ORDER OF THE PRESIDENT OF THE COURT OF FIRST INSTANCE
10 March 1995 *

In Case T-395/94 R,

Atlantic Container Line AB, a company governed by Swedish law, established in Gothenburg, Sweden,

Cho Yang Shipping Company Ltd, a company governed by Korean law, established in Seoul,

DSR-Senator Lines GmbH, a company governed by German law, established in Bremen, Germany,

Hapag Lloyd AG, a company governed by German law, established in Hamburg, Germany,

MSC Mediterranean Shipping Company SA, a company governed by Swiss law, established in Geneva, Switzerland,

A. P. Møller-Mærsk Line, a company governed by Danish law, established in Copenhagen,

Nedlloyd Lijnen BV, a company governed by Netherlands law, established in Rotterdam, the Netherlands,

Neptune Orient Lines Ltd (NOL), a company governed by Singapore law, established in Singapore,

* Language of the case: English.

Nippon Yusen Kaisha (NYK Line), a company governed by Japanese law, established in Tokyo,

Orient Overseas Container Line (UK) Ltd, a company governed by English law, established in Levington, United Kingdom,

P&O Containers Ltd, a company governed by English law, established in London,

Polish Ocean Lines, a company governed by Polish law, established in Gdynia, Poland,

Sea-Land Service Inc., a company governed by Delaware law, established in Jersey City, New Jersey, United States of America,

Tecomar SA de CV, a company governed by Mexican law, established in Mexico DF,

Transportación Marítima Mexicana SA, a company governed by Mexican law, established in Mexico DF,

represented by John Pheasant, Nicholas Bromfield and Suyong Kim, Solicitors, with an address for service in Luxembourg at the Chambers of Loesch & Wolter, 8 Rue Zithe,

applicants,

supported by

Japanese Shipowners' Association, an association governed by Japanese law, having its head office in Tokyo, represented by Nicholas J. Forwood QC, of the Bar of England and Wales, and Philip Ruttley, Solicitor, with an address for service in Luxembourg at the Chambers of Arendt & Medernach, 8-10 Rue Mathias Hardt,

and

European Community Shipowners' Associations ASBL, an association governed by Belgian law, having its head office in Brussels, represented by Denis Waelbroeck, of the Brussels Bar, with an address for service in Luxembourg at the Chambers of Ernest Arendt, 8-10 Rue Mathias Hardt,

interveners,

Commission of the European Communities, represented by Bernd Langeheine and Richard Lyal, of its Legal Service, acting as Agents, with an address for service in Luxembourg at the office of Georgios Kremlis, of the Legal Service, Wagner Centre, Kirchberg,

defendant,

supported by

Freight Transport Association Ltd, an association governed by English law, having its head office in Tunbridge Wells, United Kingdom,

Association des Utilisateurs des Transports de Fret, an association governed by French law, having its head office in Paris,

and

European Council of Transport Users, an association governed by Belgian law, having its head office in Brussels,

represented by Mark Clough, Barrister, of the Bar of England and Wales, with an address for service in Luxembourg at the Chambers of Aloyse May, 31 Grand-Rue,

interveners,

APPLICATION for an order suspending the operation of Commission Decision 94/980/EC of 19 October 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.446 — Trans-Atlantic Agreement) (OJ 1994 L 376, p. 1),

THE PRESIDENT OF THE COURT OF FIRST INSTANCE OF THE EUROPEAN COMMUNITIES

makes the following

Order

Facts and procedure

By application registered at the Court of First Instance on 23 December 1994, fifteen liner shipping companies which were parties to the Trans-Atlantic Agreement ('the TAA') brought an action under the fourth subparagraph of Article 173 of the EC Treaty for the annulment of Commission Decision 94/980/EC of 19 October 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.446 — Trans-Atlantic Agreement) (OJ 1994 L 376, p. 1).

By separate application under Articles 185 and 186 of the EC Treaty, registered at the Court on the same date, the applicants also sought suspension of the operation of the contested decision.

The Commission, after an extension of the time-limit originally set for 11 January 1995, submitted its written observations on the application for interim measures on 20 January 1995.

4 By applications registered at the Court on 9 January 1995, the Freight Transport Association Ltd ('FTA') and the Association des Utilisateurs des Transports de Fret ('AUTF') sought leave to intervene in support of the Commission.

5 The applications for leave to intervene were served on the parties in accordance with Article 116(1) of the Rules of Procedure.

