



**KOREA – MEASURES AFFECTING TRADE IN COMMERCIAL VESSELS  
(SECOND COMPLAINT) (JAPAN)**

**REQUEST FOR CONSULTATIONS BY JAPAN**

The following communication, dated 31 January 2020, from the delegation of Japan to the delegation of Korea, is circulated to the Dispute Settlement Body in accordance with Article 4.4 of the DSU.

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My authorities have instructed me to request consultations with the Government of the Republic of Korea (Korean Government), pursuant to Articles 1 and 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Articles XVI:1 and XXII:1 of the *General Agreement on Tariffs and Trade 1994 (GATT 1994)* and Articles 4, 7, and 30 of the *Agreement on Subsidies and Countervailing Measures (SCM Agreement)*, with respect to certain measures affecting trade in commercial vessels.

The Republic of Korea (Korea) has developed and implemented a range of measures designed to provide financial support to its shipbuilders. These measures include providing both "producer support," such as direct financing provided to Korean shipbuilders that, *inter alia*, enables their continued market presence and prolonged periods of otherwise unsustainable low pricing, and "sales support" to Korean shipbuilders and their customers, which is designed to stimulate sales for Korean shipbuilders, including during periods of relatively low demand.

Japan considers that certain measures taken by Korea provide subsidies that are inconsistent with its obligations under the *SCM Agreement* and the *GATT 1994*. The measures in question relate to the development, production, marketing and/or sale or purchase of commercial vessels, including vessels designed to carry crude oil, liquefied natural gas (LNG), liquefied petroleum gas (LPG) and shipping containers. These measures include, but are not necessarily limited to, those described below.

**1. Corporate Restructuring Measures to Support Korean Shipbuilders**

Japan is concerned about the provision by Korea, whether directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, of corporate restructuring measures on non-commercial terms to support Korean shipbuilders. This includes, but is not limited to, (i) measures provided by the Korea Development Bank (KDB), including those provided pursuant to the Korea Development Bank Act (KDB Act); (ii) measures provided by the Export-Import Bank of Korea (KEXIM), including those provided pursuant to the Export-Import Bank of Korea Act (KEXIM Act); (iii) measures provided by the Korea Trade Insurance Corporation (K-Sure), including those provided pursuant to the Trade Insurance Act (K-Sure Act); (iv) comprehensive measures adopted by Korea, including those establishing the Marine Finance Center (MFC) to "strengthen marine and shipping finance"; and (v) measures provided by the Korea Ocean Business Corporation (KOBC), including those provided pursuant to the Korea Ocean Business Corporation Act.

These measures take the form, *inter alia*, of (i) loans with interest at below-market rates; (ii) equity infusions on terms that are not commercially reasonable, including share subscriptions and cancellations and debt-to-equity swaps on better-than-commercial terms; and (iii) purchases of convertible bonds on better-than-commercial terms, as further described below. They include, but are not limited to, the following:

