

ANNEX

Specimen Agreement

(Paragraph 11.5.83 of Chapter 11)

Scope and application

1. The scope of this Agreement is to regulate the reciprocal obligations of export credit insurers in cases where:

(a) an undertaking (hereinafter called the “principal contractor”) subcontracts to one or more undertakings (hereinafter called “the subcontractors”) established in one or more Member States or EEA States, an export contract concluded by the principal contractor with another undertaking (hereinafter called the “buyer”) where the buyer is situated :

(i) in a non-Member State or EEA State;

or

(ii) in a Member State or EEA State other than that in which the principal contractor or any of the subcontractor(s) is situated; and

(b) the principal contractor has undertaken to remit to the subcontractor(s) the portion due to the latter for the subcontract out of the sums paid by the buyer to the principal contractor, and to complete any formalities which may be necessary to transfer that portion of the payments made by the buyer which is due to the subcontractor(s);

(c) no legal ties exist between the subcontractor(s) and the buyer;

(d) the principal contractor’s credit insurer (hereinafter called the “principal insurer”) and the credit insurer(s) of the subcontractor(s) (hereinafter called “the joint insurer(s)”) are prepared to guarantee, each according to the terms of its policy, the portion of the operation carried

out in their respective countries against the risks defined by them in each individual agreement;

2. The Agreement which the above mentioned export credit insurers shall conclude in each individual case relating to the issue of joint guarantees to the principal contractor and to one or more subcontractors, shall be governed by the paragraphs below.

Obligations of the principal insurer

3. The principal insurer, being the sole manager of the risk, including the subcontracted element shall undertake:

(a) to guarantee the principal contractor, in respect of the latter's part of the contract, against the risks defined by the principal insurer in each agreement;

(b) not to accept any modification to any of the terms of performance of the contract between the principal contractor and the buyer or to the contract between the principal contractor and the subcontractor(s) for the performance of that contract, unless mutually agreed with the joint insurer(s);

(c) not to disclaim liability under the provisions of the policy issued to the principal contractor in consequence of any default on the latter's part, without notifying the joint insurer(s) therefore;

(d) not to declare that the policy has lapsed without notifying the joint insurer(s) thereof;

(e) to notify the joint insurer(s) of any fact which comes to its knowledge and which might alter the nature or extent of the risk or lead to a loss;

(f) in case of loss or threat of loss, to consult the joint insurer(s) on the steps to be taken decisions to acknowledge a loss shall, as far as possible, be taken by mutual agreement, the amount of the indemnity and

the method of payment being fixed in accordance with the provisions of each policy;

(g) in the event of a loss, to take the necessary steps or require the principal contractor to take the necessary steps to recover amounts unpaid and to pay back to the joint insurer the portion owed to the latter out of the sums recovered and to complete any necessary formalities for transferring such portion. The costs incurred in recovery by the principal insurer shall be divided between the insurers in proportion to the share of the contract covered;

(i) in the event of cancellation of the guarantee given to the principal contractor, to use his best endeavours to meet so much of the obligations set out in this paragraph, as are applicable.

Obligations of the joint insurers

4. Each of the joint insurers shall, for his part, undertake:

(a) to guarantee the subcontractor in his country, in respect only of the latter's part of the operation, against the risks defined by the joint insurer in each agreement;

(b) not to accept any modification to the contract concluded between the principal contractor and the subcontractor for the performance of the contract concluded with the buyer, except by mutual agreement with the principal insurer;

(c) not to disclaim liability under the provisions of the policy issued to the subcontractor in consequence of any default on the latter's part, without notifying the principal insurer thereof;

(d) not to declare that the policy has lapsed without notifying the principal insurer thereof;

(e) to notify the principal insurer of any fact which comes to his knowledge and which might alter the nature or extent of the risk or lead to a loss;

(f) in the event of cancellation of the guarantee given to the subcontractor, to use his best endeavours to comply with the obligations set out in this paragraph.

Consolidation

5. In the event of an agreement to consolidate the buyer's debt, the principal insurer and the joint insurer(s) shall hold consultations on ways and means of resolving the specific problems raised by the consolidation agreement.

Arbitration

6. Any dispute arising out of this Agreement which cannot be settled amicably shall be brought before an arbitration board composed of three arbitrators. Each of the parties involved shall appoint one arbitrator. The third arbitrator shall be appointed by the President of the Court of Justice of the European Communities; he shall act as chairman of the Arbitration Board. The proceedings shall be governed by the Rules of Conciliation and Arbitration of the International Chamber of Commerce.

Buyer Credit Operations

7. If there is agreement between the joint credit insurers that their buyer credit systems are sufficiently compatible, these insurers may further agree to establish or cover a single buyer credit for the whole of a contract, whereupon the provision of this Agreement shall apply by analogy.