6 In a telefax message registered at the Court on 13 January 1995, the applicants indicated that they did not object to the requests by FTA and AUTF for leave to intervene. In the same document, they requested that, in accordance with Article 116(2) of the Rules of Procedure, certain parts of the file — certain figures given in the contested decision, the details of their losses given in Annex 10 to the application for interim measures and the details of their financial results in 1991, 1992 and 1993 given in Annex 16 to that application — should be treated as confidential.

7 By letter registered at the Court on 13 January 1995, the Commission stated that it had no observations on the applications by FTA and AUTF for leave to intervene.

8 By letter of 19 January 1995, the Court Registry informed FTA and AUTF that, by decision of the President of the Court, they would be permitted to present oral argument at the hearing on the application for interim measures and that they were allowed until 26 January 1995 for the submission of their written observations.

9 By applications registered at the Court on 20 January 1995, the Hong Kong Shipowners' Association ('HKSA'), the Japanese Shipowners' Association ('JSA') and the European Shipowners' Associations ('ECSA') sought leave to intervene in sup

port of the applicants. In observations lodged on 23 January 1995, the Commission objected to those applications for leave to intervene. The applicants did not express any opinion.

10 By order of 15 January 1995, the President of the Court of First Instance dismissed HKSA's application for leave to intervene on the ground that it had not established a prima facie interest in the result of the case as required by the second paragraph of Article 37 of the (EC) Statute of the Court of Justice.

11 By letter of the same date, the Registry informed ECSA and JSA that, in view of the tenor of their application, the President had decided to allow them to take part in the hearing on the application for interim measures in order to establish their interest in the result of the case, the decision on their applications for leave to intervene being reserved.

12 By letter registered at the Court on 24 January 1995, the European Council of Transport Users ASBL ('ECTU') sought leave to intervene in support of the defendant. Neither the applicants nor the Commission submitted observations on that application for leave to intervene. By letter of the same date, the Registry informed ECTU that, in view of the tenor of its application, the President had decided to allow it to take part in the hearing on the application for interim measures in order to establish its interest in the result of the case, the decision on its application for leave to intervene being reserved.

13 The parties presented oral argument on 27 January 1995.

14 Before examining the merits of the application for interim measures, it is necessary to outline the context of the dispute before the Court, as it appears from the documents lodged by the parties and the explanations given orally at the hearing.

15 The applicants are the fifteen liner shipping operators which were parties to the TAA, under which they together provided westbound and eastbound international liner services across the Atlantic for the carriage of container cargo between northern Europe and the United States of America. The TAA came into effect on 31 August 1992, replacing previous liner conference agreements. Four new members joined the TAA after it came into effect.

16 The TAA applies to several aspects of maritime transport. It contains, *inter alia*, rules on establishing freight rates, on service contracts (under which customers undertake to ship a minimum quantity over a given period in exchange for a rate lower than the normal) and on a capacity management programme (designed to limit the supply of transport in order to stabilize the market).

17 The TAA comprises two types of member. Those in the first category ('structured members') sit on the committees which monitor the application of the tariffs and service contracts. With two exceptions, those members also took part in the two liner conferences which preceded the TAA. Members in the second category ('unstructured members') do not sit on those committees and may enter into independent service contracts, unlike structured members. They may also take part in service contracts negotiated by the structured members, whereas structured members may not take part in contracts negotiated by unstructured members.

18 The TAA lays down the rates applicable to maritime transport and to through-intermodal transport, which includes both the maritime transport and the inland haulage, to or from the coast, of goods from or to a point inland. The rates applicable to through-intermodal transport, which concern in each case a single contract of carriage, thus cover both the sea and the inland portions.

19 The TAA was notified to the Commission on 28 August 1992. Pursuant to Article 12(1) of Council Regulation (EEC) No 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport (OJ 1986 L 378, p. 4), the applicants sought the application of Article 85(3) of the Treaty.

20 By letter of 24 September 1992, the Commission informed the applicants that it would examine the TAA also under the provisions of Council Regulation (EEC) No 1017/68 of 19 July 1968 applying rules of competition to transport by rail, road and inland waterway (OJ, English Special Edition 1968 (I), p. 302).

21 Between 13 October 1992 and 19 July 1993, the Commission received a large number of complaints relating to the implementation of the TAA. Those complaints were lodged by exporters and associations of exporters established in various Member States of the Community and exporting to the United States of America, by various port authorities in Europe and by a number of forwarding agents and associations of forwarding agents. They included various allegations that the TAA was in breach of Articles 85 and 86 of the Treaty, with regard to the fixing of rates, by imposing unfair contract terms and by artificially limiting the supply of transport.

