II

(Preparatory Acts)

COMMISSION

PROGRESS TOWARDS A COMMON TRANSPORT POLICY

MARITIME TRANSPORT

Draft Council Regulation concerning coordinated action to safeguard free access to cargoes in ocean trades

COM(85) 90 final

Submitted by the Commission to the Council on 19 March 1985

(85/C 212/02)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas an increasing number of countries resort to protecting their merchant fleets either unilaterally, through legislation or administrative measures, or through bilateral agreements with other countries;

Whereas in respect of liner shipping the United Nations Convention on a Code of Conduct for Liner Conferences which entered into force on 6 October 1983 grants certain rights to shipping lines which are members of a conference operating a pool;

Whereas increasingly third countries, contracting parties or signatories to that Convention interpret its relevant provisions in such a way as to effectively expand the rights given under the Convention to their shipping lines, to the disadvantage of Community shipping lines or shipping lines of other OECD countries, whether conference members or not;

Whereas in shipping trades where the Convention is not likely to apply unilateral cargo reservation or bilateral agreements threaten to restrict free access to liner cargoes far in excess of the principles of the Convention and of international agreements, in particular those concerning the reservation to national flag ships of certain government sponsored cargoes, without prejudice to international obligations to give access to such cargoes to other flags;

Whereas in respect of bulk shipping there is an increasing tendency on the part of third countries to restrict access to bulk cargoes which poses a serious threat to the freely competitive environment broadly prevailing in the bulk trades;

Whereas restriction of access to bulk cargoes would adversely affect the merchant fleets of the Member States, as well as substantially increasing transportation costs of such cargoes, and would thereby have a serious effect on the trading interests of the Community;

Whereas the Community and its Member States have agreements with third countries in the field of shipping which refer to access to the trade;

Whereas the Community should be enabled to proceed to coordinated action by Member States if the competitive position of Member States' merchant fleets is adversely affected by cargo reservation to shipping companies of third countries or if required by an international agreement;

Whereas Council Decision 77/587/EEC of 13 September 1977 [1] provides, *inter alia*, for consultation on the various aspects of development which have taken place in relations between Member States and third countries in shipping matters;

Whereas Council Decision 83/573/EEC of 26 October 1983 [2] provides, *inter alia*, for an attempt at concertation by Member States of any counter-measures they may take in relation to third countries and for the possibility of a unanimous decision on the joint application by Member States of appropriate counter-measures forming part of their national legislation;

Whereas it is necessary to elaborate and refine the machinery provided for in these Decisions with a view to being prepared to proceed to coordinated action by

(1) OJ No L 239, 17. 9. 1977, p. 23.
(2) OJ No L 332, 28. 11. 1983, p. 37.

Member States in special circumstances at the request of a Member State or Member States or on the grounds of an international agreement,

HAS ADOPTED THIS REGULATION:

Article 1

When action by a third country restricts or threatens to restrict the access of shipping companies of Member States or another OECD country to:

— liner cargoes, where such action is not taken in accordance with the United Nations Convention on a Code of Conduct for Liner Conferences or any other agreement to which the Community and its Member States are parties, and/or

— bulk cargoes,

the procedure provided by this Regulation for coordinated action by Member States shall be applicable.

Article 2

1. Coordinated action may be requested by:

— a Member State, if the competitive position of its merchant fleet is or may be adversely affected;

— another OECD country, where an agreement has been concluded by that country with the European Economic Community providing for coordinated resistance in the case of restriction of access to cargoes, if the competitive position of its merchant fleet is or may be adversely affected.

2. The request shall be made to the Commission, whereupon the latter, if it is satisfied that the conditions for a request are met and that it is in the interests of the Community that action should be taken, will make within four weeks an appropriate proposal to the Council with a view to the adoption of a Decision defining the coordinated action to be taken in accordance with Article 3.

Article 3

1. Coordinated action shall consist of the following:

(a) diplomatic measures, such as the sending of a diplomatic message to the third countries concerned or a diplomatic mission to the third countries concerned, if appropriate jointly with the other OECD country with whom an international agreement as referred to in Article 1 has been concluded;

(b) counter-measures, directed at the shipping company or companies of the third countries concerned, whether operating as a home-trader or as a cross-trader in Community trades, which may consist of:

(i) a permit to load, carry or discharge cargoes;

(ii) the imposition of a quota;

(iii) the imposition of financial charges,

separately or in combination.