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- a. All Korean measures related to the restructuring of Daewoo Shipbuilding & Marine Engineering Co., Ltd. (DSME)<sup>1</sup> and related entities from 2015 onward, including, but not limited to, the following:
- i. All aspects of support provided to DSME pursuant to its 2015 restructuring, including, but not limited to, the following:
- a. KDB's commitment in 2015 to provide 2.27 trillion KRW in the form of additional short- and long-term loans, as well as KDB's subsequent provision of such loans;
- b. KDB's acquisition in 2015 of 75.8 million newly-issued DSME shares for 383 billion KRW; and
- c. KEXIM's commitment in 2015 to provide 1.60 trillion KRW in the form of additional short- and long-term loans, as well as KEXIM's subsequent provision of such loans.
- ii. All aspects of support provided to DSME pursuant to its 2016 restructuring, including, but not limited to, the following:
- a. KDB's agreement to the cancellation, in 2016, of 60.2 million of its shares in DSME without compensation and the reduction in value by 10:1 of the 213 million remaining shares in DSME;
- b. KDB's debt-to-equity swap in 2016 of 1.79 trillion KRW; and
- c. KEXIM's purchase in 2016 of 1.00 trillion KRW in convertible bonds issued by DSME.
- iii. All aspects of support provided to DSME pursuant to its 2017 restructuring, including, but not limited to, the following:
- a. KDB's debt-to-equity swaps in 2017 of 319 billion KRW for all unsecured claims concerning DSME;
- b. Korea's entrustment in or direction of private financial institutions to participate in debt-to-equity swaps in 2017 and 2018 of 1.36 trillion KRW for unsecured claims concerning DSME;
- c. KEXIM's agreement to purchase, and ultimate purchase in 2017 and 2018, of 1.33 trillion KRW in convertible bonds issued by DSME;
- d. KDB's purchase in 2017 of 152 thousand shares in Daehan Shipbuilding Co., Ltd. (Daehan) from DSME for 1.52 billion KRW;
- e. KDB's commitment in 2017 to provide 1.45 trillion KRW of additional loans, as well as KDB's subsequent provision of such loans; and
- f. KEXIM's commitment in 2017 to provide 1.45 trillion KRW of additional loans, as well as KEXIM's subsequent provision of such loans.

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<sup>1</sup> Throughout this request, "DSME," and "DSME and related entities" include DSME, any predecessor entities to DSME, any current DSME affiliates or related entities, and any actual or planned successor entities to DSME, including each person or entity that directly, or indirectly through one or more intermediaries or relationships, controls or controlled DSME.

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- iv. All aspects of support provided to DSME and/or HHI Group<sup>2</sup> pursuant to HHI Group's acquisition of DSME's shares including, but not limited to, the following:
    - a. KDB's commitment to release all its shares in DSME (59.7 million shares valued at 2.09 trillion KRW) in exchange for 9.12 million convertible preferred shares and 6.10 million common shares in Korea Shipbuilding & Offshore Engineering Co., Ltd.;
    - b. KDB's guarantee to provide an additional 1 trillion KRW in financial assistance in case of a fund shortage; and
    - c. Any other aspects of support provided to DSME and HHI Group pursuant to corporate restructuring or reorganization plans from 2018 onward, including additional support provided as a result of any changes in the terms or conditions of the acquisition of DSME by HHI Group.
  - v. Any other aspects of support provided to DSME and related entities pursuant to corporate restructuring from 2015 onward.
  - b. All Korean measures related to the restructuring of Korean shipbuilders other than DSME since 2007, including restructurings of Sungdong Shipbuilding & Marine Engineering Co., Ltd. (Sungdong), STX Offshore & Shipbuilding Co., Ltd. (STX) and Daehan.

## **2. Guarantees and Other Insurance for Financing Related to Commercial Vessel Orders Placed with Korean Shipbuilders**

Japan is concerned about the provision by Korea, whether directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, of guarantees or other types of insurance on sales-specific payments or financing on non-commercial terms. Public and private institutions owned, controlled, entrusted and/or directed by the Korean Government provide guarantees or other insurance at a preferential rates and/or on terms otherwise unavailable on the market for payments and/or financing related to a commercial vessel order placed with a Korean shipbuilder in case the Korean shipbuilder or the customer fails to perform its obligations pursuant to the relevant agreement(s) relating to the purchase of commercial vessels. This support includes Refund Guarantees (RGs), re-guarantees of RGs and guarantees/insurance covering financing for shipbuilders provided by a number of Korean public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, including KEXIM, K-Sure, KDB, the Industrial Bank of Korea (IBK) and the Korea Credit Guarantee Fund (KODIT). These measures include, but are not limited to, the following:

- a. All Korean measures providing guarantees from KEXIM for prepayments from customers to Korean shipbuilders, including RGs. These measures include, but are not limited to, the following:
  - i. RGs provided by KEXIM for export sales pursuant to the KEXIM Act;
  - ii. RGs provided by KEXIM in the form of Advance Payment Bond (which provides guarantees in the form of bonds ensuring the beneficiary (i.e., the buyer/sponsor/importer (or their agent) in an export transaction) will be reimbursed for down payments for purchases from an exporter in the event the exporter fails to fulfil its contractual obligations) and in the form of Performance Bond (which provides guarantees in the form of bonds to ensure that the beneficiary will be reimbursed for a certain portion of the contracted amount for purchases from an exporter in the event the exporter fails to fulfil its contractual obligations);

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<sup>2</sup> "HHI Group" includes Hyundai Heavy Industries Co., Ltd.(HHI); any predecessor entities to HHI; any current HHI affiliates, related entities, or parent or holding companies; and any actual or planned successor entities to HHI, including each person or entity that directly, or indirectly through one or more intermediaries or relationships, controls or controlled HHI, is or was controlled by HHI, or is or was under common control with HHI.

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- iii. RGs provided by KEXIM in connection with an agreement involving KDB, KEXIM, K-Sure and certain other Korean banks pursuant to DSME's 2015 restructuring to provide prepayment RGs for orders placed with DSME;
  - iv. RGs provided by KEXIM to small-and medium-sized shipbuilders covering payments from customers to these shipbuilders; and
  - v. RGs provided by KEXIM covering an order of five crude oil tankers by a Greek shipping company and accepted by Sungdong in July 2017.
- b. All Korean measures providing guarantees from K-Sure for prepayments from customers to Korean shipbuilders, including RGs. These measures include, but are not limited to, the following:
- i. RGs provided by K-Sure for export sales pursuant to the K-Sure Act;
  - ii. RGs provided by K-Sure in the form of Advanced Payment Bond (which provides guarantees in the form of bonds ensuring the beneficiary will be reimbursed for down payments in the event that the contracted export is not performed) and in the form of Performance Bond (which provides guarantees in the form of bonds ensuring the beneficiary will be reimbursed for damages arising out of the exporter's failure to fulfil its contractual obligations under industrial equipment export contracts or overseas construction contracts);
  - iii. RGs provided by K-Sure in connection with an agreement involving KDB, KEXIM, K-Sure and certain other Korean banks pursuant to DSME's 2015 restructuring to provide prepayment RGs for orders placed with DSME; and
  - iv. RGs provided by K-Sure to small-and medium-sized shipbuilders covering payments from customers to these shipbuilders.
- c. All Korean measures providing guarantees from KDB for prepayments from customers to Korean shipbuilders, including RGs. These measures include, but are not limited to, the following:
- i. RGs provided by KDB for export sales pursuant to the KDB Act;
  - ii. RGs provided by KDB as part of its Marine Industry Finance (해양산업금융) activities (which guarantee down payments and are provided to strengthen the competitiveness of Korean shipbuilders);
  - iii. RGs provided by KDB in connection with an agreement involving KDB, KEXIM, K-Sure and certain other Korean banks pursuant to DSME's 2015 restructuring to provide prepayment RGs for orders placed with DSME;
  - iv. RGs provided by KDB in connection with an agreement involving KDB and certain other Korean banks pursuant to DSME's 2017 restructuring to provide prepayment RGs for orders place with DSME;
  - v. RGs provided by KDB to small-and medium-sized shipbuilders covering payments from customers to these shipbuilders;
  - vi. RGs provided for the following orders:
    - a. RGs provided by KDB around July 2015 covering prepayment for an order by Maersk Line for eleven container ships accepted by DSME around June 2015;
    - b. RGs provided by KDB covering prepayment for an order of three tankers accepted by STX around April 2017;