22 The complainants asked the Commission to adopt interim measures under Article 11(1) of Regulation No 4056/86. After opening the procedure provided for under Article 23 of that regulation, the Commission did not accede to those requests.

23 By letter of 10 December 1993, the Commission addressed a statement of objections to the applicants.

24 Following the discussions which took place during the course of the administrative procedure, the applicants notified a modified version of the TAA, the Trans-Atlantic Conference Agreement ('the TACA'), to the Commission. After a number of amendments, that new agreement entered into effect on 24 October 1994, replacing the TAA. The Commission had not yet, at that time, completed its examination of the TACA.

25 On 19 October 1994, the Commission adopted the contested decision. Article 1 finds that the provisions of the TAA relating to price-fixing and capacity infringe Article 85(1) of the Treaty. Article 2 refuses the application of Article 85(3) of the Treaty or Article 5 of Regulation No 1017/68 to the provisions of the TAA referred to in Article 1. Article 3 of the decision requires the addressees specified in Article 6 to bring an end to the infringements referred to in Article 1, and Article 4 requires them to refrain in future from any agreement or concerted practice which may have the same or a similar object or effect as the agreements and practices referred to in Article 1. Finally, Article 5 requires the addressees, within a period of two months, to inform customers with whom they have concluded service contracts or other contractual relations in the context of the TAA that such customers are entitled, if they so wish, to renegotiate the terms of those contracts or to terminate them forthwith.

Law

26 Under Articles 185 and 186 of the EC Treaty, taken together with Article 4 of Council Decision 88/591/ECSC, EEC, Euratom of 24 October 1988 establishing a Court of First Instance of the European Communities, as amended by Council Decision 93/350/Euratom, ECSC, EEC of 8 June 1993, the Court may, if it considers that circumstances so require, order that the application of the contested act be suspended or prescribe any necessary interim measures.

27 Article 104(2) of the Rules of Procedure provides that applications for any of the interim measures referred to in Articles 185 and 186 of the Treaty must state the circumstances giving rise to urgency and the pleas of fact and law establishing a prima facie case for the interim measures applied for. The measures sought must be provisional in that they must not prejudge the judgment on the substance.

The applications for leave to intervene

28 In the light of the considerations submitted either in writing or orally at the hearing on the application for interim measures, all the applicants seeking leave to intervene except HKSA, whose application has already been dismissed, must be found to have established their interest in intervening in these interim proceedings. First, the contested decision was adopted following a procedure in which FTA, AUTF and the European Shippers' Council — a member of ECTU — took part as complainants. Secondly, as became clear in particular from the explanations given orally by JSA and ECSA at the hearing on 27 January 1995, the immediate application of the Commission's decision is likely, prima facie, to affect maritime transport to or from European ports.

29 In the present application for interim measures, therefore, JSA and ECSA must be granted leave to intervene in support of the applicants and FTA, AUTF and ECTU must be granted leave to intervene in support of the defendant.

The request for confidential treatment

30 In view of the nature of the items for which confidential treatment has been requested, it appears appropriate to grant the applicants' request for the purposes

of the application for interim measures, since those items appear, prima facie, to fall within the category of business secrets.

The application for interim measures

The subject-matter of the application

31 In their application, the applicants seek suspension of the operation of Articles 1, 2, 3 and 4 of the contested decision in so far as those articles prohibit them from jointly exercising rate-making authority in respect of the inland portions within the Community of through-intermodal transport services. They further seek suspension of the operation of those articles in so far as they prohibit them from concluding joint service contracts and, finally, suspension of the operation of Article 5 of the decision.

32 At the hearing on 27 January 1995, the Commission confirmed that, as it had stated in its written observations, the contested decision does not prohibit joint service contracts as such. Following that confirmation, the applicants acknowledged that their application for suspension of the operation of the decision is without purpose in that regard.

33 As regards Article 5 of the decision, the applicants explained that 27 of the 463 contracts in effect when the decision was notified continued to produce effects after 31 December 1994. After the Commission confirmed at the hearing that, as it had stated in its written observations, only those 27 contracts are affected by Article 5, the applicants acknowledged that the immediate application of that article was not such as to cause them serious and irreparable damage.

