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COMMISSION OF THE EUROPEAN COMMUNITIES

COM(83) 588 final

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Recommendation for a

COUNCIL DECISION

authorizing the Commission to open negotiations with the
United States of America on competitive access to shipping trades

(submitted to the Council by the Commission)

COM(83) 588 final

Explanatory Memorandum

1. The present pattern of world liner shipping is undergoing a period of considerable change. If no Community action to counter these changes is forthcoming the results will be severely detrimental to the foreign trade of the Community. An ever increasing number of non-OECD member countries are adopting practices which reserve cargo, both export and import for vessels of their national lines. Moreover, certain of these countries have opened negotiations on bilateral cargo-sharing regimes with the United States of America.

2. This would mean that not only a substantial part of such countries' liner trade is taken out of the market through allocation to their national lines but also that the greater part of the trades between those countries and the United States would be split between their respective shipping lines. This would be to the detriment of the shipping lines of other OECD countries, including those of the Community, operating as cross-traders in these trades.

3. Although the United States is prepared to resist the expansion of measures to restrict the freedom of carriage of cargoes in its trades with non-OECD countries, it seeks a commitment from its main OECD shipping partners, in particular the Member States of the Community, Finland, Norway, Sweden and Japan, to do the same in their trades with non-OECD countries, i.e. to keep these trades open for competitive access to the greatest degree possible.

4. In October 1983 the United Nations Code of Conduct for Liner Conferences, adopted by the EEC in 1979 (Regulation 954/79)¹ as a suitable instrument for its shipping relations with third countries, will enter into force. The United States, which is not a signatory to the Liner Code, fears that the European and Japanese trades with third countries will have a tendency to become closed to their liner operators.

5. If the United States could obtain a legally binding commitment from the other parties it is prepared to guarantee in its turn to keep open its trades as much as possible.
In this connection the United States have referred to the possibilities of Community action, in particular the application of the competition rules of the Treaty of Rome.

1) OJ No. L 121 17.5.1979

6. The United States is willing to accept the implication of EEC Regulation 954/79 (the "Brussels Package"), and in particular its Article 4 on reciprocity in competitive access, provided that the adherents to the "Brussels Package" will ensure that it works in the spirit in which it was drafted. Thus, there would be no discrimination between EEC Lines of the same nationality in respect of access to conference membership and between OECD lines in respect of redistribution of cargoes. Independent lines should have competitive access to the Code-based trades.
7. Exploratory talks on these matters have been held with the Government of the United States since June 1982. Member States of the EEC, the Commission (on behalf of the Community) Finland, Japan, Norway and Sweden have used the Consultative Shipping Group (CSG) for this purpose. The CSG is an unofficial body of thirteen (1) European countries and Japan, established in the sixties as a forum for certain countries of the OECD (Maritime Transport Committee) in order to discuss the problems raised by the US regulatory system in ocean shipping, more particularly to arrive at an agreed position v.a.v. the United States.
8. The time has come to open negotiations with the United States on these matters in order to conclude an agreement which ensures the maintenance of commercial principles and competitive access to each other's Liner trades with third countries.

1) Belgium, Denmark, France, Germany, Greece,
Italy, Netherlands, United Kingdom, Finland, Norway, Portugal, Spain, Sweden.

9. The forthcoming negotiations will involve discussions on such matters as the UN Liner Code, the right of establishment, the rules of competition and maritime counter measures and it is clear that the Community together with its Member States should take an active part in the negotiations in this field.

10. In accordance with the principle laid down in Article 228 of the Treaty of Rome external agreements with third countries on behalf of the Community shall be negotiated by the Commission. Following established practice the Commission will conduct these negotiations in consultation with Member States. In this case the Commission will be assisted by a Committee composed of representatives of the Member States. The Committee could either meet within the framework of the Council in Brussels or on the spot.

11. The participation of the Community together with its Member States and the other countries of the CSG in the agreement with the United States is necessary to achieve an overall understanding. Given these circumstances the CSG is considered to be the most appropriate body with which the overall agreement may be achieved. The CSG would be used to co-ordinate and to express the position of the European countries, the Community and Japan during the negotiations with the United States.

