



COUNCIL

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Working Party on Shipbuilding

ALTERNATIVE WAYS OF UPDATING AND BRINGING INTO FORCE THE 1994 UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

(Note by the Chairman of the Expert Group on the Export Financing for Ships)

This document is submitted to Delegates of the Council Working Party on Shipbuilding for consideration and decision at the meeting to be held on 18-19 December 2000.

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Summary

At its meeting on 6-7 July 2000, the Council Working Party on Shipbuilding asked the Chairman of the Expert Group on the Export Financing for Ships to prepare a detailed report on alternative ways of updating the existing Understanding on the Export Credits for Ships, which dates back to 1981.

This document examines a number of alternative options available to update the existing Understanding.

Action

The document is submitted to the Council Working Party on Shipbuilding for consideration and decision.

Related documents

C/WP6(99)12 Expert Group on Export Financing for Ships (Chairman's Summary)

C/WP6(99)15 Expert Group on Export Financing for Ships: Legal Procedure
and ADD1

**ALTERNATIVE WAYS OF UPDATING AND BRINGING INTO FORCE THE 1994
UNDERSTANDING ON EXPORT CREDITS FOR SHIPS**

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PART I
MANDATE

At its meeting on 6/7th July 2000 the Council Working Party on Shipbuilding requested Mr. Tore Samuelsen, Chairman of the Expert Group on the Export Financing for Ships, to prepare a report on the entry into force of alternatives to the 1994 Revised Understanding on Export Credits for Ships.

The mandate given to Mr. Samuelsen was as follows:

- To revise the 1994 Understanding on Export Credits for Ships so that this Understanding can be brought into force independent of the OECD Shipbuilding Agreement.
- To develop a 2000 Understanding on Export Credits for Ship, i.e. to bring the 1994 Understanding into line with the Arrangement on Guidelines for Officially Supported Export Credits.
- To integrate the 1994 Understanding on Export Credits as a sectoral Understanding into the Arrangement on Guidelines for Officially Supported Export Credits.
- To discuss possible legal problems which could arise for Member countries wishing to bring the 1994 Understanding on Export Credits for Ships into force, either as a self-contained Understanding, 2000 Understanding, or as sectoral Understanding.
- To evaluate possible pros and cons of the various approaches.

PART II

THE REVISED 1994 UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

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- Protocol to Annex III
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REVISED 1994 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 installments 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:

- 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.

1. See also Annex I.

- 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.

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 adoption by the OECD Council to this extent. The Participants in the Understanding are: Australia, Canada, the European Union, Japan and Norway. Other countries with a shipbuilding capability willing to apply these Guidelines may become Participants to this Understanding following prior invitation of the existing 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 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, on notification to its partners, may withdraw from it at the same effective date as the Participant which first gave notice.

**NOTES AND REFERENCES TO THE REVISED 1994 UNDERSTANDING
ON EXPORT CREDITS FOR SHIPS**

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

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 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 Understanding, 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 Understanding 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.

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 installments and whether these installments 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**

- Relevant Paragraphs
- Notes to Annex III
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- Notes to Annex III

Text as contained in C/WP6(94)6 pages 13 - 37

PART III

THE 2000 UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

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Annex III: Shipbuilding-Developments in the Arrangement since 1994 and
Implication for the 1994 Ships Understanding

THE 2000 UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

Chapter I Form, Scope and Procedures

This Understanding complements the Arrangement on Guidelines for Officially Supported Export Credits. It sets out the particular complementary guidelines that are applicable to officially supported export credits for the financing of ships.

The procedures outlined in the Arrangement on Guidelines for Officially Supported Export Credits apply to this Understanding. The Participants may request a consultation if there is any reason to believe that another participant is offering an officially supported credit on terms that do not conform to this Understanding.

Chapter II Provisions for Export Credits and Aid

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:

- ii) 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.
- iii) Payment by delivery of less than 20% of the contract price.
- iv) An interest rate (5) of less than the commercial interest reference rate CIRR of the currency of the credit.

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 i) the rules of the Arrangement are applied and ii) 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 65 a) of the Arrangement will be unusual and infrequent.

8. A Participant has the right to match credit terms and conditions offered by Participants in the Understanding 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.

9. 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.

