

Progress towards a common
transport policy

Maritime transport

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contents

Summary	7
I. Introduction	9
II. The situation of the shipping industry	9
<i>Changes in world and Community shipping since 1975</i>	9
<i>Causes of the relative decline of the Community fleet</i>	11
III. Questions affecting all forms of shipping	13
<i>General guidelines</i>	13
<i>Specific issues</i>	15
The external threat	15
The possibilities of cooperation with developing countries	16
The consequences for relations with Member States	17
– Freedom to provide services	17
– State aids	19
Manpower and social aspects	19
IV. Issues primarily affecting liner shipping	21
<i>General policy considerations</i>	21
<i>Specific aspects of policy concerning liner shipping</i>	22
Implementation of the UN Convention on a Code of Conduct for Liner Conferences and the Brussels Package (Regulation 954/79)	22
The application of the competition articles of the Treaty of Rome	22
The problem of unfair practices	23
V. Issues primarily affecting bulk shipping	25
<i>Organization of the markets</i>	25
<i>Bulk shipping developments</i>	26
<i>Open registry shipping</i>	26
<i>Further action in bulk shipping and the open registry question</i>	28
VI. Maritime safety and pollution prevention	28
<i>Introduction</i>	28
<i>Port State control</i>	29
<i>The provision of navigational assistance in European waters</i>	29

<i>The transfer of ships between Community countries</i>	30
<i>Training standards</i>	30
VII. Seaports	31
<i>Background</i>	31
<i>Past cooperation of the Commission with the ports</i>	31
<i>The influence of national and Community transport policies on conditions of competition between the ports of the Member States</i>	32
Hinterland traffic	32
Maritime aspects	33
<i>The influence of charging policies and of State aids to ports on competition between the ports of the Member States</i>	33
<i>Possible further work in the port sector at the level of the Community</i>	34
VIII. Other questions	34
<i>Maritime research</i>	34
<i>Transport of Community food aid</i>	34
<i>Maritime fraud</i>	34
Annexes	35
<i>Statistical annex</i>	36
Table 1: Merchant fleet of the world 1970-83	36
Graph. 1: Distribution of world merchant fleets and world trade 1975-83	37
Graph. 2: Distribution of world and Community countries' merchant fleets by category of vessel 1975-83	38
Table 2: World seaborne trade 1971-83	39
Graph. 3: Growth of EC Member State merchant fleets 1975-83	40
Table 3: Distribution of Member States' merchant fleets by category of vessel 1975, 1983	41
Table 4: Distribution of world merchant fleets by category of vessel and flag 1983	44
Table 5: Average age of Community fleet 1975, 1983	45
Table 6: Tonnage owned by Community countries 1970, 1975, 1978-83	46
<i>Commission proposals</i>	47
Draft Council Regulation concerning coordinated action to safeguard free access to cargoes in ocean trades	47
Draft Council Regulation applying the principle of freedom to provide services to maritime transport	49
Draft Council Decision amending Council Decision 77/587/EEC of 13.9.1977 setting up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organizations	52

Draft Council Directive concerning a common interpretation of the concept of 'national shipping line'	53
Amendments to the proposal for a Council Regulation (EEC) laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport	54
Draft Council Regulation on unfair pricing practices in maritime transport	58
<i>Table 7: Status of ratification and entry into force of various relevant IMO and ILO instruments</i>	68

Summary

After a number of policy proposals on specific shipping policy matters, the time has come to develop a more coherent overall framework for a Community shipping policy. This paper provides such a concept. It reviews, against the background of an analysis of the decrease of Community-based shipping over the past decade and in the light of the policy principles developed in the paper, Community actions so far and proposes new measures which in the Commission's opinion are required to promote the Community's trading and shipping interests. The paper should be read in conjunction with the policy papers in February 1983 (on inland transport)¹ and March 1984 (on civil aviation).² Taken together, they meet Parliament's request for a comprehensive approach to the common transport policy.

The major causes for the decline of the Community fleet relative to world tonnage have been the prolonged recession in world trade, a loss of comparative advantage and the growth of protectionist practices adopted by other countries. Nevertheless, in view of the Community's dependence on world trade and the dependence of its shipping interests on international shipping markets, the Commission is of the opinion that the maintenance of a multi-lateral and commercially orientated Community shipping policy is still in the best interest of the Community's shipping industry, as well as of its user industries, and is still the best way of achieving the objectives of the Treaty. However, this also means for the Community and the Member States that it will be more necessary than heretofore to come to grips with the growing threat to Community interests of protectionist policies and practices of other countries which make it difficult or impossible to maintain a commercially competitive system. Consequently, one of the central themes of the paper is the identification of such threats to a market-based organization of shipping and the formulation of proposals to counter them, in the hope that this will stimulate an effective solution by negotiation.

The Commission therefore proposes in respect of all forms of shipping a Regulation permitting Community action against cargo reservation practices which damage, or threaten to damage, Community interests (p. 47). This is one of the areas where Community action is likely to be more effective because of the greater trading weight of the

Community and because only Community action can ensure that such countermeasures do not merely result in the diversion of cargo from one Community port to another.

In the Commission's view action designed to preserve Community interests *vis-à-vis* third countries must be matched by equality of treatment of Community shipowners by the Member States. To this end the Commission proposes a Council Regulation applying the principle of freedom to provide services as regards offshore supply services, Member States' trades with third countries, the carriage of cargo wholly or partly reserved to the national flag and, with certain specific exemptions, the carriage of passengers or goods by sea between ports in a Member State, including overseas territories of that Member State (p. 49). Complementing this proposal is a Council Decision amending the 1977 Council Decision on Community consultation in regard to Member States' relations with third countries and relating to shipping matters in international organizations.³ The amended Decision would allow *ex ante* consultation on Member States' shipping relations with third States (p. 52).

As regards liner shipping, the organization of the liner conference markets has long been one of the main points of discussion in the Community and internationally. On 15 May 1979 the Member States and the Community took the initiative to adopt a Regulation on the ratification of the UN Code of Conduct for Liner Conferences,⁴ subject to certain reservations designed to preserve a market-orientated system as between the industrialized countries and as between liner shipping companies of the OECD countries (Regulation 954/79). In adopting Regulation 954/79 the Council envisaged the possibility of a joint interpretation of the 'concept of national shipping line' which confers, in Code-based trades, important rights on liner shipping companies. The Commission's draft of a Council Directive suggests a set of criteria for such a definition, designed to avoid any discrimination between shipping lines of the Member States and, subject to reciprocity, shipping lines of other OECD countries, without taking away from each Member State the flexibility to take into account its particular national circumstances (p. 53).

¹ OJ C 154, 13.6.1983; Bull. EC 2-1983, point 2.1.128.

² OJ C 182, 9.7.1984; Bull. EC 2-1984, point 2.1.149.

³ OJ L 239, 17.9.1977.

⁴ OJ L 121, 17.5.1979.

While Regulation 954/79 also acknowledged the stabilizing role of liner conferences, guaranteeing regular and reliable services to transport users, the Commission undertook at the same time to submit a draft Regulation on the basis of Article 85(3) applying the competition rules of the Treaty to maritime transport. The Commission submitted a draft in 1981,¹ and in the light of the ensuing discussions in the Council and elsewhere has somewhat modified its original ideas. Page 54 records those modifications. The Commission is concerned about the increasing trend to exclude outside competition from trades in which closed conferences operate. These cases are most serious where a State at one end of the trade route precludes non-conference competition. The Commission's proposal is designed in particular to deal with this problem.

In the Commission's view the proposal on the application of the competition articles of the Treaty to liner shipping needs to be complemented by a proposal ensuring that Community liner shipping can compete with third countries' liner shipping companies on the basis of fair and commercial principles. It therefore proposes that it should be empowered to act against unfair practices where they cause or threaten material injury to Community liner companies (p. 58).

The paper further reviews developments in bulk shipping and open registry shipping. In respect of bulk shipping it concludes that the pursuance of a market-orientated shipping policy is in line with the economic interests of the Community. The Commission also concludes that open registry shipping is an important economic factor for the Community shipping fleet. However, the concepts on which it is based have undesirable effects and may in some respects not be in conformity with international conventions. The Commission considers that measures should be taken to eliminate unacceptable practices (for example, substandard ships or crew conditions). The Commission will continue to support the international concertation procedures developed in this and other areas and it will, in matters affecting the Community more specifically,

make use of the consultation procedure of 1977 or of Article 116 of the Treaty.

The Commission will continue to be active in the areas of maritime safety and pollution prevention and it will pay particular attention to:

- the development and coordination of the system of port State control within the European region; and in particular the control of substandard ships and crew conditions;
- the study of the need for and, if established, the implementation of a coastal navigational system to improve the safety of navigation around the coasts of the Community, including concerted action on hydrography;
- the facilitation of the transfer of ships from one Community register to another;
- the use of the Community's relationship with developing countries to help in the training of their masters, crews and maritime administrations.

As regards ports, it is essential in the Commission's opinion that port aspects are taken into account in the context of the development of both the common inland and maritime transport policy. Thus, on 13 December 1984 the Commission presented to the Council a proposal designed to eliminate distortions of competition between ports arising from the variations in the national regulation of hinterland traffic.² The Commission will reexamine the State aids applied to ports and will deal with specific State aids on the basis of Articles 92 and 93 of the Treaty. The Commission further proposes to step up its cooperation with the ports concerning the development of common standards for the exchange of information between ports and the discussion of Commission proposals which may affect ports, and other matters of concern to ports which might be dealt with more efficiently at Community level.

¹ OJ C 282, 5.11.1981.

² OJ C 14, 16.1.1985; Bull. EC 12-1984, point 2.1.203.

I. Introduction

(i) In June 1976 the Commission sent to the Council a communication on the Community's relations with non-member countries in shipping matters. The memorandum outlined the main problems in the Community's relations with non-member countries in shipping and suggested measures to meet these problems. The principal purpose of the paper was to stimulate debate in the Community on the possible scope and content of a Community shipping policy. In the ensuing years a number of policy statements on such specific matters as the UN Code of Conduct for Liner Conferences, State-trading countries' competition and marine pollution arising from the carriage of oil were sent to the Council which, in turn, led to several Council decisions. A number of further proposals are being discussed. But neither the Council nor the Commission have hitherto clearly defined the overall framework into which specific policy decisions would fit.

(ii) The Commission believes that the Community has now reached a stage in the development of its shipping policy which requires a more coherent approach. The objective of this communication is therefore to provide such an overall concept for a Community shipping policy, to review, in the light of these principles, policy developments so far and to propose the new measures which the Commission feels are required for the furtherance of the Community's trading and shipping interests.

(iii) In view of the largely worldwide involvement of Community shipping, the Commission believes that Community shipping policy is bound to give a predominant place to its international aspects, i.e. relations between Community and non-Community countries. It is its view also that the intra-Community aspects of that policy should take account of the international context.

There are, within this area, a number of problems which in the view of the Commission the Community could tackle more effectively than individual Member States. The Commission considers it desirable and practical to develop a policy gradually in cooperation with the other Community institutions and in close contact with the Member States. It proposes therefore to adopt a flexible approach and proposes selective measures where appropriate and useful for the Community.

(iv) This communication should be read in conjunction with the Commission's communication on inland transport presented in February 1983¹ and with that on civil aviation presented in March 1984.² Taken together, they provide a comprehensive review of, and a set of proposals for, the development of the common transport policy.

II. The situation of the shipping industry³

Changes in world and Community shipping since 1975

1. Since 1975 the absolute size of the merchant fleet operating under the flags of the Community countries has decreased only slightly (see Table 1) but its share of world tonnage has fallen from 29% to 23.3% (in GRT) in 1983. In addition a further 6.7% of world DWT estimated to be equivalent to 3.6% in terms of GRT was owned by Community-based shipping companies flying open registry flags, a proportion which has also decreased in the recent recessions. During the same period (1975-83) the developing countries increased their share of world gross tonnage from 6% to nearly 14% while the open registry and Comecon⁴ fleets slightly increased their share (see Table 1 and Graph 1).

2. Until 1980 the world merchant fleet showed an increase each year in all the major shipping categories — tankers, other bulk ships, general cargo and container ships. Since then the only categories to increase their tonnage have been those of other bulk and container ships (see Graph 2) but these

¹ OJ C 154, 13.6.1983; Bull. EC 2-1983, points 2.1.125 and 2.1.128.

² OJ C 182, 9.7.1984; Bull. EC 2-1984, point 2.1.149.

³ This section of the paper attempts to summarize the statistical tables in Annex I. It should be noted that the Community has no shipping statistics of its own and must depend upon other sources. The figures quoted may not in all respects accord with others that are published, since the basis of calculation or (frequently) the exclusions differ from source to source. However, although not too much weight should be put on the detail of the figures, they are adequate to allow general conclusions to be drawn.

⁴ Albania, Bulgaria, Czechoslovakia, GDR, Hungary, Poland, Romania and the USSR.

have contributed to a rise of 2% in world DWT (about 4% in GRT) during a period when, since the record year of 1979, there has been a 25% drop in tonne-miles in world seaborne trade, almost all of it being accounted for by the decline in oil and oil product movements (see Table 2). Thus, it is clear that the supply of and demand for shipping services are seriously out of balance and indeed have been so since 1974. At the end of 1983 there was probably an overcapacity world wide of some 150-200 million DWT.¹

3. Most of the laid-up tonnage was in the oil tanker sector – 18% of the world's oil tankers in terms of DWT – reflecting in part a steep drop of almost 50% in the carriage of crude oil, expressed in tonne-miles; a relatively small 4% of the world's dry bulk carriers and 3.5% (in GRT) of the world's liner cargo vessels were idle as of December 1983.² Many of the ships involved are, however, over-aged and will probably never trade again. In terms of tonnage, though not necessarily of profits, the trades of the latter two categories of vessels have weathered the recession remarkably well. They either decreased very little or, in the case of liner cargo, even grew by about 24% (in tonne-miles) between 1975 and 1983 (Table 2). Nevertheless, it should be noted that since its peak in 1980 liner trade volume (in tonne-miles) dropped by about 7% (1983) and that signs of overcapacity are now evident in this market as well. If one may judge from the breakdown of laid-up tonnage, the Community flags have suffered rather more than the average. In mid-December 1983 40% of total world laid-up DWT tonnage, 67% of laid-up bulk carriers and 33% of laid-up tanker tonnage were under Member State flags compared with a Community share of about one quarter of world tonnage in each of these sectors. Some three quarters of the laid-up tonnage is concentrated in only two Member States.²

4. Within the Community the most marked changes in growth rates have been the steady rise until 1981 in Greek tonnage and the equally marked decline in United Kingdom tonnage. Trends in other Member States' fleets have not been so significant (see Graph 3).

5. Within the total tonnage figures the trends in terms of ship categories have tended to follow world patterns but there have been marked contrasts between Member States (see Table 3). The fleets of the Community countries contain a

little under a quarter of the world tonnage in each of the three main categories of shipping – tankers, other bulk carriers and general cargo ships – but within this latter category they contain some 36% of (more productive) world containership tonnage (in GRT). In line with the general shrinkage of the Member States' fleets, the proportion of world tankers and general cargo tonnage have each shrunk from approximately one third to their present figure, although the proportion of other bulk tonnage has remained fairly stable, i.e. there has been a structural shift towards dry bulk and specialized liner tonnage and away from tankers and general cargo shipping.

6. Although, as stated in para. 1, Comecon fleets have not significantly increased their share of total world tonnage, there have been quite significant developments in the structure of these fleets which are worth noting since the fleets of Comecon countries are important cross traders in the merchant trades of the OECD countries and thus compete directly with EEC shipping. Over 50% (1983) of Comecon merchant vessels are general cargo types, and these account for some 12% of the world fleet of this type. Of particular interest in the context of liner shipping is the almost sevenfold increase in the Comecon container fleet from an insignificant 61 000 GRT in 1975 to 414 000 GRT in 1983 (Table 4).

7. Despite the changes mentioned in para. 4, it would seem that the proportion of Community trade (in terms of tonnage) handled by Community-registered shipping companies has scarcely changed since 1975 and has remained at something over 40%.³ No figures are available to show whether the trends differ as between the bulk and liner trades, nor are figures available for Community cross-trades,⁴ but if home trades have been main-

¹ The INTERTANKO report of September 1983 estimates 95.4 million DWT of tankers over 200 000 DWT (VLCC) as surplus to requirements (laid-up, slow steaming, port delays, used for storage). The IMIF (International Maritime Industries Forum) estimates nearly 50 million DWT of surplus dry bulk tonnage and at least 100 million DWT of tanker surplus (November 1983). Drewry estimates approximately 70 million DWT of surplus dry bulk tonnage (November 1983).

² Source: Institute of Shipping Economics, Bremen.

³ Commission estimate, based on Eurostat data.

⁴ For the purposes of the statistical analysis cross-trading is defined as trading between two countries other than Member States by ships flying the flag of a Community country.

tained it would follow logically that the decline in Member States' shipping must have occurred mainly in the cross-trades.¹

8. The effects of the recession may be seen in the age profile of Member States' fleets. They are now marginally older than the world average, although average figures mask major differences between the individual fleets (see Table 5). The age of the ships may also be reflected in the safety record. During the period 1975-83 Community owners suffered total losses amounting to some 750 ships (of approximately 4 million GRT), representing about a third of world tonnage losses over the same period.²

9. Member State fleets had net earnings of some USD 9 100 million in 1982, about half of which came from cross-trading. The latter figure varies from some 90% for Denmark and Greece to about 35% for France. Community-registered shipping made in 1982 capital expenditure of over USD 3 000 million.³ Rather under half (44%) the Community tonnage on order in January 1984 was ordered in Community yards.⁴

10. The Community is the world's largest trading area, accounting in its trade with non-Member States in 1982 for nearly 21% of world imports and 20% of world exports by value.⁵ This compares with the United States, the second-largest trading area, with some 16% of world imports and 15% of world exports and Japan with 9% of world imports and 10% of world exports.⁶ Sea transport is by far the most important mode for the movement of this trade. Some 95% of the tonnage of Community trade with non-Member States and some 30% of intra-Community traffic is carried by sea.⁷ This latter figure has obviously shown a major increase since the accession of United Kingdom, Ireland and Greece, which have no common land frontiers with other Member States. As stated above, ships flying the flags of Member States carry something over 40% of this tonnage. The balance is accounted for partly by the ships of our trading partners, partly by such cross-traders as the Norwegians and partly by open registry shipping, which in 1983 was 23% beneficially owned by Community shipowners (Table 6). This complexity in the Community shipping interest is an important element for the determination of Community shipping policy.

Causes of the relative decline of the Community fleet

11. The following major long-term factors can be identified affecting the structure of Community shipping.

- It seems that a main cause of the relative decline of Community shipping is that the comparative advantage of European ships in the traditional areas of shipping activity is being eroded. It is a normal trend in developed economies that as the standard of living of the population rises some activities become less economically attractive. Traditionally, shipping has countered this trend by technological innovations (e.g. container ships), greater specialization (e.g. specialist chemical carriers, LPG, LNG carriers) and higher quality of service. It is possible that the advantages so derived are becoming increasingly difficult and costly to achieve. This is likely to have stimulated flagging out, i.e. the registering of ships under a non-Community flag. This has been a means for Community firms to retain economic control of the ships while avoiding what they see as the competitive disadvantages of operating under Community flags.

- The competitive position of Community shipowners has also been eroded as a result of the ease with which it is possible to enter the shipping industry, a problem sometimes exacerbated with regard to flags under which safety control standards are less stringently applied. The traditional shipowning companies have had strong financial bases, and until the early 1970s this gave them a comparative advantage over less-well-established shipping industries. The slump in world demand has imposed financial strains on Community shipowners which has caused them to sell off ships, sometimes at very low prices, to buyers in third countries. This reflects

¹ It is a cause of concern that relevant statistics on a Community basis are not available.

² Lloyd's *Register of Shipping* and Lloyd's *Casualty Returns*.

³ Source: Organization of the Shipowners' Associations of the European Communities (CAACE). Net contribution to balance of payments: money generated in foreign currency less disbursements abroad.

⁴ CAACE.