- c. RGs provided by KDB covering prepayment for an order of four crude oil tankers accepted by STX around June 2017;
  - d. RGs provided by KDB around November 2017 covering prepayment for an order by Oceangold Tankers Inc. for two product tankers, with an option for two additional tankers, accepted by STX;
  - e. RGs provided by KDB around November 2017 covering prepayment for an order by Sambong shipping Co.Ltd. for a product tanker accepted by STX;
  - f. RGs provided by KDB around November 2017 covering prepayment for an order by Pantheon Tankers Management Ltd. for four product tankers accepted by STX;
  - g. RGs provided by KDB around May 2018 covering prepayment for an order by Oceangold Tankers Inc. and Pantheon Tankers Management Ltd. for four product tankers accepted by STX;
  - h. RGs provided by KDB around June 2018 covering prepayment for an order by Oceangold Tankers Inc. for two Medium Range tankers accepted by STX;
  - i. RGs provided by KDB around September 2018 covering prepayment for an order for vessels accepted by STX; and
  - j. RGs provided by KDB around June 2019 covering prepayment for an order of two product tankers accepted by STX.
- d. All Korean measures providing guarantees from IBK for prepayments from customers to Korean shipbuilders, including RGs. These measures include, but are not limited to, the following:
- i. RGs provided by IBK for export sales pursuant to the Industrial Bank of Korea Act; and
  - ii. RGs provided by IBK to small-and medium-sized shipbuilders covering payments from customers to these shipbuilders.
- e. All Korean measures provided by K-Sure and KODIT, re-guaranteeing guarantees of prepayments from customers to Korean shipbuilders. These measures include, but are not limited to, the following:
- i. Re-guarantees provided by K-Sure, including re-guarantees provided pursuant to the K-Sure Act;
  - ii. Re-guarantees provided by K-Sure in the form of Export Bond Insurance;
  - iii. Re-guarantees provided by KODIT, including re-guarantees provided pursuant to the Credit Guarantee Fund Act;
  - iv. Re-guarantees provided by K-Sure or KODIT for RGs provided to small-and medium-sized shipbuilders covering prepayment. These measures include, but are not limited to, the following:
    - a. Re-guarantees provided by K-Sure based on the Re-guarantee Program for Small-and-Medium-Sized Shipbuilders which was first published in the policy document "Measures to Vitalize the Shipbuilding Industry" (November 22, 2018) and further expanded as announced in the policy document "Complementary Measures to the Measures to Vitalize the Shipbuilding Industry" (April 23, 2019); and

- b. Re-guarantees provided by KODIT based on the RG Issuance Encouraging Program which was mentioned in the policy document "Measures to Encourage RG Issuance for Orders Accepted by Small-and-Medium-Sized Shipbuilding Companies" (August 24, 2017) and further expanded as announced in the policy document "Plan to Expand Financial Support to Key Industries such as Shipbuilding and Automotive" (June 27, 2019).
- f. Any other Korean measures providing RGs, re-guarantee guaranteeing RGs and any other guarantees/re-guarantees/insurance on payments and/or financing in connection with commercial vessel orders placed with Korean shipbuilders. These measures include, but are not limited to, the following:
  - i. All Korean measures providing Export Base Insurance from K-Sure covering against losses sustained by financial institutions providing funds to shipping companies to help them purchase ships from Korean shipbuilders;
  - ii. All Korean measures providing Medium- and Long-Term Export Credit Insurance from K-Sure covering losses sustained by financial institutions providing buyer credits protecting against the risk of non-payment by importers or financial institutions providing financing for transactions with deferred payment terms exceeding two years; and
  - iii. K-Sure's provision of a guarantee for loans provided to the shipping company placing an export order with Hanjin Heavy Industries.

