of our principal competitors, namely Japan and Korea.

BACKGROUND

Negotiations were initiated by the United States in exchange for the withdrawal of a complaint by American shipbuilders under Section 301 against Community and Asian shipyards. The slowness of the discussions, which reached the conclusion of the negotiations on 17 July 1994 after almost five years of negotiations, can be explained in large measure by the problems of drawing up an "anti-dumping" instrument suited to the specific features of the sector, namely the injurious price instrument, and also by the resistance of Japan to the elimination of its system of home credits. On these two questions, which constituted a major stake in the negotiations, the Community will have obtained full satisfaction.

THE SUBSTANCE OF THE AGREEMENT

The agreement will enter into force on 1 January 1996 following ratification by all the parties[1]. The agreement can be reviewed 3 years after it has come into force.

The text of the agreement is in two parts : the first constitutes the main text of the Agreement with its annexes, the other is the revised text of the Understanding on export credits for ships which predated the Agreement.

The Agreement provides the list of all forms of support in the sector which are forbidden. It introduces the disciplines to apply in respect of direct and indirect aids including those in the field of export credits. However fishing vessels for national (or Community) fleets and military vessels are excluded from the scope of these disciplines. Finally the Agreement sets up, for the first time, an instrument to fight against the practices of injurious pricing.

INJURIOUS PRICING INSTRUMENT

This is an "antidumping" instrument suited to the specific feanres of transactions concerning ships. Until now the provisions of the antidumping code of the GATT did not apply to this area since ships are in real terms neither imported nor exported. The principle of the instrument is based on the fact that the shipbuilder guilty of the practice of injurious pricing will have to pay a charge equivalent to the dumping margin to the authorities of the injured party. Where there is a refusal to pay under this procedure

[1] United States of America, Japan, Korea, Sweden, Norway, Finland and European Community.

vessels contracted in the future from the guilty shipbuilder are liable to a prohibition on loading and unloading goods in the ports of the investigating party following a published period of notice. This instrument has, from the start, been one of the major objectives of the Community.

The Commission will make a proposal to the Council for a regulation to implement the injurious pricing instrument at Community level to ensure in particular that Community shipbuilders are able to have full and effective recourse to its provisions.

DISCIPLINES CONCERNING AIDS

All direct aids for the construction of vessels must be eliminated by 1 January 1996. Nonetheless, certain restructuring programmes, particularly those in the Community (Belgium, Spain, Portugal) can continue to their conclusion as a result of authorisation in the Agreement.

Aids to research are authorised within the limit of certain ceilings. Social aids (closures, redundancies) are also allowed. Indirect aids (aids to ship owners benefiting shipbuilding) are in principle forbidden. However those systems of home credits which are in conformity with the conditions which regulate the understanding on export credits for ships (period of repayment, commercial interest, loan guarantees, etc.) are permitted. This means that domestic transactions which are financed according to the same terms as sales for exports are authorised. The discriminatory systems of Japanese Home Credit Schemes must by the same token be abandoned in order to be in conformity with the provisions of the Agreement. This was one essential element of the mandate.

EXPORT CREDITS

The text of the Understanding on export credits for ships has been revised to take account of the new conditions of the market and the results of the Helsinki package which permitted amendments to the general understanding on export credits. In practical terms this means, inter alia, the introduction of commercial interest reference rates (CIRR) and the extension of the period of repayment of credits from 8.5 to 12 years. The dispute settlements procedures remain, in conformity with the position of the Community, non binding. The classic procedures of consultation and notification will prevail.

THE JONES ACT (US COASTWISE LAWS)

The scope of this protectionist American legislation (which reserves domestic traffic to ships built in the USA) has been severely restricted. The permitted volume of construction has been limited to 200,000 gross tonnes/year during the first three years and countermeasures are foreseen where this is exceeded during the first three years or if this legislation is maintained beyond 1 January 1999, independently of the amount of production.

In this context it is important to bear in mind that the US share of the world market is in the order of 1/1.5% : see Table 1 for details of respective production and employment in the sector.

ASSESSMENT

The results of this Agreement must be weighed up in the light of the lack of equilibrium which has characterised this sector for numerous years : massive state subsidies, or other indirect forms of support, the practice of dumping not allowing profitable prices for the trade, structural over capacities of production. The Agreement will permit the improvement of the conditions in which the sector functions by putting an end to distortions of competition. It will avoid a global subsidies war affecting the whole sector. As far as the USA are concerned certain current drafts laws presented to the US Congress are clearly rejected by the Administration and are now blocked because they have been judged incompatible with the provisions of the Agreement. The adoption of the Agreement will also avoid a potential commercial conflict which the US would not have hesitated to start with their aggressive legislative bills, such as the Gibbons Bill (which would close American ports both to subsidied ships and to ships belonging to citizens of countries which subsidise their shipbuilding industry). The rapid signature of the Agreement by committing the United States, will avoid any revival of these drafts.

In addition, a declaration concerning increase of capacities will be annexed to the Final Act of the Agreement. Although not part of the Agreement this declaration will form a political commitment of the governments to curb plans to increase shipbuilding capacities, that do not take into account the realities of the market. In this respect the Commission exert the necessary pressure both on a bilateral and on a multilateral level in order to find a solution to this problem.

By these means the objectives of the Community as set out in the mandate of 1990 have been achieved : the creation of an appropriate "antidumping" instrument, the removal of aids by all the contracting parties, equal treatment of home and export credits, link between the Arrangements on export credits (general Arrangement and Understanding on export credits for ships).

The whole shipbuilding industry (both shipbuilders and ship owners) has supported the efforts of the Commission negotiators to reach a balanced agreement which corresponds with their wishes.

PROCEDURE FOR SIGNATURE AND CONCLUSION

The text, which was agreed ad referendum on 17 July, was revised by legal linguists from 19 to 23 September at the OECD. The final version of the Agreement is that submitted to you for its final approval and its authorisation for its signature and for the designation of the person empowered to deposit the Community's instrument of approval in order to bind the Community. Parties to the agreement accept the Understanding on Exports Credits and so the Understanding does not require separate signature and approval by the Community.

The Agreement provides that it shall be open for signature and that it shall be subject to ratification, acceptance or approval which signatories shall seek to accomplish by 1 January 1996. Furthermore it provides that the agreement shall enter into force on January 1996 subject to the deposit of instruments of ratification, acceptance or approval, by all parties to the negotiations.

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Given that the General Affairs Council, in its two last meetings, requested the Commission to forward the final text for signature as soon as possible to the Council; given that the very strong support of the Member States, in the Council, for this Agreement and finally given the risk that the United States, Japan and Korea might try to reopen the negotiations or to have recourse to the grant of new subsidies at the last minute, it is in the Community's interest to do all it can to have the Agreement concluded by the interested countries as soon as possible, preferably on 6 December. For 1995 the rules of the 7th directive on aids to shipbuilding will be maintained, in conformity with the standstill provisions of the Agreement. The proposal for extension, approved by the Commission, has been submitted to Council for its approval.

The Commission proposes that the Council should approve the Agreement and authorise its signature in order to bind the Community by adopting the draft decision annexed hereto.

EXPLANATORY MEMORANDUM

1. Pursuant to the negotiating directives[1] adopted by the Council on 20 July 1990, the Commission has negotiated an international agreement seeking to restore normal competitive conditions in the shipbuilding and repair industry, on the basis of the negotiating directives set out in Annex I of the decision and in consultation with the special Article 113 Committee.

2. Following five years of negotiations the Commission concluded with its partners[2] an agreement ad referendum on 17 July 1994 in Paris within the framework of the OECD.

3. The implementation of the Agreement will require the introduction of an implementing regulation to apply the injurious pricing code together with a Community framework for those aids which will remain permitted by the Agreement.

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[1] N° 8002/90 - GATT 140 - CCG 36 - ECO 146.

[2] United States of America, Japan, Korea, Finland, Norway, Sweden.

COUNCIL

Council Decision
of ... 1994
on the conclusion of the Agreement respecting normal competitive conditions in the shipbuilding and repair industry

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the treaty establishing the European Community, and in particular Article 113 thereof together with the first sentence of Article 228 (2),

Having regard to the negotiating directives given to the Commission within the framework of the mandate of 20 July 1990,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the Commission has negotiated on behalf of the Community, an Agreement respecting normal competitive conditions in the commercial shipbuilding and repair industry, together with an Understanding on export credits for ships; whereas this Agreement should be approved,

HAS DECIDED AS FOLLOWS

Article 1

The Agreement between the European Community and certain third countries on the normal competitive conditions in the shipbuilding and ship repair industry is hereby approved on behalf of the Community.

The text of the Agreement is attached to this decision.

Article 2

The President of the Council is hereby authorised to designate the person empowered to sign the Agreement referred to in Article 1 in order to bind the Community, and to designate the person empowered to deposit the instrument of approval in accordance with Article 12 (3) of the Agreement.

Done at Brussels, ...1994

For the Council
The President

Table 1- Production- ships completed

	Figures at the end of the year			Market shares	
	1976	1981	1985	1989	1993
Belgium	0.6%	0.7%	0.9%	0.4%	0.0%
Denmark	2.5%	2.5%	3.1%	2.9%	2.9%
France	3.5%	3.2%	1.2%	2.0%	0.5%
Germany(1)	8.6%	9.2%	8.1%	8.6%	6.9%
Greece	NA	0.0%	0.3%	0.1%	0.1%
Ireland	0.1%	0.1%	0.0%	0.0%	0.0%
Italy	1.6%	2.6%	0.9%	2.9%	4.0%
Netherlands	4.3%	2.5%	2.2%	1.7%	1.8%
Portugal	0.2%	0.0%	0.3%	0.5%	0.5%
Spain	3.3%	4.0%	2.8%	3.1%	2.9%
United Kingdom	4.5%	1.8%	1.2%	1.6%	1.2%
Total EU	26.8%	26.6%	20.9%	23.7%	20.9%
Other awes					
Finland	NA	2.9%	2.0%	3.3%	1.5%
Norway	NA	2.5%	1.6%	0.8%	1.5%
Sweden	NA	3.0%	0.9%	0.3%	0.2%
Total awes	37.5%	35.1%	25.3%	28.1%	24.3%
Japan	37.8%	40.3%	45.9%	37.1%	39.2%
Korea	1.6%	3.7%	11.5%	14.1%	14.8%
Other	NA	8.6%	7.6%	10.3%	10.2%
Rest of the World	23.1%	12.3%	9.6%	10.4%	11.4%
-of which: USA	-	-	1.0%	0.1%	1.3%(2)
TOTAL WORLD	100.0%	100.0%	100.0%	100.0%	100.0%

Source: "World shipbuilding Databank" based on data supplied by Lloyd's Maritime Information Services

(1): From 1980 on data includes production from Ex-DRA yards

(2): USA have no export market

Table 2- Employment in the construction of new vessels in the European Union

Number of employees

	1975	1981	1985	1989	1993	% of industrial employment(a)
Belgium	7467	6347	3923	2307	2391	0.2%
Denmark	16630	11350	10200	7900	7300	1.1%
France	32500	22200	15053	6800	5880	0.1%
Germany	46839	28521	22260	14732	24143(b)	0.2%
Greece	2316	3393	2000	1535	0	-
Ireland	869	762	0	0	0	-
Italy	2600	16500	12000	9675	7100	0.1%
Netherlands	22662	13100	6238	3500	4000	0.3%
Portugal	NA	NA	5370	4245	3150	0.3%
Spain	NA	NA	18000	12550	10085	0.3%
United Kingdom	54550	25345	14200	6494	4666	0.1%
Total EU	**208833**	**125518**	**109242**	**69738**	**68714**	**0.2%**

Table compiled from national sources
(a): data 1992
(b): including jobs in Ex-GDR's yards

FINANCIAL STATEMENT

1. Budget heading involved :
   To be proposed for the 1996 PBA procedure
   Creation of chapter B7-85 : External measure of common commercial policy.
   Budgetary line B 7- 85-00 : Agreement on Shipbuilding.

2. Legal base :
   Article 113 EC and 228 EU.

3. **General purpose :**
   Functioning of the Agreement respecting normal conditions in the shipbuilding sector.

4. **Specific purpose :**
   Participation in the draft budget for the functioning of the parties group and of the secretariat of the group together with the special groups set up in place to adjudicate disputes which arise as a result of the Agreement.

5. Method of calculation :
   The division of expenses will be established on a prorata basis depending on the number of parties and in the case of disputes between the two or more parties concerned. The provisional amounts will be known when the 1995 budget of the OECD will be decided at the end of 1994.
   Estimated costs for the EC : 275,000 ECUS

AGREEMENT RESPECTING NORMAL COMPETITIVE CONDITIONS IN THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY

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AGREEMENT RESPECTING NORMAL COMPETITIVE CONDITIONS IN THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY

P R E A M B L E

The Parties to this Agreement

Conscious of the importance to international and national commerce of a healthy commercial shipbuilding and repair industry;

Having regard to the aims of the Organisation for Economic Co-operation and Development and considering the important role of its Council Working Party on Shipbuilding in promoting normal competitive conditions in the shipbuilding industry and noting in particular its work concerning the "Revised General Arrangement for the Progressive Removal of Obstacles to Normal Competitive Conditions in the Shipbuilding Industry" (RGA), the "Understanding on Export Credits for Ships" and the "Revised Guidelines for Government Policies in the Shipbuilding Industry";

Taking into account principles governing international trade as set forth in the General Agreement on Tariffs and Trade 1994 (hereafter referred to as GATT 1994);

Noting the severe structural disequilibrium and market trends which depressed for many years the world shipbuilding and repair industry, the increased competition, the deteriorating price levels and the implementation of measures of public assistance;

Desiring to improve transparency regarding obstacles to normal competitive conditions in the commercial shipbuilding and repair industry and to have the Organisation for Economic Co-operation and Development reinforce its collection of data about and monitoring of the market situation, prices, and policies in that industry;

Recognising the need to intensify their commitment to reach normal competitive conditions and to provide for an effective means of protection against sales of ships under their normal value which cause injury;

Recognising also that special characteristics of ship purchase transactions have made it impractical to apply countervailing and anti-dumping duties, as provided under Article VI of GATT 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on the Implementation of Article VI of GATT 1994;

Recognising further the need to provide for a speedy, effective and equitable resolution of disputes about these matters;

Hereby agree as follows:

Article 1

Restoration and Maintenance
of Normal Competitive Conditions

1. The Parties shall, in accordance with the specific provisions set out in Annex II, eliminate all existing measures or practices which are inconsistent with normal competitive conditions in the commercial shipbuilding and repair industry pursuant to Annex I (hereafter referred to as "measures of support").

2. The Parties shall not introduce any new measures of support.

3. The Parties recognise that the sale of commercial ships at less than their normal value is to be condemned if it causes or threatens material injury to an established shipbuilding and repair industry in the territory of another Party, or materially retards the establishment of a domestic shipbuilding and repair industry. In order to remedy or prevent such injurious pricing, Annex III is applicable.

Article 2

Scope of the Agreement

1. This Agreement covers the construction and repair of any self-propelled seagoing vessels of 100 gross tons and above used for transportation of goods or persons or for performance of a specialised service (for example, ice breakers and dredgers) and tugs of 365 kW and over.

2. This Agreement excludes:

a. military vessels and modifications made or features added to other vessels exclusively for military purposes. This exclusion is subject to the requirement that any measures or practices taken in respect of such vessels, modifications or features are not disguised actions taken in favour of commercial shipbuilding and repair inconsistent with this Agreement. If a Party considers that this requirement has not been met, it may, without prejudice to its rights to initiate the other procedures foreseen in this Agreement, request further information, which the other Party shall co-operate to provide as fully and quickly as possible.

b. fishing vessels destined for the building or repairing Party's fishing fleet. This exclusion is subject to the requirement that the Party provides full transparency in accordance with Article 4.

3. For purposes of this Agreement:

a. a vessel is considered "self-propelled seagoing" if its permanent propulsion and steering provide it all the characteristics of self-navigability in the high seas;

b. "repair" includes, inter alia, conversion and reconditioning of self-propelled sea going vessels as defined in subparagraph (a) above; and

c. "military vessels" are vessels which according to their basic structural characteristics and ability are intended to be used exclusively for military purposes.

Article 3

Parties Group

1. A Parties Group, composed of a representative of each of the Parties to this Agreement, shall examine the functioning of the Agreement and carry out the other functions provided for in this Agreement.

2. The Parties Group shall annually elect a Chairman, who will serve in his personal capacity. The Chairman shall convene meetings of the Parties Group annually or, upon request of a Party, more frequently. If the country of which the Chairman is a national, or in which the Chairman has his usual residence or is employed, is an interested Party in any advisory opinion, derogation, or dispute settlement procedure pursuant to Articles 5 or 8, the Parties Group shall, at the request of any Party, elect an alternate Chairman to perform the functions of Chairman relating to those procedures.

3. The Parties Group shall act by consensus, except as otherwise provided. A Party may abstain and express a differing view without barring consensus.

4. The Secretary-General of the OECD shall provide the Secretariat for the Parties Group, the costs for which shall be borne by the Parties as approved and apportioned by the Parties Group.

Article 4

Provision and Review of Information

1. In order to ensure transparency, each Party shall provide the Parties Group, through the Secretariat:

a. every six months, all publicly available information on contract price trends and on the credit terms and conditions of all ships covered by this Agreement and sold during the previous six months;

b. as far in advance as possible, relevant information on any assistance it proposes to provide specifically to the commercial shipbuilding and repair industry, including relevant information on assistance excluded from the prohibitions of this Agreement by Annex I, Section B.1.h and prompt supplementary information on any such assistance it has so provided and assistance provided under Annex II A;

c. information and notifications regarding credit terms and facilities which are called for by the Understanding on Export Credits for Ships, as defined in Annex I, section A.1. and corresponding information and notifications for the Home Credit Schemes authorised by Annex I, section B.2.2.;

d. for yards able to build merchant ships over 5000 gt, publicly available information on capacity developments and on the structure of ownership (capital structure, share of direct and indirect public ownership); financial statements (balance sheet, profit and loss statement) including, if available, separate accounts covering the shipbuilding activities of holdings; transfer of public resources (including debt guarantees, bond infusion, etc.); exemptions from financial or other obligations (including tax privileges, etc.), capital contribution (including equity infusions, withdrawal of capital, dividend, loans and their refunding, etc.), debt write-off; and transfer of losses.

2. Any Party may request from any other Party, either directly or through the Secretariat, information that it believes to be relevant to the provision of any measures of support and may provide the Parties Group with information on measures of support maintained or permitted by another Party.

