COMMISSION

COMMISSION DECISION

of 8 October 2002

under the provisions of Council Regulation (EC) No 3286/94 concerning trade practices maintained by Korea affecting trade in commercial vessels

(notified under document number C(2002) 3652)

(2002/818/EC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 3286/94 of 22 December 1994 laying down Community procedures in the field of the common commercial policy in order to ensure the exercise of the Community's rights under international trade rules, in particular those established under the auspices of the World Trade Organisation [1], as amended by Regulation (EC) No 356/95 [2], and in particular Articles 13 and 14 thereof,

After consulting the Advisory Committee,

Whereas:

A. PROCEDURE

(1) On 24 October 2000 the Commission received a complaint pursuant to Article 3 and Article 4 of Council Regulation (EC) No 3286/94 (hereafter the 'Regulation'). The complaint was lodged by the Committee of European Union Shipbuilders Associations (CESA).

(2) The complaint concerned certain alleged Korean trade practices which adversely affect Community sales of commercial vessels [3]. In particular, the complaint contained information on adverse trade effects and injury suffered by Community shipbuilders resulting from subsidies granted to, or otherwise benefiting, Korean shipbuilding companies by the Republic of Korea in violation of Articles 3 and 5 of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement). On that basis, the complainant asked the Commission to take the necessary action.

(3) The complaint contained sufficient evidence to justify the initiation of a Community examination procedure pursuant to Article 8 of the Regulation. Consequently, the Commission initiated the procedure after consulting with the Member States in the framework of the Advisory Committee, on 2 December 2000 [4].

(4) Following the initiation of the examination procedure the Commission carried out an investigation, which has led to the conclusions indicated below.

B. FINDINGS REGARDING THE EXISTENCE OF AN OBSTACLE TO TRADE

(5) The investigation was directed against subsidies allegedly granted by the Government of the Republic of Korea to its shipbuilding industry that benefited production between 1997 and 2000 and will benefit future production. Alleged Korean subsidies have included, export contingent financing, debt forgiveness, debt-for-equity-swaps, interest relief and special tax concessions in the context of preferential restructuring packages provided in order to save various shipbuilding enterprises from imminent financial collapse.

(6) The Korean shipbuilding enterprises claimed to have benefited from Korean Government subsidies included Samho Heavy Industries, Daedong Shipbuilding Co., Daewoo Shipbuilding and Marine Engineering, Hyundai Heavy Industries, Hyundai Mipo, Samsung Heavy Industries and Hanjin Heavy Industries & Construction Co.

[1] OJ L 349, 31.12.1994, p. 71.
[2] OJ L 41, 23.2.1995, p. 3.
[3] The affected products are commercial vessels for international commerce, including, more specifically: bulk carriers, container ships, oil tankers, product and chemical tankers, liquified natural gas carriers, passenger and ro/ro ferries, other non-cargo vessels (including offshore units) and cruise ships.
[4] OJ C, 345 of 2.12.2000.

(7) With regard to the alleged Korean subsidies that were expressly the subject of the complaint the Commission established the following:

Advance payment (refund) guarantees and pre-shipment loans provided by the State-owned Export-Import Bank of Korea (KEXIM)

(8) It was established that KEXIM provides a guarantee that a foreign buyer will be refunded any advance payments given to a Korean shipyard in case the Korean shipyard fails to perform its obligations under the relevant contract. It was also established that KEXIM provides pre-delivery loans to shipyards to finance shipbuilding production costs, such as raw material cost, labour and overheads until delivery of the ships. The APRG programme and the pre-shipment loans were found to constitute prohibited subsidies under Article 3(1)(a) of the SCM Agreement.

Debt forgiveness, debt-for-equity-swaps and interest relief by government-owned and government-controlled banks

(9) It was established that Korea has granted through debt forgiveness, debt-for-equity-swaps and interest relief by government-owned and government-controlled banks, subsidies within the meaning of Article 1 of the SCM Agreement to the following shipyards:

— Samho Heavy Industries,

— Daedong Shipbuilding Co. [1] and

— Daewoo Shipbuilding and Marine Engineering.