### **3. Pre-Shipment Loans, Measures through the New Shipbuilding Program and Other Financing for Commercial Vessel Orders Placed with Korean Shipbuilders**

Japan is concerned about the provision by Korea, whether directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, of pre-shipment loans and other sales-specific financing on non-commercial terms and/or on terms otherwise unavailable on the market provided to Korean shipbuilders or their customers. This financing includes: (1) provision of loans to finance production or customers' purchases of commercial vessels produced by Korean shipbuilders; (2) purchase of bonds to fund customers' purchases of commercial vessels produced by Korean shipbuilders; and (3) capital injections to finance customers' purchases of commercial vessels produced by Korean shipbuilders. This financing is offered by a range of Korean public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, including KEXIM.

As detailed in policy documents such as the "Development Strategy for the Shipbuilding Industry" (April 5, 2018) and the "Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022)" (April 5, 2018), Korea is developing and executing a plan to support shipbuilders and shipping companies by providing financial support for purchases of commercial vessels from Korean shipbuilders. Further, Korean public and private institutions owned, controlled, entrusted and/or directed by the Korean Government will support the launching of vessels and ensure liquidity for shipping companies, through means that include the provision of financing.

These measures include, but are not limited to, the following:

- a. All Korean measures providing Export Implementation Fund Loans from KEXIM to Korean shipbuilders to produce commercial vessels for export orders;
- b. All Korean measures providing pre-shipment loans to Korean shipbuilders;
- c. All Korean measures providing support for purchases of commercial vessels for more than adequate remuneration and/or loans and leasing of commercial vessels at below-market rates pursuant to the New Shipbuilding Program, including, but not limited to, the following:
  - i. KOBC's, Korea Asset Management Corporation (KAMCO)'s, K-Sure's, KDB's and KEXIM's provision of loans and other financing totalling approximately 2.15 trillion

- KRW in connection with an order placed by Hyundai Merchant Marine in 2017 for seven container carriers from DSME, five container carriers from Samsung Heavy Industries and eight container carriers from HHI;
- ii. KDB's, KEXIM's, KAMCO's, KDB Capital's and K-Sure's provision of loans and other financing totalling approximately 250 billion KRW in connection with an order placed by Polaris Shipping for three very large ore carriers (VLOCs) from HHI in 2016 through the New Shipbuilding Program; and
  - iii. The provision of financing to Hyundai Merchant Marine, a shipping company, in relation to its purchase of five very large crude carriers (VLCCs) from DSME.
- d. All Korean measures providing Export Base Fund Loans from KEXIM, solely or jointly with K-Sure, to finance the purchase of commercial vessels from Korean shipbuilders, including, but not limited to, the following:
- i. KEXIM's and K-Sure's provision of financing of 170 million USD each for a 680 million USD order by Oceanbulk Container Management SA;
  - ii. KEXIM's and K-Sure's provision of financing of 400 million USD (205 million USD in loans and 195 million USD in overseas loan guarantees) and 100 million USD, respectively, for a 1.36 billion USD order by Dorian LPG; and
  - iii. KEXIM's provision of financing of 77 million USD, along with a guarantee for an additional 10 million USD in loans from commercial banks, for a 174 million USD order by Container Carriers.
- e. All Korean measures where Korean public and private institutions owned, controlled, entrusted and/or directed by the Korean Government provided support to shipping companies and/or ship owners that have placed or would place an order with a Korean shipbuilder, including but not limited to:
- i. Sale-and-lease-back arrangements, capital injections, the purchase of perpetual bonds and other means of providing financing.
- f. Any other Korean measures providing financial assistance to Korean shipbuilders or shipping companies through the provision of preferential loans, purchase of bonds, capital injections, the purchase of commercial vessels at above-market rates and the lease back of commercial vessels at below-market rates, or any other type of preferential financing.

#### **4. Eco-Ship Replacement Subsidies**

Japan is concerned about the provision by Korea, directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, of financial assistance on non-commercial terms to purchasers of commercial vessels produced by Korean shipbuilders, including providing price support (*i.e.*, cover a portion of the cost) for the purchases of commercial vessels that comply with certain environmental standards from Korean shipbuilders.