3. The Parties Group shall, once every three years, review in depth the competitive conditions prevailing on each Party's territory. This will include the examination of the possible impact on normal competitive conditions of the evolution in ownership of yards. Information required for this review may be requested from the Parties by the Secretariat.

4. Each Party shall co-operate fully in the effort to obtain information requested under this Agreement.

5. The provisions of this Article shall not require any Party to disclose confidential information which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private. Information provided on a confidential basis shall not be disclosed without the express consent of the Party supplying the information.

Article 5

Opinions and Derogations

1. Any Party may request that the Parties Group provide a written opinion on the consistency with this Agreement of measures or practices[1]

a. it proposes or has taken or engaged in or

b. taken or engaged in by another Party.

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1. "Measures or practices" include matters falling under Article 1, paragraph 1 and 2, as well as under paragraph 3.

The Parties Group shall provide such an opinion within 60 days of the request.

2. An opinion adopted by consensus of all the members of the Parties Group shall be final and binding upon all the Parties regarding that particular measure or practice.

3. If, with respect to an opinion requested under subparagraph 1(b) there is an objection by a requesting Party or by the Party the measure or practice of which is the subject of the opinion, the Parties Group shall act by consensus of the other Parties. An opinion adopted in this manner shall be advisory.

4. The initiation of an opinion proceeding by a Party shall not prejudice the right of any Party to initiate a Panel under Article 8. If a disputed measure or practice is submitted for Panel consideration, opinion proceedings shall terminate upon request by a Party to the dispute made to the Parties' Group within 15 days of the request to establish a Panel or of the request for the opinion.

5. A Party which considers that, in response to extraordinary circumstances, it must temporarily take a measure or engage in a practice inconsistent with this Agreement, may do so only in conformity with the terms and conditions of a derogation which may be granted by the Parties Group. In critical circumstances which do not allow time for prior consideration by the Parties Group, action may be initiated provisionally, on condition that any action taken shall be rescinded no later than thirty days from initiation, and any benefit provided shall be recovered, unless its continuation is approved by the Parties Group which shall meet within this period.

Article 6

Notification of Inconsistent Measures

Whenever a Party has reason to believe that a measure or practice has been introduced or is being maintained by another Party, contrary to the terms of Article 1, paragraph 1 or 2, that Party shall notify the Parties Group, specifying the section or sections of Annex I and II with which it believes the measure or practice is inconsistent.

Article 7

Consultations

1. A Party which has reason to believe that a measure of support has been or is being introduced or maintained by another Party, contrary to the terms of Article 1, paragraph 1 or 2, may request consultations with the other concerned Party. The request shall include a statement of available information with regard to the existence and nature of the measure of support in question.

2. If a Party considers that an injurious pricing charge proceeding has been carried out regarding a shipbuilder in its territory by another Party in a manner not in conformity with Article 1, paragraph 3, and Annex III, it may request consultations with that other Party no later than 60 days after the notification to the shipbuilder of the decision imposing the injurious pricing charge.

3. A Party may request consultations with any other Party or Parties concerning any other matter respecting the operation of this Agreement, including possible initiation of a proceeding under Annex III.

4. The requesting Party or Parties shall inform the Parties Group of the request for consultations and of the reasons for the request.

5. The requested Party or Parties shall provide adequate opportunity for such consultations and shall enter into them within thirty days of such a request. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution in conformity with this Agreement.

6. The parties to the consultations shall inform the Parties Group of significant developments in the consultations as they occur and of their results.

Article 8

Dispute Panel Proceedings

1. If a mutually acceptable solution has not been reached in consultations under Article 7, paragraph 1, on a measure of support introduced, or under Article 7, paragraph 2, on a charge imposed, within 30 days after the beginning of consultations or 60 days after the date of the request, whichever is sooner, any Party to the consultation may request the establishment of a Panel to consider the dispute, in accordance with Annex IV. This right is independent of whether an affected shipbuilder has taken an appeal to the Courts of a Party.

2. A Party seeking to redress a violation by another Party of the obligations subject to the provisions of this Article and Annex IV of this Agreement, shall have recourse to, and abide by, the rules and procedures of this Agreement. In such a case, the Party shall not make a determination to the effect that a violation has occurred except in accordance with the above-mentioned provisions. Each Party shall ensure the conformity of its laws, regulations and administrative procedures with its obligations under this paragraph.

3. If a party to the dispute seeks, as a remedy, the collection of a charge from a shipbuilder, or is contesting the imposition of an injurious pricing charge on its shipbuilder, that shipbuilder shall, subject to the consent of its Party, be entitled to participate in the Panel proceeding and shall be given a full and fair opportunity to present its case against the imposition of the charge. The shipbuilder may be excluded from government-to-government aspects of the proceeding by agreement of the parties to the dispute.

4. Any other Party to this Agreement with an interest in the dispute shall be provided an opportunity to make its views on the dispute known to the Panel.

5. If the dispute involves a measure of support in Annex I, the Panel shall determine whether such measure of support is inconsistent with this Agreement. If the Panel finds the measure of support to be inconsistent:

a. the Party responsible for such measure of support shall eliminate or modify it to conform with the Agreement, within a time limit set by the Panel;

b. the Panel shall include in its findings a determination of (i) which shipbuilders benefited from the measure of support, (ii) the amount of the benefit received by each shipbuilder concerned under such measure of support, and (iii) interest on the benefit at the Commercial Interest Reference Rate (CIRR) of the country in question from the date of receipt of the benefit. For subsidies within the meaning of Article 1 of the GATT Agreement on Subsidies and Countervailing Measures, the benefit shall be determined in accordance with Article 14 of that Agreement. For other measures, the Panel shall follow any generally accepted trade practice and/or understanding.

c. the Party responsible shall, within a time limit set by the Panel, collect from the shipbuilders concerned a charge in the amount determined under subparagraph b, or if collection is not legally possible, it may, with the agreement of the adversely affected Party or Parties, take other appropriate action to remove or offset the benefits obtained.

6. If the dispute involves an injurious pricing charge, the Panel shall examine whether the charge was imposed in accordance with Annex III.

a. The Panel shall, in its assessment of the facts of the matter, determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the Panel might have reached a different conclusion, the evaluation shall not be overturned;

b. The Panel shall interpret the Agreement in accordance with customary rules of interpretation of public international law. Where the Panel finds that a relevant provision of the Agreement admits more than one permissible interpretation, the Panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations;[2] and

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2. For the purpose of this Agreement, the phrase "permissible interpretation" means "permissible method of implementation". In determining the permissibility of an implementation method, due regard shall be given to special characteristics of commercial shipbuilding and of the provisions of this Agreement relating to injurious pricing, including, particularly, its provision for payment of an injurious pricing charge by the concerned shipbuilder. Where the Panel finds that the relevant provision of this Agreement relating to injurious pricing admits more than one permissible method of implementation, the Parties Group shall, in order to prevent future disputes from arising, endeavour to reach a unified method of implementation and, if necessary, to make an amendment to the relevant provision.

c. Where the Panel finds that imposition of a charge was inconsistent with the Agreement, the Panel may recommend, in light of the nature of the inconsistency, either that the investigating authority terminate the investigation or that it reconsider its determination in light of the Panel's findings. If the Panel recommends reconsideration, it may suggest ways in which the investigating authority could implement the recommendation. The investigating authority shall make its determination consistent with the findings of the Panel.

7. If the amount required is not paid within the time limit set by the Panel, interest shall accrue at the CIRR of the currency of the charge from, in the case of a charge under paragraph 5, the expiry of that time limit and, in the case of a charge under paragraph 6, the expiry of the time limit for payment provided in Annex III, Article 7, paragraph 3, until the date of payment.

8. The decisions of the Panel shall be final and binding upon the parties to the dispute, unless rejected by the Parties Group within thirty days.

9. With regard to a dispute concerning a measure of support in Annex I, in the event a party to the dispute does not implement the Panel's decisions as provided in paragraphs 5.a. and 5.c. above, or implement appropriate alternative compensation or remedial action by agreement with the adversely affected party or parties, and until implementation occurs, the following actions may be taken, and shall not be subject to complaint under any other agreement:

a. The Parties Group, acting by consensus minus one, may deny benefits of Article 1, paragraph 3, and Annex III to shipbuilders which received the benefit but did not pay the charge or comply with the agreed alternative compensation or remedial action, by making such shipbuilders ineligible to be considered injured by the pricing of vessels sold by shipbuilders of other Parties.

b. The adversely affected party or parties to the dispute may suspend equivalent concessions under the GATT, subject to disapproval of the amount of the concessions suspended by the Parties Group acting by consensus minus one. In determining such suspensions, preference shall be given to those that are related to the product or products associated with the violation. If a Party concerned objects to the amount or the product related to the suspension of concessions proposed, it may refer the matter to the Panel.

10. In the event the shipbuilder concerned does not pay a charge imposed pursuant to Annex III, void the sale of the vessel at a price below normal value, or comply with another lawful alternative equivalent remedy acceptable

to the investigating authority in the applicable time limit[3], the investigating Party may deny onloading and offloading privileges to certain vessels built by the shipbuilder in question, to the extent sufficient but not excessive to achieve the purpose of Annex III. Such denial of onloading and offloading privileges shall not be subject to complaint under any other agreement.

a. The investigating Party may initially impose this countermeasure, subject to thirty days prior public notice, and pending compliance by the shipbuilder, for a maximum period of 4 years after delivery on vessels contracted for during a maximum period of 4 years from the end of the public notice period;

b. A party to the dispute may request the establishment of a Panel to consider countermeasure cases, where there is no Panel already in existence to consider the underlying injurious pricing determination:

i) A Panel shall increase or decrease the periods and/or authorise additional Parties to apply the countermeasure, if necessary for the countermeasure to be sufficient but not excessive to achieve the purpose of Annex III;

ii) In accordance with Section 11 of Annex IV, a Panel may provisionally suspend or reduce the imposition of a countermeasure, pending completion of its consideration of the matter if, considering the prospects of the Party complaining about the countermeasure prevailing on the merits, such action is necessary to preclude irreparable harm.

c. The Secretariat will prepare, update periodically and circulate to the Parties, the lists of the vessels which are subject to the countermeasure or remedial action. The Parties shall supply information to the Secretariat on the vessels concerned.

Article 9

Dispute Settlement for Export Credits

1. With respect to any dispute with regard to measures of support covered by Annex I, section A.1, the Parties shall make full use of the consultation mechanisms provided by the Understanding on Export Credits for Ships, referred to in Annex I.

2. If, however, any such dispute is not satisfactorily resolved through a full use of the mechanisms, and a party to the dispute believes that such a measure of support significantly undermines the balance of rights and obligations under this Agreement, that party may seek review of the matter by the Parties Group in order to establish if the measure of support has significantly undermined the balance of rights and obligations under this

3. For a charge which has been brought before a Panel for examination, the applicable time limit is that set by the Panel for compliance.

Agreement. If an affirmative determination is made, the Parties Group shall establish the conditions under which the offending party is to discontinue the measure of support giving rise to the dispute.

3. If appropriate, the Parties Group may recommend amending the Agreement or the Understanding.

Article 10

Security Interests

1. Subject to the requirement that measures or practices with respect to security interests are not disguised actions taken in favour of the commercial shipbuilding and repair industry inconsistent with the Agreement, nothing in this Agreement shall be construed:

a. to require any Party to furnish any information the disclosure of which it considers contrary to its essential security interests;

b. to prevent any Party from taking any action which it considers necessary for the protection of its essential security interests:

i) relating to fissionable materials or the materials from which they are derived;

ii) relating to traffic in arms, ammunition and implements of war and to such traffic in other goods and materials as is carried on directly or indirectly for the purpose of supplying a military establishment;

iii) taken in time of war or other emergency in international relations; or

c. to prevent any Party from taking any action in pursuance of its obligations under the United Nations Charter for the maintenance of international peace and security.

2. If a Party is of the opinion that measures or practices taken by another Party are disguised action taken in favour of the commercial shipbuilding and repair industry, it may, without prejudice to its right to initiate the other procedures foreseen in this Agreement, request further clarification. The other Party shall co-operate to discuss whether or not a measure or practice relates to essential security and to provide the available information as fully and quickly as possible through the appropriate responsible government channels.

Article 11

Review and Amendment of the Agreement

1. The Parties Group shall review this Agreement triennially. The Parties Group shall also review this Agreement if the market share in terms of world

production represented by the Parties to the Agreement falls below 70 per cent of gross tonnage.

2. Any Party may propose to the Parties Group amendments to this Agreement.

Any amendment adopted by the Parties Group shall enter into force upon the deposit of an instrument of acceptance by all the Parties, or at such later date as may be specified by the Parties Group at the time of adoption of the amendments.

Article 12

Signature, Ratification, Acceptance, Approval and Accession

1. Until its entry into force, this Agreement shall be open for signature at the OECD by the European Community, Finland, Japan, Republic of Korea, Norway, Sweden, the United States of America, and any State invited by them which has a commercial shipbuilding and repair industry. This Agreement shall be subject to ratification, acceptance or approval which the signatories shall seek to accomplish before January 1, 1996.

2. After entry into force, States with a commercial shipbuilding and repair industry may, subject to the approval of the Parties Group, become Party to this Agreement by accession.

3. Ratification, acceptance, approval and accession shall be effected by the deposit of a formal instrument to that effect with the Depositary.

Article 13

Entry into Force

1. This Agreement, of which the Annexes form an integral part shall enter into force on January 1, 1996, subject to deposit of instruments of ratification, acceptance or approval, in accordance with Article 12, by the European Community, Finland, Japan, Republic of Korea, Norway, Sweden and the United States of America.[4] If one or more of them has not deposited such instrument by that date, the Agreement shall enter into force 30 days after the last instrument has been deposited.

2. Parties accept the Understanding on Export Credits for Ships, referred to in Annex I, Section A.1. of this Agreement.

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4. If Finland, Norway or Sweden becomes a Member of the European Community, its ratification of this Agreement will not be required for entry into force. Upon its entry into the European Community, it will adopt the same status with respect to this Agreement as the Members of the European Community prior to the entry of any one of them.

Article 14

Withdrawal

1. Any Party may withdraw from this Agreement by giving written notice of its intention to do so to the Depositary, such withdrawal to take effect one year from receipt of such notice. Within this period, at the request of any of the Parties, the Parties Group shall meet to review this Agreement. Within thirty days after such a Parties Group meeting, any other Party, by written notification to the Depositary, may withdraw from this Agreement as of the date of withdrawal of the Party which first gave notice.

Article 15

Depositary

1. The Secretary-General of the OECD shall be the Depositary of this Agreement.

Annex I

MEASURES OF SUPPORT INCONSISTENT WITH NORMAL COMPETITIVE CONDITIONS IN THE COMMERCIAL SHIPBUILDING AND REPAIR INDUSTRY

The following measures of support[1] are inconsistent with normal competitive conditions when specifically provided,[2] directly or indirectly, to the commercial shipbuilding and repair industry by a Party, including the constituent states or regional or local authorities of a Party or their agencies or instrumentalities, or through public resources or public intervention in any form:

A. EXPORT SUBSIDIES

1. OFFICIALLY SUPPORTED EXPORT CREDITS[3]

Export credit facilities inconsistent with the provisions of the Understanding on Export Credits for Ships, as set out in C/WP6(94)6, and amendments thereto adopted in accordance with Clause 14 of that Understanding.

2. EXPORT SUBSIDIES

Subsidies contingent, in law or in fact,[4] whether solely or as one of several other conditions, upon export performance, including those illustrated

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1. See Accompanying Note 1 to this Annex.

2. Specificity shall be determined in accordance with the principle set out in Article 2 of the GATT Agreement on Subsidies and Countervailing Measures.

3. See Accompanying Note 3 to this Annex.

4. This standard is met when the facts demonstrate that the granting of a subsidy, without having been legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

in Accompanying Note 8 to this Annex.[5]

B. DOMESTIC SUPPORT[6]

1. DIRECT DOMESTIC SUPPORT

The following measures of support are inconsistent when provided directly to the shipbuilder or ship repairer:

a. grants;

b. loans on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;

c. loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;

d. forgiveness of debts;

e. provision of equity capital inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of that Party;

f. provision of goods and services at less than the adequate remuneration;

g. tax policies and practices benefiting the shipbuilding and repair industry, such as tax credits;

h. other assistance except for: (i) 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 and (ii) research and development assistance granted in accordance with the provisions in Section B.3.

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5. Measures referred to in the Accompanying Note 8 to this Annex as not constituting export subsidies shall not be prohibited under this Agreement.

6. See Accompanying Note 2 to this Annex.

2. INDIRECT DOMESTIC SUPPORT[7]

(1) The following measures of support are inconsistent where the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer indirectly, through a shipowner or other third parties.[8] Domestic build requirements, in law or in fact, are inconsistent.

a. grants;

b. loans and loan guarantees:

i) home credits, linked to the contract value of a new vessel, granted to a domestic shipowner or other domestic third parties placing orders for such vessel on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market, subject to paragraph 2 and paragraph 3 below;

ii) other loans, on terms and conditions more favourable than those of a comparable commercial loan which a firm can actually obtain on the market;

iii) loan guarantees that support loans on terms and conditions more favourable than those that the firm would obtain on a comparable commercial loan absent the government guarantee, or on terms and conditions more favourable than those otherwise permitted by this Agreement;

c. forgiveness of debts;

d. tax policies and practices benefiting the shipbuilding and repair industry such as tax credits;

e. any assistance provided to suppliers of goods and services to the shipbuilding and repair industry if such assistance specifically provides benefits to that industry of a country; or

f. any indirect assistance that is similar to measures and practices a. through e. of this paragraph, except for research and development which is dealt with under Section 3 below.

(2) Paragraph 1.b.i) and iii) shall not apply to loans and loan guarantees to domestic purchasers on the same terms and conditions as may be granted pursuant to the Understanding on Export Credit for Ships [C/WP6(94)6], including, *inter alia*, terms and conditions regarding interest rate, downpayment, grace period, duration, equal instalments and guarantee premiums. Eligibility for such loans and loan guarantees may be limited to purchase of ships from domestic shipyards.

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7. See Accompanying Note 3 to this Annex.

8. See Accompanying Note 4 to this Annex.

[redacted] [redacted]

(3) In accordance with terms and conditions to be agreed upon by the Council Working Party, paragraph 1.b.i) and iii) above shall also not apply to loans and loan guarantees which:

a) provide more favourable terms and conditions for a domestic shipowner placing an order for a new vessel at a foreign shipyard than those placing an order at a domestic shipyard; or

b) make such schemes subject to an open international bidding procedure; or

c) provide a total "soft" or concessional element no greater than that of the loans permitted under paragraph 2, above.