(10) There is prima facie evidence that these corporate restructuring subsidies are specific within the meaning of Article 2(1) of the SCM Agreement.

Special tax concessions

(11) It was established that Daewoo Shipbuilding and Marine Engineering has benefited from two tax programmes under the Special Tax Treatment Control Law (special taxation on in-kind contribution and special taxation on spin-off) limited to companies under corporate restructuring which are therefore specific.

Conclusion

(12) The Commission considers that the complainant's allegation on the granting of subsidies is well-founded and that the Korean practices constitute an obstacle to trade within the meaning of Article 2(1) of the Regulation, as they are contrary to Articles 3 and 5 of the SCM Agreement.

C. FINDINGS REGARDING ADVERSE TRADE EFFECTS

(13) It was established that, during the investigation period, the Community industry suffered adverse effects within the meaning of Article 5 of the SCM Agreement and Article 2(3) and Article 2(4) of the Regulation, in the form of injury within the meaning of Article 5(a) of the SCM Agreement, namely, negative effects on market share, capacity utilisation, profit, sales prices, employment, investments, and of serious prejudice within the meaning of Article 5(c) of the SCM Agreement, namely, significant price undercutting, price depression and lost sales. By sector, adverse effects were suffered in container ships and product and chemical tankers.

(14) In November 2001, CESA requested the Commission to examine whether adverse effects had been suffered by the Community industry during the period covering the 13 months following the end of the original investigation period (i.e. 1 December 2000 to 31 December 2001). The updating investigation confirmed the findings of the first investigation. As regards the liquified natural gas carriers (LNG) sector, it established that further examination is necessary to determine whether the developments observed in 2000 and 2001 would result in a consistent trend over a longer term. The Commission will continue to monitor the market, particularly as regards the sectors of container ships, product and chemical tankers and LNG carriers.

D. CAUSAL LINK

(15) It was established that the above subsidies, which rendered possible the increase in sales volume and market share of the Korean shipyards as well as the considerable decrease in their sales prices and the price undercutting found during the investigation period, caused adverse effects to the Community industry. These conclusions were confirmed by the updating investigation.

E. COMMUNITY INTEREST

(16) The shipbuilding industry in the Community represents a very important sector of economic activity in terms of employment, either direct, in the shipyards or indirect, in subcontracting or supplying companies. On the basis of the information available it seems reasonable to forecast that, should the Korean subsidy practices be halted, the Community industry may be able to regain at least part of its lost market shares and improve its profitability.

F. CONCLUSIONS

(17) Further to the above analysis, the Commission concludes that Korea has granted export and actionable subsidies within the meaning of the SCM Agreement to its shipbuilding industry and has caused adverse effects to the Community industry.

[1] Daedong did not cooperate in the procedure; evidence, however, was obtained that it has also benefited from the restructuring process.

(18) Ensuring that WTO partners fully comply with their obligations is of the utmost importance for the Community, which has committed itself to the same obligations. It is fundamental for the good functioning of a multilateral trade system to consistently tackle allegedly WTO incompatible practices.

(19) The Commission discussed the matter with the Korean authorities with a view to finding a mutually agreed solution. However, as no mutually agreed solution could be found, the initiation of a procedure within the framework of the WTO Dispute Settlement Understanding, and more particularly pursuant to the relevant provisions of the SCM Agreement, is required,

HAS DECIDED AS FOLLOWS:

Sole Article

1. The granting of subsidies to certain Korean producers of commercial vessels appears to be inconsistent with the obligations of that country under the World Trade Organisation Agreement and, in particular under the SCM Agreement, and constitutes an 'obstacle to trade' within the meaning of Article 2(1) of Regulation (EC) No 3286/94.

2. The Community will initiate dispute settlement proceedings against Korea under the Understanding on the Rules and Procedures for the Settlement of Disputes and other relevant WTO provisions with a view to securing removal of the obstacle to trade.

Done at Brussels, 8 October 2002.

For the Commission

Pascal LAMY

Member of the Commission