In 2017, the Korean Ministry of Oceans and Fisheries, a division of the Korean Government, announced that it planned to implement a system to provide price support for the purchase of newly built vessels when replacing an old ship with an "eco-ship," or highly energy-efficient ship. Pursuant to the "Development Strategy for the Shipbuilding Industry" and the "Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022)", Korea is expanding these efforts to encourage and support the replacement of existing commercial vessels with eco-ships. Pursuant to the Eco-Ship Replacement Subsidies measures, the Korean Government provides cash payments to cover 10-20% of the price of an order for a new ship that meets certain environmental requirements if the purchaser is replacing an old ship. In addition, Korea directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, will provide interest rate support to financial institutions that provide financing for projects pursuant to the Eco-Ship Replacement Subsidies measures.

In 2018, the Korean Government also enacted the Act on the Promotion and Development of Environmentally Friendly Ships (effective January 1, 2020) to further expand these efforts to encourage and support the replacement of existing commercial vessels with eco-ships.

These measures include, but are not limited to, the following:

- a. All Korean measures supporting the construction of 50 commercial vessels by 2022 envisioned by the Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022), including, but not limited to:
  - i. Korea's provision of funding, decided around March or April 2018, for Sinokor Merchant Marine's purchase of a new 1,800TEU container carrier from Hyundai Mipo Dockyard;
  - ii. Korea's provision of funding for H-Line Shipping Co., Ltd.'s purchase of two new 180,000 deadweight tonnage bulkers from Hyundai Samho Heavy Industries Co., Ltd. as published on October 12, 2018;
  - iii. Korea's provision of funding for Hyundai Merchant Marine Co., Ltd.'s purchase of new vessels from Korean shipbuilders reported in November 2018;
  - iv. Korea's provision of funding for Namsung Shipping Co., Ltd.'s purchase of two new 1,000TEU container carriers from Dae Sun Shipbuilding & Engineering Co., Ltd. as reported in November 2018;
  - v. Korea's provision of funding for Pan Continental Shipping Co., Ltd.'s purchase of a new 1,000TEU container carrier from Dae Sun Shipbuilding & Engineering Co., Ltd. as reported in March 2019; and
  - vi. Korea's provision of funding for H-Line Shipping Co., Ltd.'s purchase of a new 180,000 deadweight tonnage bulker from Hyundai Samho Heavy Industries Co., Ltd. as published on July 12, 2019.
- b. All Korean measures supporting the construction of commercial vessels pursuant to the Act on the Promotion and Development of Environmentally Friendly Ships: and
- c. Any other Korean measures providing financing to purchasers of vessels that comply with set environmental standards and that are produced by Korean shipbuilders.

## **5. Other Korea's Support for Commercial Vessel Purchases**

Japan is concerned about the provision by Korea, directly and/or through public and private institutions owned, controlled, entrusted and/or directed by the Korean Government, of financial assistance on non-commercial terms to Korean shipbuilders and/or purchasers, lessors, lessees and/or operators of commercial vessels produced by Korean shipbuilders. As detailed in policy documents, such as the "Development Strategy for the Shipbuilding Industry", the "Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022)", the "Measures to Vitalize the Shipbuilding Industry", the "Complementary Measures to the Measures to Vitalize the Shipbuilding Industry", "Progress and Main Prospects of the Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022)" (April 23, 2019), "Vision and Strategy of the Manufacturing Industry Renaissance" (June 19, 2019) and "Innovation Strategy on New Marine and Fishery Industries" (October 10, 2019), Korea is developing and executing a plan to support shipbuilders and shipping companies, including by directly purchasing, or facilitating the purchase of, commercial vessels from Korean shipbuilders. Specifically, these measures include, but are not limited to, the following:

- a. All Korean measures designed to "increase contracting and public orders ... in accordance with the marine transportation industry rebuilding plan," as described in the "Development Strategy for the Shipbuilding Industry";
- b. All Korean measures related to the KOBC's investment in new commercial vessels and financing of new commercial vessels produced by Korean shipbuilders, including, but not limited to, the following:



- i. The planned equity investments of 30 percent of the construction costs for up to 40 vessels.
- c. Any other Korean measures providing for the purchase of commercial vessels from Korean shipbuilders by the Korean Government for purposes of supporting the shipbuilding and shipping industries.