34 In view of the foregoing, there is no need to rule on the application for suspension of the operation of Articles 1 to 4 of the decision in so far as they might prohibit the applicants from concluding joint service contracts, and the application for suspension of the operation of Article 5 of the contested decision must be dismissed; the subject-matter of this application for interim measures is therefore confined to suspension of the operation of Articles 1 to 4 of the decision in so far as they prohibit the applicants from jointly exercising rate-making authority in respect of the inland portions within the Community of through-intermodal transport services.

Arguments of the parties

— Prima facie case

35 As regards the requirement of establishing a prima facie case, the applicants, referring to the pleas in law and arguments put forward in their main application, claim in substance that the contested decision is vitiated by a number of errors in law, in that it was adopted in breach of Article 85 of the Treaty and of the rules relating to its application, and by errors of assessment as regards the economic background to the TAA, which led to the errors in law.

36 The applicants' first plea, alleging a breach of Article 85(1) of the Treaty, comprises two parts. They claim that the Commission failed, first, to define the relevant market correctly and, secondly, to demonstrate that the TAA had an effect on trade between Member States.

37 With regard to the first part of the plea, the applicants maintain that the relevant market for the inland container transport which they provide in the context of through-intermodal shipments is the market for maritime transport, of which through-intermodal services form a part. Inland container transport rates should therefore be assessed in the context of Regulation No 4056/86 and not, as was done by the Commission, of Regulation No 1017/68. Even if the inland transport in question fell under the latter regulation, the relevant market would be that for inland container transport. In such an event, the applicants' share of that market would be too small for the practices complained of to have an appreciable effect on competition.

38 In the second part of their first plea, the applicants claim that the Commission has failed to show that the terms applicable to the inland transport in question had an appreciable effect on trade between Member States. Contrary to the Commission's assertions, the effects of the TAA on competition between ports were minimal; nor does the contested decision state how the TAA is alleged to have influenced the commercial behaviour of inland transport undertakings established in different Member States and thus affected intra-Community trade in such services. The cost of inland transport has, moreover, only a very limited effect on the end price of the goods transported.

39 In their second plea, the applicants maintain that, contrary to what the Commission decided, agreements relating to through-intermodal transport are covered, as regards the inland portions, by the block exemption in Article 3 of Regulation No 4056/86. They point out that one of the aims of that regulation is to ensure stability on the market for maritime transport and claim that the Commission incorrectly assessed the economic context in so far as it relied on an incorrect definition of that concept. In the Commission's view, stability may be achieved only by the establishment of uniform rates. The applicants, however, assert that several rates are necessary to ensure market stability, that the TAA had such an effect and that it should therefore have qualified for the exemption provided for in Regulation No

4056/86. That regulation, which lays down rules governing the whole sector of maritime transport, should, moreover, apply to all activities falling within that type of transport. The applicants cite a number of the provisions of the regulation which refer to inland transport and submit that such transport may therefore qualify for the block exemption in Article 3. The Commission's interpretation, that inland transport falls within the scope of Regulation No 1017/68, is contradicted by the positions taken by a number of Member States and freight users' associations during proceedings before the American authorities in 1982 as a result of which those authorities recognized the liner conferences' right to fix rates for the inland portions within the United States of through-intermodal transport services.

40 In their third plea, the applicants allege that the Commission should, in any event, have granted the TAA an individual exemption under Article 85(3) of the Treaty or, in so far as applicable, Article 5 of Regulation No 1017/68, since the TAA was beneficial to market stability.

41 In the alternative, the applicants submit that the Commission's decision should be annulled for a failure to state the reasons on which it is based if its import is to preclude the fixing of rates for the inland portions of through-intermodal service contracts by means of any agreement other than the TAA not possessing the two characteristics to which the Commission refers in the present case in refusing an exemption — namely the fact that the TAA lays down at least two rate levels and provides for non-utilization of capacity.

42 The Commission argues, first, that the TAA affected trade between Member States inasmuch as carriers, by offering a service to customers within the common market, were in competition with each other on the market for that service. That market was therefore affected by an agreement restricting competition. Secondly, it considers that the TAA is not a liner conference within the meaning of Article 1(3)(b) of Regulation No 4056/86 because the rates applied are not the same for all carriers. In any event, that regulation concerns only international maritime transport operations and not the inland portions of through-multimodal shipments; the exemption granted in Article 3 cannot, therefore, extend to such services. Thirdly, the Commission points out that the granting of an individual exemption presupposes the assessment of a complex economic situation, involving balancing the interests of the applicants for exemption, those of other economic operators and the public interest. According to established case-law, the Commission has a wide discretion in such assessment. In the absence of manifest error, the Court may not substitute its assessment for that of the Commission. In the present case, there is no such error but merely an assessment of the economic factors which differs from that of the applicants.