⁵ Excluding intra-EEC trade.

⁶ Sources: EUROSTAT, *Monthly External Trade Bulletin*, Special number 1958-82, pp. 2 and 3, Luxembourg, May 1983.

⁷ Although these shares are based on 1980 EEC and UN statistics, they have been fairly stable over time and similar shares can be assumed for 1982 as well.

one of the major characteristics which distinguish shipping from manufacturing industry – its capital assets are mobile and if no longer required in one part of the world can be moved or sold to another. In the short term, this had enabled Community shipping companies to survive; but in the long term the movement of tonnage to competing flags clearly creates problems for them and has brought about an intensification of competition and thus contributed to the decline in the Community fleet. The recession in world trade has also, and possibly more significantly, resulted in a vast surplus of capacity in the world's shipbuilding industries. As a result it has become increasingly easy to buy new ships; the credit terms available around the world require little or no up-front money from the buyer and the interest rates available have been well below commercial levels. This has, of course, helped Community shipowners to modernize their fleets; but it has helped new entrants to the trade, both Community and non-Community, even more and thus in general has probably been to the disadvantage of established Community operators.

- In the liner trades in particular, the situation which, given the world economic situation, would have been tight enough in any case has been made worse by competition from State-trading countries' ships and by cargo reservation by non-Community countries. State-trading countries' competition is not new; and so long as the general level of trade was rising and Community shipowners could keep one technological jump ahead, it was sustainable. The nervousness of Community shipowners lies partly in the fact that State-trading countries' shipping tends to operate outside the conferences and to undercut rates (though often their freight rates are no lower than those of other non-conference operators) and partly and possibly more significantly in the fact that because of the different financial regime under which these countries' ships operate and the possibility that a service may be political in its inspiration it is impossible for private-enterprise shipowners to assess the strength of the opposition they face and to judge whether a normal commercial reaction to that competition will have any effect. When combined with a drop in (or at best no increase in) the cargo available and the other factors outlined above, this potentially uncommercial competition creates real problems for Community shipowners. The overall quantitative impact of such policies seems at present rather limited and mostly confined to the liner trades but as the Commission's monitoring exercise has shown can be quite important in specific liner

trades. The price of their containment has often been the undermining of the rate structure of Community liner operators. These practices are on the increase and, if not contained in time, could mean a major threat to Community liner shipping (paras. 64-70). So, too, does the activity of other governmentally-financed shipping companies. The first step to find cargo for their ships has often been to reserve the cargoes of the country concerned or to cut freight rates in a way that commercially based shipowners cannot match, or to resort to a whole arsenal of interventionist policies designed to restrict fair access to these countries' trades.

- There has also been a marked shift in trade patterns over the last decade which particularly affected the oil trades. The coming on stream of such new oil-producing areas as the North Sea, the north slope of Alaska, Mexico and the Far East and the resulting shift away from Middle East production areas, as well as the deepening of the Suez Canal, have considerably shortened distances to the main consuming areas in Europe, the United States and Japan. Additionally, energy conservation measures have radically changed energy consumption patterns. These influences, taken together, resulted in the redundancy of a large number of oil tankers, particularly ULCCs and VLCCs. Furthermore, there has been a substantial growth in non-Community maritime trade flows – such as Australian coal and iron ore to Japan, US grain exports – which encouraged non-Community shipping to grow relatively faster.

- Other developments have changed the ownership structure and fleet composition, including the following:

- major takeovers;
- diversification by shipowners into non-maritime activities (e.g. banking, leisure activities, construction);
- a significant increase in the influence of financial companies and merchant bankers as beneficial owners.

12. These structural weaknesses have been exacerbated by the impact of the prolonged world recession. Since about 1980 world trade has been stagnant and even declining whereas the size of the world fleet has until recently kept expanding, thus adding to the overcapacity of the market. Even if world trade resumes its growth, as is expected, and scrapping continues at its present pace, it is estimated that the supply/demand imbalance is likely to persist for a number of years.

13. Several long-term factors can thus be identified as causes of the structural changes in the Community's fleet. This process has developed over the past two decades with differing intensity and speed in every Member State. In addition, there are also short-term factors brought about by the recession in international trade. While it can reasonably be expected that with a revival in international trade demand for seaborne transportation will also pick up and thus contribute to an improved supply/demand balance in shipping, the underlying long-term trends within Community shipping are likely to persist.

III. Questions affecting all forms of shipping

General guidelines

14. The Community has only been involved in the formulation of shipping policy since the second half of the 1970s with a submission to the Council, in 1976, of a communication on the Community's relations with third countries in shipping matters and the adoption, in 1977, of a consultation procedure in shipping.¹ Subsequently, it initiated, for instance, *ad hoc* actions regarding competition by State-trading countries and the question of shipping safety to meet concerns expressed by Member States; it also initiated the 1979 compromise on the accession by the Member States to the UN Code of Conduct for Liner Conferences.² The basis of these actions was the consensus of the shipping-orientated Member States in favour of a multilateral and market-based organization of world shipping, an obligation which they have also accepted in the context of the OECD Code of Liberalization of Current Invisible Operations.

15. In the light of the situation described in the previous section the time has come to examine whether the shipping policy pursued so far should be modified or extended and whether additional measures should be adopted for the promotion of the interests of the Community in general and of its shipping industry and shippers in particular.

16. The preceding analysis is based predominantly on figures of tonnage, and shares of trade. It does not cover the vital question of profitability. It is difficult to reach any quantitative assessment of

the profitability of shipping operations, if only because, in many cases, the shipping companies have diversified into non-shipping activities. Equally, it is not possible, without a detailed company-by-company assessment, to judge whether in those cases where shipping operations make a loss or at best an inadequate profit the reason lies in external and unavoidable circumstances or in mistaken management decisions. It is fairly clear, in qualitative terms, however, that the profitability of Community shipowners has in general been low over the past few years; that the recession has squeezed their financial reserves; and that many of them are concerned about how they will finance future investment. The analysis of tonnage shows that the Community's fleet has declined relatively over the past 10 years; and the decline has, if anything, steepened over the past two years.³ It is likely that because of the squeeze on their finances, Community shipowners will in the near future not be in a good position to reverse this trend. The basic question which must today underlie the Community's approach to shipping policy is whether the past decline (and its likely continuance in the near future) has reached such a stage that the Community risks not having an adequate merchant fleet – which would have far-reaching implications; and if so what, if anything, the Community, as distinct from the Member States, should do about it.

17. As set out above, the decline in the tonnage of Community fleets relative to world tonnage not only represents a reaction to the recession in world trade and to advancing technology but to some extent it represents a loss of comparative advantage. If this last factor implied a serious decline or the virtual disappearance of the Community's fleet, the Community would face a choice between maintaining the fleet – at the expense of the taxpayer or of the user industries – or of letting the fleet go and adopting a policy designed to ensure that the Community's user industries obtained their shipping services from non-Community carriers at the lowest possible cost. In the Commission's view while there can be no room for complacency, this point has not been reached and the Community is not yet faced with the stark choice which such a

¹ OJ L 239, 17.9.1977.

² OJ L 121, 17.5.1979.

³ Between 1.7.1982 and 1.4.1984 the fleet declined by approximately 20 million GRT, representing a drop of 18.5% of total GRT under Member State flags.

situation would imply. Community ships still carry a significant proportion of Community trade; they are still prominent in the cross-trades. A move to a protectionist policy would almost certainly lead to a similar policy on the part of the United States and most other countries and cross-trading opportunities would be lost; whilst in the direct trades little or nothing would be gained. In the Commission's view the maintenance of a non-protectionist shipping policy is still in the best interest of the Community shipping industry; it is even more in the interest of its user industries; and such a policy is still in its view the best way of achieving the objectives of the Treaty.

18. If this policy is to be maintained, there are two consequences of Community importance. The first concerns the commercial reaction to the pressures described above. It is likely that they will lead to a continuing concentration of Community shipping into fewer, but larger, groupings, partly to generate the capital necessary for development (or even survival) and partly to create the strength necessary to resist the competitive pressure they will face. The Commission believes that provided that the competition criteria of the Treaty are satisfied, this development could be of advantage to Community shipowners, customers and those working in the industry. It is important that the concentration should not be confined to national entities but should, as commercial interests require, be on a wider Community basis. In its own policies the Commission will do what it can to facilitate this process; and recommends that Member States should equally avoid a purely national approach to the problem. The second consequence concerns the governmental reaction to external competitive pressures. It will, in the Commission's view, be necessary for the Community and its Member States to be more active than in the past to counter the threat to Community interests from policies and practices adopted by other countries which make difficult or impossible the maintenance of a commercially competitive system and which consequently reduce the possibilities for profitable enterprise open to the Community's shipowners. One of the major themes of the rest of this paper will be the identification of such threats and the formulation of proposals to counter them.

19. The legal basis for such additional shipping policy measures is Article 84(2) of the Treaty of Rome, read in the light of the objectives and tasks enumerated in Articles 2 and 3. Shipping policy is

part of the common transport policy, as mentioned in Article 3(e) of the Treaty. The general rules of the Treaty with its requirements for the free movement of capital, labour and goods in the context of the strengthening of the internal market, the guarantee of undistorted competition, the right of establishment, the improvement of employment opportunities and working conditions, and so on, apply to the sector. There is also a clear connection between shipping policy and the common commercial policy, the common policy *vis-à-vis* developing countries, social policy and other industrial policies such as those concerning shipbuilding, the environment, research and energy. It clearly affects, and is affected by, the general economic policy of the Community. Shipping policy stands alongside these other policies but has its own identity (Article 84(2)). The need for compatibility and complementarity between the various Community policies works both ways: certainly shipping policy has to take account of the requirements of the other Community policies, but these policies equally have to be implemented in a way which is compatible with the specific requirements of the European shipping industry, its users and the interests of those employed in it.

20. In the light of the experience hitherto gained in the formulation of common shipping policy measures, the Commission suggests, as basic principles which should guide further Community action in shipping, the following:

- The predominant issues affecting shipping are those concerning trade with third countries. Because of this, any actions on matters internal to the Community should take fully into account their effect on the international competitive position of Community shipping.
- The Community should seek, where regulatory action is necessary, and in particular where the competitive position of Community shipping is affected, wide international agreement rather than take unilateral Community action. This is necessary in order not to jeopardize the important cross-trading interests of the Community fleet and its need to compete in an international market. Thus the Community should stimulate and support the work of the International Maritime Organization (IMO) and the International Labour Organization (ILO) and the position of the maritime countries in OECD. This means in effect helping and stimulating the implementation of international conventions and complementing them where appropriate;

and formulating policies in the more general context of wider shipping policy discussions and negotiations.

- The Community should concentrate most of its efforts on those problems which can be more effectively resolved at Community level because this could lead to the adoption of measures that could be applied by the Community as a whole, including, if necessary, appropriate countervailing measures against unfair practices.

- The Community should ensure that common policy action on shipping matters *vis-à-vis* third countries for the preservation of Community interests is matched by equality of treatment of Community shipowners by the Member States.

- The Community should continue to pursue a non-protectionist shipping policy, based on the principle of free and fair competition in world shipping, in the interests of Community shipowners and the users of shipping services, taking into account the interests of the Community's trading partners, including the developing countries. The Community should, in particular, consider whether – and if so how – the current work in GATT and in OECD on trade in services might be used to pursue this objective.

- The Community should seek to support international efforts to maintain and improve the standards of maritime safety.

- The Community should seek to improve the commercial competitiveness of Community shipping and thus contribute to such general objectives of the Treaty as economic development and the improvement of employment opportunities for Community ship officers and seamen.

Specific issues

21. The broadly free and open regime enshrined in the OECD Code of Liberalization of Current Invisible Operations has been the basis of the shipping policies of the Member States, and this has in particular had the consequence that discrimination by one Member State against shipowners established in another Member State has not been serious.

22. There are signs, however, that under the pressures of the recession, and of cargo reservation and other unfair and discriminatory practices by

other countries, this broad consensus is beginning to break down. Thus, we are beginning to see Member States adopting bilateral agreements or arrangements with third countries to the detriment of other Community flags and of the maintenance of a broadly commercial regime in general. Such a development would, in the Commission's view, be contrary to the creation of a common market in shipping. In certain cases, such as the Member States' trade with State-trading countries, the conclusion of bilateral agreements or arrangements may well be inevitable. But such agreements or arrangements should be written in such terms as to avoid also any discrimination against shipowners from other Member States. As indicated above, it is thus necessary to consider together the Community's attitude to the external threat of cargo reservation and that to its policies affecting the relations between Member States themselves.

The external threat

23. Hitherto, cargo reservation has been predominantly a liner problem. In this area, the Community, in adopting Regulation 954/79 and supporting, subject to it, the UN Code of Conduct, took a political decision to meet the aspirations of the developing countries for a larger share in the liner trades serving their countries. Although the Code only came into force in October 1983, it had already been anticipated by the shipping industries of the world and many developing countries now have a share in their liner conference trades which approaches or even exceeds the 40% envisaged in the Code.¹

24. This has not, however, halted the increase of discriminatory measures as much as one might have hoped. Some countries – even some parties to the UN Code of Conduct – reserve 50% or more. Some countries have established freight booking offices at both ends of a trade which enables them to channel cargo to the national flag. Others reserve 'government cargoes' to their own ships and in doing so use an unacceptably wide definition of the term. Others, observing the increasing impact of non-conference competition, attempt to close the trade to non-conference operations or at least seriously obstruct it and thus reserve for themselves

¹ For instance Benin, Cameroun, Gabon, Ivory Coast, Morocco, Senegal, Togo, Zaire, Bangladesh, Sri Lanka, Chile, Cuba, Mexico, Peru, Venezuela and China.

40% of a larger amount of trade than might otherwise be available to them. This is a very serious development which could entail considerable damage for Community shipowners and shippers. Most Community countries supported the resolution on non-conference lines sponsored by representatives of all groups in the UN conference on the Code of Conduct, stressing the importance to them of maintaining for their shippers a choice of shipowner service. It is because of this that Community and other CSG (Consultative Shipping Group) countries have worked out a statement on this issue for use when instruments of ratification are deposited. It is equally because of these considerations that the services of the Commission, when preparing the modification of the proposal on competition rules (p. 54), made it clear that acts of non-Member States preventing the operation of outsiders in a trade should trigger the monitoring procedure foreseen by the Regulation (see also para. 63). And it is because this issue lies at the heart of the negotiations currently in progress between CSG countries and the United States that the Commission regards these negotiations as being of such vital importance to the Community.

25. In terms of bulk shipping cargo reservation, legislation exists in many countries. In practice this legislation is not as yet applied to anything like the same extent as in liner shipping. There are signs, however, of pressures towards the application of cargo reservation rules in this area. Moreover, neo-bulk commodities (see para. 72) carried in full shiploads and destined for use in large projects in developing countries are often subject to cargo reservation by the importing country. There have been demands by developing countries, presented in Unctad, for the 'equitable' sharing of bulk cargo transport and a parallel demand for the phasing out of open registry shipping (discussed in paras 79-86). In the Commission's view there is a real risk that cargo sharing in bulk shipping could destroy the economic efficiency of these markets, lead to higher costs to Community (and other) consumers, increase government intervention and change trading patterns in favour of those raw-material-producing countries which abstained from the introduction of bulk cargo sharing practices. It is worth noting that transport can represent something like 20% of the cost of dry bulk cargo delivered to the Community. Any significant increase to this figure brought about by a decrease in the economic efficiency of the system would have serious consequences for the Community's manu-

facturing industries, which import by sea about 90% of their raw materials. It would also reduce the opportunities for profitable enterprise on the part of Community shipowners. In the Commission's view the prevailing organization of the bulk markets has provided the Community with reliable, efficient and competitively-priced bulk shipping services and enabled Community shipowners to offer their services worldwide.¹ On the other hand, the Commission notes — as is observed subsequently — that there are practices operating in these trades, as well as others, which the Commission deplores and would wish to see ended. In general, however, the Commission considers that there are good reasons for maintaining the existing market organization of bulk shipping, and the Commission is opposed to any governmentally imposed scheme of mandatory cargo sharing in bulk shipping. The Commission appreciates that many developing countries express opposing views.

26. The Commission concludes that cargo reservation policies in liner and bulk shipping should be resisted. In its view this is essentially an area where Community action is likely to be more effective than action by individual Member States. Not only has the Community greater trading weight, but given the proximity of Community ports in different Member States, Community action ensures that action against such policies will not merely result in the diversion of cargo from a port in one Community country to a port in another. In this context it welcomes the decision of the Council on consultation on measures to counter flag discrimination² as a step in this direction. It proposes, however, to go further and to present to the Council a proposal for a Regulation which permits Community action against shipping companies of third States whose cargo reservation policies or practices damage, or threaten to damage, Community interests (p. 47).

The possibilities of cooperation with developing countries

27. At the same time, it is important, in the Commission's view, that its action in this sphere

¹ An analysis of the organization and development of the bulk shipping markets is given in para. 71 *et seq.*

² Council Decision of 26.10.1983 concerning counter measures in the field of international merchant shipping: OJ L 332, 28.11.1983.

should also be constructive, in particular in respect of the developing countries, while at the same time firmly defending the Community's commercial and shipping interests. The Commission wishes to intensify its cooperation with ACP countries with which it has a special relationship under the Lomé Convention. In return it looks to the ACP countries to observe the principles of the Code and not to impair competitive access in bulk shipping. In this spirit it considers it useful to intensify its cooperation in shipping matters with the Asean¹ and Andean² countries. It would welcome the establishment of joint ventures between commercial undertakings of the Community and developing countries taking account of the Caracas Declaration of the International Chambers of Commerce (ICC) on joint ventures with developing countries.³ To this end the ICC has recently prepared for the Commission a report on the scope for, and methods to stimulate, such cooperation at the commercial level, and it supports the willingness of the international business community to cooperate with the developing countries in the establishment of viable shipping enterprises on a commercial basis. In addition, the Commission is pleased that the third Lomé Convention will also reflect several other recommendations of the Caracas Declaration as priority areas for cooperation.

28. The results of this study indicate that it would be useful to set up at commercial level a Business Cooperation Centre to promote joint ventures in the maritime sector, and the Commission will continue to encourage the ICC's efforts to establish such a Centre. The partners would be commercial interests in the EEC and their counterparts in the developing countries. Such joint ventures would be business deals between parties who believe that a combination of their efforts will produce results beneficial to them all. The role of the Centre would be twofold:

- to provide a permanently updated storage of offer and demand for joint ventures;
- to assist, if required, the parties identify their respective contributions, as regards establishment of the venture and its management.

29. The Commission also notes and endorses the useful recommendations by experts under the auspices of the UN on promoting the participation of developing countries in the transport of dry bulk and liquid hydrocarbons.⁴ In this area also it is prepared, in the context of its special relationship

with the ACP countries or in any other suitable framework, to advocate Community assistance in developing new forms of cooperation in shipping between the Community and developing countries.

The consequences for relations with Member States

30. If the Community's policies on external questions are to be effective, it is important that its internal policies are consistent with it and give Member States the assurance that a broadly commercial regime will be maintained. The Commission therefore proposes two actions designed to achieve this end:

- In the Commission's view the time has come to apply to shipping the principle of the freedom to provide services, as defined in Articles 59, 60 and 66 of the Treaty. Because of the legal exception laid down in Article 61(1) a specific measure for that purpose on the basis of Article 84(2) is required. A more detailed analysis of this matter will be given in paras 31-37 below.
- In order to provide a more coherent basis for action in respect of third countries it is more than hitherto necessary to examine and, if warranted, to eliminate differences in shipping aid regimes of Member States. This is further discussed in paras 38-40.

Freedom to provide services

31. The principle of freedom to provide services laid down in Articles 59 to 66 of the Treaty, if applied to shipping, would mean that any shipowner of a Member State could offer transport services in the international and national trades of another Member State without the obligation of establish-

¹ Association of South East Asian Nations (Brunei, Dares Salam, Indonesia, Malaysia, Philippines, Singapore and Thailand): OJ L 144, 10.6.1980; OJ L 81, 23.3.1985.

² Bolivia, Colombia, Ecuador, Peru and Venezuela: OJ L 153, 8.6.1984.