3. RESEARCH AND DEVELOPMENT[9]

(1) Assistance provided by public authorities in the form of grants, preferential loans, preferential tax treatment or other means for research and development to the shipbuilding and ship repair industry, except for:

a. Fundamental research as defined in Accompanying Note 5 b);

b. Basic industrial research, where the aid intensity is limited to 50 per cent of the eligible costs;

c. Applied research, where the aid intensity is limited to 35 per cent of the eligible costs;

d. Development, where the aid intensity is limited to 25 per cent of the eligible costs;

(2) The maximum allowable aid intensity for research and development related to safety and the environment may be 25 percentage points higher than those percentages mentioned under b., c. and d. above under the condition that the Parties Group has approved the project by consensus minus one, or more than 25 percentage points higher if the Parties Group has approved the project by consensus.

(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 those percentages mentioned at b., c. and d. above. Small and medium sized enterprises are those with less than 300 employees whose yearly sales figure does not exceed 20 million ECU and which are not more than twenty five per cent owned by a large company.

(4) Information on the results of Research and Development is to be published promptly, at least annually.

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9. See Accompanying Note 5 to this Annex.

C. OFFICIAL REGULATIONS AND PRACTICES

1. Administrative acts, guidance, or practices which authorise, encourage or require shipbuilders or ship repairers to enter into anti-competitive arrangements with competitors including but not limited to agreements to fix prices, rig bids, allocate markets, restrain production or sales, or engage in predatory practices.[10]

2. Domestic build or repair or domestic content requirements that discriminate in favour of the commercial shipbuilding and repair industry of the Party, or official regulations or practices that have similar effects including, inter alia, cargo reservation schemes directly linked with domestic shipbuilding or repair requirements.[11]

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10. See Accompanying Note 6 to this Annex.

11. See Accompanying Note 7 to this Annex.

ACCOMPANYING NOTES TO ANNEX I

Note 1. Disciplines in Annex I include measures of support provided to related entities, where a "related entity" is any natural or juridical person (i) who owns or controls a shipbuilder or (ii) is owned or controlled by a shipbuilder, directly or indirectly, whether through stock ownership or otherwise. A rebuttable presumption of control arises when a person or shipbuilder owns or controls an interest of 25 per cent in the other.

Note 2. Section B does not apply to measures of support dealt with in Section A.

Note 3. Item A(1) and B(2):

Transparency and Review of Export and Home Credit Schemes

Within two years of entry into force of this Agreement, the Parties Group shall set up a Working Group to review the functioning of Annex I, sections A.1 and B 2.2.

i) examining the reports submitted each year on the value, tonnage, interest rates, etc. on all ships financed through officially supported Export Credits and Home Credit Schemes; and

ii) evaluating the adequacy of the notification procedures provided for in Article 4.1.c. in terms of revealing measures or practices that are inconsistent with the Agreement;

The Working Group is to examine whether the use of such measures has significantly undermined the balance of rights and obligations of this Agreement. If this is the case, the Working Group may recommend to the Parties Group appropriate amendments to the Agreement or the Understanding.

Note 4. Item B(2):

A measure of support is understood to be provided through a shipowner or other third parties where, e.g. the benefit is passed or may reasonably be expected to be passed to the shipbuilder or ship repairer or where the work is required by law or encouraged in fact to be carried out at the yards of a specific country.

Note 5. Item B(3):

The following definitions apply to research and development:

a. Eligible costs:

i) Costs of instruments, materials, land and buildings to the extent that they are used for the specific research and development project.

ii) Costs of researchers, technicians and other supporting staff to the extent that they are engaged in the specific research and development project;

iii) Consultancy and equivalent services including bought in research, technical knowledge, patents, etc.

iv) Overhead costs (infrastructure and support services) to the extent that they are related to the research and development project, on condition that they do not exceed 45 per cent of the total costs of the project for basic industrial research and 20 per cent for applied research and 10 per cent for development.

b. The term "fundamental research" means research activities independently conducted by higher education or research establishments for the enlargement of general scientific and technical knowledge, not linked to industrial or commercial objectives.

c. Basic industrial research is understood to mean original theoretical and experimental work whose objective is to achieve new and better understanding of the laws of science and engineering in general and as they might apply to an industrial sector or to the activities of a particular undertaking.

d. Applied research is understood to mean investigation or experimental work on the basis of the results of the basic research with a view to facilitating the attainment of specific practical objectives such as the creation of new products, production processes and services. It normally ends with the creation of a first prototype and does not include efforts whose principal aim is the design, development or testing of specific items of services to be considered for sale.

e. Development is understood to mean work based on the systematic use of scientific and technical knowledge in a design, development, testing or evaluation of a potential new product, production processes or service or of an improvement of an existing product or service to meet specific performance requirements and objectives. This stage will normally include pre-production models such as pilot and demonstration projects but does not include industrial application and commercial exploitation.

f. Public assistance for research and development specifically provided to the shipbuilding and repair industry includes, but is not limited to, the following cases:

i) research and development projects carried out by the shipbuilding or ship repair industry or research institutes controlled by or financed by this industry;

ii) research and development projects carried out by the shipping industry or research institutes controlled by or financed by this industry when the project is directly related to shipbuilding or repair;

iii) research and development projects carried out by universities, public or independent private research institutes and other industrial sectors in collaboration with the shipbuilding industry;

iv) research and development projects carried out by universities, public and or independent private research institutions and other industrial sectors, when at the time the project is carried out, it is reasonably anticipated that the results will be of substantial specific importance for the shipbuilding and ship repair industry.

Note 6. Item C(1):

The Parties recognise that differences exist among its competition policies or laws and regulations. The provision of Item C(1) is not intended to unify competition policies among the Parties to this Agreement nor to compel a Party to amend its national competition laws and regulations.

Note 7. Item C(2):

While customs duties on newly built vessels or vessel repairs are included within the scope of Item C(2), the Parties do not intend thereby to characterise customs duties as obstacles to normal competitive conditions in the commercial shipbuilding industry.

Note 8. Item A(2):

Illustrative List of Export Subsidies

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available[1] on world markets to their exporters.

(e) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes[2] or social welfare charges[3] paid or payable by industrial or commercial enterprises.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission in respect of the production and distribution of exported products, of indirect taxes[2] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior stage cumulative indirect taxes[2] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[4] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures.

(i) The remission or drawback of import charges[2] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II of the Agreement on Subsidies and Countervailing Measures and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III of the Agreement on Subsidies and Countervailing Measures.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The payment by governments (or by institutions controlled by and/or acting under the authority of governments) of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of the GATT 1994.

Footnotes to the Illustrative List of Export Subsidies

1 The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

2 For the purpose of this Agreement:
The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;
The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
"Prior stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;
"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;
"Remission" of taxes includes the refund or rebate of taxes;
"Remission or drawback" includes the full or partial exemption or deferral of import charges.

3 The Parties recognise that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Parties reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Party may draw the attention of another Party to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Parties shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Parties under this Agreement, including the right of consultation created in the preceding sentence. Paragraph (e) is not intended to limit a Party from taking measures to avoid the double taxation of foreign source income earned by its enterprises or the enterprises of another Party.

4 Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

Annex II

SPECIAL PROVISIONS RELATING TO MEASURES OF SUPPORT

Existing measures of support that are inconsistent with the Agreement are to be eliminated at the time this Agreement enters into force, except as provided in Sections A and B below. Support committed before the entry into force of the Agreement may be paid after entry into force, provided that it complies with the provisions of the understanding set out in paragraph 3 of the Final Act of the negotiations concerning this Agreement.

A. SUPPORT FOR RESTRUCTURING

Support may be provided in accordance with the following notification to the Council Working Party:

i) The Republic of Korea's ongoing programme for Daewoo and KSEC described in [C/WP6(91)58].

ii) Restructuring assistance in Belgium, Portugal and Spain information on which is set out in [C/WP6(93)31] and the Accompanying Note 1 to this Annex.

B. OFFICIAL REGULATIONS AND PRACTICES

COASTWISE LAWS OF THE UNITED STATES

1. The United States reserves the right to retain the domestic build requirements incorporated in the public laws referred to in the Accompanying Note 2 to this Annex.

2. Regarding the coastwise laws of the United States which reserve the domestic market for US shipyards, the following will apply:

a) Any domestic build, rebuild, or repair requirements found in United States laws other than those specified in Accompanying Note 2 to this Annex (hereafter "the coastwise laws") that are inconsistent with the Agreement are subject to elimination as of entry into force of the Agreement.

b) Recognizing that a permanent derogation for the coastwise laws could undermine the balance of rights and obligations of the Parties under the Agreement and is unacceptable to the other Parties, the Parties

agree that responsive measures may be taken as provided below and on the special review and monitoring procedure.

c) The United States agrees to co-operate in an annual review by the Parties Group and to ensure full transparency regarding the construction of such vessels, including the provision of information on new orders and ratified contracts (both adjusted subsequently for cancellations), expected and actual delivery dates, by tonnage and type of ship. The United States will provide such information no less than annually, and more frequently when requested or appropriate [e.g., when it appears that annual actual and expected deliveries may increase beyond the threshold described below under e)].

d) The United States estimates the average annual deliveries for vessels subject to the Agreement constructed under the provisions of the coastwise laws following adoption of the Agreement will not exceed 200,000 gt.

e) The Parties group will carefully monitor the information provided under c) above. It may by consensus minus one make determinations and authorize responsive measures as specified in subparagraphs (i) and (ii) below.

(i) Until three years after entry into force of the Agreement:

If the Parties Group determines that actual or expected deliveries in any year after the entry into force of this Agreement exceeds 200 000 gt[1] and that such deliveries will significantly undermine the balance of rights and obligations under the Agreement, the Parties Group may authorize 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 coastwise vessels, aimed at effecting a loss of sales opportunities comparable to that resulting from deliveries of coastwise vessels in excess of the threshold.

For purposes of the paragraph, actual or expected deliveries in excess of the threshold, as defined above, in any one year establishes a rebuttable presumption of significantly undermining the balance of rights and obligations under this Agreement.

(ii) After three years following entry into force:

If the Parties Group determines that actual or expected deliveries will significantly undermine the balance of rights and obligations under the Agreement, the Parties Group may authorize one or more affected Parties to take responsive measures (e.g.,

1. The threshold for any given year may be increased by carrying over an unused amount of a maximum of 50 000 gt from the previous year and by borrowing 50 000 gt from the next year.

impose a charge or restriction on bids or contracts) with regard to shipyards benefiting from the construction of coastwise vessels, aimed at effecting a loss of sales opportunities or other commercial advantages comparable to that resulting from deliveries of coastwise vessels.

For purposes of this paragraph, there is a rebuttable presumption that the balance of rights and obligations under this Agreement is significantly undermined.

f) If the United States believes that the level, kind, or duration of the measures taken by a Party or Parties under subparagraph e) result in a loss of sales opportunities for its shipbuilders greater than that caused by the delivery of coastwise vessels, it may invoke dispute panel proceedings under Annex IV of the Agreement. The Panel shall determine whether the measures taken under subparagraph e) are disproportionate or excessive and make appropriate recommendations. Measures taken by the Parties must be made consistent with the Panel's recommendations.

g) As part of and in sufficient time prior to the first triennial review provided for in Article 11 of the Agreement, the Parties Group shall examine whether the conditions which created the need for Part B of Annex II still prevail and whether the measures provided for under subparagraph e) above are adequate to maintain the balance of rights and obligations under the Agreement. On the basis of that review and with the aim of maintaining the balance of rights and obligations under the Agreement, the Parties Group may decide to:

-- modify the provisions of subparagraph e);

-- withdraw other rights under the Agreement;

-- authorize the withdrawal of GATT concessions; or

-- take other appropriate action.

h) If, after the review called for in subparagraph g) is completed, a Party continues to believe that the responsive measures available to it are unsatisfactory, such Party may withdraw from this Agreement three months after submitting a notification of its determination to this effect to the Parties Group. The same procedures for termination are available to a Party entitled to take the above-mentioned responsive measures at any time after four years from entry into force of this Agreement, if Part B of Annex II remains in effect.

ACCOMPANYING NOTES TO ANNEX II

Note 1. ITEM A (ii): RESTRUCTURING SUPPORT

a. The total amounts of assistance included in the restructuring plans of item A (ii) are as follows:

Spain	180 billion pesetas
Portugal	17.7 million contos
Belgium	2 369 million Belgian francs

b. These total amounts of assistance consist of the following:

i) assistance for social measures exempted under Annex I B (1)(h).

ii) assistance for restructuring costs incurred before the date of signature of the present agreement, committed by the respective national governments and approved by the Commission of the European Community before that date, but have not been paid due to budgetary problems.

iii) other assistance for restructuring measures committed and paid, on the basis of costs incurred before 1 January 1996.

iv) assistance for restructuring measures paid after 1 January 1996, broken out in two categories:

(a) investment assistance; and
(b) any assistance for social measures not exempted under Annex I B (i)(h)

c. The European Community will provide to the Parties Group, in accordance with Article 4 (1)(b) of the present agreement information which splits up the amounts mentioned in point 1 above into the categories referred to in point 2 above, allowing the Parties Group to monitor the restructuring plans.

d. The European Community can state that assistance paid after the 1 January 1996 and not falling under 2(i) and (ii) above, will be subject to maximum limits and payment deadlines particular to each country as follows:

	AID VOLUME	ULTIMATE PAYMENT DEADLINE
Spain	10 billion pesetas	31 December 1998
Portugal	5.2 million contos	31 December 1998
Belgium	1 320 million Belgian francs	31 December 1997

e. The European Commission has not yet received complete notifications of these restructuring plans as required by the internal legislation of the Community. The Commission will ensure that the above limits and restrictions on the aid will be fully respected when it takes its final decisions authorising these aids.

Note 2. ITEM B: COASTWISE LAWS OF THE UNITED STATES

The United States reserves the right to retain the domestic build requirements incorporated in the legislation listed below.

a. Laws that prohibit the transportation of merchandise between points in the United States except on U.S. built vessels documented under U.S. law and owned by citizens of the United States:

Section 27 of the Act of June 5, 1920 (41 STAT. 999), as amended by the Act of April 11, 1935 (49 STAT. 154); the Act of July 2, 1935 (49 STAT. 442); Section 1 of the Act of July 14, 1956 (70 STAT. 544); Section 27(a) of Public Law 85-508 (72 STAT. 351); Section 1 of Public Law 86-583 (74 STAT. 321); Public Law 89-194 (79 STAT. 823); Section 1 of Public Law 86-583 (74 STAT. 321), Public Law 89-194 (79 STAT. 823); Public Law 90-474 (82 STAT. 700); Section 1 of Public Law 92-163 (85 STAT. 486); Section 213 of Public Law 95-410 (92 STAT. 904); Section 4 of Public Law 96-112 (93 STAT. 848); Section 12(49) of Public Law 97-31 (95 STAT 157); Sections 502 and 504 of Public Law 97-389 (96 STAT. 1954, 1956); Section 6(c)(1) of Public Law 100-239 (101 STAT. 1782; Section 1(a) of Public Law 100-329 (102 STAT. 588); and Section 5501(b) of Public Law 102-587 (106 STAT. 5085).

b. Laws that prohibit the transportation of passengers between points in the United States except on U.S. built vessels documented under U.S. law and owned by the citizens of the United States:

Section 8 of the Act of June 19, 1886 (24 STAT. 81), as amended by Section 2 of the Act of February 17, 1898 (30 STAT. 248).

c. Laws requiring that dredges must be built and registered in the United States:

Section 1 of the Act of May 28, 1906 (34 STAT. 204), as amended by Section 5501(a)(1) of Public Law 102-587 (106 STAT. 5084).

d. Laws requiring that towing vessels must be U.S. built and documented under the laws of the U.S. and owned by citizens of the United States to engage in towing vessels from any port or place in the U.S. to any other port or place in the United States:

Revised Statute No. 4370 (54 STAT. 304), as amended by Section 10 of Public Law 99-307 (100 STAT. 447); and Section 2 of Public Law 100-329 (102 STAT. 589).

e. Though fishing vessels destined for a country's fishing fleet are excluded from the scope of the Agreement, listed below for the sake of completeness are laws requiring that fishing vessels, fish tender vessels and fish processing vessels operating in U.S. waters, or in the waters of the U.S. Exclusive Economic Zone (unless operating under a permit pursuant to a governing international fishing agreement), must be built in the United States and documented under U.S. law and owned by citizens of the United States:

Section 1 of Public Law 98-89 (97 STAT. 587), as amended by Section 301(c) of Public Law 98-454 (98 STAT. 1734); Section 3(4), (5), 6(a)(6) of Public Law 100-239 (101 STAT. 1779, 1782); and Section 301(a)(8) of Public Law 101-225 (103 STAT. 1921).

Annex III

INJURIOUS PRICING CHARGES

A. BASIC PRINCIPLES

1. The Parties recognise that injurious pricing, by which vessels covered by Article 2 of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("vessels") of one country are sold[1] directly or indirectly to one or more nationals or companies of another

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1. For the purposes of this Annex:

a. The concept of "sale" covers the creation or transfer of an ownership interest in the vessel except for an ownership interest, as defined in this Annex, created or acquired solely for the purpose of providing security for a normal commercial loan.

b. An "ownership interest" shall include any contractual or proprietary interest which allows the beneficiary or beneficiaries of such interest to take advantage of the operation of the vessel in a manner substantially comparable to the way in which an owner may benefit from the operation of the vessel. In determining whether such substantial comparability exists, the investigating authorities shall consider the following factors:

i) the terms and circumstances of the transaction;

ii) commercial practice within the industry;

iii) whether the vessel subject to the transaction is integrated into the operations of the beneficiary or beneficiaries; and

iv) whether in practice there is a likelihood that the beneficiary or beneficiaries of such interests will take advantage of and the risk for the operation of the vessel for a significant part of the life-time of the vessel.

c. The term "buyer" means any person who acquires an ownership interest, including by way of lease or long-term bareboat charter, in conjunction with the original transfer from the shipbuilder, either directly or indirectly, including a national or company which owns or controls a buyer.

d. The terms "buyer" and "sale" shall be construed accordingly and it is understood that there may be more than one buyer of any one vessel.

Party[2] or to one or more companies owned[3] or controlled[4] by such nationals or companies[5] at less than the normal value of the vessels, 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.

2. In order to remedy or prevent injurious pricing, a Party may impose on the producer of any injuriously priced vessel an injurious pricing charge not greater in amount than the margin of injurious pricing in respect of such vessel.

3. No vessel of the territory of any Party sold to a buyer of any other Party shall be subject to injurious pricing charges by reason of the exemption of such vessel from duties or taxes borne by the like product when sold to a buyer of the Party in which the vessel originates, or by reason of the refund of such duties or taxes.