43 FTA and AUTF submit that the fixing of rates for the inland portions of through-multimodal transport services falls solely under Regulation No 1017/68, since Regulation No 4056/86 does not apply to that type of transport. Nor, in the interveners' view, are the conditions for granting an individual exemption met, since the agreement does not allow shippers a fair share of the benefit.

— Risk of serious and irreparable damage

44 The applicants maintain that the prohibition on fixing rates for the inland portions of through-multimodal transport services in Europe would lead to a collapse of

rates in the whole sector, which would cause them serious and irreparable damage. In support of that submission, they refer to what they claim happened in transatlantic shipping in 1982 and 1983. As a result of restrictions imposed by United States law on the fixing by liner conferences of the rates applicable to the inland portions of through-multimodal transport services, the market collapsed, leading to huge losses for carriers and a disturbance of the North Atlantic liner services. A prohibition by the Community authorities of the fixing of such rates would necessarily have the same effects, leading to a significant drop in rates and rendering the supply of transatlantic liner services unviable for many operators. The result would be a restriction of the services offered to shippers, affecting intra-Community trade. Such damage would, because of its nature, be irreparable.

45 The applicants further point out that the fixing of rates for the inland portions of through-intermodal transport services in Europe has been practised for over two decades. They refer to the order in Joined Cases 76, 77 and 91/89 R *RTE and Others* v *Commission* [1989] ECR 1141 and state the application of the contested decision pending the outcome of the main action would give rise to irreversible market developments which would cause them serious and irreparable damage.

46 ECSA and JSA have also stressed the danger of a repetition of the drop in rates which occurred in 1982, leading to very significant damage and meaning that it was no longer possible to provide regular transport services.

47 The Commission denies that the application of its decision can cause the applicants serious and irreparable damage. The applicants have failed to show the existence of a causal link between the decision and the risk of damage. It lies within their power to avoid such a risk, in particular by prohibiting the fixing of rates below cost. If carriers are unable to ensure that such a solution is respected, it is their fault. The Commission also states that the notification of its decision was accompanied by a letter inviting the applicants to notify new agreements on inland transport, which they have not done. In any event, in the Commission's view, the drop in freight rates in 1982 and 1983 was the result of the economic recession at that time, following the second 'oil shock'. The economic situation today is very different and there is therefore no risk of a repetition of the same collapse.

48 FTA and AUTF deny that there is any risk of serious and irreparable damage and claim that what happened in 1982 was the result of specific economic circumstances due, in particular, to a period of recession, which are not present now. In any event, the applicants' power on the market, as demonstrated by the constant increase in rates over the last two years, would prevent the recurrence of such a crisis. Even if damage were incurred, it would be caused by a breach of the terms of the agreement by the carriers which are parties to it; it would thus be those undertakings which were responsible, not the Commission's decision. Finally, the interveners claim that the balance of interests leans in favour of the users of the services in question, who are all exporters to the United States whose costs have been increased by the exploitative rates fixed by the TAA and the significant rise in those rates over the last two years.

Findings of the judge hearing the application for interim measures

49 With regard, first, to the merits of the main action, it is clear that at least some of the pleas in law put forward by the applicants appear, prima facie, to be relevant

and in any event not entirely ungrounded. That is true, *inter alia*, of the argument, in support of their first plea, that the Commission failed to take account of inland container transport as a whole when determining the relevant market, and of the alternative plea that the Commission unlawfully applied to the TACA, which replaced the TAA and which it is still examining, the conclusions which it had reached when examining the TAA. A prima facie case has therefore been established.

50 It must accordingly be determined whether the other criterion for the grant of interim measures — a risk of serious and irreparable damage — is met. It is settled case-law (see, in particular, the order in Case T-543/93 R *Gestevisión Telecinco* v *Commission* [1993] ECR II-1409, paragraph 27) that the urgency of an application for interim measures must be assessed in relation to the necessity for an interim order to prevent serious and irreparable damage to the party applying for them. It is for the party seeking suspension of operation to prove that it cannot wait for the outcome of the main proceedings without suffering damage that would entail serious and irreparable consequences.