## 6. Amendments and Other Measures

This request for consultations extends to any amendments, revisions, implementation or measures related to the measures described above, as well as the laws and practices on which the measures listed above are based or that they reflect or constitute.

In addition, this consultation request extends to any other measures that involve a financial contribution by Korea that, whether directly or indirectly, confer a benefit to Korean shipbuilders and/or lessors, lessees, owners and/or operators of commercial vessels produced by Korean shipbuilders.

## 7. Legal Basis

Japan is concerned that the measures described in Sections 1 through 6 above are inconsistent with Korea's obligations under certain provisions of the *SCM Agreement*. In particular, these measures appear to be specific subsidies that cause adverse effects to Japan's interests as provided in:

- a. Article 1.1 of the *SCM Agreement* because, in each instance, a subsidy exists in that there is a financial contribution and a benefit is thereby conferred.
- b. Article 2 of the *SCM Agreement* because, in each instance, the subsidies are specific.
- c. Articles 5 (a) and (c) and 6.3 (a), (b) and (c) of the *SCM Agreement* because the measures are specific subsidies within the meaning of Articles 1 and 2 of the *SCM Agreement* that are causing or threatening to cause adverse effects to the interests of Japan in the form of injury to Japan's domestic shipbuilding industry and serious prejudice to the interests of Japan, including through displacement and impedance of imports and exports of the Japanese like product into Korea and third country markets, and significant price undercutting, price suppression, price depression and lost sales in the same market or markets.

Japan is also concerned that the measures described in Sections 1 through 6 above appear to be export subsidies inconsistent with Articles 3.1 (a) and 3.2 of the *SCM Agreement*.

Japan is further concerned that the measures described in Sections 1 through 6 above appear to be contingent upon the use of domestic over imported goods, thus are inconsistent with Articles 3.1 (b) and 3.2 of the *SCM Agreement*; appear to fail to accord products imported into Korea treatment no less favourable than that accorded to like products of Korean origin in a manner consistent with Article III:4 of the *GATT 1994*; and appear to fail to accord immediately and unconditionally any advantage, favour, privilege or immunity granted by Korea to products originating in other countries to like products originating in Japan with respect to all matters referred to in Article III:4 of the *GATT 1994*, in a manner consistent with Article I:1 of the *GATT 1994*.

In accordance with Articles 4.2 and 7.2 of the *SCM Agreement*, Japan attaches a statement of available evidence with regard to the existence and nature of the subsidies in question, as well as the injury caused to the domestic industry, and/or serious prejudice caused to the interest of Japan. The available evidence is listed in **Annex** to this request.

Japan reserves the right to request that Korea produce further information and documents regarding the measures in question, to offer further evidence of each of the measures and potential violations listed above, and to raise further facts and claims under other provisions of the covered agreements and address additional measures during the course of consultations.

Japan looks forward to receiving a reply from Korea to this request for consultations and to find a mutually convenient date for consultations.

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## ANNEX

### Statement of Available Evidence

Japan's request for consultations dated January 31, 2020 identifies the subsidies that are the subject of this request for consultations.

The evidence set out below is evidence available to Japan at this time regarding the existence and nature of those subsidies, as well as the injury caused to the domestic industry, and/or serious prejudice caused to the interest of Japan. Japan reserves the right to supplement or alter this list in the future, as required. Certain evidence may be indicative of the existence and nature of more than one type of subsidy or measure. However, for simplicity, all sources of evidence are only listed once.