4. a) No Party shall impose any injurious pricing charge on a shipbuilder that is a national or company of another Party unless it determines that the effect of the injurious pricing is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

b) The Parties may waive the requirement of sub-paragraph (a) of this paragraph so as to permit a Party to impose an injurious pricing charge on a shipbuilder with regard to the sale of any vessel to a buyer which is its company or national for the purpose of remedying injurious pricing which causes or threatens material injury to an industry in the territory of another Party exporting the product concerned to the Party of the buyer.

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2. For purposes of this Annex, "company of a Party" means any kind of juridical entity, including any corporation, company, association, or other organisation, that is legally constituted under the laws and regulations of such country or a political subdivision thereof, regardless of whether or not the entity is organised for pecuniary gain, private or governmentally owned, or organised with limited or unlimited liability.

3. The term "owned" is defined as having more than a 50 per cent interest.

4. The term "control" is defined as actual ability to have substantial influence on corporate behaviour, which is presumed at a 25 per cent interest. If ownership of a company is shown, a separate control of that company is presumed not to exist unless established otherwise.

5. Under this Annex, a sale shall not be subject to injurious pricing investigation if an ownership interest is shown to exist in a buyer of the Party in which the vessel originates, unless it is established that the owner is acting under instruction from a "buyer", as defined in this Annex, of another Party or rights and liabilities of the owner of the vessel are otherwise assumed by such a "buyer".

5. The Parties agree to take action only under this Annex with regard to transactions involving the injurious pricing of vessels covered by this Agreement. A Party shall withhold action under this Annex if any member of the World Trade Organisation not a Party to this Agreement has previously initiated an anti-dumping action pursuant to Article VI of GATT 1994 and the Agreement on the Implementation of Article VI of GATT 1994 with regard to a particular transaction. If subsequent to the initiation of an action under this Annex, a member of the World Trade Organisation who is not a Party to this Agreement initiates an antidumping action pursuant to Article VI of GATT 1994 and the Agreement on the Implementation of Article VI of GATT 1994 with regard to a particular transaction, the Party that had initiated an action under this Annex shall suspend the action. If the antidumping investigation is concluded by the imposition of measures or a negative finding, a Party shall not initiate or continue action under this Annex. If the antidumping investigation is not concluded within a reasonable period of time, but not less than one year, or if, in the event of an affirmative finding, action is not taken, the Party to this Agreement may initiate or continue its investigation, but in no case may both an injurious pricing charge under this Agreement and an antidumping duty under the GATT 1994 be imposed with respect to a particular transaction.

B. SUPPLEMENTARY PROVISIONS REGARDING THE BASIC PRINCIPLES

Regarding Paragraph 1

1. Hidden injurious pricing by associated houses (that is, the sale by a buyer at a price below that corresponding to the price invoiced by a shipbuilder with whom the buyer is associated, and also below the price in the country of sale) constitutes a form of injurious pricing with respect to which the margin of injurious pricing may be calculated on the basis of the price at which the vessels are resold by the buyer.

2. It is recognised that, in the case of sales from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, special difficulties may exist in determining price comparability for the purposes of paragraph 1, and in such cases parties may find it necessary to take into account the possibility that a strict comparison with domestic prices in such a country may not always be appropriate.

Regarding Paragraph 2

Multiple currency practices can in certain circumstances constitute a form of injurious pricing by means of a partial depreciation of a country's currency which may be met by action under paragraph 2. By "multiple currency practices" is meant practices by governments or sanctioned by governments.

Regarding Paragraph 4. b)

Waivers under the provisions under paragraph 4 b) shall be granted only on application by the Party proposing to impose an injurious pricing charge.

SHIPBUILDING INJURIOUS PRICING CODE

The Parties,

Recognising that anti-injurious pricing practices should not constitute an unjustifiable impediment to international trade and that injurious pricing charges may be applied against injurious pricing only if such injurious pricing causes or threatens material injury to an established industry or materially retards the establishment of an industry;

Considering that it is desirable to provide for equitable and open procedures as the basis for a full examination of injurious pricing cases;

Desiring to interpret the Basic Principles and to elaborate rules for their application in order to provide uniformity and certainty in their implementation; and

Recognising the need to take account of the complexity of ship purchase transactions and the manner in which the ownership of a vessel may be obscured;

Recognising the nature of commercial shipbuilding and repair, which often involves a single transaction covering one vessel and the adaptation of shipyard operations to render them capable to produce a particular ship, and thus, understanding that the investigating authorities shall consider the context of these and other characteristics of commercial shipbuilding and repair in assessing the impact of sales on a domestic industry:

Hereby agree as follows:

Article 1

Principles

1.1 An injurious pricing charge on a vessel covered by Article 2 of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("vessel") shall be applied only under the circumstances provided for in this Annex and pursuant to investigations initiated[6] and conducted in accordance with its provisions. The following provisions govern the application of the Basic Principles in so far as action is taken under implementing legislation or regulations.

1.2 The Parties agree to incorporate into this Code any amendments made in the future to the Agreement on the Implementation of Article VI of the GATT 1994. Changes to such amendments shall be limited to those necessitated by the special characteristics of commercial shipbuilding.

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6. The term "initiated" as used hereinafter means the procedural action by which a Party formally commences an investigation as provided in Article 5.

Article 2

Determination of Injurious Pricing

2.1 For the purpose of this Agreement, a vessel is to be considered as being injuriously priced, i.e., sold[7] directly or indirectly to one or more nationals or companies of another Party, or to one or more companies owned or controlled by such nationals or companies, at less than its normal value, if the export[8] price of the vessel sold is less than the comparable price, in the ordinary course of trade, for the like vessel when sold to a buyer of the exporting country.

2.2 When there are no sales of the like vessel in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation, such sales do not permit a proper comparison, the margin of injurious pricing shall be determined by comparison with a comparable price of the like vessel when exported to an appropriate third country provided that this price is representative. If such sales to any appropriate third country do not exist or do not permit a proper comparison, the margin of injurious pricing shall be determined 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.

2.2.1 Sales of the like vessel in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling, and general costs may be treated as not being in the ordinary course of trade[9] by reason of price and may be disregarded in determining normal value only if the authorities[10] determine that such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time.[11] If prices which are below costs at the

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7. a. "Sold to a buyer of the Party in which the vessel originates" means neither sold, within the meaning of this Annex directly or indirectly to nationals or companies of other countries nor to companies that are owned or controlled by such nationals or companies. b. Sales to buyers of the Party in which the vessel originates constitute "domestic sales" for purposes of this Annex, and their prices constitute "domestic prices".

8. For purposes of this Annex, "export" means the sale of a vessel to a buyer other than a buyer of the Party in which the vessel originates.

9. The term "ordinary course of trade" shall be given the same meaning throughout Article 2.

10. When in this Code the term "authorities" is used, its shall be interpreted as meaning authorities at an appropriate senior level.

11. For purposes of this Annex, a "reasonable period" of time shall be five years.

time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2 of this Article, costs shall normally be calculated on the basis of records kept by the shipbuilder under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the vessel under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the shipbuilder in the course of the investigation provided that such allocations have been historically utilised by the shipbuilder, in particular in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.[12]

2.2.2 For the purpose of paragraph 2 of this Article, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like vessel by the shipbuilder under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realised by the shipbuilder in question in respect of production and sales in the domestic market of the country of origin of the same general category of vessel;

(ii) the weighted average of the actual amounts incurred and realised by other shipbuilders of the country of origin in respect of production and sales of the like vessel in that country's domestic market;

(iii) any other reasonable method[13], provided that the amount for profit so established shall not exceed the profit normally realised by other shipbuilders on sales of vessels of the same general category in the domestic market of the country of origin, and

12. The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

13. Recourse to "any other reasonable method" should be had only absent appropriate domestic sales. In such case, reference will generally be made, under iii, to appropriate export sales of the shipbuilder in question or, absent such sales, to those of other shipbuilders of the country-of origin.

(iv) the profit added in constructing value shall, in all instances, be based upon the average profit realised over a reasonable period of time[14] prior to and after the sale under investigation and shall reflect a reasonable profit at the time of such sale. In making such calculation, any distortion which would result in other than a profit which is reasonable at the time of the sale shall be eliminated.

2.2.3 In light of the long lead time between contract and delivery of vessels, a normal value shall not include actual costs which are due to extraordinary circumstances (e.g., labour disputes, fire, natural disaster), and which are significantly over the cost increase which the shipbuilder could have reasonably anticipated and taken into account at the time the material terms of sale were fixed.[15]

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the shipbuilder and the buyer or a third party, the export price may be constructed on the basis of the price at which the vessels are first resold to an independent buyer, or if the vessels are not resold to an independent buyer, or not resold in the condition as originally sold, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at, as nearly as possible the same time.[16] Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.[17] In the cases referred to in paragraph 3 of Article 2, allowances for costs, including duties and taxes, incurred between original sale and resale, and for profits accruing, should also be made. If in these cases, price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade

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14. A reasonable period of time in this context shall refer to the shortest possible time, which should normally not exceed six months both prior to and after the sale under investigation.

15. The burden of proof shall be placed on the shipbuilder.

16. Sales "made at as nearly as possible the same time" normally would mean sales within three months prior to or after the sale under investigation, or, in the absence of such sales, such longer period as would be appropriate.

17. It is understood that some of the above factors may overlap, and the authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

of the constructed export price, or make due allowance as warranted under this paragraph. The authorities shall indicate to the Parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those Parties.

2.4.1 When the price comparison under this paragraph requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale,[18] provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4 of this Article, the existence of margins of injurious pricing during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction to transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods and if an explanation is provided why such differences cannot be taken into account appropriately by the use of a 'weighted average to weighted average' or 'transaction to transaction' comparison.

2.5 In the case where vessels are not sold to a buyer of another Party directly from the country of origin but are exported to that other Party from an intermediate country, the price at which the vessels are sold from the country of export to the buyer of that other Party shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the vessels are merely trans-shipped through the country of export, or such vessels are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like vessel" shall be interpreted to mean 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. The term "same general category of vessel" shall be interpreted to mean a vessel of the same type and purpose, but of a significantly different size. Small differences in size and equipment will not affect the category of the vessel, but may be reflected in appropriate adjustments in calculations and comparisons made under this Code.

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18. Date of sale, for purposes of this provision, means the date on which the material terms of sale are established. That date is normally, for ship transactions, the date of contract. However, if the material terms of sale are significantly changed on another date, the rate of exchange on the date of the change should be applied. In such a case, the investigating authority shall make appropriate adjustments to take into account any unreasonable effect on the injurious pricing margin solely due to exchange rate fluctuations between the original date of sale and the date of this change.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of the Basic Principles.

Article 3

Determination of Injury[19]

3.1 A determination of injury for purposes of this Annex 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[20].

3.2 With regard to the effect of the sale at less than normal value on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the sale at less than normal value as compared with the price of like vessels of the buyer's country, 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. No one or several of these factors can necessarily give decisive guidance.

3.3 Where sales of vessels from more than one country are simultaneously subject to injurious pricing investigations, the investigating authorities may cumulatively assess effects of such sales only if they determine that (1) the margin of injurious pricing established in relation to the purchases from each country is more than de minimis as defined in paragraph 8 of Article 5 and that (2) a cumulative assessment of the effects of the sales is appropriate in light of the conditions of competition between vessels sold by shipbuilders of other Parties to its buyers and the conditions of competition between such vessels and the like domestic vessels.

3.4 The examination of the impact of the sale at less than normal value on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices 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;

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19. Under this Code the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

20. For purposes of this Annex, "domestic producers of like vessels" shall encompass those shipyards capable of producing a like vessel with their present facilities or which can be adapted in a timely manner to produce a like vessel.

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.

3.5 It must be demonstrated that the sale at less than normal value is, through the effects of the sale at less than normal value, as set forth in paragraphs 2 and 4 of this Article, causing or has caused injury within the meaning of this Agreement. The demonstration of a causal relationship between the sale at less than normal value and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the sale at less than normal value which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the sale at less than normal value. Factors which may be relevant in this respect include, inter alia, the volume and prices of sales by shipbuilders of other Parties to buyers of the investigating Party not sold at less than normal value, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the sale at less than normal value shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the sale at less than normal value shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the sale at less than normal value would cause injury must be clearly foreseen and imminent.[21] In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:

(i) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased sale at less than normal value to the market of the buyer's country, taking into account the availability of other export markets to absorb any additional exports; and

(ii) whether vessels are being exported to the domestic market at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further purchases from other countries.

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21. One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased sales of such vessels at sale at less than normal value to buyers of the investigating Party.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further sale at less than normal value are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by sale at less than normal value, the application of injurious pricing measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers[22] as a whole of the like vessels or to 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, except that when producers are related[23] to the exporters or domestic buyers or are themselves domestic buyers of the allegedly injuriously priced vessel, the term "domestic industry" may be interpreted as referring to the rest of the producers.

4.2 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of the GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1 above.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6 of this Article, an investigation to determine the existence, degree and effect of any alleged injurious pricing shall be initiated upon a written application by or on behalf of the domestic industry.

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22. See footnote 20 above.

23. For the purposes of this paragraph, producers shall be deemed to be related to exporters or domestic buyers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control the other when the former is legally or operationally in a position to exercise restraint or direction over the latter.

[redacted] [redacted]

5.2 An application under paragraph 1 shall be filed not later than six months from the time that the applicant knew or should have known of the sale of the vessel[24] in a case falling under subparagraph d(i) or d(ii) below; 9 months from that time in a case falling under subparagraph d(iii) below, provided that a notice of intent to apply[25] had been filed no later than six months from that time; but in any event no later than six months from its delivery. The application shall include evidence:

(a) of injurious pricing;[26]

(b) of injury within the meaning of this Annex;

(c) of a causal link between the injuriously priced sale and the alleged injury; and

(d) (i) that, if the vessel was sold through a broad multiple bid,[27] the applicant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the applicant substantially met bid specifications (i.e., delivery date and technical requirements), or

(ii) that, if the vessel was sold through any other bidding process and the applicant was invited to tender a bid on the contract at issue, it actually did so, and the bid of the applicant substantially met bid specifications, or

(iii) that, in the absence of an invitation to tender a bid other than under a broad multiple bid, the applicant was capable of building the vessel concerned and, if the applicant knew or should

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24. There is a rebuttable presumption that a shipbuilder knew or should have known of the sale from the time of publication of the fact of the conclusion of the contract, along with very general information concerning the vessel, in the international trade press.

25. This notice shall include information reasonably available to the applicant to identify the transaction concerned.

26. Including evidence of the existence of a buyer who is a company or national of the investigating Party.

27. For the purpose of this provision, a broad multiple bid shall be one in which the proposed buyer extends an invitation to bid to at least all the shipbuilders in the country of the buyer known to the buyer to be capable of building the vessel in question.

have known of the proposed purchase,[28] it made demonstrable efforts to conclude a sale with the buyer consistent with the bid specifications in question.

Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like vessel by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like vessel and, to the extent possible, a description of the volume and value of domestic production of the like vessel accounted for by such producers;

(ii) a complete description of the allegedly injuriously priced vessel, the name of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and the identity of the buyer of the vessel in question who is a company or national of the investigating Party;

(iii) prices at which such vessels are sold in the domestic market of the country of origin or export (or, where appropriate, information on the prices at which such vessels are sold from the country of origin or export to a third country or countries or on the constructed value of the vessel) and information on export prices or, where appropriate, on the prices at which such vessels are first resold to an independent buyer of the other country;

(iv) 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, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

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28. It shall be rebuttably presumed that the applicant knew or should have known of the proposed purchase if it is demonstrated that:

(i) the majority of the domestic industry in the country of the proposed buyer have made efforts with that buyer to conclude a sale of the vessel in question; or

(ii) general information on the proposed purchase was available from brokers, financiers, classification societies, charterers, trade associations, or other entities normally involved in shipbuilding transactions with whom the shipbuilder had regular contacts or dealings.

5.3 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.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like vessel, that the application has been made by or on behalf of the domestic industry.[29] The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective capacity to produce the like vessel constitutes more than 50 per cent of the total capacity to produce the like vessel of that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total capacity of the domestic producers capable of producing the like vessel.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicising of the application for the initiation of an investigation. However, before proceeding to initiate an investigation, whether upon application or upon decision of the authority to initiate an investigation under paragraph 5.6 below, the authorities shall notify the government of the exporting country concerned.

5.6 If in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of injurious pricing, injury, a causal link, and that a member of the allegedly injured domestic industry met the criteria of paragraph 5.2(d), to justify the initiation of an investigation.

5.7 The evidence of both injurious pricing and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either injurious pricing or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of injurious pricing is de minimis or the injury is negligible. The margin of injurious pricing shall be considered to be de minimis if this margin is less than 2 per cent, expressed as a percentage of the export price.

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29. Parties are aware that in the territory of certain Parties, employees of domestic producers of the like product or representatives of those employees, may make or support an application for an investigation under paragraph 1.

5.9 A final decision on initiation will be taken no later than 45 days following an application and, in case of initiation without application, no later than six months from the time the investigating authority knew or should have known of the sale of the vessel. For cases involving price to price comparison, where a like vessel has been delivered, investigations must be completed no later than one year from the date of initiation. For cases in which the like vessel is under construction, investigation will end no later than one year from delivery of that like vessel. Investigations involving constructed value shall be concluded within one year after their initiation or within one year of delivery of the vessel, whichever is later.

Article 6

Evidence

6.1 All interested Parties in an injurious pricing investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant[30] in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an injurious pricing investigation shall be given at least thirty days for reply.[31] Due consideration should be given to any request for an extension of the thirty day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested Party shall be made available promptly to other interested Parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the exporter and to the authorities of the exporting country and make it available, upon request, to other interested Parties involved. Due regard shall be paid to the requirement for the protection of confidential information as provided for in paragraph 5 below.

6.2 Throughout the injurious pricing investigation all interested Parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested Parties to meet those Parties with adverse interests, so that opposing views

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30. Such evidence may include the findings of any investigation into the matter made by the Party of the exporting shipbuilder, which will be considered by the investigating authority and made part of the investigation record.

31. As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country.

may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the Parties. There shall be no obligation on any Party to attend a meeting, and failure to do so shall not be prejudicial to that Party's case. Interested Parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only insofar as it is subsequently reproduced in writing and made available to other interested Parties, as provided for in sub-paragraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested Parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5 and that is used by the authorities in an injurious pricing investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he acquired the information) or which is provided on a confidential basis by Parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the Party submitting it.[32]

6.5.1 The authorities shall require interested Parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarisation is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[33]

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Parties upon which their findings are based.