For the purposes of this Regulation:

— *'home-trader':* means a shipping company of a third country which operates a service between its own country and one or more Member States;

— *'cross-trader':* means a shipping company of a third country which operates a service between another third country and one or more Member States.

2. Diplomatic measures shall be taken before counter-measures. Such counter-measures shall be without prejudice to the obligations of the European Economic Community and its Member States under international law, including agreements with third countries which refer to access to shipping trades.

Article 4

1. When deciding upon one or more of the counter-measures, referred to in Article 3, the Council shall specify, as appropriate, the following:

(a) the developments which have caused counter-measures to be taken;

(b) the liner trade or range of ports to which the counter-measures are to apply;

(c) the flag or shipping company of the third country whose cargo reservation measures restrict free access to cargoes in the shipping area concerned;

(d) maximum or minimum volume (percentage, tonnes weight, containers) or value of cargo which may be loaded or discharged in ports of Member States;

(e) maximum or minimum number of sailings from and to ports of Member States;

(f) amount or percentage and basis of the financial charges to be levied and the manner in which they will be collected;

(g) the duration of the counter-measures.

2. Where the counter-measures envisaged by paragraph 1 are not provided for by the national legislation of a Member State such counter-measures may be taken in accordance with the Council Decision referred to in Article 2 (2) by the Member State concerned on the basis of this Regulation.

Article 5

1. If the Council has not adopted the proposal on coordinated action within a period of two months, Member States may apply national counter-measures unilaterally or as a group, if the situation so requires.

2. However, Member States may, in cases of urgency, take the necessary national counter-measures on a provisional basis even within the two month period as set out in paragraph 1.

3. National counter-measures taken in pursuance of this Article shall be notified immediately to the Commission and to the other Member States.

Article 6

During the period in which the counter-measures are to apply the Member States and the Commission shall consult each other in accordance with the consultation procedure established by Decision 77/587/EEC every three months or earlier if the need arises, in order to discuss the effects of the counter-measures in force.

Article 7

This Regulation shall enter into force on 1 July 1986.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Draft Council Regulation applying the principle of freedom to provide services to sea transport

(85/C 212/03)

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas, within the Community, the principle of freedom to provide services does not yet apply to shipping:

Whereas the abolition as between Member States of obstacles to the free movement of services is laid down by Article 3 of the Treaty as one of the activities of the Community;

Whereas in accordance with Article 61 of the Treaty freedom to provide services in the field of maritime transport is to be governed by the provisions of the Title relating to transport;

Whereas the application of this principle within the Community is also a necessary condition for effectively pursuing in relation to third countries a policy aiming at safeguarding to the maximum extent possible the continuing application of commercial principles in shipping;

Whereas Council Regulation (EEC) No 954/79 [1] preserves, *inter alia*, within conferences competitive access to that part of cargo liner shipping which is not restricted by commitments to national shipping lines of third countries under the United Nations Convention on a Code of Conduct for Liner Conferences, when ratified by Member States;

Whereas, taking into account the fact that the Code of Conduct has not yet been ratified by all Member States and that certain third countries are not likely to ratify it, the Code is not yet applied in all Community trades nor is it likely to apply in the future in some of these trades;

Whereas the Code of Conduct applies only to liner conferences and the cargo carried by their members, and not to independent lines or to shipping companies operating in the field of bulk or tramp shipping, where the Community aims at maintaining a regime of free and fair competition;

Whereas Community ship owners are increasingly faced with new restrictions, imposed by third countries, on the freedom to provide sea transport services for shippers established in their own country, in other Member States or in the third countries concerned, which may have harmful effects on the Community trades as a whole;

Whereas some of the abovementioned restrictions are incorporated in bilateral agreements between third countries and some Member States, while other restrictions, such as those pertaining to sea transport between ports within the same country, are reflected in similar provisions in the legislation or in administrative practices of some Member States;

Whereas therefore the principle of freedom to provide services should now be applied to maritime transport so as to abolish progressively existing restrictions and avoid the introduction of new restrictions within the Community;

[1] OJ No L 121, 17. 5. 1979, p. 1.