12. The Community's position, either within the CSG or in the negotiations with the United States, will be stated by the Commission representative. As is usual in negotiations in which Member States participate alongside the Community, it is also possible for Member States' representatives to make individual statements, provided that they are in accordance with the agreed position adopted by the Committee referred to in Article 2.

13. For the purpose of these negotiations and in accordance with the customs of the CSG the Chairman of that body may be entrusted with the task of expressing a common viewpoint, including the Community's position, during the negotiations with the United States.

14. Problems which are raised in the negotiation meetings with the United States and which call for an adaptation of the common viewpoint of the Consultative Shipping Group should be placed before the Consultative Shipping Group by the Chairman for further co-ordination; if these problems affect the Community the Committee mentioned in Article 2 of the Decision will meet on the spot.

15. In view of the above-mentioned considerations and in order to ensure the participation of the Community as such in the negotiations for competitive access to liner trades the Commission hereby recommends that the Council should as soon as possible:
 - adopt the decision for which a proposal is annexed authorising the Commission to open the negotiations on behalf of the Community concerning competitive access to liner trades.

This Council decision to authorise the opening of negotiations does not prejudice the distribution of competence in these questions between Member States and the Community. Following the successful conclusion of the negotiations the Commission will make a proposal to the Council concerning the conclusion of the agreement by the Community and its Member States.

RECOMMENDATION FOR A COUNCIL DECISION

authorising the Commission to open negotiations with
the United States of America on competitive access
to shipping trades

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to the Recommendation from the Commission,

Whereas the introduction or the expansion of restrictive measures by certain third countries may lead to the closing of their liner trades to shipping lines other than their own and those of their trading partners ;

Whereas it would be of considerable advantage to the shipping lines and shippers of the Community to reach agreement with the United States of America about a concerted approach to this problem, including an agreed policy on cargo reservation, in order to maintain a commercial and competitive environment in world liner shipping ;

Whereas the preliminary discussions with the United States of America indicate that the United Nations Liner Code, the right of establishment, the rules of competition and maritime counter-measures will be important elements of a possible agreement ;

Whereas certain other members of the OECD, in particular Finland, Japan, Norway and Sweden, forming part, with Member States, of the Consultative Shipping Group, wish to participate in negotiations with the United States of America on the matter of keeping world liner trades open and that of reciprocal guarantees of competitive access ;

Whereas in order to arrive as effectively as possible at coherent solutions the Consultative Shipping Group is the appropriate framework within which and through which the negotiations should be conducted;

Whereas in view of the results of the preliminary discussions the Commission should be authorised to open negotiations on behalf of the Community ;

HAS DECIDED AS FOLLOWS :

Article 1

The Commission, acting in close co-operation with Finland, Japan, Norway and Sweden in the framework of the Consultative Shipping Group, is hereby authorized to open negotiations with the United States of America with a view to concluding an agreement on competitive access to shipping trades.

Article 2

During the negotiations the Commission will be assisted by a Committee consisting of representatives of the Member States. This Committee will define a position on all matters arising in the course of the negotiations. Any major disagreement within this Committee should be referred to the Council bodies.

Article 3

The Commission shall conduct the negotiations in accordance with the Directives in the Annex.

Done at Brussels

For the Council

The President

DIRECTIVES FOR NEGOTIATION

The negotiations should aim, in the first place, at the establishment of an agreed position between the Community and its Member States, on the one hand and Finland, Japan, Norway and Sweden on the other hand, within the framework of the CSG. This agreed position should prepare the negotiation of an agreement with the USA as defined in Article 1.

The purpose of the agreement with the USA should be to arrive at an arrangement on competitive access to shipping trade between the USA on the one side and the Community, its Member States and the other States forming part of the CSG on the other side.

This arrangement shall cover the policy on cargo reservation by third countries and the repercussions of this on shipping and trade of the partners to the agreement.

Specifically the agreement should contain the following elements :

- objectives of the agreement as outlined above
- content of reciprocal undertakings as to competitive access to shipping trades; these should be analogous to the provisions of reciprocity in Council Regulation (EEC) N° 954/79
- derogations from such undertakings
- procedure for joint resistance to such restrictions
- courses of action and available instruments when coordinated resistance fails
- procedure for settlement of disputes
- rules for termination.