³ Caracas Declaration of the 4th ICC International Shipping Conference, Caracas, 7-10.9.1981.

⁴ TD/B/C.4/263 – Report of the Group of Experts on international sea transport of liquid hydrocarbons in bulk on its second session.

TD/B/C.4/AC.3/5 – 7.3.1984.

TD/B/C.4/234 – Report of the Group of Experts on problems faced by the developing countries in the carriage of bulk cargoes on its second session.

TD/B/C.4/AC.2/5 – 21.12.1981.

ing, for instance, a branch office in that Member State. In terms of transport policy this means free access to the market without discrimination on grounds of nationality both in the national traffic of a Member State as well as in the international traffic between Member States and between them and third countries.

32. The freedom to provide services, which corresponds to the traditional freedom of the seas, has not already been completely achieved within the Community because Article 61(1) of the Treaty provides that this freedom in the field of transport is to be governed by the 'transport' chapter, i.e. in the case of shipping by Article 84(2). Up to now the Council has made use only once of this provision for this purpose.

33. As regards liner shipping, Regulation 954/79 on the UN Convention on a Code of Conduct implies the freedom to provide services. Article 3 of that Regulation stipulates the principle of a redistribution within a conference of the cargo shares belonging to EEC shipowners. In this redistribution the national lines and the 'cross-traders' of the EEC participate, and thus free competitive access to the share of conference cargo attributed to them is maintained. As regards the participation of outsiders in the trade the so-called 'outsider' Resolution contained in the final Act of the UN Conference on the Code of Conduct is of importance.

34. However, the Regulation referred to has only a limited effect. Regulation 954/79 is applied only to the extent that the relevant trade is subject to the Code regime. Up to now only two Member States have ratified the Code.¹ Finally, the Resolution on outsiders can only exert limited effect because it bears the character of a declaration of intent.

35. Despite the general picture mentioned in para. 21 a number of constraints on the freedom of shipowners of one Community country to sell their services in another already exist.

- The participation of West European shipowners in the bilateral trades with State-trading countries is often only possible if the Member States of the Community conclude bilateral agreements or arrangements about the sharing of cargoes with these countries and on condition that the shipowners conclude corresponding pool agreements. These agreements are usually conceived in national rather than Community terms.

- As regards the trades between Member States of the Community and certain developing countries which have ratified the Code, there also exist bilateral agreements or arrangements which do not always respect the principle of non-discrimination on the grounds of nationality.

- There are also agreements or arrangements concerning trades not subject to the Code where the participation of other Community shipowners is effectively prevented. These agreements or arrangements have largely been concluded as defensive measures to meet pressures from third countries and to counter flag-discriminatory policies on their part. But they are usually conceived, like those with the State-trading countries, in national rather than Community terms.

- A Member State practices cargo reservation for the import of oil in favour of the national flag.

- Some Community countries reserve cabotage traffic to ships of their own flag.

36. Many of these restraints are of long standing. Frequently they are defensive rather than aggressive; sometimes the market involved is small. To change things to meet the principle of freedom to provide services will obviously take time and require a gradual adjustment. In particular, in handling the question of cabotage, it is important to realize that in some cases there may be social or security considerations which would make it difficult for Member States to open their internal shipping trades to competition from ships of other Community flags. It may be necessary to allocate a time for adjustment which in some cases could be considerable. In general, however, in the Commission's view, it is both desirable in itself to remove the restraints on Community shipowners mentioned in para. 35 and impossible effectively to counter flag discrimination by third countries (on which see paras 23-26) without doing so. The Commission therefore proposes a Council Regulation under Article 84 of the Treaty providing, in principle, the application of Articles 59, 60 and 66 of the EEC Treaty to maritime shipping and to introduce by way of exception transitional periods for the above-mentioned areas. It would also be advisable

¹ See '4th Progress Report' of the Commission, transmitted to the Council on 27.6.1984: 'Implementation of Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences' (com (84) 369 final).

to introduce a provision corresponding to Article 64 enabling the Member States to introduce a complete liberalization earlier than foreseen by the transitional periods. The exceptions mentioned above require that the Council also provides for a standstill clause (by analogy with Article 62) and a non-discrimination clause (by analogy with Article 65). A draft proposal embodying these ideas is attached (p. 49).

37. As a consequence of the above proposal, it seems to the Commission sensible that examination and consultation in respect of bilateral agreements and arrangements containing provisions restricting access to cargo should be carried out prior to their conclusion. An amendment of the consultation procedure set up by Council Decision in 1977 is necessary to achieve this. A proposal for a Council decision is at page 52.

State aids

38. The Commission has already carried out a study on the prevalence of State aids;¹ and has cooperated in a more recent study undertaken in OECD.² In this paper the Commission is primarily concerned with aids designed to support shipping rather than those aids whose purpose is to help shipbuilding by using the shipping industry as their vehicle.

39. On the basis of the information available to it, the Commission has hitherto taken the view that the aids to shipowners that exist in the Member States have not significantly distorted competition between the various Community flags and that competition, fair or unfair, from outside the Community presents a much more serious problem. Although there is no evidence that Community carriers use State aids as the base for unfair competitive practices (of the sort referred to in paras 64-70, the Commission has constantly maintained the position, supported by the European Court of Justice in its judgment in Case 167/73,³ that the general provisions of the Treaty, thus Article 92 *et seq.*, apply to the maritime transport sector. Within that framework, the Commission, in collaboration with the Member States, has a duty to maintain a constant review of all systems of aid existing in Member States, and propose any appropriate measures required by the progressive development or by the functioning of the common market. It is important that, as the existing restraints on the

freedom to supply shipping services are removed, they are not replaced by state aids. The first stage is to obtain a greater transparency. In this context the Commission is considering the extension of its transparency Directive on State aids to transport. Beyond this, in exercising its powers under Articles 92 and 93 the Commission will pay particular attention to proposals for new State aids to shipowners; it will, as indicated in para. 20 above, bear in mind the effect of any action on the competitive position of Community shipowners when considering the Community interests in any such national aid proposals.

40. As stated above, it is not the purpose of this paper to discuss aids to shipbuilding. There can be no doubt, however, that aids to shipbuilding also have significant repercussions for shipping. All seafaring Member States support shipbuilding at a considerable cost to their exchequer. Such aids are primarily justified by regional and social considerations. The Commission monitors these aids under the Council Directive of 28 April 1981,⁴ ensuring that they are granted for the purpose of promoting the restructuring of the shipbuilding industry and the restoration of its competitiveness. The Commission in administering the Directive will continue to take into account the need to avoid exacerbating the problems of the shipping industry and, while desiring that the European shipbuilding industry should be supported, the need of shipowners who operate in the world market to be able to buy their ships in the world market.

Manpower and social aspects

41. Some 250 000 to 300 000 people are registered as ratings and officers in the Community countries. Sample studies suggest that some 30% of ratings and nearly 40% of officers, included in the above figures, form back-up crews. The increasing size of vessels and technological advances leading

¹ A comparison of the fiscal treatment of shipping and the incentive to invest in shipping in different countries; a study undertaken for the Commission of the EEC by Maritime Training and Research Consultants Ltd, Cardiff, Wales, UK, 1981.

² 'Subventions et avantages fiscaux. Inventaire des mesures d'aide financière et indirectes qu'accordent les administrations centrales aux transports maritimes et à la construction navale dans la mesure où ces dernières avantagent également les armateurs.'

³ *Commission v French Republic* [1974] ECR 359.

⁴ OJ L 137, 23.5.1981.

to a marked decrease in manning scales have reduced demand for seafarers. According to a survey by the ITF the 'northern EEC countries' merchant fleets in 1980 employed only some 40% of the number employed in 1960. Taking the Community as a whole, the current nine maritime members' combined fleets amounted to some 48 million GRT in 1960, and they employed approximately 376 000 seafarers. It is also worth noting that ships' officers of Community nationality gain employment on ships flying other countries' flags. In 1980 the fleet had more than doubled to 111 million GRT and some 254 000 seafarers were employed, a decrease of approximately one third. The number of ships in Member States' fleets remained about the same.

42. It is difficult to calculate the proportion of non-nationals employed in Member States' fleets, whether from other Member States or from third countries, but it is estimated by the Commission to be in the region of 15-20%.

43. There are obviously differences in the wages paid to seafarers in the various Member States, reflecting mainly national conditions and social security regimes. Wages and standards of employment have tended to rise in tandem with onshore wage levels and standards of employment in the Community. This creates a difficulty because Community shipping is faced with international competition from non-Community shipping, which is often not subject to as strict manning and high wage scales as prevail in most Community Member States. This problem has been exacerbated by the current economic situation and has led some Community shipowners to seek lower-cost crews elsewhere. This may save money but at a heavy price in terms of unemployment among Member States' seafarers. This reduction of skilled and semi-skilled seafarers could have adverse consequences for Member States.

44. The trade unions, and in particular the Committee of Transport Workers Unions, have argued that the only way to safeguard the numbers and standards of EEC nationals employed in the EEC fleet is to adopt a policy which would enable EEC shipowners to offer the sort of wages and conditions that would attract EEC nationals to seaboard employment. The Commission is concerned about the erosion of the merchant fleets of Member States and appreciates the position of the seafaring trade unions to seek stable employment and satisfactory

working conditions for their members. It is impossible, however, to insulate social and employment problems from the full international dimensions of shipping, and it seems to the Commission that important advantages accrue to the Community as a whole as a result of a pro-competitive policy. If the Commission's proposals are accepted by the Council, however, the industry's employees should benefit in the following ways:

- any measures taken to counter unfair practices should strengthen the position of EEC shipowners (see paras 64-70); in consequence, EEC seafarers in the Member States should benefit from improved employment opportunities;
- the port State control programme, in particular the observance of ILO and IMO standards, should help to deal with substandard crew conditions and substandard ships of any flag;
- observance of an official dialogue between the social partners should promote a greater consensus to the problems affecting the industry as a whole.

In general, it seems to the Commission that the promotion of a competitive Community shipping industry in terms of a non-protectionist policy — which could well mean an increasing concentration on high-value, high-technology services — is an effective means of ensuring and possibly expanding employment of EEC nationals in the long run. This in turn will require continuing attention to be given to training provisions. The Commission is aware of the fact that wide differentials in pay and conditions of employment operate between EEC and non-EEC nationals employed in the industry. It considers that a detailed study should be undertaken of the problems and, to that end, it proposes to invite both sides of industry to discuss the issues concerned, in the context of the Commission's *ad hoc* consultative committee on maritime questions. The Commission takes the view that specific manning standards and wages are a matter to be dealt with by the social partners and, as appropriate, by Member States. The Commission would regard a favourable direct tax regime for Community seafarers as a reasonable way of helping to maintain the employment of EEC nationals on Community ships.

45. There are some social aspects of Community importance which are specific to shipping. These concern such aspects as reasonable working condi-

tions for those employed in shipping, mutual recognition of diplomas, licences and certificates of competence. In so far as these matters cannot be dealt with through dialogue between the social partners, the Commission will consider developing proposals for action in these areas.

46. As shipping is predominantly a worldwide activity, it is important that there be active Community involvement in international regulatory bodies, such as IMO and ILO.

47. The Commission is re-examining the need for minimum rules to be established in cases of dismissal of professional seamen serving on board Member States' merchant ships, in particular when the dismissal takes place in a foreign port. Preparatory work is already being undertaken by the Commission for a draft instrument concerning individual dismissals irrespective of the industrial sector involved.

48. Social questions of a more general nature falling within the scope of the Treaty should be dealt with in the framework of the broader social policy of the Community, taking into account the special circumstances of the shipping industry.

IV. Issues primarily affecting liner shipping

General policy considerations

49. Since the adoption of the UN Convention on a Code of Conduct for Liner Conferences in 1974, the organization of the liner conference markets has been one of the main points of discussion in connection with ocean transport policy. The general intention of the Member States to ratify the Convention on a Code of Conduct on the basis of a common position (Regulation 954/79) which provided for specific adaptations was a first indication that the Community was capable of taking policy action in shipping matters of international importance. In spite of the fact that certain Member States conceived their interest to be diametrically opposed to the Code, it proved possible to reach agreement in the end. The Member States

accepted the Code of Conduct as one of the key factors in a new economic order in liner traffic between the industrialized world and the developing countries, but rejected the demand of the developing countries to make the Code of Conduct universally applicable since the *dirigiste* aspects of the Code, such as the rule governing cargo sharing, will not be applied by the Community's shipping lines in the trades between the Member States. This principle is also extended to other OECD countries on a reciprocal basis.

50. With the ratification by the Federal Republic of Germany and the Netherlands, the Code entered into force in October 1983. In most of the other Member States the ratification procedures have been initiated and the Commission urges them to deposit their ratification documents promptly.¹

51. The requirement of reciprocal treatment of other OECD countries under the Brussels Package has led to discussions between the CSG countries and the United States which have broadened out to cover the whole issue of how to cope with flag discrimination and how in particular to maintain the right of commercial access to trades. In the Commission's view these discussions are of vital importance for international shipping policy. A successful outcome would be very beneficial to the Community and the United States and to their shipping and user industries in particular. In formulating its policies and proposals the Commission has had and will have very much in mind the importance of compatibility with the CSG position in these discussions and indeed of facilitating a favourable outcome. In due course it will be necessary, since aspects of Community competence are involved in these discussions, for the Council to act on the involvement of the Community in the negotiations in the future agreement² and to work out arrangements for applying the same principles between the Member States.

¹ See '4th Progress Report' of the Commission, transmitted to the Council on 27.6.1984: 'Implementation of Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conferences' (com (84) 369 final).

² See Recommendation for a Council Decision authorizing the Commission to open negotiations with the United States of America on competitive access to shipping trades: Bull. EC 10-1983, point 2.1.179.

Specific aspects of policy concerning liner shipping

52. Apart from the general questions discussed in the previous paragraphs, the main aspects of policy which concern liner shipping are:

- (i) implementation of the UN Convention on a Code of Conduct for Liner Conferences and the Brussels Package (Regulation 954/79).
- (ii) the application of the competition articles of the Treaty of Rome;
- (iii) the problem of unfair practices.

Implementation of the UN Convention on a Code of Conduct for Liner Conferences and the Brussels Package (Regulation 954/79)

53. The fact that only two Community Member States have as yet ratified the Code leads to the application of different regimes in the trade to and from Community ports. This situation is not compatible with the general requirements of the common market and should not last long. The prompt adhesion of all Member States to the Code in accordance with Regulation 954/79 is most desirable.

54. When ratifying, Member States should make use of the statement on outsiders which was agreed in the so-called 'round table' in April 1984.¹

55. With the application of the Code to a given trade, the bilateral relations of the Community Member States to the relevant third countries will be governed by the Code and Regulation 954/79. During the transitional period, during which other Member States prepare for ratification, their relations to third countries follow the traditional pattern.

56. However, it follows from Article 5 of the Treaty that they should abstain from any measure which could jeopardize the later proper application of the Brussels Package. The Community instrument outlined in para. 36 is relevant to this objective.

57. Equally, the relationship of Community Member States to third countries not adhering to the Code will be governed by the new instrument mentioned above. The Commission recalls the

arrangements laid down by the Council of 8 May 1979. In particular, it was foreseen that the Member States and the Commission will initiate action to encourage the other OECD countries to adopt equivalent solutions to the Brussels Package if they accede to the Code. Norway and Sweden have taken the same position as the Community, and useful contacts have been made with Japan and Finland. The Commission will continue this activity. In addition, the Commission will, in due course, follow up the actions envisaged in the Council minutes concerning the accession of the Community as such to the UN Convention and the preparation of the review conference envisaged in the Convention.

58. The Council, in adopting Regulation 954/79, also envisaged the possibility of a joint interpretation of the concept of 'national shipping line'. Since some Member States are now developing legislation on this issue the Commission proposes a draft Directive (p. 53) which lays down a set of criteria rather than a uniform definition, with a view to avoiding any discrimination *vis-à-vis* shipping lines of other Member States or, subject to reciprocity, shipping lines of other OECD countries. Any of these criteria, which may be set alone or in combination, would meet such a requirement, so that it is left to the Member States to choose the yardstick which they feel is most appropriate.

59. This matter should not be confused with the laying down of criteria for the registration of a ship, currently under consideration in Unctad.

60. The development of the bilateral relations of the Member States and the Community to third countries not adhering to the Code will require intensive cooperation with these States since the Code is a rather complex convention. The Community and its Member States, acting together, will have to develop their contacts with third countries not adhering to the Code in order to establish the required cooperation.

The application of the competition articles of the Treaty of Rome

61. The Council, in adopting Regulation 954/79, had invited the Commission to submit a proposal

¹ See '4th Progress Report' of the Commission to the Council, op. cit.

to lay down detailed rules for the application of Articles 85 and 86 to sea transport. This has already been done and discussions are in train in the subordinated bodies of the Council. The purpose of this section of this paper is not to discuss competition policies *ab initio* but to set them in the context of general shipping policy and to demonstrate their importance to the achievement of the Community's shipping policy objectives.

62. The Commission's proposal¹ applies to international maritime transport services other than those of tramp vessels. As far as liner conferences are concerned, it takes into account the facts that the system has existed for over 100 years and has been broadly supported by shipowners and shippers; and that it was considered by the Council to have a stabilizing effect, guaranteeing regular and reliable services to transport users. It is proposed to grant a block exemption to conferences on the basis of Article 85(3), considering in particular the existence of outside competition. Because of the peculiarities of the liner sector the conditions and obligations attached to the exemption are designed to maintain the system whilst giving fair consideration to the interests of transport users. Contrary to the legislation in the United States, providing for the open conference system, the Commission's proposal leaves it entirely to the conferences to decide on their membership and in doing so does not deviate from the system endorsed by the Code.

63. The Commission views with concern the increasing trend effectively to exclude non-conference competition from trades in which closed conferences operate. If the trend continues it will severely affect the competitiveness of Community exports, is likely to increase freight rates for its imports and will limit the possibilities for profitable enterprise available to its shipowners. At the same time, where trades are open to non-conference competition, the percentage of cargo handled by non-conference operators has progressively increased; in most European trades 10 years ago the tonnage carried by non-conference operators represented some 10% of the total; on many trades it now represents 30% or 40%. In the light of these developments the Commission has, in the course of the discussions on its draft Regulation in the subordinate bodies of the Council, proposed modifications to its original proposal. These maintain the possibility of a group exemption for conferences on somewhat easier conditions than those originally proposed; but they introduce a tighter regime of

monitoring conferences in trades where for whatever reason non-conference competition is precluded. In practice, because of the mobility of shipping's assets and the way in which ships can be switched from trade to trade as the market demands, the most serious problems arise where a third State at one end of the trade route precludes non-conference competition by way of legislative or administrative action. In these circumstances the Commission's proposal foresees the withdrawal from the conference in question of the benefit of the block exemption. It would consider instead the possibility of an individual exemption subject to conditions and obligations which meet the requirements of Article 85(3) and which in its view are necessary to protect the interests of Community shippers and of those shipowners who were effectively excluded from the trade in question. The substance of these ideas is set out more fully on page 54. The Commission regards those proposals as a realistic basis for the future and hopes that the Council will rapidly reach an agreement along these lines.

The problem of unfair practices

64. The complement of the Commission's proposal on the application of the competition articles of the Treaty is the problem of how to deal with unfair pricing practices. The two questions obviously impact on each other, and in the Commission's view it would be appropriate to make progress on both simultaneously.

65. For some time now the Commission has paid particular attention — through its monitoring of specific liner trades — to the activities of State-trading countries such as the USSR. The monitoring exercise, started in 1979 and covering trades between the Community to and from Central America, East Africa and the Far East, has been working very satisfactorily and has revealed that such tactics employed by State-trading countries' carriers as underquoting and the creaming off of high-paying cargo are causing damage to Community carriers. However, the fact that these trades are being monitored has only in one case, and after lengthy negotiations, induced these carriers to cease their damaging behaviour and accept a reduced share of the trade. There is evidence to believe that these

¹ OJ C 282, 5.11.1981; OJ C 339, 29.12.1981.

practices are also employed in other trades not monitored by the Commission and that indeed the problem of unfair competition may not only be confined to State-trading countries' carriers but also extend to carriers of other countries who are owned or financed by their governments. For this reason the Commission considers it necessary to continue and to extend the exercise to other trades threatened by the same practices.