10. 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.

11. 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.

12. The Understanding becomes effective upon adoption by the OECD Council to this extent. The Participants in the Understanding are: Australia, Canada, the European Union, Japan and Norway. Other countries with a shipbuilding capability willing to apply these Guidelines may become Participants to this Understanding following prior invitation of the existing Participants.

13. Changes to the Arrangement, to be brought immediately to the attention of the Participants of the Understanding by the Secretariat, shall also apply to the Understanding. Any participant to the Understanding, without being able to block the changes to be applied to the Arrangement, may request examination of such changes and its consequences for shipbuilding. Furthermore the Understanding shall be subject to review as often as requested by Participants and, in any case, at intervals not exceeding one year.

14. At such a reviews, Participants may refuse that changes to the Arrangement are applied to the Understanding and/or 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 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, 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. 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

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 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 this Understanding, 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 this Understanding.

3. During the two-year period following entry into force of this Understanding, 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.

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 of this Understanding, and should be limited to the following items: 1. to 7.a), 8.a) and 8.b).

Guarantees

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

- i) The schemes in force for providing official guarantees and insurance for export credits for ships.
- ii) 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.

Premia

The provisions of the Arrangement in relation to minimum premium benchmarks shall until further decisions have been taken by Participants of the Understanding not apply to this Understanding.

ANNEX II
STANDARD FORM FOR NOTIFICATION FOR SHIPS

For notifications, required under the Arrangement, 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:
 - aid financing
 - matching
 - derogation
 - pure cover transaction
 - 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	up 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 installments and whether these installments 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 Article 38 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 9

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 9 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 10 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

SHIPBUILDING –DEVELOPMENTS IN THE ARRANGEMENT SINCE 1994 AND IMPLICATION FOR THE 1994 SHIPS UNDERSTANDING

Abolition of SDR based rate: CIRRs

Implications: None – the 1994 Ships Understanding (the 1994 Understanding) envisaged the provision of official financing support solely on the basis of the CIRR regime.

Note. Since 1994, the basis of construction of CIRRs for several currencies has been amended or introduced, e.g. the Euro and the Korean Won.

There is a commitment under the “Further Work “ programme of the 1994 Understanding to discuss questions relating to second windows, pure cover and cosmetic interest rates. During the two years following the entry into force of the 1994 Understanding transactions on commercial interest terms other than CIRRs are permitted provided that the guarantee does not confer a benefit within the general sense of that term. Pure cover transactions are subject to prior notification.

Tied Aid: Development of “*Ex Ante* Guidance on Tied Aid”

Implications: None – the *Ex Ante* Guidance does not cover ships.

Note. The 1994 Understanding “imported “ the Helsinki tied aid disciplines, with the emphasis that discussions would continue to strengthen the disciplines regarding tied aid, and also to develop an illustrative list of ships which would be considered commercially non viable. The expectation would be that *Ex Ante* Guidance on ships would develop in the light of experience under the Helsinki tied aid consultation process once the provisions of the 1994 Understanding were implemented.

Periodic revisions of the GNP per capita threshold for 17 year World Bank loans (which is used in the country eligibility criterion) would need to be incorporated.

The formula for calculating the concessionality level of tied aid has also been revised as part of the Schaerer Package

Minimum Premium Benchmarks for Country and Sovereign Credit Risk

Implications: work would be needed to incorporate into the 1994 Understanding the results of the “Knaepen Package” which set minimum premium for country and sovereign credit risk. This would need to include provision for discounts, where appropriate, for “permitted exceptions”, i.e. where the country credit risk is either externalised/removed or limited/excluded for the life of the debt repayment obligation. High-income OECD countries (as well as other countries with similar risk) are not subject to the premium disciplines.

Note. This is a specific commitment under the 1994 Understanding for “Further Work”.

Berne Union Starting Point of Credit

Implications: None – the 1994 Understanding did not incorporate the Arrangement definition of the starting point of credit.

Flexibility to terms and conditions for Project Finance transactions

Implications: None – the flexibility regime did not envisage coverage of shipbuilding transactions.