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32. Parties are aware that in the territory of certain Parties, disclosure pursuant to a narrowly drawn protective order may be required.

33. Parties agree that requests for confidentiality should not be arbitrarily rejected.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in other countries as required, provided they obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation. The procedures described in Addendum I shall apply to verifications carried out in exporting countries. The authorities shall, subject to the requirement to protect confidential information, make the results of any verifications available or provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested Party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Addendum II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested Parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the Parties to defend their interests.

6.10 For the purposes of this Agreement, "interested Parties" shall include:

(i) an exporter or foreign producer or the buyer of a vessel subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or domestic buyers of such vessels;

(ii) the government of the exporting country; and

(iii) a producer of the like vessel in the investigating country or a trade or business association a majority of the members of which produce the like vessel in the investigating country.

This list shall not preclude the investigating Party from allowing domestic or foreign parties other than those mentioned above to be included as interested Parties.

6.11 The authorities shall provide opportunities for buyers[34] of the vessel under investigation to provide information which is relevant to the investigation regarding injurious pricing, injury, causality and the elements set out in Article 5.2(d).

6.12 The authorities shall take due account of any difficulties experienced by interested Parties, in particular small companies, in supplying information requested and provide any assistance practicable.

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34. An alleged buyer may provide information on whether he is in fact a buyer.

6.13 The procedures set out above are not intended to prevent the authorities of a Party from proceeding expeditiously with regard to initiating an investigation, reaching determinations, whether affirmative or negative, or from applying measures, in accordance with relevant provisions of this Agreement.

Article 7

Imposition and Collection of Injurious Pricing Charges

7.1 The decision whether or not to impose an injurious pricing charge in cases where all requirements for the imposition have been fulfilled and the decision whether the amount of the injurious pricing charge to be imposed shall be the full margin of injurious pricing or less, are decisions to be made by the authorities of the investigating Party. It is desirable that the imposition be permissive and that the charge be less than the margin, if such lesser charge would be adequate to remove the injury to the domestic industry.

7.2 The amount of the injurious pricing charge shall not exceed the margin of injurious pricing as established under Article 2.

7.3 If the Party conducting the investigation determines that an injurious pricing charge is warranted, the Party may require the shipbuilder to pay that charge to it 180 days after notice to the shipbuilder of the amount due. The shipbuilder shall be given a reasonably extended period to pay where payment in 180 days would render it insolvent or would be incompatible with a judicially supervised reorganisation, in which case the Party may require interest to accrue, at CIRR of the currency of the charge, on any unpaid portion.

7.4 The obligation of a shipbuilder to pay the charge shall expire (i) if the shipbuilder voids the sale on which the charge was based or complies with the alternative equivalent remedy accepted by the investigating authority or (ii) if the countermeasures, applied in accordance with Article 8, paragraph 10, have expired.

Article 8

Public Notice and Explanation of Determinations

8.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an injurious pricing investigation pursuant to Article 5, the Party the vessel of which is subject to such investigation and other interested Parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given. A public notice of the initiation of an investigation shall contain or otherwise make available through a separate report[35] adequate information on the following:

35. Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

(i) the name and country of the shipbuilder and the buyers and a description of the vessel involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which injurious pricing is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested Parties should be directed;

(vi) the time-limits allowed to interested Parties for making their views known.

8.2 Public notice shall be given of any determination, whether affirmative or negative. Each such notice shall set forth or otherwise make available through a separate report in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Party the vessel of which is subject to such determination and to other interested Parties known to have an interest therein. A public notice of conclusion shall contain or otherwise make available through a separate report all relevant information on the matters of fact and law and reasons which have led to the imposition of measures, due regard being paid to the requirement for the protection of confidential information. The notice or report shall in particular contain the information described below as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and buyers.

i. the name of the shipbuilder, buyer, applicant, and country of export;

ii. a description of the type, purpose and size of the vessel;

iii. the margin of injurious pricing established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

iv. considerations relevant to the injury determination, as set out in Article 3; and

v. the main reasons leading to the determination.

Article 9

Judicial Review

Each Party whose national legislation contains provisions on injurious pricing measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, inter alia, of the prompt review of administrative actions relating to final determinations. Such tribunals or procedures shall be independent of the authorities responsible for the determination in question.

Article 10

Injurious Pricing Action on Behalf of a Third Country

10.1 An application for injurious pricing action on behalf of a third country shall be made by the authorities of the third country requesting action.

10.2 Such an application shall be supported by price information to show that a vessel is being or has been injuriously priced and by detailed information to show that the alleged sale at less than normal value is causing or has caused injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the buyer's country to obtain any further information which the latter may require.

10.3 The authorities of the buyer's country in considering such an application shall consider the effects of the alleged injurious pricing on the industry concerned as a whole in the third country; that is to say the injury shall not be assessed in relation only to the effect of the alleged injurious pricing on the industry's sales to buyers of the investigating country or even on the industry's total exports.

10.4 The decision whether or not to proceed with a case shall rest with the buyer's country. If the buyer's country decides that it is prepared to take action, the initiation of the approach to the Parties Group seeking its approval[36] for such action shall rest with the buyer's country.

Article 11

Consultations

Each Party shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Party with respect to any matter affecting the operation of this Annex.

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36. Approval may be given by consensus minus the Party of the exporting shipbuilder.

Article 12

Addenda

The Addenda to this Code constitute an integral part thereof.

Article 13

Non-retroactivity

This Annex is not applicable to vessels contracted for prior to the date of entry into force of the Agreement, except for vessels contracted for after the opening of this Agreement for signature and for delivery more than 5 years from the date of contract. Such vessels shall be subject to this Annex unless the shipbuilder can demonstrate that the extended delivery date was for normal commercial reasons and not to avoid the applicability of this Annex.

Addendum I

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Party and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Party should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Party before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained the investigating authorities should notify the authorities of the exporting Party of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if the investigating authorities notify the representatives of the government of the Party in question and unless the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Party is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

Addendum II

FACTS AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested Party, and the way in which that information should be structured by the interested Party in its response. The authorities should also ensure that the Party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the request for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested Party provide its response in a particular medium (e.g., computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested Party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The authority should not maintain a request for a computerised response, if the interested Party does not maintain computerised accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested Party, e.g., it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested Party does not maintain its computerised accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested Party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the authorities, should be taken into account when determinations are made. If a Party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, this should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g., computer tape) the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it provided the interested Party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying Party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the authorities have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the request for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official statistics of sales to domestic buyers and customs returns, and from the information obtained from other interested Parties during the investigation. It is clear, however, that if an interested Party does not co-operate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the Party than if the Party did co-operate.

Annex IV

DISPUTE SETTLEMENT
PURSUANT TO ARTICLE 8

The following provisions and rules of procedure are applicable in the implementation of Article 8 of this Agreement.

SECTION 1 Initiation of a Panel Proceeding

(1) A Panel proceeding is initiated by a request to establish a Panel, communicated in writing through diplomatic channels to the other party to the dispute ("responding Party") and to the Parties Group, through its Secretariat, which shall act as Secretariat to the Panel to be formed.

(2) The request shall identify the Party initiating the establishment of a Panel, the responding Party and the specific measures at issue, and shall provide a brief summary of the legal basis of the complaint sufficient to present the problem clearly.

(3) The responding Party shall, within ten days of receipt of the request, deliver a copy to any shipbuilder entitled to become a Participant.

SECTION 2 Shipbuilder Participants and Other Interested Parties

(1) A shipbuilder eligible under Article 8, paragraph 3, of this Agreement shall become a Participant by submission to the other Party and the Panel, through its Secretariat, of a written statement of intent to participate within 15 days of receipt by the shipbuilder of notification of the request to establish a Panel.

(2) Another Party to the Agreement wishing to make its views on the dispute known to the Panel (hereafter an "interested Party") shall notify the Panel, through its Secretariat, within thirty days of the date on which the Parties group was notified of the request to establish a Panel.

SECTION 3 Agents and Service of Documents

(1) Each party to the dispute, shipbuilder Participant, and other interested Party shall designate an agent to represent it in the Panel proceedings and shall communicate the name and address of that agent to the Panel, through its Secretariat, and to the other Parties and Participants. A party to the dispute shall do so at the time it or its side appoints a member of the Panel. An interested Party or shipbuilder Participant shall do so at the time of notification of its interest or intent to participate.

(2) Should a Panel proceeding involve the disclosure of a shipbuilder's confidential business information, the Panel may require that the Participating shipbuilder's representatives not be employees of or otherwise under the shipbuilder's professional direction or control and that the representatives undertake to maintain the confidentiality of that information.

(3) Any document that is submitted by a party to the dispute or a shipbuilder Participant during a Panel proceeding shall be delivered to the Panel, through its Secretariat, and at the same time, subject to provisions the Panel may adopt to protect confidentiality, to the other parties to the dispute and other shipbuilder Participants. The submitting Party shall inform other interested Parties of such submissions and, subject to requirements of confidentiality, shall make such documents available to other interested Parties.

(4) Any document submitted by an interested Party shall be delivered to the Panel, through its Secretariat, to the parties to the dispute, and to any shipbuilder Participant and other interested Parties.

(5) Service of a document may be effected by delivery through diplomatic channels to a Party and to the Panel or by personal service, facsimile transmission or expedited international courier or expedited mail service, such as express mail, to the person and address designated in paragraph (1) of this Section. Service shall be deemed made when the document is received.

SECTION 4 Time Limits

(1) If the last day of any time period falls on a legal holiday, which means any day on which the offices of the government of any party to the dispute are officially closed, the time period is extended until the next working day.

(2) The Panel, in consultation with the parties to the dispute, may modify the time periods provided in this Annex.

SECTION 5 Languages

(1) Subject to an agreement of the parties to the dispute and any shipbuilder Participant, the Panel shall decide the language or languages in which proceedings shall be conducted. At least one official language of the OECD shall be used.

(2) If more than one language is used:

(a) any document submitted in the course of a Panel proceeding which is not in an official language of the OECD being used for this procedure shall be accompanied by a translation into that official language. Documents submitted in such an official language of the OECD shall be translated into one or more of the other languages of the proceeding at the direction of the Panel; and

(b) no less than ten days before the oral hearing, each party to the dispute, other interested Party and participating shipbuilder shall inform the Secretariat of the language or languages it or its witnesses will use at the hearing and simultaneous translation will be provided.

(3) Awards and decisions of the Panel under Section 13 shall, if issued in one official language of the OECD, be promptly translated into the other by the Secretariat of the Parties Group at Parties Group expense.

SECTION 6 Formation of the Panel

(1) The Panel shall consist of two members and a Chairman or, at the option of any party to the dispute, four members and a Chairman ("the panellists")

(2) Each party to the dispute shall appoint one member of the Panel within thirty days of receipt by the responding Party of the request to initiate a Panel. If there are two or more parties on a side of a dispute, or a shipbuilder Participant and one or more parties, the parties (and, subject to the consent of its Party, participant) on that side shall jointly choose one member of the Panel. The appointing Party or side shall provide the name of such member of the Panel to the Secretariat. If a Party or side does not appoint a member within thirty days of receipt by the responding Party of the request to establish a Panel, within seven days thereafter the Secretary-General of the OECD, after consultation with the Party or side, shall select a member from a list of eligible panellists maintained by the Parties Group in accordance with paragraph 5 of this Section (hereinafter referred to as "Parties Group list").

(3) Within thirty days of their appointment, the Panel members shall jointly choose a Chairman and, where applicable, two other members of the Panel from the Party Group list. If the two Panel members are unable to agree upon a Chairman or any other members, the Secretary-General, in consultation with the two Panel members selected pursuant to Section 6(2), shall select the Chairman or such other members of the Panel from the Parties Group list within seven additional days. With the agreement of the parties to the dispute, the Panel members or Secretary-General may select a Chairman and other Members of the Panel who are not on the Parties Group list.

(4) A vacancy on the Panel shall be filled by the procedures applicable to that position pursuant to paragraph (2) and (3) of this section.

(5) Panellists shall be persons with demonstrated expertise in law, international trade and the subject matter of this Agreement generally, and unaffiliated with any government. The list of eligible panellists shall be established by the Parties Group at its first meeting, and updated at its subsequent meetings, on the basis of nominations made by the Parties and actions taken under subparagraph (e) below:

(a) Each Party may nominate up to four individuals who are qualified to serve as panellists.

(b) Each nomination shall be submitted at least sixty days prior to consideration by the Parties Group and shall be accompanied by (i) biographical information stating the nominee's qualifications and (ii) disclosure of any past or current financial interest in or affiliation with the shipbuilding and repair industry or employment with or work performed for a Party.

(c) Information provided in confidence under subparagraph (b)(ii), above, will be held in confidence by the recipients.

(d) Each nominee will be included on the list upon a finding of eligibility by the Parties Group.

(e) If a Party's nominee is not found to be eligible or withdraws, or is withdrawn by the nominating Party before or after being listed, the nominating Party may submit a new nomination, which shall be promptly considered by the Parties Group.

SECTION 7 Impartiality and Independence of the Panel

(1) The Parties and other Participants shall respect the impartiality and independence of the Chairman and members of the Panel.

(2) No panellist may have a financial interest in the matter, be employed by, or take instructions from, any party to the dispute.

(3) No panellist may be a national of any party to the dispute or, in the case of the EC, a national of an EC Member State, unless the other parties agree.

(4) The panellists shall avoid any conflict, or appearance of conflict of interest. Each panellist shall, upon appointment, certify in writing the absence of any conflict of interest and shall, at that time and throughout the proceedings, disclose any circumstances likely to give rise to justifiable doubts as to the panellist's impartiality or independence, including involvement in any matter known to be in dispute between Parties under the Agreement.

(5) Any party to the dispute may, at any time, challenge any panellist on the basis of a justifiable doubt as to impartiality, independence, or conflict of interest. The challenge shall be decided within 15 days of receipt of notice of a challenge. The challenged panellist may withdraw or be withdrawn by the appointing authority under Section 6 without any implication of acceptance of the validity of the grounds for the challenge. If the challenged appointment is not so withdrawn, it shall be terminated if such challenge is considered well founded by a panellist other than one appointed by the challenging Party.

SECTION 8 Confidentiality

(1) Unless the parties to the dispute and the Panel agree otherwise, only the Panel and, if the parties to the dispute have authorised it to engage assistants, such assistants may be present during deliberations of the Panel, which shall be confidential.

(2) Confidential information submitted to the Panel shall not be disclosed without formal authorisation from the person or authority providing the information.

(a) Upon request of the person or authority providing confidential information, the Panel may (i) make disclosure of the information subject to a non-disclosure agreement and (ii) limit disclosure to parties to the dispute, excluding any shipbuilder participants and interested Parties.

(b) Where such information is requested from the Panel by a Party or shipbuilder Participant, but release of such information by the Panel is not authorised, a non-confidential summary of the information, authorised by the authority or person providing the information, will be provided;

(c) Confidential information may not be relied upon in support of any finding adverse to a Party or shipbuilder Participant whose representative was not given access to that information.

(3) The Panel shall inquire into any allegation that a Party or Participant has failed to maintain the confidentiality of the proceeding and, if the Panel determines that the Party has failed to maintain confidentiality, the Panel may make adverse inferences against the Party or Participant in its decision.

(4) The Chairman shall inquire into any allegation that another panellist has failed to maintain the confidentiality of the Panel proceeding and, if the Chairman determines that the panellist has failed to maintain confidentiality, the Chairman may remove the panellist, who shall be replaced in accordance with Section 6 of these Rules.

(5) The other Panellists shall inquire into any allegation that the Chairman has failed to maintain the confidentiality of the proceeding and if they determine that the Chairman has failed to maintain confidentiality, they may remove the Chairman, who shall be replaced in accordance with Section 6 of these Rules.

(6) Parties shall provide for effective legal measures against their nationals or other persons in their jurisdiction for improper disclosure of confidential information obtained through such persons' participation in Panel proceedings.

SECTION 9 Terms of Reference

The parties to the dispute shall, within sixty days of receipt of the request to establish the Panel, jointly submit to the Panel terms of reference briefly describing the issue or issues in dispute. If the Parties are unable to agree to terms of reference, the Panel shall have the following terms of reference:

> "To examine, in light of the relevant provisions of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry, the matter identified in the request by [name of Party] to establish a Panel of [date] and to make such decisions as are provided for in that Agreement."

SECTION 10 Written Submissions

(1) The first written submission of each party to the dispute and other Participant shall include a statement of facts, argument and documentary evidence in support of its position. The requesting Party's first submission shall also state any remedy it seeks.

(a) The first written submissions of the requesting Party or side including a shipbuilder participant on that side of the dispute shall be made within thirty days after the selection of the Chairman, or after the submission of the Panel's terms of reference, whichever is later.

(b) The first written submissions of the responding party or side including any shipbuilder participant on that side of the dispute shall be made within 30 days after the first written submissions of the requesting party or side.

(2) The second written submission of each party to the dispute and shipbuilder participant shall be made within twenty days of the first written submission of the responding Party or side. It shall be limited to rebuttal of the arguments and evidence presented by the other side and shall include any supplemental supporting evidence.

(3) Written submissions of other interested Parties shall be made concurrently with those of the Party or side to which its position is closest.

(4) Within twenty days after oral hearing under Section 12, the parties to the dispute and any shipbuilder participant may provide supplementary submissions to the Panel, including responses to any questions or requests for additional information from the Panel.

SECTION 11 Provisional Suspension or Reduction of Countermeasures

(1) A request under Article 8, paragraph 10.b.(ii) shall set forth the evidence and argument pertaining to the likelihood of success on the merits and the irreparable harm that would be suffered by the shipbuilder absent the relief requested. Such request shall be served on the investigating Party in accordance with Section 3 of this Annex.

(2) Within twenty days after the date of service, the investigating Party shall submit its response to the request for provisional relief.

(3) Within twenty days after submission of the response, the Panel shall issue its decision on the request for provisional relief. The Panel's decision shall include factual findings and conclusions in accordance with Section 14 of this Annex.

(4) Any provisional relief granted by the Panel shall terminate automatically when the Panel issues its decision in the underlying matter. If the Panel sustains imposition of countermeasures, the period of countermeasures established pursuant to Article 8.10 of the Agreement will be deemed tolled during any period in which countermeasures were provisionally suspended. Nothing in this section affects the Panel's authority under Article 8., paragraph 10.b.i) of the Agreement to consider claims concerning the imposition of countermeasures."

SECTION 12 Hearings

(1) A hearing shall be held within twenty-one days after the second submissions are due.

(2) All panellists shall attend the hearing.

(3) The Secretariat shall give the Parties fourteen days notice of the place, date, and time of the hearing.