51 In that regard, it is clear that the Commission's decision, if applied, would have the immediate effect of preventing the applicants from pursuing a practice — the joint fixing of rates by carriers in respect of the inland portions of through-intermodal transport services — which has been current in Europe since the early 1970s and in any event since the entry into effect of Regulation No 4056/86, on which the Commission relies in declaring that practice illegal.

52 The applicants have, moreover, both in their application and at the hearing, put forward reasonable substantiation as regards the risk which an interruption of that practice might entail for the operation of the transport market. In particular, they have stated that if they were unable jointly to fix rates for that type of transport, a general collapse of maritime transport rates would be likely to ensue. Although the applicants and the Commission do not agree on the exact percentage of maritime transport as a whole which is accounted for by through-multimodal transport, it has not been disputed that the share is not insignificant. It cannot, therefore, be ruled out that a drop in prices in that sector of the market could have a substantial affect on the general level of rates charged.

53 It further appears from the applicants' observations, in particular from those relating to the economic characteristics specific to maritime transport, that there is a danger in such a situation that some carriers may run up losses and disappear from the market, as happened on the North Atlantic market in the early 1980s.

54 In that regard, whilst it is not possible to deny altogether the relevance of the Commission's claim that the crisis experienced on the transatlantic shipping market in the early 1980s was due to specific short-term economic factors, the United States legislation in force at that time may none the less have had, as regards the fixing of rates for through-intermodal transport, tangible effects which may have at least contributed to that situation. Nor can it be ruled out that the contested decision might itself produce comparable effects.

55 As has been held in the past in applications for interim measures, such situations, in which market conditions as a whole are modified by a Commission decision applicable within a relatively short period, involve a risk of serious and irreparable damage to the addressees of the decision, since they imply major changes to the framework in which they operate. Such changes might lead to developments on the market that would subsequently be very difficult to reverse if the main action were successful. Conversely, suspension of the operation of the decision is not such as to prevent its subsequently becoming fully effective should the main application be dismissed (see the orders in *RTE and Others* v *Commission*, cited above, paragraphs 15 and 18; Case 56/89 R *Publishers Association* v *Commission* [1989] ECR 1693, paragraphs 34 and 35; Joined Cases T-24/92 R and T-28/92 R *Langnese-Iglo and Schöller* v *Commission* [1992] ECR II-1839, paragraph 29; and Case T-29/92 R *SPO and Others* v *Commission* [1992] ECR II-2175, paragraph 31).

56 Here, an initial examination of the grounds put forward by the applicants shows that there is a not insignificant risk that changes to the framework in which they operate, such as the application of the contested decision would imply, might entail a general drop in rates such as even to affect the regularity of maritime transport. If such a situation were to arise, it could, in view of the economic importance of that market, lead to widespread damage of undeniable significance.

57 It follows that the immediate application of the contested decision pending the outcome of the main action entails a risk not merely of causing serious and irreparable damage to the applicants but also of compromising the stability of the market. The balance of interests therefore requires that the operation of the decision be sus-

pended in so far as it prohibits the applicants from jointly exercising rate-making authority in respect of the inland portions within the Community of through-intermodal transport services.

On those grounds,

THE PRESIDENT OF THE COURT OF FIRST INSTANCE

hereby orders:

1. **The Japanese Shipowners' Association and the European Community Shipowners' Associations ASBL are granted leave to intervene in support of the applicants.**

2. **The Freight Transport Association Ltd, the Association des Utilisateurs des Transports de Fret and the European Council of Transport Users ASBL are granted leave to intervene in support of the defendant.**

3. **The applicants' request for confidential treatment of certain parts of the file is granted.**

4. **Operation of Articles 1, 2, 3 and 4 of Commission Decision 94/980/EC of 19 October 1994 relating to a proceeding pursuant to Article 85 of the EC Treaty (IV/34.446 — Trans-Atlantic Agreement), in so far as they prohibit the applicants from jointly exercising rate-making authority in respect of the**

inland portions within the Community of through-intermodal transport services, is suspended until delivery of the final judgment of the Court of First Instance in the main action.

5. There is no need to rule on the application for suspension of the operation of those articles with regard to the conclusion of joint service contracts.

6. The application for suspension of the operation of Article 5 of the decision is dismissed.

7. Costs are reserved.

Luxembourg, 10 March 1995.

H. Jung

Registrar

J. L. Cruz Vilaça

President