Re-drafting of the Arrangement Text

Implications (in case of full harmonization of the Understanding with the Arrangement): Few – although the re-drafting exercise did not change the substance of the Arrangement disciplines (e.g. in relation to CIRRs or tied aid disciplines) it involved a complete revision of the format of the Arrangement. There would be necessary to make correct/new references to the Arrangement in a new “2000 Understanding” or “Sector Understanding” as drafted under Part III and IV of this Report.

PART IV

INTEGRATION OF THE UNDERSTANDING ON EXPORT CREDITS FOR SHIPS AS A SECTORAL UNDERSTANDING INTO THE ARRANGEMENT ON GUIDELINES FOR OFFICIALLY SUPPORTED EXPORT CREDITS

Chapter I Form, Scope and Procedures

This sectoral Understanding complements the Arrangement on Guidelines for Officially Supported Export Credits. It sets out the particular complementary guidelines that are applicable to officially supported export credits for the financing of ships.

The procedures outlined in the Arrangement on Guidelines for Officially Supported Export Credits apply to this Chapter. The Participants may request a consultation if there is any reason to believe that another participant is offering an officially supported credit on terms that do not conform to this Sector Understanding.

Chapter II Provisions for Export Credits and Aid

Text as contained in the 2000 Understanding on Export Credits for Ships but delete and replace para 11 by the following

The Understanding becomes effective upon adoption by the following Participants to the Arrangement. Australia, Canada, the European Union, Japan and Norway. Other countries with a shipbuilding capability willing to apply these Guidelines may become Participants to this Understanding following prior invitation of the existing Participants)

PART V

LEGAL PROCEDURES RELATED TO THE ADOPTION OF A NEW UNDERSTANDING ON EXPORT CREDITS FOR SHIPS

The 1994 Understanding on Export Credits for Ships, although having a close connection in substance with the “Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry” is not an integral part of the Agreement. It is an independent arrangement and as such could be brought into force independently and immediately through a Resolution of the Council.

If a decision is taken to bring the to bring the 1994 Understanding on Export Credits for Ships into force as a self-contained Understanding, a 2000 Understanding or as a sectoral Understanding into force certain legal problems might arise for Member countries but not for the Organisation

This part outlines legal procedures and potential legal problems that could arise for Members countries.

I. European Commission

The 1994 Understanding on Export Credits for Ships (the “Understanding”) has been approved by the Council in its decision of 19 December 1994 together with the Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry negotiated in the framework of the OECD (“OECD Agreement”), which incorporates it by reference.

The Understanding was identified in the OECD Agreement as that “set out in C/WP6(94)6”. The Understanding is designed to replace an existing Understanding which is part of the 1992 Arrangement on Guidelines for Officially Supported Export Credits (the “Arrangement”). This Arrangement was formally brought into force for the Community by Council Decision 93/112/EEC of 14 December 1992.²

If the Understanding should be brought into force as an OECD Recommendation the necessary legal procedures would be the following:

The European Community should modify its previous decisions. In any event, the procedure to be followed is the adoption of a new Council decision under Article 133 EC (ex 113) on a proposal from the Commission.

² OJ L44 of 22 February 1993, page 1-46. The Arrangement is also referred to in Council Directive 98/29/EC of 7 May 1998 (OJ L 148/22 of 19 May 1998).

II. Japan

No domestic legal procedure has been required in Japan in order to bring into force the various revisions of the Understanding on Export Credits for Ships since the conclusion of the original (1969) Understanding.

No legal procedure concerning domestic laws and regulations is required in Japan to implement the 1994 (Revised) Understanding on Export Credits for Ships.

The laws, governmental ordinances, ministerial ordinances and clauses concerned

The domestic law implementing the Shipbuilding Agreement does not include any clauses concerning the implementation of the 1994 (Revised) Understanding, following the decision that it is not necessary to set out any clauses in the law to implement the Understanding and its amendments since the conclusion of the original (1969) Understanding.

There is no independent law, governmental ordinance or ministerial ordinance to implement the 1994 (Revised) Understanding.

General procedure to amend the law

In Japan, any draft amendments to the law are examined by the Cabinet Legislation Bureau. After the approval by the Cabinet meeting, the bill is submitted to the Diet.

At the Diet, the bill is discussed and voted at relevant committees and plenary sessions of both the House of Representatives and the House of Councillors. The implementation of the revised Understanding does not necessitate these procedures as it does not require any changes to the law.