66. These unfair practices compound the already precarious commercial existence of Community carriers caused by intensified competitive pressures brought about by over-tonnaging and an increasing share of liner trades being carried by outsiders. As will be clear from the statistical annexes to this paper, the world liner fleet has increased by some 21% in terms of GRT over the period 1975-83 while the EEC liner fleet decreased by some 7.5% during the same period. This decline has been mitigated somewhat by the higher degree of sophistication of the EEC fleet, primarily through containerization. However, non-EEC countries are planning to increase their container capacity much faster with the result that world average container fleet utilization is likely to drop from 91% in 1981 to 77% in 1986.¹ In addition, the increase in non-conference carryings in a number of important liner trades, referred to above, has put freight rates under constant pressure in real terms, despite nominal increases.

67. The above developments can partly be interpreted as the effects of normal commercial pressures. Consequently, that situation should be coped with by commercial means at the disposal of the Community shipowners themselves. However, if Community carriers, already weakened by these developments, are weakened even further by unfair practices of carriers which are not subject to the same commercial constraints as Community carriers, the damage thus inflicted could be financially serious.

68. The problem has recently been highlighted by the French Government, and the Council has already had some discussions on this subject. Although, as is stated in para. 17, there is an increasing risk that shipping services under the Community flags may price themselves out of the market, the more immediate danger lies rather in the disruption that may be caused on particular trade routes by competition which derives an unfair advantage from being State-owned or controlled or

from the flying of a flag of a State which has not ratified or implemented the main IMO and ILO conventions. At the same time, it must be emphasized that State ownership and financing is not necessarily a cause for concern; the concern lies in the abuse of the advantages of such ownership and financing.

69. In considering how to cope with the problem, the Commission has carefully examined the anti-dumping and countervailing duty provisions of the GATT Code and the Community's own instruments in this area, which apply only to manufactured goods. In its view the various criteria set out in the GATT Code for deciding whether dumping exists cannot be satisfactorily applied to liner shipping. This results predominantly from the nature of liner freight rates. Although the general level of freight rates which a shipowner quotes is obviously related to the revenue he needs to cover his costs and (ideally) make a profit, rates for individual commodities have, subject to a minimum level derived from direct handling costs, traditionally been based on what the market will bear (i.e. the price elasticity of demand of the commodity in question in the market to which it is consigned, the commodity mix in the trade, the volume of trade in each direction, and the degree of competition). This has resulted in sometimes extremely complex rate structures. The advent of container services has tended to reduce the variety of rates offered and to simplify the rate structure; and in the practical setting of rates there is a good deal of rough and ready adjustment to commercial pressures. But in principle there is no reason why a freight rate for a particular commodity should be the same on one route as on another; nor even for different directions on the same route or that it should bear any predetermined relation to the cost of carriage. In the view of the Commission, the problem has to be approached from the comparison of freight rates charged for the same commodity on the same route and without any detailed reference to the costs of moving the particular commodity in question. Thus, before the Community takes action against a rate or rates alleged to be predatory, the following cumulative criteria should be satisfied:

¹ According to a study by Cargo Systems Research Ltd on 'Containership Demand in the Eighties'. Another study is even more pessimistic with regard to 1986 and forecasts a fleet utilization of between 60 and 62% for EEC-based operations. Source: *Container Insights*, No 1, March 1984.

- (i) the rate or rates are offered by a shipowner who in the view of the Commission derives an unfair advantage from being State-owned or State-controlled; or from having preferential access to an international market to which other shipowners on the route do not have access; or from operating under a flag of a country which has not ratified or does not implement the main IMO and ILO conventions; and
- (ii) the rate or rates are persistently lower than those quoted for the same commodities on the same route by an established non-conference operator not coming within the categories set out in (i) above; and
- (iii) the rate or rates cause or threaten to cause material injury to Community shipowners or have caused an unacceptable disruption in the freight pattern on the trade in question and thus cause or threaten to cause material injury to Community shipowners.

70. If all these criteria are satisfied, the Commission proposes that it should be empowered to impose a countervailing duty on the freight rate(s) in question; this duty should take into account such factors as the relative quality of the service offered, the possibility that the rates quoted may not be the same as those actually charged and so on. A detailed proposal embodying these ideas is on page 58. The Commission will consider whether similar problems apply in other areas of maritime transport and will, as appropriate, make proposals accordingly.

V. Issues primarily affecting bulk shipping

71. The basic issues relating to bulk shipping — other than that of open registries, which is largely a bulk shipping issue — have been dealt with under the questions affecting all forms of shipping in paras 14-48 (see in particular paras 25, 26 and 29). This chapter reviews recent developments in the bulk shipping market and in the open registry issue, which would need to be taken into account in determining any further Community action that may be useful or necessary in this area in view, in particular, of the ongoing discussions at international level and more specifically in Unctad.

Organization of the markets

72. Like other economic sectors there is a variety of distinctive features which characterize the bulk shipping markets:

- *specialization*: with regard to ship types and sizes, cargo carried, and trades served;
- *degree of integration*: ranging from independent owners, bulk shipping pools or consortia where owners/operators pool their ships in order to compete more effectively for larger volumes of cargo, to own-account shipping of vertically integrated companies;
- *types of contractual arrangement*: e.g. short- and long-term contracts of affreightment, voyage charter, time charter, bareboat charter.

There have been some notable developments in the organization of the dry bulk markets and, more recently, the oil markets. As to dry bulk, there is a trend towards forward integration of mineral processing at the source of extraction in developing countries because of the possibility of cost savings, significantly more stringent pollution controls in industrial countries and the attempt of developing countries to increase their exports of higher value-added products. The principal products concerned are alumina, bauxite, copper ore, manganese, chromium phosphates and, more recently and not yet substantially, iron ore. Furthermore, the rise of the Japanese economy has significantly influenced trading patterns. The rapid expansion of trade volume, average distance and of ship size has largely been due to Japanese requirements, particularly as regards the shipment of iron ore. Over the last decade a move towards carrying commodities in full ship loads such as cars, bulk paper, logs, tubular steel (neo-bulk commodities) which were traditionally shipped as liner cargo has gained in importance.

73. As to the transport of oil, some oil-producing countries are also beginning to process their crude into higher value products but this development has not yet had a significant impact on seaborne transport.

74. The economics of the industries involved in processing or trading dry bulk and oil or oil products are such that they are often organized in vertically integrated concerns including the transportation of bulk commodities. Therefore, as com-

pared with the organization of the liner trades, bulk trades are characterized by a higher proportion of transport on own account. In this respect bulk shipping more resembles certain aspects of inland navigation and road transport. Examples of a high concentration of own-account shipping, either through outright ownership or period chartering, are the steelmaking and aluminium industries as well as the major oil companies, although some of the latter have considerably reduced their own-account shipping since the recent oil crises.

75. However, it is estimated that in the dry bulk sector the majority of vessels are independently owned, the principal centres of control being the United States, Japan, Hong Kong, Norway, Greece and the United Kingdom. A similar picture emerges for the transport of crude oil and oil products. The relatively small number of shippers have, in the interest of supply stability of raw materials, in the past tended to show a preference for long-term contracts of affreightment and a proven record of performance. Thus, only a proportion of bulk transport is carried out on a spot-market basis. Supply of and demand for bulk shipping is insensitive to price changes in the short run, but higher in the long run. Thus, in times of high prices capacity has tended to be expanded, taking into account the time required to build a ship; in times of low prices it has tended to shrink, depending on shipowners' expectations of future price developments. This is the well-known phenomenon of the shipbuilding cycle, whose effects are particularly pronounced in bulk shipping.

Bulk shipping developments

76. As pointed out, bulk shipping, particularly oil bulk shipping, is a market segment that has suffered the largest decline during the recent recession. This process has not yet stabilized, and the imbalance between supply and demand is expected to persist for a number of years even if world seaborne trade (in tonnes) resumes growing at about 4% per year, which would almost reach the 4.8% p.a. registered during the relatively prosperous period 1971-79.¹

Crude oil and oil products

77. Seaborne trade in these commodities decreased by 41% (in terms of tonne-miles) between 1979 and 1983, reflecting weak demand, energy conser-

vation measures and a shift in trading patterns away from Arabian and African sources to European, American and Far East producers. Additionally, greater use of the enlarged Suez Canal helped to reduce distances to Far East consumers. While demand for oil is likely to increase, albeit at lower rates than before the two oil price shocks, the changed market structure is likely to remain. This means that only part of the oversupply can be absorbed by the resumed growth in demand and that at least that part of the tanker oversupply caused by the changed market structure must be reduced by other measures. Shipowners have, since 1981, responded by increased scrapping of tankers. This trend is expected to continue although bulk shipping markets are notoriously unpredictable since shipowners traditionally have resumed expansion of their fleets at the first signs of a stabilization of freight rates. Thus, even under optimistic assumptions of tanker reductions and growth in seaborne oil trades the overall supply/demand imbalance can probably not be eliminated fully over the next three to four years.

Dry bulk

78. Dry bulk markets have weathered the recession rather better than the oil trades. Demand tended to grow in the period 1979-82, showing a steady rise until 1981 and only a 3% drop (in tonne-miles) between 1981 and 1982 (p. 00). Nevertheless, there is also an oversupply of dry bulkers, estimated for 1982 at about 23% of total dry cargo capacity. Supply and demand are expected to grow at about the same rate over the next three to four years. Therefore, unless scrapping accelerates substantially this market too will be characterized by an oversupply of shipping capacity.

Open registry shipping²

79. The potential spread of cargo reservation practices has been discussed in paras 23-26. The

¹ The analysis is primarily based on research by Fearnleys and Hapag Lloyd.

² For the purpose of this paper the open registry definition of the (1970) report of the Rochdale Committee of Inquiry into Shipping has been adopted. The countries whose registries are assumed to fulfil the criteria of the 1970 Rochdale report and which have been taken into account in this paper are: Bahamas, Bermuda, Cyprus, Liberia and Panama.

issue of open registry shipping is technically separate but is relevant to it at least in the context of bulk shipping.

80. As of 1983 about 23% (46.7 m DWT) of the open registry tonnage was beneficially owned by Community nationals or legal entities, of which about 66% was under Greek, over 13% under German, 9% under British, 4% under Italian, 3% each under Dutch and Danish, and 2% under French beneficial ownership (Table 6).

81. The above statistics indicate clearly that Community beneficial ownership of shipping is not negligible as a complement of the fleets under the registry of Member States. Flagging out is a means increasingly employed by Community owners to remain competitive in world shipping markets and at the same time to retain economic control of the operation. This is particularly the case with bulk shipping operations, the most important segment of open registry shipping. It also enables Community shipowners to average their costs between high-cost operations under the national flag and lower-cost open registry operations. Moreover, open registry shipping in general fosters the operation of highly competitive shipping services, and this contributes to the minimization of transport cost which benefits the Community directly and indirectly.

82. The representatives of the Community's seamen's unions claim, however, that resort by Community shipowners to open registry operations jeopardizes employment opportunities of Community seamen; and that these operations are often unacceptable from the point of view of wage, safety and social standards and should therefore be phased out on the basis of suggestions made by the developing countries in Unctad. It is clear that the treatment of officers and crews by some owners operating under open registries is unacceptable (though the phenomenon is not restricted to open registries). Equally, it has been argued in Unctad that open registry shipping constitutes one of the most important barriers to bulk shipping ownership by developing countries because this allegedly enables the industrialized countries to benefit from operating cost and such other advantages as lower safety standards while retaining full economic control over the operation. Consequently, the advocates of phasing out open registry shipping demand a genuine economic link between flag State and ship, i.e. that a significant part of the economic control of the operations concerning capital, labour

and management should be exercised by nationals from the country of registration. It is claimed that the developing countries would almost certainly benefit from such a move since the developed countries could not repatriate their ships because of their countries' high cost levels.

83. From the arguments made earlier in this paper, the Commission believes that such a development would run counter to the Community's shipping and trading interests. However, even if there was merit in these demands it would be unlikely that the necessary world consensus about phasing out could be achieved and that the tonnage registered under open registries would transfer to other developing countries. This might only happen if the developing countries succeeded in their efforts to introduce cargo sharing in the bulk trades as well. Thus, the moves in favour of cargo sharing in bulk shipping and in relation to open registries complement each other.

84. The EEC Member States, as well as other members of OECD, have been opposed to the genuine link concept as defined by the developing countries. They argue that this concept is at variance with the relevant provisions of the High Seas Convention, which are repeated in the new Law of the Sea Convention which two EEC Member States have so far not signed, and infringes on the sovereign right of States to fix their own criteria for the registration of ships under their flag. They are not convinced that the hoped-for economic benefits would accrue to developing countries and they argued, by contrast, that there could be a great danger of substantial economic disadvantages both for developed and developing countries alike if the developing countries' genuine link idea were adopted. However, the OECD countries and the Commission feel that a case could be made for more transparency of ownership and for the improvement of ship safety and social standards generally. They are therefore in favour of tightening the administrative link between flag State and ship in order to enable the flag State to identify ownership and financial responsibility and to improve implementation and control of relevant international agreements on safety and social standards. At the same time it is widely accepted that all ships, regardless of flag, should be made subject to more stringent port State control.

85. The Commission supports this position and, as set out elsewhere in this report, the Community

and other European States have already moved in this direction through proposals in Unctad and their action on port State control. The Commission believes that the administrative link between flag and ship could be tightened but that in relation to the economic conditions of registration the present market-oriented system, based on a relatively free flow of capital, labour and management, has certainly contributed to the efficient organization of seaborne transportation. It should be emphasized that the freedom of action of the Member States is to some extent constrained by the Treaty under Articles 7, 48, 52, 58 and 221. This prevents Member States from imposing conditions for the establishment of companies under their law or the flying of their national flag which would discriminate against nationals of other Member States. The Commission will monitor developments in this area in Unctad and elsewhere and will determine any necessary action in the light of the relevant provisions of the Treaty.

Further action in bulk shipping and the open registry question

86. At this stage it does not appear to the Commission that Community measures specific to bulk shipping, i.e. in addition to those proposed in paras 14-48 above concerning all forms of shipping, are called for. The Commission, however, will follow closely developments in this field and will, as required, make proposals for Community action. The Commission will, in particular, continue to support the present concertation procedure in OECD. In matters affecting the Community more specifically it will, whenever useful, make use of the consultation procedure of 1977 or of Article 116 of the Treaty.

VI. Maritime safety and pollution prevention

Introduction

87. The Community has a major interest in the maintenance and improvement of standards of ship safety, both from the point of view of its seafarers and from that of the protection of the maritime

environment.¹ Its Member States, as flag States, are responsible for the enforcement of safety regulations on over a fifth of the world's tonnage; and as port States responsible for handling a vast number of ship movements and as coastal States they are responsible for the protection of the marine environment. Safety at sea is governed by a series of international conventions worked out in the IMO and other UN bodies. The Community has observer status at IMO, and its Member States play a prominent part in the formulation and negotiation of its conventions and the detailed rules developed under them. These have a worldwide application. The ratification of these conventions is frequently slow; and their application from time to time leaves something to be desired. But over the years the system has worked well; the development of worldwide standards for the construction, equipment and operation of ships has greatly facilitated the free movement of ships and in general ensured high and constantly improving standards of safety. The Commission supports this system,² which in its view works to the advantage of world trade in general and Community trade in particular. At the same time the rights and responsibilities of flag, coastal and port States have also been negotiated in international conventions. The latest convention (the UN Convention of the Law of the Sea) is not yet in force, and the attitude of the Member States towards it varies. But this variation of attitude does not apply to those parts of the convention that deal with the maritime (including pollution) and navigational aspects. In the view of the Commission, therefore, any Community activities in the field of maritime safety and of pollution prevention should primarily be designed to support the existing international system as developed in IMO to ensure its application even-handedly to ships flying flags of the Community. In addition, the Commission is considering to which extent some of these rules as they stand or as they may be modified, can be rendered more stringent, in particular with regard to the protection of certain coastal waters such as

¹ See the Council Directive of 21.12.1978 concerning pilotage of vessels by deep-sea pilots in the North Sea and English Channel, and the Council Directive of 21.12.1978 concerning minimum requirements for certain tankers entering and leaving Community ports (OJ L 33, 8.2.1979).

² Council Recommendation of 26.6.1978 on the ratification of conventions on safety in shipping (OJ L 194, 19.7.1978) and the Council Recommendation of 21.12.1978 on the ratification of the 1978 international convention on standards of training, certification and watchkeeping for seafarers (OJ L 33, 8.2.1979).

the North Sea or the Mediterranean. Moreover, it should respect the responsibilities and rights accorded to flag, coastal and port States by the proposed Law of the Sea Convention. The Commission will in general pay attention to the implementation of measures designed to prevent pollution. There seem to be four particular areas where on this basis Community action is useful:

- (a) the development and coordination of the system of port State control within the region, and in particular the control of substandard ships;
- (b) the study of the need for and, if established, the implementation of a coastal navigational system to improve the safety of navigation around the coasts of the Community, including concerted action on hydrography;
- (c) the facilitation of the transfer of ships from one Community register to another;
- (d) the use of the Community's relationships with developing countries to help in the training of their masters, crews and maritime administrations.

Port State control

88. In June 1980 the Commission proposed a Directive concerning the enforcement, in respect of shipping using Community ports, of international standards for shipping safety and pollution prevention, known as 'port State control'.¹ Discussions in the Council were overtaken by events as the French Government convened a meeting of the maritime authorities of 13 (the nine Member States plus Norway, Sweden, Spain, Portugal and later Finland) European countries to discuss the issue. Subsequent work culminated in the signature of the Memorandum of Understanding (MOU) on Port State Control, signed in Paris in January 1982 and brought into effect on 1 July 1982. The aim of the MOU was to ensure that the standards set by various international conventions in the maritime safety area were being implemented in an effective and harmonized manner. To this end the signatories undertook to inspect within three years 25% of the individual foreign flag merchant ships entering their ports, to detain or delay ships with deficiencies until such deficiencies were put right, to set up an information system to assist each other in the choice of ships for inspection and to ratify all the relevant international conventions.

89. Of the 14 signatory States 10 had, by 1 October 1984, ratified all the relevant international instruments (see Table 7), and it is hoped that the other States will complete these ratifications by the end of the year. By 30 June 1984 over 18 000 inspections had been carried out within the framework of the application of the MOU and over 700 ships with serious deficiencies had been delayed or detained. Several States had already met their three-year target of inspecting at least 25% of foreign ships calling at their ports. It is essential that all Member States should reach and maintain these targets.

90. A real-time computerized information system has been put into operation at St Malo which allows instant updating and interrogation. This enables the inspectors to concentrate their attention on ships which have not been inspected in the previous six months or which have a poor record.

91. This system of port State control is still being developed, and the Commission would like to see it progressively tightened. This need to ensure stringent controls on ships entering their ports in accordance with the MOU was recently confirmed at the International Conference on the Protection of the North Sea (Bremen, 31 October and 1 November 1984). At the same time there is little evidence that competitive pressures amongst the various ports of the Community are undermining its application. If these tendencies were to arise, the way to deal with them would be by writing the MOU into Community law. The Commission has deliberately kept open the option with this end in view.

92. At the same time it would be advantageous to link the system with that operated by other countries; and, as it becomes established, to encourage other countries geographically close to the Community to accede to the Memorandum. It might also be considered whether the system might not be opened to all port States wishing to participate.

The provision of navigational assistance in European waters

93. The Council adopted on 13 December 1982 a Decision adopting a concerted action project in the field of shore-based marine navigation aid

¹ OJ C 192, 30.7.1980.

systems (COST project 301).¹ In 1983 Finland, Sweden, Norway and Spain joined the project by signing an agreement of cooperation.² The main objective of COST 301 is to consider the need for and if appropriate to propose means to improve the safety of navigation in European waters through an integrated network of shore-based centres. The purpose of these centres, (known as Vessel Traffic Management Services – VTMS or VTS) would be, through better organization and management of traffic flow, to reduce risks of collisions, strandings and rammings, and therefore enhance safety at sea and prevent pollution of seas and coastal areas. In the Commission's view the relevant objectives contained in the final declaration of the International Conference on the Protection of the North Sea should be taken into account in this context, and in particular the development and introduction of a system of notification for specific ships categories should be examined.