(4) Each Party or side shall have equal time to present evidence and argument at any hearing. The amount of time allocated for the hearing shall be determined by the Panel in consultation with the parties or sides to the dispute. Shipbuilder participants shall, subject to the consent of its Party, be entitled to present evidence and argument at the hearing within the time allocated to their side. The Panel, in consultation with the parties to the dispute, may provide an opportunity for other interested Parties to present argument.

SECTION 13 Evidence

(1) If the dispute involves a measure of support in Annex I, or a countermeasure as provided under Article 8, paragraph 9.b. and 10.b.i), the following provisions apply:

(a) The requesting Party or side shall present evidence sufficient to create a *prima facie* case in support of the allegations.

(b) The responding Party shall be required to present evidence sufficient to prove that the allegations are without support in fact.

(c) At any time during a Panel proceeding the Panel may require the Parties to produce documents, exhibits or other evidence within such time as the Panel shall determine.

(d) If a Party or other Participant refuses to supply information requested by the Panel, the Panel shall use the best information available to it.

(e) The Panel shall determine the admissibility, relevance, materiality and weight of the evidence offered.

(f) In taking all appropriate steps to establish the facts, the Panel may, when necessary, request views of neutral experts.

(g) If witnesses are to be heard, at least ten days before the hearing each party to the dispute and shipbuilder participant shall communicate to the Panel and the other Party or side the names and addresses of any witnesses on behalf of the Party or Participant, and the subject upon which such witnesses will give their testimony.

(h) Testimony of witnesses may also be presented in the form of written statements signed by them.

(i) After the Panel has closed the hearing, no Party may present any further evidence.

(2) If the dispute involves the levy by a Party of an injurious pricing charge under Annex III, the following provisions apply:

(a) the levying Party shall preserve the record of the injurious pricing proceeding for the purposes of review by the Panel. Unless otherwise stipulated by the parties to the dispute, or by the shipbuilder and the Party levying the charge, the record shall consist of:

i) a copy of all information presented to or obtained by the authorities concerned during the course of the proceeding under Annex III, including all governmental memoranda that reflect the analysis of the law and the facts and are relied upon in the decision making process; and

ii) a copy of the determination and of all transcripts or records of conferences or hearings.

(b) The levying Party shall submit a detailed index to the record and shall also make available the record to the other party or parties to the dispute, to any Participating shipbuilder and to the Panel, within 45 days of the request to establish a Panel. The record shall remain available throughout the Panel proceedings at a convenient site suitably equipped for the purposes of this Annex. Any party or Participating Shipbuilder shall be entitled to copy any portion of the record and may submit such record to the Panel. The levying Party shall submit any portion of the record requested by the Panel. If the lack of availability does not permit efficient Panel proceedings, the Panel shall consider the extension of any period set out in this Annex. This subparagraph is subject to Section 8 paragraph 2.

(c) In accordance with Article 8, paragraph 6, of this Agreement, the Panel shall examine the matter on the basis of the facts made available in conformity with appropriate domestic procedures to the authorities of the investigating Party. If required by considerations of fairness, the Panel may send a matter back to the Investigating Authority for reconsideration in light of evidence not made available during the investigation, provided that the evidence was in existence at the time of the investigation but could not then, with due diligence, have been made available.[1]

SECTION 14 Decisions

(1) Any award or decision of the Panel shall be made by a majority of the panellists.

(2) Any Panel decision shall include factual findings, conclusions, and reasons therefor.

(3) The Panel shall give due weight to any advisory opinion and shall take as conclusive any final and binding opinion given by the Parties Group under Article 5, paragraph 2, of the Agreement.

(4) Within thirty days from the closing of the hearing, the Panel shall present to the parties to the dispute and other Participants its preliminary decision.

(5) Each Party or side and any shipbuilder Participant shall be afforded twenty days in which to submit written objection to any portion of the Panel's preliminary decision with which the Party, side or participant disagrees.

(6) Upon receipt of any objections, the Panel may solicit additional written views of any Party or other Participant and shall consider its preliminary decision.

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1. This provision does not authorise sending a matter for reconsideration in light of expert studies and reports completed after the investigation, based on evidence which would have been available with due diligence for such purposes during the investigation.

(7) Within 180 days from the selection of the Chairman, the Panel shall submit its final written decision.

(8) Unless the parties reach an alternative resolution to the dispute, the decision of a Panel shall be made public fifteen days after the Panel issues the decision.

SECTION 15 Costs

The parties to the dispute shall bear the costs of the proceedings, as allocated by the Panel.

SECTION 16 General Provisions

(1) The Panel may supplement the rules governing its Procedures, consistently with Article 8 of the Agreement and the other terms of this Annex.

(2) There shall be no *ex parte* communications between the panel and any Party, Participant, expert or witness.

(3) A Panel which has issued a decision requiring action by a Party or a shipbuilder shall remain constituted until the decision has been complied with or for a reasonable period of time following the compliance deadline for purposes of disputes which may be submitted regarding compliance, including countermeasures.

UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

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UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

1. For any contract relating to any new sea-going ship or any conversion of a ship (1)(2)(3) to be negotiated from the entry into force of the Understanding onwards, Participants in the Understanding agree to abolish existing official facilities (4) and to introduce no new official facilities for export credits on terms providing:

i) a maximum duration exceeding 12 years from delivery and repayment other than by equal instalments at regular intervals of normally six months and a maximum of 12 months;

ii) payment by delivery of less than 20 per cent of the contract price;

iii) an interest rate (5) of less than the commercial interest reference rate [CIRR] (6) of the currency of the credit [1].

2. The minimum interest rate will apply to the credit granted with official support by the shipbuilder to the buyer (in a supplier-credit transaction) or by a bank or any other Party in the shipbuilder's country to the buyer or any other Party in the buyer's country (in a buyer-credit transaction) whether the official support is given for the whole amount of the credit or only part of it.

3. The minimum interest rate will also apply to the credit granted with support by governments participating in the Understanding, in the shipbuilder's country to the shipbuilder or to any other Party, to enable credit to be given to the shipowner or to any other Party in the shipowner's country, whether the official support is given for the whole amount of the credit or only part of it.

4. Insofar as other public bodies participate in measures to promote exports, Participants agree to use all possible influence to prevent the financing of exports on terms which contravene the above principles.

5. Concerning the rule that Governments (or special institutions controlled by Governments) should not provide official export credit guarantee or insurance programmes at premium rates which are inadequate to cover the long term operating costs and losses of the programmes, Participants agree that the rule should cover ships also.

6. Any Participant in the Understanding desiring, for genuine aid reasons, to concede more favourable terms in a particular case is not precluded from doing so, provided that:

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1. See also Annex I.

a) adequate notification, as specified in paragraphs A and C of Annex II and paragraphs 15 c) and d), 17 and 18 of Annex III is given to all the Parties to the Understanding;

b) the concessionality level for tied and partially untied aid - as defined in paragraphs 24 i) and 24 n) and Notes 12 through 15 of the Annex III - is at least 50 per cent for LLDCs and at least 35 per cent for other countries of final destination; paragraph 24 d) 3) of the Annex III applies;

c) the terms comply with the guidelines for tied and partially untied aid and the procedures are followed as contained in paragraphs 7 b), 8, 10 b) 12 b), 14, 15 e), 19, 24 d) 3), 24 i), Notes 5 through 8, the Protocol, Appendix I, and Appendix II of Annex III;

d) confirmation is provided that the ship is not to be operated under an open registry for the duration of the credit and that appropriate assurance has been obtained that the ultimate owner resides in the receiving country, is not a non-operational subsidiary of a foreign interest and has undertaken not to sell the ship without his government's approval.

7. The Participants acknowledge that the invocation of paragraph 14 a) 3 of Annex III will be unusual and infrequent. Where a Party finds that usage of paragraph 14 a) 3 is not unusual and infrequent, it may request that the Parties Group of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (hereafter referred to as the "Agreement") immediately examine the situation with a view to taking a decision on whether corrective action is necessary or whether the Agreement should be amended in accordance with its Article 11. Pending conclusion of this examination, which should be accomplished within 1 year, Participants shall make best efforts not to commit to any transaction under 14 a) 3 of Annex III. If after one year, no acceptable corrective measures are agreed upon, Participants will again have the possibility of invoking overriding non-trade reasons.

8. A Participant has the right to match credit terms and conditions notifiable under clause 6 or 9 as well as credit terms and conditions offered by a non-Participant. The validity of a matching commitment may not exceed the termination date of the commitment being matched. Participants shall match by offering terms that comply with the Understanding, unless the initiating offer does not comply with the Understanding. A Participant intending to match credit terms and conditions:

a) notified by another Participant shall follow the procedures set forth in:

i) paragraph 16 a) of Annex III, if clause 6 or 9 of this Understanding applies to the initiation offer.

ii) paragraph 16 c) of Annex III, when the initiating offer is a non-conforming prior commitment.

b) offered by a non-Participant, shall follow the procedures set forth in paragraph 16 b) of Annex III.

9. Notwithstanding the operative provisions of the Protocol and of Appendix I to Annex III, if a Participant intends to support terms and conditions not in conformity with Clause 1 of the Understanding and not violating the no-derogation engagement in paragraph 12 a) of Annex III, the Participant shall give adequate notice as specified in Annex III and in Annex II of the Understanding.

10. Any Participant in the Understanding may obtain information from any other Participant on the terms of any official support for an export contract in order to ascertain whether the terms contravene the Understanding. Participants undertake to supply all possible information requested with all possible speed. According to the rules and practices of the OECD, any Participant may ask the Secretary-General to act on its behalf in the aforementioned matter and to circulate the information obtained to all Participants in the Understanding.

11. Each Participant undertakes to notify the Secretary-General of its system for the provision of official support and of the means of implementation of the Understanding.

12. The Participants in the Understanding will closely co-operate with the Participants in the Arrangement, with the view to ensure consistent treatment of matters of mutual concern. The chairman of the Participants in the Arrangement will be invited to participate in relevant discussions of the Understanding Group.

13. The Understanding becomes effective upon entry into force of the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry. Participants are the Parties to that Agreement, Participants in the Understanding on Export Credits for Ships [C(81)103(Final)] which have accepted the current revisions, and any other countries with a shipbuilding and repair capability which have accepted the Understanding upon invitation to do so by the other Participants.

14. The Understanding shall be subject to review as often as requested by Participants and, in any case, at intervals not exceeding one year. At such a review, Participants may adopt amendments to the Understanding which will enter into force on the date decided by the Participants at the time of adoption of the amendment, unless any Participant has notified the Secretary-General of an objection. A Participant, not Party to the Agreement, may withdraw from the Understanding after one year's notice of its intention to do so. Within this period, at the request of any of the Participants, there shall be a meeting of the Participants to review the Understanding, and any other Participant, not Party to the Agreement, on notification to its partners, may withdraw from it at the same effective date as the Participant which first gave notice.

NOTES AND REFERENCES

1. The Understanding covers any new sea-going vessel of 100 gt and above used for the transportation of goods or persons, or for the performance of a specialised service (for example, fishing vessels, fish factory ships, ice breakers and as dredgers, that present in a permanent way by their means of propulsion and direction (steering) all the characteristics of self-navigability in the high sea), tugs of 365 Kw and over and to unfinished shells of ships that are afloat and mobile. The Understanding does not cover military vessels. Floating docks and mobile offshore units are not covered by the Understanding, but should problems arise in connection with export credits for such structures, the Council Working Party on Shipbuilding, after consideration of substantiated requests by any participating Governments, may decide that they shall be covered.

2. Ship conversion means any conversion of sea-going vessels of more than 1 000 gt. on condition that conversion operations entail radical alterations to the cargo plan, the hull or the propulsion system.

3. Hovercraft-type vessels are not included in the Understanding. Participants are allowed to grant export credits for hovercraft vessels on equivalent conditions to those prevailing in the Understanding. They commit themselves to apply this possibility moderately and not to grant such credit conditions to hovercraft vessels in cases where it is established that no competition is offered under the conditions of the Understanding.

In the Understanding, the term "hovercraft" is defined as follows: an amphibious vehicle of at least 100 tons designed to be supported wholly by air expelled from the vehicle forming a plenum contained within a flexible skirt around the periphery of the vehicle and the ground or water surface beneath the vehicle, and capable of being propelled and controlled by aircrews or ducted air from fans or similar devices.

It is understood that the granting of export credits at conditions equivalent to those prevailing in the Understanding on Export Credits for Ships should be limited to those hovercraft vessels used on maritime routes and non land routes, except for reaching terminal facilities standing at a maximum distance of 1 kilometre from the water.

4. Official facilities are those which enable credits to be insured, guaranteed or financed by governments, by governmental institutions, or with any form of direct or indirect governmental participation.

5. Interest excludes: any payment by way of premium or other charge for insuring or guaranteeing supplier credits or financial credits; any other payment by way of banking fees or commissions associated with the export credit, other than annual or semiannual bank charges payable throughout to the repayment term; and withholding taxes imposed by the importing country.

6. As defined in Appendix III and the Note to Annex III.

7. Clauses 1 to 4 imply that all credit conditions of Clause 1 shall be applied as a set of binding requirements to any ship export credit with official support, including the suppliers' credit transaction between the exporter and the buyer.

Annex I

COMMITMENTS FOR FURTHER WORK AND TRANSITIONAL ARRANGEMENT

COMMITMENTS FOR FURTHER WORK

The Participants in the Understanding request the Participants in the Arrangement on Guidelines for Officially Supported Export Credits to make a proposal for a 12 year CIRR and to base the determination on the CIRR system as in force at present with as few modifications as necessary. Thereafter the Participants in the Understanding will seek to determine before 31 December 1994 the 12 year CIRR based on the proposal by the Participants in the Arrangement. The Republic of Korea should be invited to participate in the discussions of the Participants in the Arrangement on this issue.

Participants in the Understanding on Export Credits for Ships will co-operate with the Participants of the Arrangement on Guidelines for Officially Supported Export Credits in order to ensure coherence between the Understanding and the Arrangement on Guidelines for Officially Supported Export Credits.

In the context of this co-operation, the Participants agree:

a. to continue discussions on the disciplines governing the use of aid credits for ship exports with the view of strengthening the disciplines governing the use of aid credits for ship exports;

b. to develop, on the basis of experience, an illustrative list of types of ships which are generally considered non-commercially viable;

c. to discuss questions related to second windows in conjunction with the study on pure cover;

d. to discuss questions related to cosmetic interest rates. The Participants will make best efforts to ensure that during these discussions cosmetic interest rates will not be used;

e. to incorporate into the Understanding the relevant results of the study on premiums in OECD, with a view to eliminate trade distortions, whether caused by premiums or related conditions.

PURE COVER

1. Participants in the Understanding agree to undertake discussions in 1994 on issues related to "pure cover" transactions, where the sole official support is a guarantee. A report recommending solutions to this question shall be submitted within two years after entry into force of the Agreement respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry ("the Agreement"), or as soon thereafter as possible. Participants will co-operate in this review by providing information on a quarterly basis on all shipbuilding contracts based on loan guarantees on which the interest rates are effectively less than CIRR.

2. Any Participants may ask for consultation with another Participant and request, through the Secretariat, discussions in the Parties Group if it finds the elements of the pure cover transactions are not within the scope of the Agreement.

3. During the two-year period following entry into force of the Agreement transactions on commercial interest terms other than CIRR will be permitted provided that the guarantee does not confer a benefit within the general sense of that term used in the Agreement.

4. Thereafter, such transactions are not permitted, unless all Participants agree to extend the two-year period.

5. A Participant who intends to support pure cover transactions shall give prior notification, at least ten calendar days before issuing any commitment, to all other Participants in the Understanding.

The notification shall be in accordance with Annex II, and should be limited to the following items: 1 to 7.a), 8.a) and 8.b).

6. A Participant shall upon request by another Participant, promptly and adequately respond to questions in accordance with Appendix I to Annex III (Framework for Information Exchange).

GUARANTEES

1. In order to improve transparency Participants shall provide annually information through the Secretariat on:

a) the schemes in force for providing official guarantees and insurance for export credits for ships, and:

b) the following data for the schemes described in (a):

-- annual results
-- claims paid
-- income from premiums and fees
-- income from recoveries

and other appropriate information as needed.

Annex II

STANDARD FORM FOR NOTIFICATION REQUIRED UNDER CLAUSES 6, 8 AND 9

For notifications under Clause 6, 8 and 9 the following particulars shall be communicated by means of instant communication to all Participants and the Secretariat in the form set out below:

1. Name of authority/agency responsible under the Understanding for making notifications.

2. Reference number (initials of the country notifying, year.

3. We are notifying under:
-Clause 6: aid financing [15 c); 15 d)]
-Clause 8: matching [16 a) 1) i); 16 a) 1) ii); 16 a) 3); 16 a) 4); 16 b) 2); 16 c) 3) i); 16 c) 3) ii)]
-Clause 9: derogation [15 a)]
-Clause 5 in Annex I: pure cover transaction
-Paragraph 15 b of Annex III: Deviation

4. Country of buyer/borrower.

5. Name, location and status (public/private) of buyer/borrower.

6. Number and type of ship(s) (dwt, grt, and/or kw). Closing date of tender, if relevant, expiry date of credit line.

7. a) Contract value;
b) Value of the credit or credit line;
c) Value of exporter's national share;
d) Minimum contract value of credit line.

These values shall be stated as follows:

-- The exact amount in the denominated currency for a line of credit;

-- These values pertaining to an individual vessel or contract shall be disclosed in terms of value ratings in accordance with the following scale in Special Drawing Rights (SDRs):

Category	I:	upon to	1 000 000 SDRs	
Category	II:	from	1 000 000 to	2 000 000 SDRs
Category	III:	from	2 000 000 to	3 000 000 SDRs
Category	IV:	from	3 000 000 to	5 000 000 SDRs

Category	V:	from	5 000 000	to	7 000 000	SDRs
Category	VI:	from	7 000 000	to	10 000 000	SDRs
Category	VII:	from	10 000 000	to	20 000 000	SDRs
Category	VIII:	from	20 000 000	to	40 000 000	SDRs
Category	IX:	from	40 000 000	to	80 000 000	SDRs
Category	X:	from	80 000 000	to	120 000 000	SDRs
Category	XI:	from	120 000 000	to	160 000 000	SDRs
Category	XII:	from	160 000 000	to	200 000 000	SDRs
Category	XIII:	from	200 000 000	to	240 000 000	SDRs
Category	XIV:	from	240 000 000	to	280 000 000	SDRs
Category	XV:	from	280 000 000	SDRs*		

* Indicate actual level within multiples of 40 000 000 SDRs

When using this scale please indicate currency of the contract.