The evidence presently available to Japan includes the following:

#### **General**

- Industrial Finance Division, Financial Services Commission, Korea Development Bank Act, Act No.14122 (Sept. 30, 2016), <http://www.law.go.kr/lsInfoP.do?lsiSeq=182121&efYd=20160930#0000>.
- International Economic Affairs Bureau, Ministry of Economy and Finance, Export-Import Bank of Korea Act, Act No.13453 (Aug 1, 2016), <http://www.law.go.kr/lsInfoP.do?lsiSeq=173581&efYd=20160801#0000>.
- Export and Import Division, Ministry of Trade, Industry and Energy, Trade Insurance Act, Act No.16797 (Dec 10, 2019), <http://www.law.go.kr/lsInfoP.do?lsiSeq=212215&efYd=20191210#0000>.
- Shipping Policy Division, Ministry of Oceans and Fisheries, Korea Ocean Business Corporation Act, Act No. 16703 (Dec 3, 2019), <http://www.law.go.kr/lsInfoP.do?lsiSeq=211895&efYd=20191203#0000>.
- Industrial Finance Division, Financial Services Commission, Credit Guarantee Fund Act, Act No. 16652 (Nov 26, 2019), <http://www.law.go.kr/lsInfoP.do?lsiSeq=211691&efYd=20191126#0000>.
- Industrial Finance Division, Financial Services Commission, Industrial Bank of Korea Act, Act No. 14839 (July 26, 2017), <http://www.law.go.kr/lsInfoP.do?lsiSeq=195312&efYd=20170726#0000>.
- Korea Development Bank, Articles of Incorporation of Korea Development Bank (June 26, 2019), <https://www.kdb.co.kr/index.jsp>, accessible by searching "정관"
- Export-Import Bank of Korea, Articles of Incorporation of Export-Import Bank of Korea (Aug 27, 2019), <http://www.alio.go.kr/popSusi.do?apbaId=C0223&reportFormRootNo=21110>, accessible by searching "정관".
- Korea Trade Insurance Corporation, Articles of Incorporation of Korea Trade Insurance Corporation (Jan. 1, 2015), <https://www.ksure.or.kr/en/company/articles.do>.
- For All the Relevant Ministries and Government Agencies, Ministry of Trade, Industry and Energy, *The Development Strategy for the Shipbuilding Industry through Three Major Innovations – Cost, Technology, and Systems Innovation* (Apr. 5, 2018), <https://www.gov.kr/portal/ntnadmNews/1413013>.
- For All the Relevant Ministries and Government Agencies, Ministry of Economy and Finance, *The Five-Year Marine Transportation Industry Rebuilding Plan (2018-2022)* (Apr. 5, 2018), [http://www.mosf.go.kr/com/synap/synapView.do?atchFileId=ATCH\\_00000000007840&fileSn=3](http://www.mosf.go.kr/com/synap/synapView.do?atchFileId=ATCH_00000000007840&fileSn=3).
- For All the Relevant Ministries and Government Agencies, Ministry of Economy and Finance, *Plans to Enhance the Competitiveness of the Shipbuilding Industry* (Oct. 31, 2016), [http://www.moef.go.kr/com/synap/synapView.do?atchFileId=ATCH\\_00000000003180&fileSn=1](http://www.moef.go.kr/com/synap/synapView.do?atchFileId=ATCH_00000000003180&fileSn=1).
- State Affairs Committee, The Secretariat of the National Assembly, *Minutes of the 1<sup>st</sup> State Affairs Committee Meeting of the 344<sup>th</sup> National Assembly* (Aug. 8, 2016), <http://likms.assembly.go.kr/record/mhs-40-010.do#none>.
- State Affairs Committee, The Secretariat of the National Assembly, *Minutes of the 6<sup>th</sup> State Affairs Committee Meeting of the 343<sup>rd</sup> National Assembly* (July 11, 2016), <http://likms.assembly.go.kr/record/mhs-40-010.do#none>.

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