94. An additional objective of the programme is to consider how to make the best possible use of such an integrated network to provide a service to the maritime community concerned (mariners, shipowners, governments, administrations, port authorities, search and rescue services, etc.): this service should be able to make available to these users the information they need, in a form and time-scale that meets their requirements.

95. It is clear that the success of such a system depends on optimum coordination between the ships and the shore-based services. Therefore, the correct identification of mariners' requirements for given traffic configurations will be essential in the design of any system of this kind.

Apart from these technical aspects, questions of transfer of responsibility and, therefore, liability will need to be studied in the event of a decision to set up a VTS monitoring system.

96. The results and conclusions of the project, which was started in 1983, should be available in 1986.

The transfer of ships between Community countries

97. At present, if a ship is transferred from one Community register to another, it tends to be re-examined by the regulatory authorities responsible for ship safety; and it is by no means uncommon

for the new owner to be required to replace equipment already certified by the authorities of the original flag State. This happens because the regulatory authorities tend to have their own lists of approved equipment, which owe as much to a wish to erect non-tariff barriers in favour of their own equipment industry as they do to the needs of safety. In the Commission's view this places an unnecessary burden on shipowners. It will, therefore, following up on an idea developed by Germany, establish a Community-wide list of approved equipment as meeting IMO standards, and it will propose a Directive to the effect that ships registered under Community flags may be equipped with any of the items contained on that list. It will not itself seek to approve or disapprove such equipment; this function should remain with the regulatory authorities of the Member States, which have the responsibility for implementing the relevant international conventions in pursuance of which the equipment is certified.

Training standards

98. Good levels of training of crew and shipmasters backed by a system able to enforce and monitor the minimum internationally agreed safety standards are essential elements of any consistent safety policy. In this respect the Commission would like to see a greater use of simulators in training shipmasters. The Convention on Standards of Training and Watchkeeping (STCW), which entered into force in 1984, set the framework for a Community role in helping developing countries to raise the present standards of training of their crews, thus benefiting those countries directly and also the safety of navigation in European waters. In addition, developing countries require assistance in building up their national maritime administrations. This requires training of a special nature where Community administrations can play a valuable role.

99. The agreements of cooperation concluded by the EEC with the countries of the Lomé Convention (ACP) and with several Asean and Latin American countries permit financial assistance for training in general and maritime training in particular. The Commission has already helped to develop a programme of seminars for training of trainers in maritime academies of Asean, the first of which

¹ OJ L 378, 31.12.1982.

² OJ L 84, 30.3.1983.

took place in Malacca in March 1984. The Commission proposes a larger contribution of funds for training in the maritime sector.

100. In addition to this action each European country already has problems to find highly qualified operators in their existing national VTS and, possibly, in future in the European integrated network of VTS. The special operational requirements demand a new specialized staff the qualifications and standards of whom are not set. In the light of the positive Eurocontrol experience in the field of training air traffic control operators, the Commission will consider with the Member States whether it is sensible to develop common standards of training for VTS operators in Europe.

VII. Seaports

Background

101. The first references to port policy were made in the reports of Kapteyn,¹ Seifriz² and Seefeld³ to the European Parliament. The first Commission initiative was a 'Note on port options on a Community basis'.⁴

Between November 1972 and December 1980 the Commission convened four plenary meetings of major European ports, the first two of which led to the drawing up of terms of reference for a working group which submitted its report⁵ to the third meeting in 1977, which in turn led to further terms of reference for the group which presented its final report⁶ to the fourth meeting in December 1980.

In July 1981 the Commission submitted a report⁷ to Parliament on its work towards a Community port policy.

On 11 March 1983 Parliament approved the Carossino report⁸ on the 'Role of ports in the common transport policy', which included a 10-point resolution for action.

Past cooperation of the Commission with the ports

102. Between 1972 and 1980 the Commission's services worked closely with representatives of the

major port authorities of the Community in the production of two reports. The first of these⁵ set out the major differences in practice as regards the financing of infrastructure, superstructure and operations both between the ports of the various Member States and often between the ports of a single country. The second⁶ attempted to determine whether these differences led to serious distortions to competition.

The majority of port experts did not think that the existing differences warranted a specific port policy on the part of the Community. There are, however, aspects of port policy where in the view of the Commission Community action would be useful. The Community's ports are a critical link in the transport chain between sea and inland transport. It is therefore essential that port aspects are taken into account in the context of the development of both the inland and the maritime aspects of the common transport policy. It is in this sense that the Commission will consider Parliament's recommendations on matters affecting ports.

103. In order to identify possible areas of work at Community level it seems relevant in today's transport policy context to review and update the Commission's conclusions on some of the main issues which were examined in the earlier reports mentioned above:

- the influence of national and Community transport policies on conditions of competition between the ports of the Member States;
- the influence of charging policies and of State aids to ports on competition between the ports of the Member States.

¹ Doc. EP 106, 11.12.1961.

² Doc. EP 140, 24.11.1967.

³ 'Report on port policy within the framework of the European Community' (Doc. EP 10/72), 12.4.1972.

⁴ Doc. 16/VII/71, 24.3.1970.

⁵ 'Report on an Enquiry into the Current Situation in the Major Community Seaports drawn up by the Port Working Group' (CB-22-77-863).

⁶ 'Report of the Port Working Group' (VII/440/80) (internal working paper).

⁷ 'Report on Community Port Policy' (Doc. EP 73.762).

⁸ OJ C 96, 11.4.1983.

The influence of national and Community transport policies on conditions of competition between the ports of the Member States

Hinterland traffic

104. The organization of the market in hinterland transport has an important bearing on competition between the Community's seaports. While it is not the only factor determining the competitive positions of a seaport and a customer's decision to use its services rather than those of rival ports, a port's intrinsic appeal is unquestionably enhanced the more versatile the services it can provide in the way of transport links with the hinterland and the more flexible the rates charged.

105. For years now a debate has been going on between the German seaports and various modes of transport by land. This, coupled with public utterances on the debate by experts in this field and the views expressed by the competent German authorities, attests to the topicality – although not the novelty – of this aspect of transport policy both in Germany and elsewhere. Furthermore, Parliament has, in various reports, emphasized the importance of finding adequate solutions in this matter.¹

106. But the problem is not confined to competition between the German seaports and the ARA (Amsterdam, Rotterdam, Antwerp) range of ports: it affects competition between all Community ports, i.e. between the North Sea, the Atlantic and the Mediterranean, and between individual ports in each of these groups.

107. The markets where one port enjoys an unassailable position are few and far between and in any case on the small side. Most of the Community's continental heartland can be regarded – increasingly so as a result of the constant improvement in the technical and organizational efficiency of inland modes of transport – as a collection of geographical areas each of which could be served by several ports.

108. Competition between the seaports to serve these areas can, where transport is concerned, only function under optimum conditions if each of these markets is regulated along much the same lines, i.e. if the ports and their customers are offered com-

parable terms from the point of view of quantity and quality in comparable circumstances.

109. This is not the case at present. The nub of the problem facing Germany, for instance, is that hinterland transport is subject for the most part to a 'regulated' system of competition involving, in particular, a relatively rigid set of compulsory tariffs for road haulage and inland waterway transport, a rigid capacity limitation on commercial road hauliers and all the intervention by public authorities that this entails. By contrast, hinterland transport to and from the rival ARA ports is predominantly international in nature and enjoys complete freedom of commercial activity in Rhine shipping and a freer regime, in respect of access and tariffs, in the road haulage market.

110. There is evidence of similar discrepancies in other transport markets making up the hinterland of several seaports with overlapping catchment areas – for instance, competition between North Sea and Adriatic ports. The rivalry between these ports has led to a situation in Italy where goods being carried to and from Trieste are no longer subject to quotas and road hauliers are not obliged to obtain authorization.

111. It is difficult, if not impossible, to say what the effects of such distortions of competition have been. Statistics produced in the debate going on within Germany show that figures cannot be advanced to prove what the actual effects are in view of the multitude of factors that influence the volume of traffic at a particular port over long periods of time.

112. It is obvious, however, that a port with access to a variety of freely competing inland modes of transport charging market rates may, all other things being equal, have a competitive edge over rivals whose hinterland communications are regulated by State or quasi-public cartels governing market access and prices.

113. In the Commission's view, there is no satisfactory regulatory method to harmonize the conditions of competition on such different routes facing such a widespread set of conditions. The only genuine harmonization possible is that brought about by the free operation of the market. It would be conceivable and practicable and meet

¹ See references at para. 101.

the objective of equating competition between ports to abolish all restrictions on access, notably in the area of quota-fixing, and abolish fixed tariffs in respect of the carriage of exports and imports to and from all Community ports, whether on international or on national routes.

114. This so-called corridor approach does not pose any insurmountable technical problems, and the system can also be monitored. It would serve its purpose in view of its limited objectives and could also serve to promote the Community's external trade.

115. It should be stressed – to avoid any misunderstanding – that such an approach is not designed to iron out any natural advantages or disadvantages in the competitive positions of the various seaports. In view of the objectives of the EEC Treaty, the aim is and must be solely to do away with artificial distortions stemming from discrepancies in market regulations and out-of-date measures.

116. A solution of this nature will stand the test of achieving fair competition between the seaports. With this end in view the Commission has already initiated consultations on such a proposal and has recently presented a proposal to the Council.¹

Maritime aspects

117. As regards shipping, all measures aimed at favouring, directly or indirectly, the national fleet of a Member State and/or of its trading partners tend to have an effect on the distribution of the tonnage handled by ports. Thus, for instance, unilateral or bilateral cargo reservation measures by Member States or third countries can distort competition between ports. The Commission's proposals on the application of the competition rules of the Treaty to sea transport, and on the application of the principle of freedom to provide services to shipping, will serve to remove the dangers of a distortion of competition between ports.

118. It is alleged that Community legislation concerning the environment and shipping safety has, because of national differences in the implementation and policing of these measures, caused distortions of competition between Community ports. The same allegation is sometimes made in respect of the Community's monitoring exercise in respect of seaborne trade between the Community,

Central America, East Africa and the Far East. The Commission has so far not received any substantive evidence to corroborate these allegations. But it keeps developments in this respect under review.

The influence of charging policies and of State aids to ports on competition between the ports of the Member States

119. Charging policies in the ports vary from one Member State to another and from one port to another. It is generally considered that some three quarters of the costs involved when a ship calling to load or discharge a full cargo in port are made up of cargo-handling charges (mainly stevedoring charges) and only one quarter of port charges imposed by the port authority or other public body. This relationship tends to vary, however, for some other ships such as specialized offshore vessels, passenger cruise ships or ships calling to load or discharge part cargoes, to take on bunkers or for repair. Work undertaken by the Port Working Group between 1977 and 1980 revealed that, for example, most port authorities made no specific charge for use of the deepwater access channel or for the use of buoys and lights, and it was not possible to find out whether the port dues charged covered such items. The Commission estimates that about 5% of total transport costs are port charges; and the 1980 report had already concluded that port charges did not seem to constitute the major determining factor in the choice of a port. In fact, no single factor can be identified to regularly determine this choice. There is always a whole array of qualitative and quantitative aspects involved. Their weight varies over time and as a function of the commodity to be shipped, the terms of shipment and the origin and destination of the commodity. Therefore, the Commission does not deem it useful or necessary at present to embark on the complex task of harmonizing the charging policies of the Community's ports.

120. As regards port aids, the effect of direct national port aids on competition between ports was also examined in 1980 by the Port Working Group of the Commission referred to above, and at that time it concluded that national aids to ports did not lead to serious distortions to competition. At

¹ OJ C 14, 16.1.1985.

this stage, therefore, the Commission will not attempt to draw up guidelines for the application of the Treaty to State aids to ports; but it will deal with specific aids, if required, directly on the basis of Articles 92 and 93 of the Treaty, and it will review the general situation from time to time and study further the different port aid systems existing in the Member States. Other aids, such as regional aids and aids to facilitate the development of certain economic activities which may also have a bearing on competition between ports, will be taken into account as well in the Commission's considerations regarding their compatibility with the common market.

Possible further work in the port sector at the level of the Community

121. One of the most promising areas for Commission/port collaboration has been in the field of information technology. The European Ports Data Processing Association (EVHA), which has enjoyed the full backing of the Commission's services, could form the nucleus for further development in the exchange of information between ports and agreement on common standards. This might also facilitate a common approach to the collection and publication of port statistics. The Commission's services will therefore continue their work with port and national statistical experts.

122. The Commission also suggests that the current *ad hoc* consultation with the major ports should include discussion of Commission proposals which may affect the ports and other matters of concern to them which might have a Community dimension. A current example of this is the Marpol requirement for oil slops and chemical waste reception facilities in the ports, where a Community-wide view and possible Community support could lead to a more efficient use of resources and help to ensure that the facilities necessary for the implementation of Marpol are available.

VIII. Other questions

Maritime research

123. As in the other modes of transport, the Commission is working — on the basis of the

objectives of the Commission's broader research programme for the development of modern technologies — on research proposals for new or improved technologies. Its aim will be to complement the research that already takes place rather than to seek to duplicate research done or likely to be done elsewhere. In addition to such ongoing research programmes as COST 301, the Commission is developing a longer-term research programme for maritime transport. The Commission intends to present proposals on both accounts by 1986 at the latest on the basis of the existing budgetary possibilities.

124. This programme would encourage the continuation and the expansion of the integration of technical progress in ship operation to ensure its present and future survival. It would be oriented along the following lines:

- maritime systems (transport needs, new means of transport, ship-harbour interface);
- ship economy and competitiveness;
- ship safety and environmental protection.

Transport of Community food aid

125. Having noted the potential embarrassment arising from the use of Eastern bloc and substandard ships for the transport of Community food aid to developing countries and the increasing concern expressed on this issue both by MEPs and some Member States, the Commission envisages proposing a new system, with a view, in particular, to acquiring better control on the shipment of food aid.

Maritime fraud

126. Maritime fraud is an increasing problem which is causing great concern amongst governments and in commercial circles in Member States and elsewhere. The Commission will consider with the Member States and other interested organizations whether there is anything the Community in general or the Commission in particular can undertake in coping with this problem.

Annexes

Table 1: Merchant fleet of the world 1970-83¹

	World ¹	OECD (incl. EEC)		EEC ²		Open registry countries ³		COMECON ⁴		Others ⁵	
	MGRT	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%
1970	211.9	141.4	66.7	64.9	30.6	40.2	19.0	13.0	6.1	17.3	8.2
1971	229.8	151.3	65.8	71.0	30.9	46.6	20.3	13.6	5.9	18.3	8.0
1972	254.5	165.1	64.9	76.4	30.0	54.8	21.5	14.7	5.8	19.9	7.8
1973	275.2	174.7	63.5	82.9	30.1	63.8	23.2	15.1	5.5	21.6	7.8
1974	296.0	183.2	61.9	88.6	29.9	71.4	24.1	16.1	5.4	25.3	8.5
1975	325.6	193.8	59.5	94.5	29.0	84.15	25.8	17.7	5.5	29.95	9.2
1976	354.5	204.6	57.7	99.9	28.2	93.6	26.4	19.5	5.5	36.8	10.4
1977	374.7	208.0	55.5	103.2	27.5	101.6	27.1	20.5	5.5	44.6	11.9
1978	386.6	212.0	54.8	108.3	28.0	105.3	27.2	21.5	5.6	47.8	12.4
1979	393.0	208.5	53.0	107.8	27.4	105.4	26.8	22.7	5.8	56.4	14.4
1980	398.8	210.5	52.8	108.4	27.2	105.6	26.5	23.2	5.8	59.5	14.9
1981	399.7	209.4	52.4	107.3	26.8	103.4	25.9	25.5	6.4	61.4	15.4
1982	403.0	205.3	50.9	101.8	25.2	104.6	26.0	23.9	5.9	69.4	17.2
1983	400.0	193.0	48.3	93.3	23.3	105.1	26.3	24.7	6.2	77.2	19.2

Note: MGRT = million gross registered tons – all ships of 100 GRT and over. % = percentage of world total.

¹ Merchant fleet: excluding the fishing fleet, tugs, dredgers, icebreakers, research ships, supply ships and tenders, miscellaneous.

² Figures for EEC are for the Nine. The UK, Denmark and Ireland joined the EEC in 1973, Greece in 1981, but the tonnage figures have been included from 1970 onwards for statistical reasons.

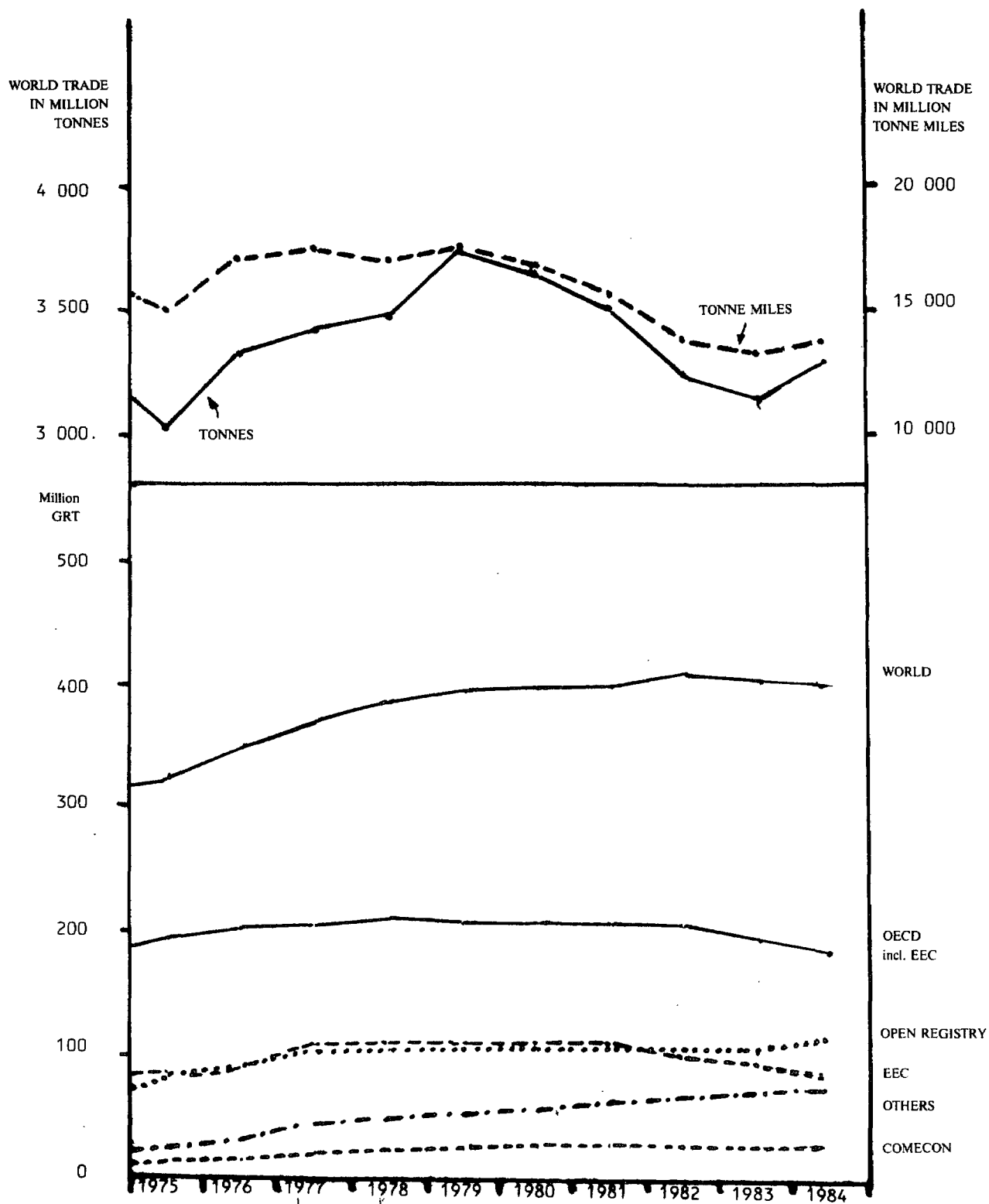
³ Open registry countries: Liberia, Panama, Cyprus, Somalia, Bermuda, Bahamas. As Singapore is no longer considered an open registry country it has been excluded for purposes of comparison, and is included in the developing countries (7 MGRT in 1983).