8. Credit terms which reporting organisation intends to support (or has supported):

a) Cash payments;

b) Repayment term (including starting point of credit, frequency of instalments and whether these instalments will be equal in amount);

c) Interest rate.

9. Any other relevant information including references to related cases and when relevant:

a) Justification for matching (specify reference number of notification matched or other references).

b) The overall concessionality level of the tied and partially untied aid financing calculated in accordance with paragraph 24 n) and the discount rate used to calculate that concessionality level.

c) Treatment of cash payments in the calculation of the concessionality level.

d) Development aid or pre-mixed credit or associated finance.

e) Restrictions on the use of credit lines.

COLLECTION OF INFORMATION UNDER CLAUSE 10

Any request for information which one Participant wishes to obtain from another should be made directly to the country in question, specifying the motives for the request, with a copy to the Secretariat. The reply, which should be made with all possible speed, should also be copied to the Secretariat.

SETTLEMENT OF DIFFERENCES BETWEEN TWO PARTICIPANTS

Prior notifications, and any ensuing discussion, will normally be by means of instant communication.

Any difference arising between two Participants should, if possible, be dealt with bilaterally, the Secretariat being kept informed as appropriate.

The Secretary-General's intervention would be solicited in accordance with Clause 10 only if the bilateral approach did not provide a satisfactory solution.

CHANGES IN SYSTEMS FOR THE PROVISION OF OFFICIAL SUPPORT FOR SHIP EXPORT TRANSACTIONS AND IN THE MEANS OF IMPLEMENTATION OF THE UNDERSTANDING

In accordance with Clause 11 of the Understanding, Participants are required to notify the Secretary-General of all changes of this kind.

Such notification must be made automatically, i.e. immediately as a change occurs, or beforehand if possible, so that the Secretariat can issue information without delay.

Annex III

PROVISIONS INCORPORATED FROM THE ARRANGEMENT ON GUIDELINES FOR OFFICIALLY SUPPORTED EXPORT CREDITS

Paragraph 7 b): [MAXIMUM PERIOD OF VALIDITY OF COMMITMENTS (*), PRIOR COMMITMENTS AND CERTAIN AID COMMITMENTS]

b) Participants shall not fix for more than one year credit terms and conditions for individual tied or partially untied aid credits that have a concessionality level below the appropriate minimum in paragraph 12 b) i) below. Aid protocols, aid credit lines or similar agreements may not be valid for more than two years after their signature. Extension of a concessional credit line shall be notified as if it were a new transaction with a note, explaining that it is an extension and that it is renewed at terms allowed at the time of the notification of the extension.

Paragraph 8: [TRADE RELATED CONCESSIONAL OR AID CREDITS (5)]

a) Eligibility

This sub-paragraph does not apply to concessional or aid credits whether tied or partially untied* with a value of less than SDR 2 million or to those where the concessionality level is 80 per cent or more, except for concessional or aid credits or grants that form part of an associated (mixed) credit package, which remain subject to the provisions of footnote 12 of Annex III. In any case, derogation from these rules will be possible if THE PARTICIPANTS agree through a common line procedure (6).

i) Tied and partially untied concessional or aid credits, except for credits to LLDCs, shall not be extended to public or private projects that normally should be commercially viable if financed on market or Understanding terms.

The key tests for such aid eligibility are:

- Whether the project is financially non-viable, i.e. does the project lack capacity with appropriate pricing determined on market principles, to generate cash flow sufficient to cover the project's operating costs and to service the capital employed, or
- Whether it is reasonable to conclude, based on communication with other Participants, that it is unlikely that the project can be financed on market or Understanding terms.

The above tests are intended to describe how a project should be evaluated to determine whether it should be financed with such aid or with export credits on market or Understanding terms. Through the consultation process, a body of experience is expected to develop over time that will more precisely define, for both export credit and aid agencies, *ex ante* guidance as to the line between the two categories of projects.

ii) There shall be no tied or partially untied concessional or aid credits to countries whose per capita GNP would make them ineligible for 17 or 20 year loans from the World Bank (7).

b) Procedure for derogation:

Participants may derogate from the rules in paragraph 8 a) above by following the procedures in paragraph 14.

c) Notification procedure

i) If a Participant intends to support trade related tied or partially untied aid financing

- o with a value of SDR 2 million or more and a concessionality level of 80 per cent or more; or
- o with a value of less than SDR 2 million and a concessionality level of 50 per cent or more;

the Participant shall give notification in accordance with the procedures in paragraph 15 d) to all Participants and the Secretariat.

ii) If a Participant intends to support trade related untied, tied or partially untied aid credits not covered by i) above the participant shall, without prejudice to official development assistance procedures administered by the Development Assistance Committee, give notification in accordance with the procedures set forth in paragraph 15 c), if the concessionality level (*) is less than 80 per cent. Concessional or aid credits or grants that form part of an associated (mixed) credit package shall remain subject to the provisions of Note 12 of Annex III.

iii) No notification is required for untied aid financing with a value of less than SDR 2 million and a grant element of more than 50 per cent.

iv) Exception for Small Projects and Technical Assistance

The reporting requirements of paragraphs 12 b) and 15 c) and d) do not apply to the following transactions:

- o Aid financing where the official development aid component consists solely of technical co-operation that is less than either 3 per cent of the total value of the transaction or one million US dollars, whichever is lower, and

- o Capital projects of less than one million US dollars that are funded entirely by development assistance grants.

Paragraph 10: [BEST ENDEAVOURS]

a) Objectives:

1. The guidelines set out in this Understanding represent the most generous credit terms and conditions that Participants may offer when giving official support. All Participants recognise the risk that in the course of time these guidelines may come to be regarded as the normal terms and conditions. They therefore undertake to take the necessary steps to prevent this risk from materialising.

2. In particular, if in an individual branch of trade or industrial sector to which this Understanding applies, credit terms and conditions less generous to buyers than those set forth above in the Understanding are customary, Participants shall continue to respect such customary terms and conditions and shall do everything in their power to prevent these from being eroded as a result of recourse to the credit terms and conditions set forth in this Understanding.

b) Firm Undertaking:

In keeping with the objectives in a) above, the Participants, recognising the advantage which can accrue if a clearly defined common attitude toward the credit terms and conditions for a particular transaction can be achieved, firmly undertake:

1) to respect strictly the existing procedures for notification and in particular to give prior notification at the latest at the stipulated moment before commitment as well as to supply all the information in the detail called for in the form set forth in Appendix I of this Annex III;

2) to make maximum use of the Framework for Information Exchange (see Appendix I of this Annex III) at an early stage with a view of forming a common line towards credit terms and conditions for particular transactions;

3) to consider favourably face-to-face consultations if a Participant so requests in the case of important transactions as set out in the protocol to this Annex III.

Paragraph 11: [MATCHING]

A Participant has the right to match credit terms and conditions notifiable under paragraph 15, as well as credit terms and conditions offered by a non-Participant. The validity of a matching commitment may not exceed the termination date of the commitment being matched. Participants shall match by offering terms that comply with this Understanding unless the initiating offer does not comply with this Understanding. A Participant intending to match credit terms and conditions:

a) notified by another Participant shall follow the procedures set forth in paragraph 16 a) or c) as appropriate;

b) offered by a non-Participant shall follow the procedures set forth in paragraph 16 b.

Paragraph 12: [NO-DEROGATION ENGAGEMENT]

Participants shall not:

a) derogate with respect to maximum repayment terms (whatever the form of support), to minimum interest rates or to the limitation of the validity of commitments to a maximum of six months or extend the relevant repayment term through an extension of the grace period before the start of the repayment beyond the normal practice of six months after the starting point; or

b) avail themselves of the possibilities provided under paragraph 15 of this Annex III to support tied or partially untied aid financing that:

i) has a concessionality level of less than 35 per cent or 50 per cent if the beneficiary country is a Least Developed Country (LLDC) as defined by the United Nations, or

ii) does not conform to the provisions on eligibility for aid financing in paragraph 8 a) ii) of this Annex III (6).

Paragraph 14: [CONSULTATIONS]

a) 1) Any Participant seeking clarification about possible trade motivation for a tied or partially untied aid credit may request that a full Aid Quality Assessment (see Appendix II of this Annex III) be supplied. Any Participant may request consultations (8) in accordance with paragraph 14 a) 2) to a) 4) below with other Participants, including face-to-face consultations, to discuss:

- first, whether an aid offer meets the requirement of the rules in paragraph 8 a) above;
- if necessary, whether an aid offer is justified even if the requirements of the rules in 8 a) are not met.

2) The consultation shall be completed and the findings on both questions in 1) above notified by the Secretariat to all Participants at least ten working days before the earlier of bid closing date or commitment date. If there is disagreement among the consulting Parties, the Secretariat shall invite other Participants to express their views within five working days. It shall report these views to the notifying Participant, who should reconsider going forward if there appears to be no substantial support for an aid offer.

3) A donor wishing to proceed with a project despite the lack of substantial support shall provide prior notification to other Participants and shall, in a letter to the Secretary-General of the OECD, outline the results of the consultations and explain the over-riding non-trade related national interest that forces this action. The Participants expect that such an occurrence will be unusual and infrequent.

4) The Secretariat shall monitor the progress and results of the consultation.

b) There shall be consultation (8) for all offers of tied or partially untied concessional or aid credits for projects larger than SDR 50 million with a concessionality level of less than 80 per cent. Concessional or aid credits or grants that form part of an associated (mixed) credit package shall remain subject to the provisions of Note 12 of this Annex III. In such consultation, special weight shall be given to the expected availability of financing at market or Understanding terms when considering the appropriateness of such aid credits.

Paragraph 15: [PRIOR(*) AND PROMPT(*) NOTIFICATIONS]

a) Derogations: Procedure for Prior Notification and Discussion

1) If a Participant intends to take the initiative to support terms and conditions not in conformity with this Understanding, the Participant shall notify all other Participants of the terms and conditions it intends to support at least ten calendar days before issuing any commitment. If any other Participant requests a discussion during this period, the initiating Participant shall wait an additional ten calendar days before issuing any commitment on such terms. Normally this discussion will be by means of instant communication.

2) If the initiating Participant moderates or withdraws its intention to support the notified non-conforming terms and conditions, it must immediately inform all other participants accordingly.

3) A Participant intending to match notified derogating terms and conditions shall follow the procedure set forth in paragraph 16 a) 1).

b) Deviations: Procedure for Prior Notification without Discussion

1) A Participant shall notify, at least ten calendar days before issuing any commitment, all other Participants of the terms and conditions if it intends:

iv) to support, for any kind of ship to which the OECD Understanding on export credits for ships applies, credit terms and conditions that would be more favourable than those credit terms and conditions permitted by the Arrangement on Guidelines for Officially Supported Export Credits.

2) If the initiating Participant moderates or withdraws its intention to give such support to the notified deviating credit conditions it must immediately inform all other Participants accordingly.

3) A Participant intending to match notified deviating terms and conditions shall follow the procedure set forth in paragraph 16 a) 2).

c) Procedures for Prior Notification of Aid Financing

The procedures set out in paragraph 15 b) shall apply where a Participant intends to provide or support a transaction covered by paragraph 8 c) ii) above; except that wherever paragraph 15 b) refers to a period of ten calendar days, a period of 30 working days before bid closing date or commitment (*), whichever comes first shall apply and that Participants intending to match shall use the procedures of paragraph 16 a) 3). Notifications according to this paragraph can not substitute procedures for derogation in paragraph 8 b).

d) Procedure for Prompt Notification (*)

As soon as a Participant commits itself to support a transaction covered by paragraph 8 c) i) above, the Participant will promptly notify all other Participants accordingly.

e) Tying Status

Any Participant may request additional information relevant to the tying status of any credit.

Paragraph 16: [PROCEDURES FOR MATCHING]

a) Matching Terms and Conditions Notified in Accordance with paragraph 15

1) Matching of notified derogations: On and after the expiry of the first ten calendar day period referred to in paragraph 15 a) 1) if no discussion is requested (or on and after the expiry of the second ten calendar day period if discussion is requested) and unless the

Participant intending to match has received notice from the initiating Participant that the latter has withdrawn its intention to support non-conforming terms and conditions, any Participant will have the right to support:

i) in a case of "identical matching", terms and conditions that include the identical non-conforming element but that otherwise conform to the Understanding; provided that the matching Participant gives as early as possible notification of its intention to match; or

ii) in a case of "other support" prompted by the initial derogation, any other non-conforming element of the terms subject to the restrictions of paragraph 11; provided that the responding Participant introducing a fresh derogation, initiates a five calendar day prior notification and five calendar day discussion procedure and awaits its completion. This period can run concurrently with that of the prior notification and discussion procedure initiated by the originally derogating Participant but cannot elapse before the end of the applicable ten or twenty calendar day period referred to under paragraph 15 a) 1).

2) Matching of notified deviations: On and after the expiry of the ten calendar day period referred to in paragraph 15 b 1) and unless the matching Participant has received notice from the initiating Participant that the latter has withdrawn its intention to support the terms and conditions notified in accordance with paragraph 15 b) 1), any Participant will have the right to support:

i) in a case of "identical matching", terms and conditions that include the identical element notified in accordance with paragraph 15 b) 1) but that otherwise conform to the Understanding; provided that the matching Participant gives notification as early as possible of its intention to match.

ii) in a case of "other support", any other element of the terms which does not conform to the Understanding subject to the restrictions of paragraph 11; provided that the responding Participant initiates a five calendar day prior notification procedure without discussion and awaits its completion. This period may run concurrently with that of the prior notification procedure started by the initiating Participant, but may not elapse before the end of the ten calendar day period referred to under paragraph 15 b) 1).

3) Matching of a prior notification of aid financing: The procedures set out in paragraph 16 a) 2) shall apply where a Participant intends to match aid financing; except that where paragraph 16 a) 2) refers to a period of ten calendar days, a period of thirty working days before bid closing date or commitment, whichever comes first, shall apply.

4) Matching of a prompt notification: No prior notification need be given if a Participant intends to match terms and conditions that were subject to a prompt notification according to paragraph 15 d).

5) Discount rate in matching: In matching aid financing, identical matching means matching with an identical concessionality level recalculated with the discount rate in force at the time of matching.

b) Matching Export Terms and Conditions offered by a non-Participant

1) Before considering meeting non-conforming terms and conditions assumed to be offered by a non-Participant, a Participant shall make every effort to verify that these terms are receiving official support. The Participant shall inform all other Participants of the nature and outcome of these efforts.

2) A Participant that intends to match non-conforming terms offered by a non-Participant shall follow the prior notification and discussion procedure under paragraph 15 a) 1).

c) Matching Non-conforming Prior Commitments

1) A Participant intending to match a prior commitment shall make reasonable efforts to determine whether the non-conforming terms and conditions of the individual transaction or credit line in question will be used to support a particular transaction. This Participant will be considered to have made such reasonable efforts if it has informed by means of instant communication the Participant assumed to offer such non-conforming terms and conditions of its intention to match but in reply to the instant communication has not been informed within three working days, exclusive the day of reception, that this prior commitment will not be used to support the transaction in question.

2) A prior credit line may be matched by an individual transaction or by means of a credit line. In both cases, the dates of expiry of the matching offer shall not be later than that of the credit line being matched.

3) A Participant intending to match another Participant's non-conforming prior commitment shall, in the case of:

i) "identical matching", follow the procedure set forth in paragraph 16 a) 1) i) when matching a derogation and paragraph 16 a) 2) i) when matching a deviation;

ii) "other support", follow the procedure set forth in paragraph 16 a) 1) ii) when matching a derogating prior commitment and the procedure set forth in paragraph 16 a) 2) ii) when matching a deviating prior commitment.

Paragraph 17: [INFORMATION ON COMMITMENTS]

As soon as a Participant commits credit terms and conditions that it had notified in accordance with paragraph 15 or 16, it shall, in all cases, inform all other Participants accordingly by including the notification reference number on the relevant Creditor Reporting System (CRS) 1c form.

Paragraph 18: [INFORMATION TO BE SUPPLIED UNDER THE NOTIFICATION AND MATCHING PROCEDURES]

The notifications called for by the above procedures shall be made in accordance with and contain the information set out in the "standard form" in Annex II and be copied to the Secretariat of the OECD.

Paragraph 19: [MONITORING]

The Secretariat shall monitor the implementation of the Understanding.

Paragraph 24 d) 3): [DEFINITIONS AND INTERPRETATIONS: Relay countries]

In the case of an export through a relay country, the relevant repayment term and interest rate are those corresponding to the country of final destination in cases:

i) where the "relay country" makes payment, if and when received from the country of final destination, to the exporting country on the basis of the latter's portion in the total export value; or

ii) where there is security or payment by the country of final destination.

Paragraph 24 i): [DEFINITIONS AND INTERPRETATIONS: Tied aid financing]

Tied aid financing (10) is defined as loans or grants or associated financing packages involving a concessionality level greater than zero per cent that is in effect tied to procurement of goods and services from the donor country. Partially untied aid financing (10) is defined as loans or grants or associated financing packages involving a concessionality level greater than zero per cent that is in effect tied to procurement of goods and services from the donor country and from a restricted number of countries (11).

1) Such financing can take the form of either:

i) Official Development Assistance loans;

ii) Official Development Assistance grants;

iii) Other Official Flows (including grants and loans but excluding officially supported export credits that are in conformity with this Understanding); or

iv) Any association in law or in fact (12) either in the hands of the donor, lender or borrower among two or more of the following:

-- Official Development Assistance loans;

-- Official Development Assistance grants;

-- Other Official Flows (including grants and loans but excluding officially supported export credits that are in conformity with this Understanding);

-- An export credit that is officially supported by way of direct credit, refinancing, eligibility for an interest subsidy, guarantee or insurance to which this Understanding applies, other funds at or near market terms or cash payments from the buyer's own resources.

2) Such financing is defined to be in effect tied to procurement of goods and services from one or a restricted number of countries as soon as:

i) one of the financial components listed above is not freely and fully available to finance procurement from the recipient country, substantially all other developing countries and from participating countries, whether by a formal or informal understanding to that effect between the recipient and the donor country, or

ii) it involves practices that the Development Assistance Committee of the OECD or the Participants may determine to result in such tying (13).

3) The definition of "Official Development Assistance" is identical to that in the "DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance".

Paragraph 24 1): [DEFINITIONS AND INTERPRETATIONS: Starting Points]

1) Starting Point is the same as the Berne Union definition currently in use and is as follows:

1) In the case of a contract for the sale of capital goods consisting of individual items usable in themselves (e.g. locomotives), the starting point is the mean date or actual date when the buyer takes physical possession of the goods in his own country.

2) In the case of a contract for the sale of capital equipment for complete plant of factories where the supplier has no responsibility for commissioning, the starting point is the date when the buyer is to take physical possession of the entire equipment (excluding spare parts) supplied under the contract.

