



EUROPEAN COMMISSION

Directorate-General for Trade

Directorate F - WTO Affairs, OECD and Food-related Sectors
WTO, OECD and Dual Use

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Subject: CHAP (2010)02320 – Complaint against the UK Export Credits Scheme

Dear Madam,

Dear Sir,

I would like to refer to your complaint concerning the UK Export Credits Scheme "FREF"- registered under reference number CHAP (2010) 02320 – and more specifically to your letter of 27 October 2010 replying to our letter of 30 September 2010.

We have carefully examined your letter and re-examined the file. Our analysis is as follows:

First of all, you appear to base your assessment on three arguments:

- a) that FREF is an export credit guarantee programme covered by item (j) of Annex I to the ASCM, and that therefore FREF loans qualify as prohibited export subsidies;
- b) that FREF is not in line with the OECD Arrangement and therefore its loans constitute export subsidies forbidden under the ASCM;
- c) that FREF loans qualify as subsidies under the definition of Article 1.1 (iv) of the ASCM

In view of the above we would like to stress:

a) It is our understanding that FREF is an interest rate support scheme and not an export guarantee programme. In the case of an interest rate support scheme, a commercial bank provides a loan at a fixed interest rate to foreign buyers. An arrangement between the government through its Export Credit Agency, the UK Export Credits Guarantee Department (ECGD) in this case, and the commercial bank which funds the export loan ensures that this fixed interest rate is available throughout the lifetime of the transaction. While the expression could be used that the government "guarantees" the fixed interest rate, this does not turn the transaction into an export credit guarantee in the sense of item (j) of Annex I to the ASCM. Our understanding is confirmed by various OECD publications on the matter, the most recent one being "Export Credit Financing Systems in OECD Member countries and Non Member economies" of 1 May 2008, which define FREF as an interest rate support scheme.

b) We are not in possession of any information supporting your view that FREF is not in line with the OECD arrangement insofar it appears that this export credit practice is (i) in the form of official financing support, (ii) has repayment terms of at least 2 years and (iii) has fixed interest rates. In particular, when looking at the explanations provided by the UK government in the documents quoted in your letter, we do not find any elements justifying the argument that the scheme in question would not qualify as an interest rate support scheme in the sense of the OECD Arrangement. On the contrary, relevant OECD publications as the one mentioned earlier specifically confirm that FREF is in line with such Arrangement. In addition, the break-even requirement established by item (j) of Annex I to the ASCM applies only to export credit guarantee or insurance programmes and not to interest rate support schemes as in the present case;

c) Article 1.1 of the ASCM provides for a general definition of subsidies. A subsidy is a financial contribution by a government or other public entities, which confers a benefit. However not all measures falling under that definition and therefore qualifying as subsidies, are *per se* forbidden by the ASCM. Having said that, any form of export financing since it is by definition contingent upon export performance, is prohibited under Article 3.1(a) of the ASCM. However, footnote 5 to Article 3.1(a) specifically establishes that *measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or other provisions of this Agreement*. The only export financing measure that explicitly falls into this category is the second paragraph of item (k) which states that an export credit practice that conforms to the interest rate provisions of an international undertaking on official export credits, such as the OECD Arrangement, is not a prohibited export subsidy. This is the so called "safe haven". Therefore such "safe haven" constitutes an exception to the prohibition of export subsidies spelled out in Article 3 of the ASCM. The panel in *Brazil-Aircraft* confirmed that the conformity with the provision under paragraph 2 of item (k) of Annex I to the ASCM implies that the export credit practice concerned is not prohibited under the ASCM.

In light of all the above explanations we confirm our previous assessment that FREF appears to be in compliance with the ASCM.

Therefore I will propose to close this complaint file. If you have any comments on this proposed course of action, I would request that you provide these within one month of your receipt of this letter.

Yours sincerely,

Ditte Juul-Jørgensen

Head of Unit

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