⁴ Socialist countries of Eastern Europe: Albania, Bulgaria, Czechoslovakia, GDR, Hungary, Poland, Romania, the USSR.

⁵ 'Others': all developing countries (incl. South Korea – 6 MGRT in 1983 – and Hong Kong – 4 MGRT in 1983), China (11 MGRT in 1983) and other Socialist countries of Asia, South Africa, Gibraltar and the Faroe Islands. If South Korea, Hong Kong, China and other Socialist countries of Asia, South Africa, Gibraltar and the Faroe Islands are excluded from the 'Others' total we are left with a tonnage of approximately 54.5 MGRT for the developing countries. This represents approximately 13.6% of the world total (1983 figures). For 1975 the share of the developing countries amounted to 23.55 MGRT, or 7.2% of the world total.

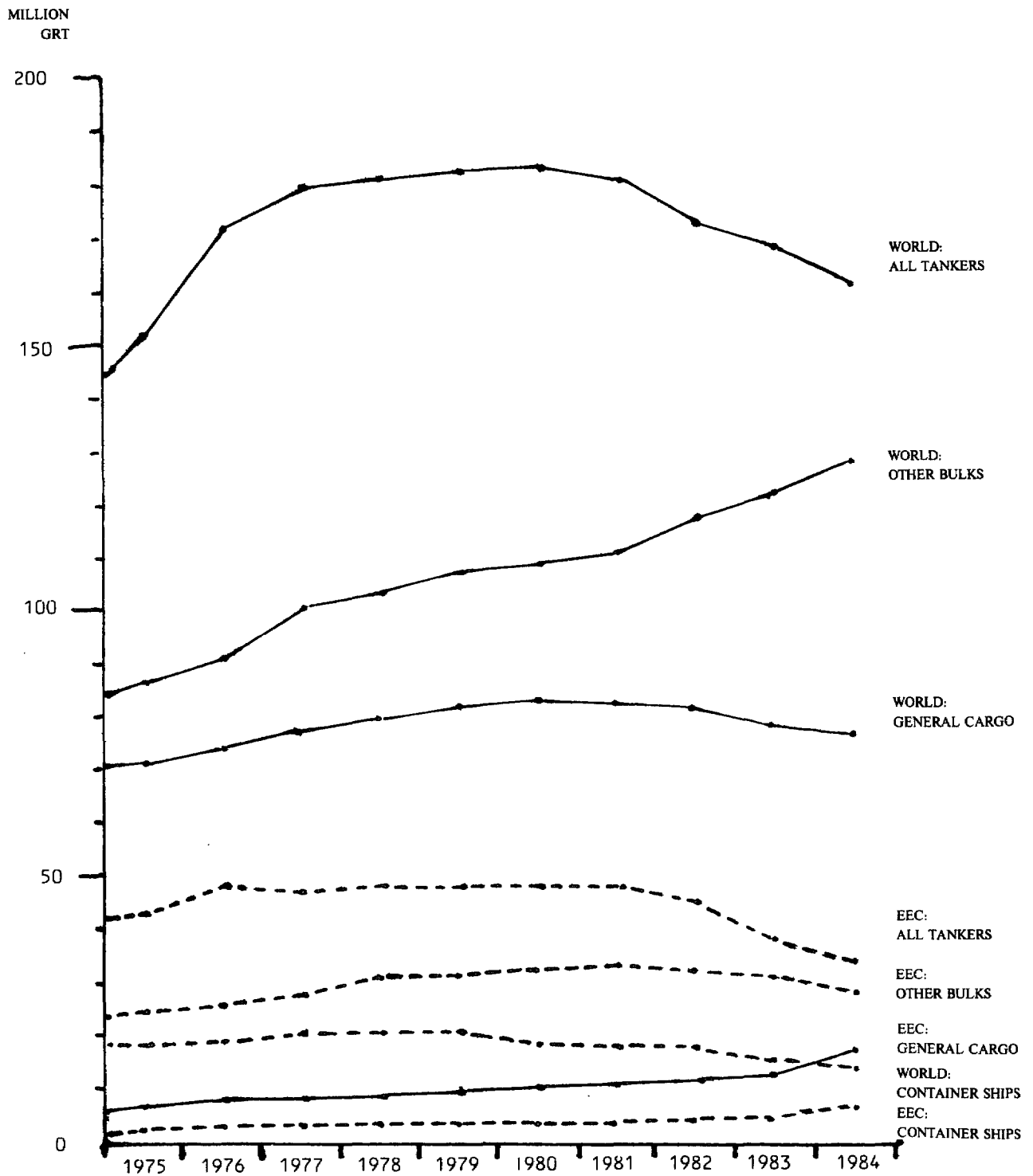
Source: Eurostat, *Statistical Yearbook – Transport, Communications, Tourism*.

Graph 1: Distribution of world merchant fleets and world trade 1975-83



Source : Lloyd's Register of Shipping, Fearnley's Review, 1983.

Graph 2: Distribution of world and Community countries' merchant fleets by category of vessel 1975-83



Source : Lloyd's Register of Shipping, Fearnley's Review, 1983.

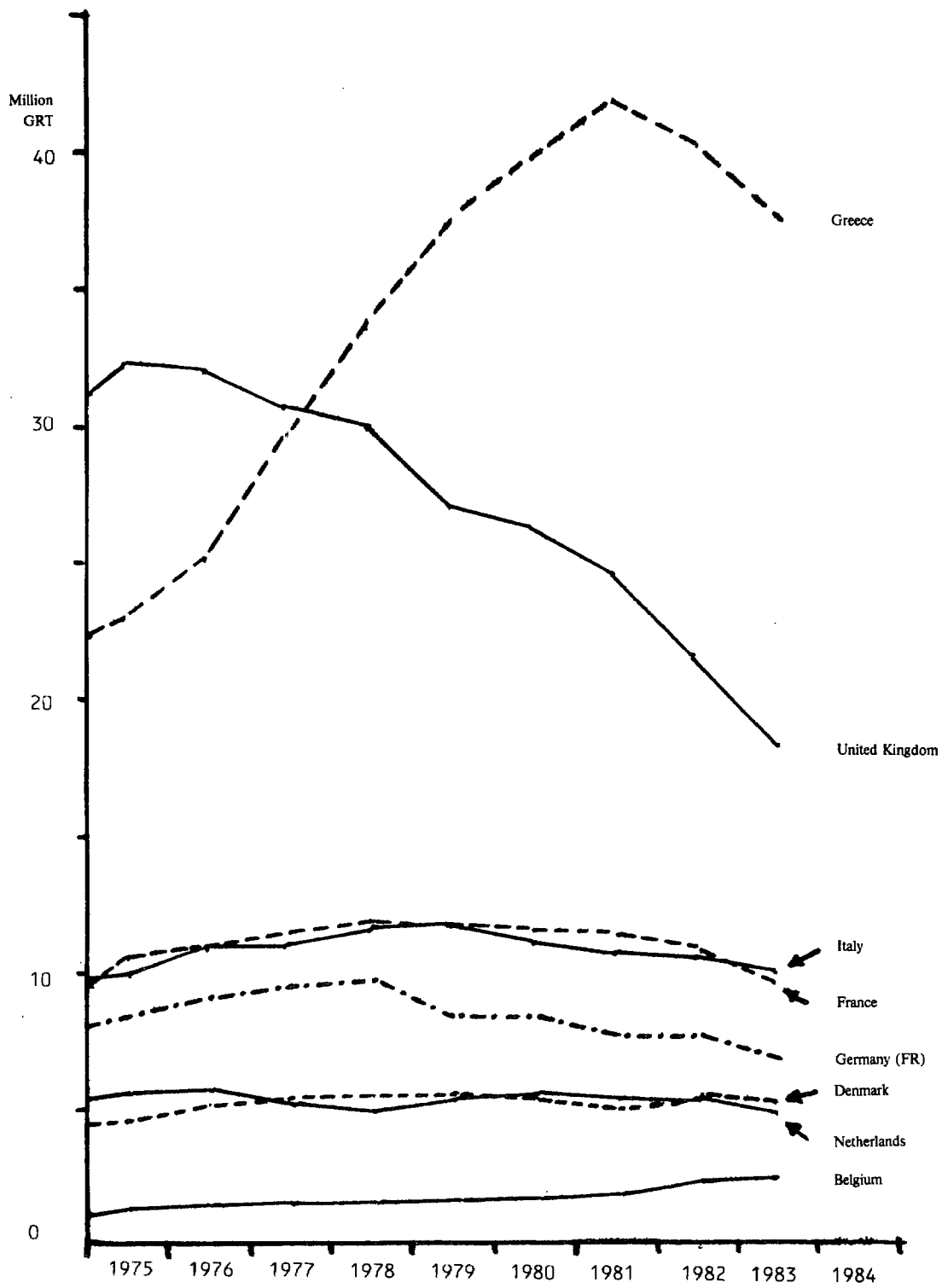
Table 2: World seaborne trade 1971-83

	Crude oil	Oil products	Iron ore	Coal	Grain	Other cargo (estimate)	Total trade (estimate)
<i>(million tonnes)</i>							
1971	1 070	247	250	94	91	825	2 577
1972	1 185	261	247	96	108	866	2 763
1973	1 365	274	298	104	139	940	3 121
1974	1 361	264	329	119	130	1 045	3 248
1975	1 263	233	292	127	137	995	3 047
1976	1 422	260	294	127	146	1 075	3 324
1977	1 475	273	276	132	147	1 120	3 423
1978	1 457	270	278	127	169	1 190	3 491
1979	1 538	279	327	159	182	1 270	3 755
1980	1 362	276	314	188	198	1 310	3 648
1981	1 215	267	303	210	206	1 305	3 506
1982	1 043	285	273	208	200	1 240	3 248
1983 (est.)	1 020	272	268	192	193	1 220	3 165
<i>('000 million tonne-miles)</i>							
1971	6 555	900	1 185	434	487	2 169	11 730
1972	7 720	930	1 156	444	548	2 306	13 104
1973	9 207	1 010	1 398	467	760	2 562	15 404
1974	9 661	960	1 578	558	695	2 935	16 387
1975	8 885	845	1 471	621	734	2 810	15 366
1976	10 233	950	1 469	591	779	3 035	17 057
1977	10 472	995	1 386	643	801	3 220	17 517
1978	9 661	985	1 384	604	945	3 455	17 034
1979	9 614	1 045	1 599	786	1 026	3 605	17 675
1980	8 385	1 020	1 613	952	1 087	3 720	16 777
1981	7 371	1 000	1 508	1 120	1 131	3 710	15 840
1982	5 412	1 070	1 443	1 094	1 120	3 560	13 699
1983 (est.)	5 200	1 050	1 400	960	1 080	3 490	13 180

Note: Estimates for 1983 are based on statistics for the first 9 to 11 months of the year for the most important countries as regards the specified commodities, supplemented with data from international associations. The 'Total trade' and 'Other cargo' estimates for 1983 are based on world trade growth as indicated by official sources.

Source: *Fearnley's Review*, 1983.

Graph 3: Growth of EEC Member State merchant fleets 1975-83



Source: Lloyd's Register of Shipping.

Table 3: Distribution of Member States' merchant fleets by category of vessel 1975, 1983

	Belgium				Denmark				Germany (FR)				France			
	1975		1983		1975		1983		1975		1983		1975		1983	
	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%
Oil tankers	0.37	28.47	0.27	12.6	2.16	49.66	2.42	48.7	2.72	33.05	2.02	30.4	6.94	66.79	5.44	57.0
Liquefied gas carriers	—	—	0.09	4.2	0.03	0.69	0.11	2.2	0.02	0.24	0.16	2.4	0.24	2.34	0.38	4.0
Chemical tankers	—	—	0.07	3.3	0.01	0.23	—	—	0.01	0.12	—	—	0.06	0.58	0.05	0.5
Other tankers	—	—	—	—	—	—	—	—	—	—	—	—	0.01	0.10	0.01	0.01
Total tankers	0.37	28.47	0.43	20.0	2.20	50.57	2.54	51.1	2.75	33.41	2.25	33.9	7.25	69.78	5.88	61.6
Bulk/oil carriers	—	—	0.21	9.8	—	—	—	—	0.12	1.46	0.09	1.4	0.64	6.16	0.61	6.4
Ore/bulk carriers	0.55	42.31	1.11	51.6	0.55	12.64	0.49	9.9	2.08	25.27	1.05	15.8	0.77	7.41	1.20	12.6
Total other bulk carriers	0.55	42.31	1.32	61.4	0.55	12.64	0.49	9.9	2.20	26.73	1.14	17.2	1.41	13.57	1.81	19.0
General cargo	0.30	23.08	0.19	8.8	1.16	26.67	0.80	16.1	2.45	29.77	1.75	26.4	1.39	13.38	1.07	11.2
Cellular container	0.03	2.31	0.15	7.0	0.18	4.14	0.83	16.7	0.64	7.78	1.22	18.4	0.14	1.35	0.59	6.2
Ferries, passenger and other merchant vessels	0.05	3.85	0.06	2.8	0.26	5.98	0.31	6.2	0.19	2.31	0.28	4.2	0.20	1.92	0.19	2.0
Total general cargo and other merchant vessels	0.38	29.23	0.40	18.6	1.60	36.79	1.94	39.0	3.28	39.86	3.25	48.9	1.73	16.65	1.85	19.4
Total all ships	1.30		2.15		4.35		4.97		8.23		6.64		10.39		9.54	

Note: % refers to the percentage of each type of carrier in the country's total fleet. MGRT = million gross registered tons.

Source: Lloyd's Register of Shipping.

Table 3 (contd): Distribution of Member States' merchant fleets by category of vessel 1975, 1983

	Greece				Ireland				Italy				Netherlands			
	1975		1983		1975		1983		1975		1983		1975		1983	
	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%
Oil tankers	8.29	36.99	12.06	32.3	0.01	5.00	0.01	5.0	4.06	40.93	3.87	39.5	2.64	49.07	1.60	35.9
Liquefied gas carriers	0.02	0.09	0.07	0.2	—	—	—	—	0.15	1.51	0.21	2.1	0.06	1.12	0.07	1.6
Chemical tankers	—	—	—	—	—	—	—	—	0.02	0.20	0.09	0.9	0.01	0.18	0.03	0.7
Other tankers	—	—	0.04	0.1	—	—	—	—	0.01	0.10	0.02	0.2	—	—	—	—
Total tankers	8.31	37.08	12.17	32.6	0.01	5.00	0.01	5.0	4.24	42.74	4.19	42.8	2.71	50.37	1.70	38.1
Bulk/oil carriers	1.21	5.40	2.34	6.3	—	—	—	—	1.55	15.62	1.51	15.4	—	—	—	—
Ore/bulk carriers	5.96	26.60	14.44	38.6	0.15	75.00	0.09	45.0	2.01	20.26	2.26	23.1	0.51	9.48	0.78	15.8
Total other bulk carriers	7.17	32.00	16.78	44.9	0.15	75.00	0.09	45.0	3.56	35.00	3.77	38.5	0.51	9.48	0.78	17.5
General cargo	6.30	28.11	7.57	20.3	0.02	10.00	0.05	25.0	1.13	11.39	0.90	9.2	1.83	34.01	1.35	30.3
Cellular container	0.03	0.13	0.15	0.4	—	—	0.01	5.0	0.10	1.01	0.25	2.6	0.15	2.79	0.40	9.0
Ferries, passenger and other merchant vessels	0.60	2.68	0.70	1.9	0.02	10.00	0.04	20.0	0.89	8.97	0.68	6.9	0.18	3.35	0.23	5.2
Total general cargo and other merchant vessels	6.93	30.92	8.42	22.5	0.04	20.00	0.10	50.0	2.12	21.37	1.83	18.7	2.16	40.15	1.98	4.44
Total all ships	22.41		37.37		0.20		0.20		9.92		9.79		5.38		4.46	

Table 3 (contd): Distribution of Member States merchant fleets by category of vessel 1975, 1983

	United Kingdom				EEC				% of world total under EEC flag	
	1975		1983		1975		1983		1975	1983
	MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	MGRT
Oil tankers	16.10	50.03	8.28	45.5	43.29	45.88	35.97	38.6	28.8	22.9
Liquefied gas carriers	0.70	2.18	1.18	6.5	1.22	1.29	2.27	2.4	40.7	24.9
Chemical tankers	0.17	0.53	0.22	1.2	0.28	0.30	0.54	0.6	29.0	17.4
Other tankers	—	—	0.04	0.2	0.02	0.02	0.11	0.1	17.5	36.7
Total tankers	16.97	52.73	9.72	53.5	44.81	47.49	38.89	41.7	29.1	22.9
Bulk/oil carriers	2.92	9.07	1.69	9.3	6.44	6.82	6.45	6.9	27.2	24.8
Ore/bulk carriers	5.19	16.13	2.93	16.1	17.77	18.83	24.35	26.1	28.7	24.8
Total other bulk carriers	8.11	25.21	4.62	25.4	24.21	25.66	30.80	33.0	28.3	24.8
General cargo	4.89	15.20	1.65	9.1	19.47	20.60	15.33	16.4	27.5	19.3
Cellular container	1.35	4.20	1.52	8.4	2.62	2.78	5.12	5.5	42.0	36.1
Ferries, passenger and other merchant vessels	0.86	2.67	0.67	3.7	3.25	3.44	3.16	3.4	35.7	25.7
Total general cargo and other merchant vessels	7.10	22.06	3.84	21.1	25.34	26.85	23.61	25.3	29.5	22.3
Total all ships	32.18		18.18		94.36		93.3		29.0	23.3

Note: % refers to the percentage of each type of carrier in the country's total fleet. MGRT = million gross registered tons.

Source: Lloyd's Register of Shipping.

Table 4: Distribution of world merchant fleets by category of vessel and flag 1983¹

	MGRT	OECD ²		of which: EEC		OR ³		Comecon ⁴		Others ⁵	
		MGRT	%	MGRT	%	MGRT	%	MGRT	%	MGRT	%
Oil tankers	157.28	79.91	50.8	35.97	22.9	48.90	31.1	6.10	3.9	22.37	14.2
Liquefied gas carriers	9.08	5.21	57.4	2.27	24.9	2.25	24.7	0.20	2.2	1.42	15.6
Chemical tankers	3.14	1.86	59.3	0.54	17.2	0.84	26.8	0.006	0.2	0.43	13.7
Other tankers	0.30	0.22	73.3	0.11	36.7	0.05	16.7	0.016	5.3	0.014	4.7
Total tankers	169.80	87.20	51.4	38.89	22.9	52.04	30.6	6.322	3.7	24.234	14.3
Bulk/oil carriers	26.03	11.51	44.3	6.45	24.8	9.30	35.7	0.75	2.9	4.47	17.1
Ore/bulk carriers	98.37	47.35	48.1	24.35	24.8	27.15	27.6	4.88	5.0	18.99	19.3
Total other bulk carriers	124.4	58.86	47.3	30.8	24.8	36.45	29.30	5.63	4.5	23.46	18.9
General cargo	79.32	28.74	36.2	15.33	19.3	14.72	18.6	11.48	14.5	24.38	30.7
Cellular containers	14.19	9.49	66.8	5.12	36.1	1.22	8.7	0.41	2.9	3.07	21.6
Ferries, passenger and other merchant vessels	12.30	8.71	70.8	3.16	25.7	0.70	5.7	0.86	7.0	2.03	16.5
Total general cargo and other merchant vessels	105.81	46.94	44.3	23.61	22.3	16.64	15.7	12.75	12.1	29.48	27.9
Total all ships	400.0	193.0	48.3	93.3	23.3	105.13	26.3	24.7	6.2	77.174	19.93

Source: *Lloyd's Register of Shipping – Statistical Tables 1983*.