3) In the case of construction contracts where the contractor has no responsibility for commissioning, the starting point is the date when construction has been completed.

4) In the case of any contract where the supplier or contractor has a contractual responsibility for commissioning, the starting point is the date when he has completed installation or construction and preliminary tests to ensure that it is ready for operation. This applies whether or not it is handed over to the buyer at that time in accordance with the terms of the contract and irrespective of any continuing commitment which the supplier or contractor may have, e.g. for guaranteeing its effective functioning or for training local personnel.

5) In the case of paragraphs 2), 3) and 4) above where the contract involves the separate execution of individual parts of a project, the date of the starting point is the date of the starting point for each separate part, or the mean date of those starting points or, where the supplier has a contract, not for the whole project but for an essential part of it, the starting point may be that appropriate to the project as a whole.

Paragraph 24 n): [DEFINITIONS AND INTERPRETATIONS: Concessionality level]

1) Concessionality level is very similar in concept to the "grant element" used by the Development Assistance Committee (DAC) of the OECD. In the case of grants, it is 100 per cent. In the case of loans, it is the difference between the nominal value of the loan and the discounted present value of the future debt service payments to be made by the borrower, expressed as a percentage of the nominal value of the loan, and is calculated in accordance with the method of calculating the grant element used by the DAC, except that:

i) The discount rate used in calculating the concessionality level of a loan in a given currency is subject to change on an annual basis on the 15th of January and calculated as follows:

- o for currencies where CIRR is less than 10 per cent: CIRR + 1/4 (10-CIRR).
- o for other currencies: CIRR.

where CIRR is the average of the monthly CIRRs valid during the six-month period extending from the 15th August of the previous year through the 14th of February of the current year. The

calculated rate is rounded to the nearest 10 basis points. If there is more than one CIRR for the currency, the CIRR for the longest maturity shall be used for this calculation.

ii) The base date for the calculation of the concessionality level is the starting point as defined in paragraph 24 1).

2) For the purpose of calculating the overall concessionality level of an associated financing package, the concessionality levels i) of export credits that are in conformity with this Annex III, ii) of other funds at or near market rates, iii) of other official funds with a concessionality level of less than the minimum permitted by paragraph 12 b) above, except in cases of matching (14), or iv) of cash payments that are from the buyer's own resources, are considered to be zero. The overall concessionality level of a package is determined by dividing i) the sum of the results obtained by multiplying the nominal value of each component of the package by the respective concessionality level of each component by ii) the aggregate nominal value of the components.

3) The discount rate for a given aid loan is the rate that is in effect at the time of notification (15), except in cases of prompt notification, where the discount rate is the rate in effect at the time of commitment. A change in the discount rate during the life of a loan does not change its concessionality level.

4) Without prejudice to 3) above, when calculating the concessionality level of individual transactions initiated under an aid credit line, the discount rate is the rate that was originally notified for the credit line.

NOTES TO ANNEX III

(*) The asterisk refers to the relevant definitions or interpretations set forth in paragraph 24.

Note 2:
see Appendix III hereafter

Note 5:
The Participants are agreed on the following general principle: "OECD Members' export credit and tied aid credit policies should be complementary; those for export credits should be based on open competition and the free play of market forces; those for tied aid credits should provide needed external resources to countries, sectors or projects with little or no access to market financing, ensure best value for money, minimise trade distortion and contribute to developmentally effective use of these resources".

Note 6:
There are three means by which a Participant may proceed with a non-conforming offer under paragraph 8 a):

- common lines;
- justification on aid grounds through support by a substantial body of Participants -- paragraphs 14 a) 1) and 14 a) 2); and
- through a letter to the Secretary-General -- paragraph 14 a) 3), which the Participants expect will be unusual and infrequent.

Note 7:
GNP/Capita over $2 465 in 1990. A country will only be moved to or from this category after its World Bank category has been unchanged for two consecutive years. Notwithstanding classifications of countries ineligible or eligible to receive tied aid, tied aid policy for Bulgaria, Czech and Slovak Federal Republic, Hungary, Poland and Romania is covered by the Participants' agreement, as long as such agreement is in force, to try to avoid such credits other than outright grants, food aid and humanitarian aid. The OECD Ministers endorsed this policy in June 1991.

Note 8:
At which time, they may request, among other items, the following information:

- assessment of a detailed feasibility study/project appraisal;
- whether there is a competing offer with non-concessional or aid financing;

- o expectation of the project generating or saving foreign currency;
- o whether there is co-operation with multilateral organisations such as the World Bank;
- o presence of International Competitive Bidding (ICB), in particular if the donor country's supplier is the lowest evaluated bid;
- o environmental implication;
- o private sector participation;
- o timing of the notifications (e.g. 6 months prior to bid closing or commitment date) of concessional or aid credits.

Note 10:
It is understood that the terms "tied aid financing" and "partially untied aid financing" exclude aid programmes of multilateral or regional institutions.

Note 12:
Associated financing transactions may take various forms -- such as "mixed credit", "mixed financing", "joint financing", "parallel financing" or single integrated transactions. Their main characteristic is that the concessional component is linked in law or in fact to the non-concessional component, that either the non-concessional or the concessional component or the whole financing package is in effect tied or partially untied and that the availability of concessional funds is conditional upon accepting the linked non-concessional component.

Association or linkage "in fact" is determined by such factors as the existence of informal understandings between the recipient and the donor authority, the intention by the donor through the use of ODA to facilitate the acceptability of a financing package, the effective tying of the whole financing package to procurement in the donor country, the tying status of ODA and the modality of tender and/or of the contract of each financing transaction or any other practice, identified by the DAC or the Participants in which a de facto liaison exists between two or more financing components.

None of the following practices shall prevent the determination that an association or linkage "in fact" exists: contract splitting through the separate notification of component parts of one contract; splitting of contracts financed in several stages; non-notification of interdependent parts of a contract; non-notification arising from the partial untying of a financing package.

Note 13:
In cases of uncertainty as to whether a certain financing practice falls within the scope of the above definition, the donor country shall furnish evidence in support of any claim to the effect that such a practice is untied.

Note 14:
In identical matching, the concessionality level of any OOF in the initiating Participant's offer shall be included in the calculation of the initial offer's concessionality level if the matching offer contains an OOF that is included in its concessionality level, even if the OOF in the initial offer has a concessionality level below the minimum permissible concessionality level.

Note 15:
If a change of currency is made before the contract is concluded, a revision of the notification is required. The discount rate used to calculate the concessionality level will be the one applicable at the time of the revision. However, if the alternative currency is indicated in the original notification and all necessary information is provided, a revision is not necessary.

PROTOCOL TO ANNEX III

Whereas at the OECD Ministerial meeting of 17th-18th May 1983, the Ministers enjoined the competent bodies of the Organisation for Economic Co-operation and Development to take prompt action to improve existing arrangements so as to strengthen transparency and discipline in the area of aid and trade related concessional finance by all appropriate means;

Whereas the Participants to the Consensus recognise the advantage which can occur if a clearly defined common attitude toward the credit terms for a particular transaction can be achieved and if maximum use is made of the existing arrangements for exchanging information at an early stage;

Whereas the Framework for Information Exchange (Appendix I) lays down rules for exchanging information amongst members of the OECD Group on Export Credits and Credit Guarantees;

Whereas this Framework outlines procedures to be followed in the event that all members taking part in an exchange of information agree to accept that the credit terms for a particular transaction should be the subject of a binding obligation;

Whereas at a meeting of the OECD Consensus Group in April 1984 all Participants firmly undertook to consider favourably face-to-face consultations if a Participant so requests in the case of important transactions;

Whereas this undertaking was motivated by the unsatisfactory functioning of existing procedures for exchanging information in a number of important transactions;

Whereas the implementation of the provisions of the Consensus can be jeopardised if procedures for exchanging information do not function efficiently;

Whereas any weakening in Consensus discipline risks provoking wasteful export credit and/or tied aid credit competition and increasing subsidies;

Whereas the search for a common attitude does not prejudice the possibility for Participants to retain their rights and liberty as to whether to insure or finance credits for a particular transaction, in the framework of their international obligations.

The Participants have decided as follows:

Within the framework of existing procedures in the field of officially supported export credits and tied aid credits, and with a view to improving transparency, the Participants:

1) Confirm that they will strive to provide the fullest possible details on the credit terms and conditions which they may be considering offering for any transaction which is the subject of an exchange of information;

2) Acknowledge that the interests of all Participants are best served if agreement can be reached at an early stage on a common attitude on the export credit conditions for a particular transaction and if the provisions of that agreement are maintained;

3) Reaffirm, therefore, the need to promote common attitudes, particularly on important transactions;

4) Recognise that in certain instances, notably when existing exchange of information procedures are perceived to be functioning in an unsatisfactory manner, face-to-face consultations could facilitate the adoption of a common line;

5) Undertake, in such circumstances, to respond favourably to any such request for early face-to-face consultations and to attend any meeting arranged in order to reach a common attitude on credit terms in conjunction with other interested Participants. In this respect, particular attention will be paid to the observance and common interpretation of the guidelines;

6) Confirm moreover the importance they attach to a strict observation of the formal notification procedures provided for in this Annex III.

Appendix I to Annex III

[FRAMEWORK FOR INFORMATION EXCHANGE (FIE)]:

1. Scope

The Framework for Information Exchange (FIE) concerns credit terms and conditions for any export credit or credit guarantee transactions that are covered by Clause 1 of this Understanding, as well as any aid transaction that is covered by the notification procedures of paragraph 15 of Annex III.

2. Information exchange

a) A Participant:

-- may address to another Participant an enquiry on the attitude it takes in respect of a third country, of an institution in a third country or of a particular method of doing business;

-- who has received an application for official support, may address an enquiry to another Participant giving the most favourable credit terms that the enquiring Participant would be willing to support; or

-- who has received allegations that another Participant has offered official support that derogates from the Understanding, may address an enquiry to another Participant, stating the details of any such allegation.

If an enquiry is to more than one Participant, it shall contain a list of addressees. A copy of all enquiries shall be sent to the Secretariat.

b) The Participant to whom an enquiry is addressed shall respond within seven calendar days with as much information as is available at that time. The reply shall include, if possible, the best indication that the Participant can give of the decision likely to be taken. If necessary, the full reply shall follow as soon as possible. Copies shall be sent to the other addressees of the enquiry and to the Secretariat.

c) If an answer to an enquiry subsequently becomes invalid because an application has been made, changed or withdrawn, because other terms are being considered, or for any other reason, a follow-up reply shall be made at once and copied to all other addressees of the enquiry and to the Secretariat.

d) All communications shall be made between the designated contact points in each country by means of instant communication (e.g. electronic mail, telex, telefax) and shall be confidential.

3. Common Line Proposals

a) The information exchange or face-to-face consultations (see the Protocol to Annex III) may lead to a common line. A proposal for a common line shall be sent to all Participants, all DAC contact points and the Secretariat. The proposal shall be dated and shall be in the following format:

1. reference number, as for Understanding notifications, but followed by 'Common Line';

2. name of the importing country and buyer;

3. name or description of the project as precise as possible to clearly identify the project;

4. terms and conditions foreseen by the instigating country;

5. common line proposal;

6. nationality and name of known competing bidders;

7. commercial and financial bid closing date and tender number to the extent it is known; and

8. other relevant information, including reasons for proposing the common line, availability of studies of the project or special circumstances.

b) A common line proposal may contain terms and conditions that are more or less favourable than terms and conditions allowed under the Understanding.

4. Common Line Procedure

a) The Participants should react on a common line proposal as quickly as possible but in any case within 20 calendar days. A reaction can be a request for additional information, acceptance, rejection, a proposal for modification of the common line or an alternative proposal for a common line. A Participant who replies that it has no position because it has not been approached by an exporter or by the Authorities in the recipient country in case of aid credit for the project is deemed to have accepted the common line proposal. When such a Participant is approached after the common line has gone into effect, it may apply the procedures of paragraph 5, below, if it wishes to extend softer terms than those stipulated in the common line.

b) The Secretariat shall, after a period of twenty calendar days, inform all Participants of the status of the common line proposal. If no Participant has rejected the common line proposal, but not all Participants have accepted it, the proposal shall be retained for a second period of eight calendar days.

c) If the instigating Participant and a Participant who has proposed a modification or alternative cannot agree on a common line within the second period, this period can be extended by their mutual consent. The Secretariat shall inform all Participants of such an extension.

d) After the second period, any Participant who has not explicitly rejected the common line proposed shall be deemed to have accepted the common line. Nevertheless, any Participant, including the instigating Participant, may make his acceptance of the common line conditional on the explicit acceptance of one or more Participants.

e) The Secretariat shall inform all Participants that the common line has either gone into effect or has been rejected. The common line will take effect three calendar days after this announcement. The Secretariat shall on the on-line system make available a permanently updated record of all common lines that are accepted or undecided.

5. Validity of a Common Line

a)

1. The rules of an agreed common line supersede the rules of the Understanding only for the project specified in the common line.

2. The Participants who have agreed to the common line should inform the Secretariat when the common line is no longer of interest.

3. The Secretariat shall initiate review of the common line after each period of two years from the date on which the common line has come into force by reminding the Participants. The common line shall remain in force if any Participant so indicates within fourteen calendar days.

b) The intention to submit a bid that is more favourable than agreed in the common line must be notified to all Participants and to the Secretariat at least 60 calendar days before any commitment. The notification must include an explanation of the reason for the commitment as well as a justification of how the commitment does not result in a purchasing decision (possibly including the outcome of an ICB procedure) which is influenced by the availability of aid. If any Participant interested in this specific transaction so requests,

the Secretariat shall organise a face-to-face consultation. Participants shall refrain from making any commitments until twenty-eight calendar days after the face-to-face consultation unless an alternative common line is established or 60 calendar days after notification. Any Participant can reserve the right of matching a finance offer which is more favourable than agreed in the common line in accordance with paragraph 16 of Annex III.

Appendix II to Annex III

[CHECKLIST OF DEVELOPMENTAL QUALITY OF AID-FINANCED PROJECTS]:

To ensure developmental quality of projects in developing countries financed totally or in part by official development assistance (ODA), a number of criteria have been developed in recent years by the Development Assistance Committee of the OECD (DAC). They are essentially contained in the:

a) DAC Principles for Project Appraisal, 1988;

b) DAC Guiding Principles for Associated Financing and Tied and Partially Untied Official Development Assistance, 1987;

c) Good Procurement Practices for Official Development Assistance, 1986.

I. CONSISTENCY OF THE PROJECT WITH THE RECIPIENT COUNTRY'S OVERALL INVESTMENT PRIORITIES (PROJECT SELECTION)

1. Is the project part of investment and public expenditure programmes already approved by the central financial and planning authorities of the recipient country?

(Specify policy document mentioning the project, e.g., public investment programme of the recipient country).

2. Is the project being co-financed with an international development finance institution?

3. Does evidence exist that the project had been considered and rejected by an international development finance institution or another DAC Member on grounds of low developmental priority?

4. In case of a private sector project, has it been approved by the government of the recipient country?

5. Is the project covered by an intergovernmental agreement providing for a broader range of aid activities by the donor in the recipient country?

II. PROJECT PREPARATION AND APPRAISAL

6. Has the project been prepared, designed and appraised against a set of standards and criteria broadly consistent with the DAC Principles for Project Appraisal (PPA)? Relevant principles concern project appraisal under:

a) Economic aspects (paragraphs 30 to 38 PPA).

b) Technical aspects (paragraph 22 PPA).

c) Financial aspects (paragraphs 23 to 29 PPA).
In case of a revenue producing project, particularly if it is producing for a competitive market, has the concessionary element of the aid financing been passed on to the end-user of the funds? (paragraph 25 PPA).

d) Institutional assessment (paragraphs 40 to 44 PPA).

e) Social and distributional analysis (paragraphs 47 to 57 PPA).

f) Environmental assessment (paragraphs 55 to 57 PPA).

III. PROCUREMENT PROCEDURES

7. What procurement mode will be used among the following? (for definitions, see Principles listed in Good Procurement Practices for ODA).

a) International competitive bidding (Procurement Principle II and its Annex 2: Minimum conditions for effective international competitive bidding).

b) National competitive bidding (Procurement Principle IV).

c) Informal competition or direct negotiations (Procurement Principles V A or B).

8. Is it envisaged to check price and quality of supplies (paragraph 63 PPA)?

Appendix III to Annex III

[DETERMINATION OF COMMERCIAL INTEREST REFERENCE RATES]:

1. The Participants have accepted the following aims for evaluating specific commercial interest reference rates (CIRRs):

i) The CIRR should be representative of final commercial lending rates of interest in the domestic market of the currency concerned;

ii) The CIRR should closely correspond to a rate for a first class domestic borrower;

iii) The CIRR should be based, where appropriate, on the funding cost of fixed interest-rate finance over a period of not less than five years;

iv) The CIRR should not lead to a distortion of domestic competitive conditions;

v) The CIRR should closely correspond to a rate available to first-class foreign borrowers.

2. In view of these aims, the Participants have decided that CIRRs shall be set at a fixed margin above their respective base rates.

a) For each currency, the base rates may be either:

i) 3 year government bond yields for repayment terms up to and including 5 years, 5 year government bond yields for over 5 up to and including 8.5 years, and 7 year government bond yields for over 8.5 years, or

ii) 5 year government bond yields for all maturities except where the Participants have agreed otherwise.

b) The fixed margin is 100 basis points, except where the Participants have agreed otherwise.

NOTE 2 TO ANNEX III:

CIRRs shall equal a base rate plus 100 basis points. For each currency the base rates may be either:

i) 3 year government bond yields for repayment terms up to and including 5 years, 5 year government bond yields for over 5 up to and including 8.5 years, and 7 year government bond yields for over 8.5 years, or

ii) 5 year government bond yields for all maturities.

Each Participant shall initially select one of the two base rate systems for its currency. Other Participants shall use this system for financing offered in that currency. A Participant, with a 6 month advance notice and with the concurrence of the Participants may change to the other system for its currency, and other Participants shall then use that system for that currency. The Yen CIRR is the Long Term Prime Rate minus 20 basis points for all maturities. The ECU CIRR is the secondary market yield on medium term ECU bonds in the Luxemburg stock exchange plus 50 basis points.

A margin of 20 basis points shall be added to the CIRR for fixing the interest prior to contract. Interest may not be fixed for longer than 120 days.

ISSN 0254-1475

COM(94) 460 final

DOCUMENTS

EN **08 10**

Catalogue number : CB-CO-94-512-EN-C

ISBN 92-77-81747-X

Office for Official Publications of the European Communities
L-2985 Luxembourg