Necessary works to bring the 1994 (Revised) Understanding on Export Credits for Ships into force in Japan

With respect to the Understanding on Export Credits for Ships since the conclusion of the original (1969) Understanding in Japan, the terms and conditions (interest rate, maturity, etc.) are set out by internal rules of export credit agencies and the administrative bodies concerned in order to operate their scheme in accordance with the Understanding. Therefore, the revised Understanding can be implemented by making necessary amendments to these internal rules; no obstacles are foreseen in this process.

Note by Norway

No legal procedure is required to bring the 1994 Revised Understanding on Export Credits for Ships into force. All amendments since 1969, including the amendments of 1981, have been implemented by governmental decisions and necessary amendments made in the internal rules of the bodies concerned. The same procedure will be used to bring the 1994 Understanding into force, whether the procedure is based on the entering into force of the Shipbuilding Agreement or based on an OECD Recommendation.

Note by Korea

Without prejudice to Korea's position on this issue, we provide the following interpretation of Korean law:

Under the Constitution of the Republic of Korea, treaties concluded and promulgated in accordance with the Constitution have the same effect as the domestic law (Constitution, Article 6(1)). No implementation legislation is necessary for a treaty to have direct legal effect in Korea.

The OECD Agreement Respecting Normal Competitive Conditions in the Commercial Shipbuilding and Repair Industry (the "Agreement") was approved by the National Assembly on 1 December 1995, as the Agreement provided for the legislative matters that require parliamentary approval. Thereafter, it has been duly ratified and promulgated by the Korean government in December 1995. As such, the Agreement has acquired the status of national law, and it will have direct legal effect in Korea upon entry into force pursuant to Article 13 of the Agreement.

The 1994 Understanding on Export Credits for Ships (the "1994 Understanding"), including amendments thereto, has been incorporated into the Agreement by reference. The Parties to the Agreement had negotiated the Agreement and the 1994 Understanding as a package and made the latter a cornerstone of balancing interests among the negotiating parties. Korea has approved and ratified the Agreement on this basis in accordance with the Constitutional procedures, thereby giving it the status of national law and creating a binding commitment of Korea. Accordingly, as long as the Agreement, which incorporates the 1994 Understanding by reference, remains in the same form as approved and ratified by Korea in December 1995, the Korean government would not be allowed to implement the 1994 Understanding separately from the Agreement, nor to adopt any other similar instrument, whether in the form of an amendment to the original Understanding, or otherwise, to the extent that such instrument undermines the basis on which the Agreement was concluded.

In view of the foregoing legal nature of the Agreement and the 1994 Understanding incorporated therein, if the 1994 Understanding should be implemented without the Agreement entering into force at the same time, the necessary legal procedures would be as follows:

All Parties to the Agreement shall agree, by way of amendment thereto, to delete references to the 1994 Understanding from the Agreement and make necessary adjustments to the provisions of the Agreement reflecting the changes.

The Government of Korea shall submit the amended Agreement (and the necessary amendments to the domestic implementing legislation) to the National Assembly for approval.

Section 13 of the 1994 Understanding shall be amended via OECD Council Recommendation so as to allow its implementation separate from the Agreement.

Korea accepts the 1994 Understanding as amended pursuant to the foregoing procedures.

PART VI

CONCLUDING REMARKS

Part II through Part IV of the report set out the respective Understanding options. Part V of the report describes legal issues related to the OECD decision-making process, as well as the required action to be taken by the respective Participants.

Provided there is willingness to have the Understanding enter into force as an independent gentlemen's agreement, the fastest solution may be to adopt the alternative set out under Part II above. The modernisation of this 1994 Understanding could start very soon after its entry into force.

On the other hand, the solutions presented under Part III and IV above show that even an updating of the Understanding to a 2000 Understanding or a Sector Understanding may be carried through relatively easily. The difference between these two options is mostly administrative in character. In the latter alternative, the Arrangement secretariat will handle the day-to-day work under the Understanding and a separate chairman has to be elected.

The outcome of the above is of course dependent on the political decision-making process among the Participants. This process is based on the national procedures. Due to the lack of an international common understanding in this field one could only hope for a positive outcome to these political discussions.