Note: MGRT = million gross registered tons – all ships of 100 GRT and over. % = percentage of world total.

¹ Merchant fleet: excluding the fishing fleet, tugs, dredgers, icebreakers, research ships, supply ships and tenders, miscellaneous.

² Including EEC.

³ Open registry countries: Liberia, Panama, Cyprus, Somalia, Bermuda, Bahamas.

⁴ Socialist countries of Eastern Europe: Albania, Bulgaria, Czechoslovakia, GDR, Hungary, Poland, Romania, the USSR.

⁵ 'Others': all developing countries (including South Korea – 6 MGRT in 1983 – and Hong Kong – 4 MGRT in 1983), China (11 MGRT in 1983) and other Socialist countries of Asia, South Africa, Gibraltar and the Faeroe Islands.

Table 5: Average age of Community fleet 1975, 1983¹

	All vessels	1975		All vessels	1983	
		Oil Tankers	Ore/bulk		Oil Tankers	Ore/bulk
World	9.00	8.05	6.86	11.15	9.98	10.60
EEC total	8.87	8.28 ²	6.13 ²	11.49	11.10 ²	8.28 ³
Belgium	8.04	?	?	6.78	?	4.96
Denmark	6.82	4.95	5.49	7.97	7.29	?
Germany (FR)	6.68	6.25	5.18	8.57	9.02	9.10
France	6.66	5.96	5.19	8.44	7.41	11.40
Greece	12.18	13.13	7.34	14.46	14.28	13.75
Italy	10.47	9.76	7.40	12.24	11.01	12.63
Netherlands	11.03	9.98	9.12	10.04	11.57	6.79
United Kingdom	7.34	6.91	4.77	9.78	9.74	8.47

Source: Lloyd's Register of Shipping.

¹ No figures available for Ireland.

² Excluding Belgium.

³ Excluding Denmark.

Table 6: Tonnage owned by Community countries 1970, 1975, 1978-83

('000 DWT)

	1970	1975	1978	1979	1980	1981	1982	1983
Belgium: Own fleet	1.530	2.055	2.600	2.725	2.730	2.950	3.590	3.691
Open registry ¹	NA	NA						
total								
Germany (FR): Own fleet	12.275	13.610	15.700	13.745	13.330	12.510	12.355	10.797
Open registry ¹	NA	NA	5.461	6.887	7.166	5.774	5.720	6.237
total			21.161	20.632	20.496	18.184	18.075	17.034
Denmark: Own fleet	5.070	7.155	8.940	8.980	8.705	7.980	8.145	7.926
Open registry ¹	NA	NA						1.219
total								9.145
France: Own fleet	9.455	18.135	21.100	20.825	20.860	20.110	18.725	16.820
Open registry ¹	NA	NA		1.267	1.414	1.250	1.005	1.041
total				22.092	22.274	21.360	19.730	17.861
Greece: Own fleet	16.990	37.540	57.030	63.310	67.050	73.515	70.230	65.986
Open registry ¹	NA	NA	40.666	30.361	28.587	22.586	22.846	30.835
total			97.696	93.671	95.637	96.101	93.076	96.821
Italy: Own fleet	10.330	15.605	18.700	19.130	17.951	17.430	17.045	16.475
Open registry ¹	NA	NA	3.195	3.454	2.648	2.195	2.461	1.753
total			21.895	22.584	20.599	19.625	19.506	18.228
Ireland: Own fleet	235	280	270	240	248	340	275	266
Open registry ¹	NA	NA						
total								
Netherlands: Own fleet	7.415	8.630	7.925	8.405	9.000	8.600	8.430	7.480
Open registry ¹	NA	NA	1.201	2.453	2.794	2.483	2.199	1.604
total			9.126	10.858	11.794	11.083	10.629	9.084
United Kingdom: Own fleet	38.700	53.420	50.460	45.080	43.815	41.275	35.990	29.878
Open registry ¹	NA	NA	2.284	3.867	3.481	3.140	3.365	3.998
total			52.744	48.947	47.296	44.415	39.355	33.876
Community: Own fleet	102.000	156.430	182.725	182.440	183.690	184.610	174.785	159.319
Open registry ¹	NA	NA	52.807	48.289	46.090	37.428	37.596	46.687
total			235.532	230.729	229.780	222.038	212.381	206.006
World fleet – total	388.840	553.380	670.420	681.490	682.770	697.190	701.980	694.500
of which: open registry	70.330	161.900	196.829	213.718	217.496	197.697	197.253	202.047
of which: open registry: %	18.1%	29.3%	29.4%	31.4%	31.9%	28.4%	28.1%	29.1%
of which: open registry: EEC owned	NA	NA	7.9%	7.1%	6.7%	5.4%	5.3%	6.7%

Sources: Lloyd's Register of Shipping, Unctad Review of Maritime Transport.

¹ Open registry figures are not available regarding 'countries, entities or territories beneficially owning less than 0.5%', or as in the case of France in 1978, less than 1 million DWT. NA = Not available.

Commission proposals

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

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 UN 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/EEC¹ 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/EEC² provides, *inter alia*, for an attempt at concertation by Member States of any countermeasures 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 countermeasures 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 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

¹ OJ L 239, 17.9.1977.

² OJ L 332, 28.11.1983.

– 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 which an international agreement as referred to in Article 1 has been concluded;

(b) countermeasures, 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 countermeasures. Such countermeasures 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 countermeasures, referred to in Article 3, the Council shall specify, as appropriate, the following:

(a) the developments which have caused countermeasures to be taken;

(b) the liner trade or range of ports to which the countermeasures 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 countermeasures.

2. Where the countermeasures envisaged by paragraph 1 are not provided for by the national legislation of a Member State, such countermeasures 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 countermeasures unilaterally or as a group, if the situation so requires.

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

3. National countermeasures 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 countermeasures 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 countermeasures 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 maritime transport

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 954/79¹ 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 all 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 shipowners 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

¹ OJ L 121, 17.5.1979.

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;

Whereas provision should be made for reasonable transitional periods in accordance with the sensitivity of the type of transport concerned,

Has Adopted this Regulation:

Article 1

1. Restrictions on freedom to provide sea transport services within the Community shall be abolished by 1 July 1986 in respect of nationals of Member States who are established in a State of the Community other than that of the person for whom the services are intended.

2. In the case, however, of the sea transport services specified in Article 3(1) restrictions existing before 1 July 1986 may be retained, but shall be progressively abolished during a period which shall end five years after the adoption of this Regulation and in the case of cabotage 10 years after the adoption thereof.

In the case of cabotage between specific regions, however, the 10 year period shall not apply where its application would cause particular difficulties. In such cases, the Member States concerned shall inform the Commission, which shall before the end of the 10th year after the adoption of this Regulation present specific proposals which take account of these difficulties, for the progressive abolition of the relevant restrictions.

Article 2

For the purposes of this Regulation:

– freedom to provide sea transport services shall

include the provision of sea transport services between a Member State and a third country;

– services shall be considered as 'sea transport services' where they are normally provided for remuneration and shall in particular include:

(a) the carriage of passengers or goods by sea between ports in any one Member State, including overseas territories of that State (cabotage);

(b) the carriage of passengers or goods by sea between any port in a Member State and installations or structures on the continental shelf of that Member State (offshore supply services);

(c) the carriage of passengers or goods by sea between any port in a Member State and any port in another Member State (intra-Community shipping services);

(d) the carriage of passengers or goods by sea by a shipping company established in a Member State between the ports of another Member State and ports in a third country (cross-trading).

Article 3

1. The sea transport services referred to in Article 1(2) are:

– cabotage;

– offshore supply services;

– cross-trading where the third country concerned is a State-trading country listed in the annex or one with which the Member State concerned has concluded a bilateral agreement which limits the freedom to provide sea transport services;

– the carriage of certain goods wholly or partly reserved to ships flying the national flag.

2. Member States which make use of the possibility provided for in Article 1(2) shall notify the relevant provisions to the Commission, which shall publish appropriate details in the *Official Journal of the European Communities*.

Article 4

Notwithstanding the application of the principle of freedom to provide services to sea transport services, a Member State may where necessary in order to maintain sufficient sea transport services in the case of cabotage between the mainland and its

islands and between its islands impose public service obligations as a condition for the right to provide the service.

Article 5

The Council may, acting unanimously on a proposal from the Commission, extend the provisions of this Regulation to nationals of a third country who provide sea transport services and are established in the Community.

Article 6

Without prejudice to the provisions of the Treaty relating to the right of establishment, the person providing a sea transport service may, in order to do so, temporarily pursue his activity in the State where the service is provided, under the same conditions as are imposed by that State on its own nationals.

Article 7

During the transitional period provided for in Article 1(2), a Member State may not, without the unanimous approval of the Council, make the various provisions governing the subject when this Regulation enters into force less favourable in their direct or indirect effect on shipping companies established in other Member States as compared

with shipping companies which are established in that State.

Article 8

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of Article 1(1).

Article 9

The provisions of Articles 55 to 58 of the Treaty shall apply to the matters covered by this Regulation.

Article 10

Member States shall, before adopting laws, regulations or administrative provisions in implementation of Article 1(2) and Article 4 consult the Commission and send to the latter any such measures so adopted.

Article 11

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.

Liste over de i artikel 3 omhandlede statshandelstlande

Liste der Staatshandelsländer nach Artikel 3

Πίνακας των χωρών κρατικού εμπορίου που αναφέρονται στο άρθρο 3

List of State trading countries referred to in Article 3

Liste des pays à commerce d'État visés à l'article 3

Lista dei paesi a commercio di Stato di cui all'articolo 3

Lijst der in artikel 3 bedoelde landen met Staatshandel

Bulgarien	Bulgarien	Βουλγαρία	Bulgaria	Bulgarie	Bulgaria	Bulgarije
Polen	Polen	Πολωνία	Poland	Pologne	Polonia	Polen
Romänien	Rumänien	Ρουμανία	Romania	Roumanie	Romania	Roemenië
Tjekkosllovakien	Tschechoslowakei	Τσεχοσλοβακία	Czechoslovakia	Tchécoslovaquie	Cecoslovacchia	Tsjechoslovakije
USSR	UdSSR	ΕΣΣΔ	USSR	Union soviétique	URSS	USSR
Tyske demokratiske Republik	Deutsche Demokratische Republik	Λαϊκή Δημοκρατία της Γερμανίας	German Democratic Republic	République démocratique allemande	Repubblica tedesca	Duitse Democratische Republiek
Folkerepublikken Kina	Volksrepublik China	Λαϊκή Δημοκρατία της Κίνας	People's Republic of China	République populaire de Chine	Repubblica popolare cinese	Volksrepubliek China
Vietnam	Vietnam	Βιετναμ	Vietnam	Viêt-nam	Vietnam	Vietnam

Draft Council Decision amending Decision 77/587/EEC setting up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organizations

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 Decision 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 seeking to develop their fleets resort to restricting access to cargo, *inter alia* by means of bilateral agreements;

Whereas a number of bilateral agreements containing provisions restricting access to cargo have been concluded in recent years or are under negotiation between Member States and third countries;

Whereas such agreements should respect the principles and objectives of the Treaty and measures adopted in pursuance of Community maritime transport policy and safeguard to the maximum extent possible the continuing application of commercial principles in shipping;

Whereas Council Decision 77/587/EEC¹ sets up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organizations;

Whereas examination and consultation in respect of bilateral or multilateral agreements containing provisions restricting access to cargo is required prior to their conclusion,

Has Adopted this Decision:

Article 1

Decision 77/587/EEC is hereby amended as follows:

1. In article 1:

– the following point (c) is added to the first paragraph:

‘(c) on any provisions of bilateral or multilateral agreements to be negotiated between Member States and third countries, which might affect the freedom of shipping companies, established in a Member State to provide sea transport services’.

– the second paragraph is replaced by the following:

‘The consultations under (a) and (b) shall be held at the request of a Member State or of the Commission, within one month of the request or at the earliest opportunity in urgent cases. The consultations under (c) shall be held within the same time limits following a communication from the Member State concerned or at the request of any other Member State or of the Commission’.

2. The following Article 3a is inserted:

Article 3a

1. For the purposes of the consultations referred to in Article 1 under (c), each Member State intending to negotiate a bilateral or multilateral agreement with a third country or group of third countries shall inform, as early as possible, the other Member States and the Commission of the relevant provisions.

2. The main aim of the consultations referred to in paragraph 1 shall be to examine whether the proposed agreements respect the principles and objectives of the Treaty and measures adopted in pursuance of Community maritime policy and safeguard to the maximum extent possible the continuing application of commercial principles in shipping.’

¹ OJ L 239, 17.9.1977.

3. Article 5 is replaced by the following:

'Article 5

Before 1 January 1989 the Council shall consider a report to be submitted by the Commission on the working of the consultation procedure and shall take action on any proposals for amending or supplementing it which experience shows to be necessary.'

Article 2

This Decision is addressed to the Member States.

Draft Council Directive concerning a common interpretation of the concept of 'national shipping line'

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 Directive 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 Council Regulation (EEC) No 954/79¹ provides, *inter alia*, for the principle of equal treatment to apply in accordance with the right of establishment whenever shipping companies apply for membership of a liner conference;

Whereas a shipping company can only be admitted as a national shipping line if it has successfully negotiated such admission on that basis with shipping companies of the same nationality which are already members of the conference or which also apply for membership;

Whereas the Member State concerned may settle the dispute if these negotiations do not lead to an agreement;

Whereas in either case the successful shipping company will meet one of the criteria for the definition of a national shipping line according to the United Nations Convention on a Code of Conduct for Liner Conferences, in that it will be recognized under the law of the country, while the criteria of management head office and effective control are widened through the reservation made by Member States upon ratification of the Convention in order to set their obligations under the Treaty;

Whereas most Member States wish to expand the criteria for recognition under national law, with a view to avoiding as far as possible the need to settle a dispute as foreseen in Article 2 (2) of Regulation (EEC) No 954/79 in deciding which shipping company established in the Member State concerned could be admitted to the conference as a 'national shipping line';

Whereas when Regulation (EEC) No 954/79 was adopted, it was found necessary to arrive at a joint interpretation of the concept 'national shipping line', in order to preserve the principle of equal treatment and to meet the obligations towards other OECD countries,

Has Adopted this Directive:

Article 1

1. Member States shall take the necessary measures so that a shipping line may participate in a conference as a 'national shipping line' within the meaning of the United Nations Code of Conduct for Liner Conferences in accordance with the procedure laid down by Article 2 of Regulation (EEC) No 954/79 only where it meets the criteria set out in paragraph 2.

2. The criteria referred to in paragraph 1 are:

(a) the management head office must be situated and the effective control exercised in a Member State;

(b) the executive board must consist of persons the majority of whom are nationals of Member States;

¹ OJ L 121, 17.5.1979.

(c) the company shares must effectively be controlled through a majority shareholding by nationals of Member States who have their domicile or registered office in one of the Member States.

3. The criteria under paragraph 2 (b) and (c) shall be extended by a Member State by adding 'and nationals of other OECD countries' to 'nationals of Member States', provided that the other OECD countries concerned grant reciprocal treatment in their national law to shipping lines of the Community.

4. The criteria under paragraph 2 (b) and (c) may be further extended by a Member State by adding 'and nationals of other States' to 'nationals of Member States', provided that the other States concerned grant reciprocal treatment in their national law to shipping lines of that Member State.

5. For the purposes of paragraph 3, reciprocal treatment by another OECD country shall be deemed to exist if the Commission certifies that that country does not impose restrictions on the establishment of shipping lines from Member States in that country with a view to qualifying in that country as a national shipping line for the purposes of the United Nations Convention on a Code of Conduct for Liner Conferences or to having free access to liner cargoes in the trades to and from that country.

Article 2

1. The criterion of ships flying the flag of a Member State may only be added to the three criteria referred to in Article 1 if the Member State concerned:

— allows shipping lines of other Member States which take advantage of the right of establishment or, subject to reciprocal treatment, shipping lines of other OECD countries which are established in the Member State concerned, to enter ships in the national register, or

— otherwise secures equal treatment, including recognition as a national shipping line, for shipping lines of other Member States, which take advantage of the right of establishment or, subject to reciprocal treatment, shipping lines of other OECD countries which are established in the Member State concerned.

2. The Commission shall certify whether reciprocal treatment exists for the purposes of this article.

Article 3

Member States shall, after consulting the Commission, adopt the laws, regulations and administrative provisions necessary to comply with this Directive not later than 1 July 1986. They shall inform the Commission and the other Member States of the measures taken.

Article 4

This Directive is addressed to the Member States.

Amendments to the proposal for a Council Regulation (EEC) laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

The following articles are substituted for Articles 1-8 in the text originally transmitted on 16 October 1981¹

Article 1

Subject matter and scope of the Regulation

1. This Regulation lays down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport services.

2. It shall apply only to international maritime transport services from or to one or more Community ports, other than tramp vessel services.

3. For the purposes of this Regulation:

(a) 'tramp vessel services' means the transport of goods in bulk or in break-bulk in a vessel chartered to one or more shippers on the basis of a charter-party or a booking note, for non-regularly scheduled and/or non advertised sailings;

¹ OJ C 282, 5.11.1981.

(b) 'liner conference' means a group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which, within the framework of an agreement or arrangement of whatever nature, jointly fix uniform or common freight rates and any other conditions for those services;

(c) 'transport user' means an undertaking or association of undertakings (shippers, consignees, forwarders, etc.) which has entered into, or which demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods.

Article 2

Technical agreements

1. The prohibition laid down in article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices whose object and effect is to achieve technical improvements or cooperation by means of:

(a) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations;

(b) the exchange or pooling for the purpose of operating transport services, of vessels, space on vessels or slots and other means of transport, staff, equipment or fixed installations;

(c) the organization and execution of successive or supplementary maritime transport operations and the establishment and application of inclusive rates and conditions for such operations;

(d) the cooperation of transport timetables for connecting routes;

(e) the consolidation of individual consignments;

(f) the establishment or application of uniform rules concerning the structure and the conditions governing the application of transport tariffs.

2. The Commission shall, if necessary, submit to the Council proposals for the amendment of the list contained in paragraph 1.

Article 3

Exemption for agreements between carriers concerning the operation of scheduled maritime transport services

Agreements, decisions and concerted practices of all or part of the members of a conference or of several conferences are hereby exempted from the prohibition in Article 85(1) of the Treaty, subject to the condition imposed by Article 4, when they have one or more of the following objects:

(a) the fixing of rates and conditions of carriage, and, as the case may be;

(b) the coordination of shipping timetables, sailing dates or dates of calls;

(c) the determination of the frequency of sailings or calls;

(d) the coordination or allocation of sailings or calls among members of the conference;

(e) the regulation of the carrying capacity offered by each member;

(f) the allocation of cargo or revenue among members.

Article 4

Condition attaching to exemption

The exemption provided for in Article 3 shall be granted subject to the condition that a conference shall not within the common market cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and *in the area covered by the conference* rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, if such an application cannot be justified economically.

Article 5

Obligations attaching to exemption

The following obligations shall be attached to the exemption provided for in Article 3:

1. Consultations

There shall be consultations for the purpose of seeking solutions on issues of general principle between transport users on the one hand and conferences on the other concerning the rates, conditions and quality of scheduled maritime transport services.

These consultations shall take place whenever requested by any of the abovementioned parties.

2. Fidelity arrangements

Where a conference offers transport users the opportunity of entering into loyalty agreements entitling them to rebate or reduced rates of freight or as the case may be to commission:

(a) Each conference shall offer transport users a system of immediate rebates or the choice between such a system and a system of deferred rebates.

– Under the system of immediate rebates each of the parties shall be entitled to terminate the loyalty agreement at any time without penalty and subject to a period of notice of not more than six months.

– Under the system of deferred rebates neither the loyalty period on the basis of which the rebate is calculated nor the subsequent loyalty period required before payment of the rebate may exceed six months.

(b) In no event shall the spread between immediate rebates and deferred rebates be more than 3% of the freight rate.

(c) A conference may not refuse to enter into a new loyalty agreement on the ground that a transport user has previously terminated such an agreement, unless the transport user concerned has not paid penalties due to breach of previous agreement.

(d) The loyalty agreement shall apply only to shipments of goods covered by the conference tariff in respect of which the transport user is entitled or able to determine the carrier under the contract for the purchase, sale or transfer of the goods.

(e) A conference shall not prohibit the transports users from using modes of transport other than sea transport nor may it deprive them of the right to choose the port of loading or of discharge and the

carrier from among the ports served by it and the operators, who are members of the conference.

(f) The conference shall, after having consulted the transport users concerned, set out:

(i) a list of cargo and any portion of cargo agreed with transport users which is specifically excluded from the scope of the loyalty arrangement;

(ii) a list of circumstances in which transport users are released from their obligation of loyalty; these shall include:

– circumstances in which consignment are dispatched from or to a port in the area covered by the conference but not advertised and where the request for a waiver can be justified, and

– those in which waiting time at a port exceeds a period to be determined for each port and for each commodity or class of commodities following consultation of the transport users directly concerned with the proper servicing of the port.

The conference shall, however, be informed, in advance, by the transport user, within a specified period, of his intention to dispatch the consignment from a port *not advertised* by the conference or to make use of a non-conference vessel at a port served by the conference as soon as he has been able to establish from the published schedule of sailings that the maximum waiting period will be exceeded.

(g) The conference shall nevertheless be entitled to impose penalties on a transport user in respect of any improper use made of the provisions of (d) to (f) above with a view to evading his obligation of loyalty. *The penalties shall not exceed two thirds of the freight charge on the particular shipment, computed at the rate provided under the agreement.*

3. Services not covered by the freight charges

Transport users shall be entitled to approach the undertakings of their choice in respect of inland transport operations and quayside services not covered by the freight charge or charges on which the shipping line and the transport user have agreed.

4. Availability of tariffs

Tariffs, related conditions, regulations and any amendments thereto shall at all times be made

available on request to transport users at reasonable cost, or they shall be available for examination at offices of shipping lines and their agents. They shall set out all the conditions concerning loading and discharge, the exact extent of the services covered by the freight charge in proportion to the sea transport and the land transport or by any other charge levied by the shipping line and customary practice in such matters.

5. *Notification of awards and recommendations*

Awards given at arbitration and recommendations made by conciliators that are accepted by the parties shall be notified forthwith to the Commission when they resolve disputes relating to the practices of conferences referred to in Article 4 and in points 2 and 3 above.

Article 6

Exemption for agreements between transport users and conferences concerning the use of scheduled maritime transport services

Agreements, decisions and concerted practices between transport users on the one hand and conferences on the other concerning rates, conditions and quality of liner services are hereby exempted from the prohibition laid down in Article 85 (1) of the Treaty.

Article 7

Monitoring of exempted agreements

1. *Breach of an obligation*

Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Section II:

- address recommendations to the persons concerned;
- in the event of failure by such persons to observe those recommendations, and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or

requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption according to Article 10(4) or withdraws the benefit of the block exemption which they enjoyed.

2. *Effects incompatible with Article 85(3)*

(a) Where owing to special circumstances as described below, agreements, decisions and concerted practices which qualify for the exemption provided for in Articles 3 and 6 have nevertheless effects which are incompatible with the conditions laid down in Article 85(3) of the Treaty, the Commission, on receipt of a complaint or on its own initiative, under the conditions laid down in Section II and depending upon the gravity of the situation, takes the measures described in (c) below.

(b) Special circumstances are created by:

(i) acts of third countries which

- prevent the operation of outsiders in a trade,
- impose unfair tariffs on conference members,

– impose arrangements which otherwise impede technical or economic progress (cargo sharing, limitations on types of ships);

(ii) acts of conferences or a change of market conditions in a given trade which result in the absence of actual and potential competition;

(iii) acts of conferences which may prevent technical or economic progress or consumer participation in the benefits.

(c) (i) If, as a result of special circumstances as set out in (b), there are effects other than those foreseen in (ii) the Commission may take any of the measures described in paragraph 1.

(ii) If, however, the special circumstances result in the elimination of competition contrary to Article 85(3) (b) of the Treaty the Commission shall withdraw the benefit of the block exemption and shall, at the same time, rule on whether and, if so, under what additional conditions and obligations an individual exemption should be granted to the relevant Conference agreement.

If competition is or may be eliminated as a result of action by a third country, the Commission shall

enter into consultations with the competent authorities of the third country concerned, followed if necessary by negotiations under directives to be given by the Council, in order to remedy the situation.

Article 8

Conflicts of international law

1. Where the application of this Regulation to certain restrictive practices or clauses is liable to enter into conflict with the provisions laid down by law, regulation or administrative action of certain third countries which would compromise important Community trading and shipping interests, the Commission shall, at the earliest opportunity, undertake with the competent authorities of the third countries concerned, consultations aimed at reconciling as far as possible the abovementioned interests with the respect of Community law.

2. Where the number or the nature of such consultations give rise to the need for the Commission to negotiate an arrangement with the competent authorities of the third country concerned as respects the exercise of their powers, the Commission shall take the appropriate measures.

3. Where it appears that an amendment to the powers of the competent authorities of the third country or to this Regulation is desirable, the Commission shall ask the Council for authority to negotiate in accordance with directives which it shall establish. Amendments to this Regulation shall be confined to the conditions and obligations under which an exemption is given to liner conferences and shall ensure that a proper balance is maintained between the shipping and shipowning interests of the Community.

Draft Council Regulation on unfair pricing practices in maritime transport

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 there is reason to believe, *inter alia* on the basis of the information system referred to in Council Decision 78/774/EEC,¹ that the competitive participation of the fleets of Member States in international liner shipping is adversely affected by certain unfair practices of shipping lines of third countries;

Whereas such practices consist of continuous charging of freight rates for the transport of certain selected commodities which are lower than the lowest freight charged for the same commodities by an established and representative non-conference shipowner;

Whereas such pricing practices are made possible by non-commercial advantages enjoyed by the lines concerned, either because they are government-owned or controlled, or because they have preferential access to cargo through national legislation or because they operate ships flying the flag of countries which have not ratified and do not implement certain international safety conventions;

Whereas the Community should be able to take redressive action against such pricing practices;

Whereas there are no internationally agreed rules as to what constitutes an unfair price in the maritime transport field;

Whereas appropriate factors relevant for the determination of injury should be set out;

Whereas it is necessary to lay down the procedures for anyone acting on behalf of Community shipowners who consider themselves injured or threatened by unfair pricing practices to lodge a complaint; whereas it seems appropriate to make it clear that in the case of withdrawal of a complaint, proceedings may, but need not necessarily, be terminated.

Whereas there should be cooperation between the Member States and the Commission both as re-

¹ OJ L 258, 21.9.1978.

gards information about the existence of unfair pricing practices and injury resulting therefrom, and as regards the subsequent examination of the matter at Community level; whereas, to this end, consultations should take place within an advisory committee;

Whereas it is appropriate to lay down clearly the rules of procedure to be followed during the investigation, in particular the rights and obligations of the Community authorities and the parties involved, and the conditions under which interested parties may have access to information and may ask to be informed of the essential facts and considerations on the basis of which it is intended to recommend definitive measures;

Whereas it is necessary that the Community's decision-making process permit rapid and efficient action, in particular through measures taken by the Commission, as for instance the imposition of provisional duties;

Whereas, in order to discourage unfair pricing practices, but without preventing, restricting or distorting price competition by non-conference lines, it is appropriate to provide, in cases where the facts as finally established show that there is an unfair pricing practice and injury, for the possibility of definitive collection of provisional duties, even if no decision were made on the imposition of a definitive redressive duty on particular grounds;

Whereas it is essential, in order to ensure that redressive duties are levied in a correct and uniform manner, that common rules for the application of such duties be laid down; whereas, by reason of the nature of the said duties, such rules may differ from the rules for the levying of normal import duties;

Whereas open and fair procedures should be provided for the review of measures taken and for the investigation to be reopened when the circumstances so require;

Whereas appropriate procedures should be established for examining applications for refunds of redressive duties;

Article 1

Scope

This Regulation lays down the procedure to be followed in order to respond to unfair pricing practices by certain shipowners engaged in cargo liner shipping, which cause serious disruption of the freight pattern on a particular route to or from the Community or which otherwise cause injury to Community shipowners.

Article 2

Principle

A redressive duty may be applied in accordance with this Regulation where foreign shipowners engage in unfair pricing practices which cause injury to Community shipowners.

Article 3

Definitions

1. For the purposes of this Regulation:

(a) 'foreign shipowners' means cargo liner shipping companies established in a third country, which enjoy the advantages of being

– owned or controlled directly or indirectly by any State which is not a Member of the Community, and/or

– more favourably placed than Community shipowners as to the access to cargo in ocean trades through national legislation, and/or

– the operators of ships flying the flag of countries which have not ratified and do not implement the international conventions of the IMO and ILO referred to in Annex;

(b) 'unfair pricing practices' means the continuous charging of a freight rate on a particular shipping route to or from the Community for certain selected commodities which is lower than the lowest freight rate charged during at least one year for the same commodity or commodities on the same shipping route by an established and representative non-conference shipowner not enjoying the above advantages;

Has Adopted this Regulation,

(c) 'an established and representative non-conference shipowner' means a cargo liner shipping company which operates and has operated during a significant period of time regular services independently from the conference and which has committed a notable volume of tonnage to the trade in question;

(d) 'injury' means any material injury caused or threatened to Community shipowners;

(e) 'Community shipowners' means all cargo liner shipping companies which have their management head office and their effective control in a Member State.

2. When there is no established and representative non-conference shipowner active on the shipping route in question, comparison may be made with the lowest freight rate regularly charged for the same or similar commodities on a similar route by an established and representative non-conference shipowner.

3. Where the freight rates vary, weighted averages may be established.

Article 4

Examination of injury

1. An examination of injury shall involve in particular the following factors:

(a) the freight rate offered by the Community shipowners' competitors, in particular in order to determine whether there has been, on the shipping route in question, significant underbidding of the freight rates of Community shipowners, taking into account the level of service offered by all carriers concerned;

(b) the share reserved under national legislation to the Community shipowners' competitors and the possibility of waivers to be granted to associated lines or other carriers or of chartering-in ships under other flags, in particular to determine whether there has been, on the shipping route in question, a significant decrease of the share of Community shipowners;

(c) consequent impact on Community shipowners and as indicated by trends in certain economic factors such as:

- sailings,
- utilization of capacity,
- cargo bookings,
- market share,
- freight rates (that is, depression of freight rates or prevention of freight rate increases which would normally have occurred),
- profits,
- return on capital,
- investment,
- employment.

2. Where a threat of injury is alleged, the Commission shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard, account may also be taken of factors such as:

(a) the increase of tonnage deployed on the shipping route where the competition with Community shipowners is taking place;

(b) capacity in the country of the foreign shipowners, which is already in existence or will be operational in the foreseeable future, and the likelihood that the deployment of tonnage resulting from that capacity will be on the shipping route referred to at (a).

3. Injury caused by other factors which, either individually or in combination, are also adversely affecting Community shipowners, must not be attributed to the practices under consideration.

Article 5

Complaint

1. Any natural or legal person, or any association not having legal personality, acting on behalf of Community shipowners which consider themselves injured or threatened by unfair pricing practices may lodge a written complaint.

2. The complaint shall contain sufficient evidence of the existence of the unfair pricing practice and injury resulting therefrom.

3. The complaint may be submitted to the Commission, or a Member State, which shall forward it to the Commission. The Commission shall send Member States a copy of any complaint it receives.

4. The complaint may be withdrawn, in which case proceedings may be terminated unless such

termination would not be in the interest of the Community.

5. Where it becomes apparent after consultation that the complaint does not provide sufficient evidence to justify initiating an investigation, then the complainant shall be so informed.

6. Where, in the absence of any complaint, a Member State is in possession of sufficient evidence both of unfair pricing practices and of injury resulting therefrom for Community shipowners, it shall immediately communicate such evidence to the Commission.

Article 6

Consultations

1. Any consultations provided for in this Regulation shall take place within an advisory committee, which shall consist of representatives of each Member State, with a representative of the Commission as chairman. Consultations shall be held immediately on request by a Member State or on the initiative of the Commission.

2. The committee shall meet when convened by its chairman. He shall provide the Member States, as promptly as possible, with all relevant information.

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.

4. Consultation shall in particular cover:

(a) the existence of unfair pricing practices and the amount thereof;

(b) the existence and extent of injury;

(c) the causal link between the unfair pricing practices and injury;

(d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by unfair pricing practices and the ways and means for putting such measures into effect.

Article 7

Initiation and subsequent investigation

1. Where, after consultation, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Commission shall immediately:

(a) announce the initiation of a proceeding in the *Official Journal of the European Communities*; such announcements shall indicate the foreign shipowner concerned and his country of origin, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;

(b) so advise the shipowners, shippers and freight forwarders known to the Commission to be concerned and the complainants;

(c) commence the investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both unfair pricing practices and injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of unfair pricing practices shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

2. (a) Where appropriate the Commission shall seek all the information it deems necessary and attempt to check this information with the shipowners, agents, shippers, freight forwarders, conferences, associations and organizations, provided that the undertakings or organizations concerned give their consent.

(b) Where necessary the Commission shall, after consultation, carry out investigations in third countries, provided that the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States who so request.

3. (a) The Commission may request Member States

— to supply information,

– to carry out all necessary checks and inspections, particularly amongst shippers, freight forwarders, Community shipowners and their agents,

– to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection.

(b) Member States shall take whatever steps are necessary in order to give effect to requests from the Commission. They shall send to the Commission the information requested together with the results of all inspections, checks or investigations carried out.

(c) Where this information is of general interest or where its transmission has been requested by a Member State, the Commission shall forward it to the Member States, provided it is not confidential, in which case a non-confidential summary shall be forwarded.

(d) Officials of the Commission shall be authorized, if the Commission or a Member State so requests, to assist the officials of Member States in carrying out their duties.

4. (a) The complainant and the shippers and shipowners known to be concerned may inspect all information made available to the Commission by any party to an investigation as distinct from internal documents prepared by the authorities of the Community or its Member States provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 8 and that it is used by the Commission in the investigation. To this end, they shall address a written request to the Commission, including the information required.

(b) Shipowners subject to investigation and the complainant may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive duties or the definitive collection of amounts secured by way of a provisional duty.

(c) (i) Requests for information pursuant to (b) shall:

– be addressed to the Commission in writing;

– specify the particular issues on which information is sought;

– be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty.

(ii) The information may be given either orally or in writing, as considered appropriate by the Commission. It shall not prejudice any subsequent decision which may be taken by the Commission or the Council. Confidential information shall be treated in accordance with Article 8.

(iii) Information shall normally be given no later than 15 days prior to the submission by the Commission of any proposal for final action pursuant to Article 12. Representations made after the information is given shall be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

5. The Commission may hear the interested parties. It shall so hear them if they have, within the period prescribed in the notice published in the *Official Journal of the European Communities*, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard orally.

6. Furthermore, the Commission shall, on request, give the parties directly concerned an opportunity to meet, so that opposing views may be presented and any argument put forward by way of rebuttal. In providing this opportunity the Commission shall take account of the need to preserve confidentiality and of the convenience of the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case.

7. (a) This article shall not preclude the Community authorities from reaching preliminary determinations or from applying provisional measures expeditiously.

(b) In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period, or significantly impedes the investigation, preliminary or final findings, affirmative or negative, may be made on the basis of the facts available.

8. Proceedings on unfair pricing practices shall not constitute a bar to customs clearance of the goods to which the freight rates concerned apply.

9. (a) An investigation shall be concluded either by its termination or by definitive action. Conclusion should normally take place within one year of the initiation of the proceeding.

(b) A proceeding shall be concluded either by the termination of the investigation without the imposition of duties and without the acceptance of undertakings or by the expiry or repeal of such duties or by the termination of undertakings in accordance with Articles 14 or 15.

Article 8

Confidentiality

1. Information received in pursuance of this Regulation shall be used only for the purposes for which it was requested.

2. (a) Neither the Council, nor the Commission, nor Member States, nor the officials of any of these, shall reveal any information received in pursuance of this Regulation for which confidential treatment has been requested by its supplier, without specific permission from the supplier.

(b) Each request for confidential treatment shall indicate why the information is confidential and shall be accompanied by a non-confidential summary of the information, or a statement of the reasons why the information is not susceptible of such summary.

3. Information will ordinarily be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

4. However, if it appears that a request for confidentiality is not warranted and if the supplier is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the information in question may be disregarded.

The information may also be disregarded where such request is warranted and where the supplier is unwilling to submit a non-confidential summary,

provided that the information is susceptible of such summary.

5. This article shall not preclude the disclosure of general information by the Community authorities and in particular of the reasons on which decisions taken in pursuance of this Regulation are based, or disclosure of the evidence relied on by the Community authorities in so far as necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

Article 9

Termination of proceedings where protective measures are unnecessary

1. If it becomes apparent after consultation that protective measures are unnecessary, then, where no objection is raised within the advisory committee referred to in Article 6 (1), the proceeding shall be terminated. In all other cases the Commission shall submit to the Council forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

2. The Commission shall inform the parties known to be concerned and shall announce the termination in the *Official Journal of the European Communities* setting forth its basic conclusions and a summary of the reasons therefor.

Article 10

Undertakings

1. Where, during the course of investigation, undertakings are offered which the Commission, after consultation, considers acceptable, the investigation may be terminated without the imposition of provisional or definitive duties.

Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 7 (4) (c) (iii). The termination shall be decided in conformity with the procedure laid down in Article 9 (1) and information shall be given and notice published in accordance with

Article 9 (2). Such termination does not preclude the definitive collection of amounts secured by way of provisional duties pursuant to Article 12 (2).

2. The undertakings referred to under paragraph 1 are those under which rates are revised to an extent such that the Commission is satisfied that the unfair pricing practice, or the injurious effects thereof, are eliminated.

3. Undertakings may be suggested by the Commission, but the fact that such undertakings are not offered or an invitation to do so is not accepted shall not prejudice consideration of the case. However, the continuation of unfair pricing practices may be taken as evidence that a threat of injury is more likely to be realized.

4. If the undertakings are accepted, the investigation of injury shall nevertheless be completed if the Commission, after consultation, so decides or if request is made by the Community shipowners concerned. In such a case, if the Commission, after consultation, makes a determination of no injury, the undertaking shall automatically lapse. However, where a determination of no threat of injury is due mainly to the existence of an undertaking, the Commission may require that the undertaking be maintained.

5. The Commission may require any party from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as violation of the undertaking.

6. Where an undertaking has been withdrawn or where the Commission has reason to believe that it has been violated and where Community interests call for such intervention, it may, after consultations and after having offered the shipowner concerned an opportunity to comment, apply provisional duties forthwith on the basis of the facts established before the acceptance of the undertaking.

Article 11

Provisional duties

1. Where preliminary examination shows that an unfair pricing practice exists and that there is

sufficient evidence of injury caused thereby and the interests of the Community call for intervention to prevent injury being caused during the proceeding, the Commission, acting at the request of a Member State or on its own initiative, shall impose a provisional duty on the foreign shipowners concerned, the definitive collection of which shall be determined by the subsequent decision of the Council under Article 12 (2).

2. The Commission shall take such provisional action after consultation or, in cases of extreme urgency, after informing the Member States. In this latter case, consultations shall take place 10 days at the latest after notification to the Member States of the action taken by the Commission.

3. Where a Member State requests immediate intervention by the Commission, the Commission shall, within a maximum of five working days of receipt of the request, decide whether a provisional duty should be imposed.

4. The Commission shall forthwith inform the Council and the Member States of any decision taken under this article. The Council, acting by a qualified majority, may decide differently. A decision by the Commission not to impose a provisional duty shall not preclude the imposition of such duty at a later date, either at the request of a Member State, if new factors arise, or on the initiative of the Commission.

5. Provisional duties shall have a maximum period of validity of four months. However, where the Community shipowners concerned so request or, pursuant to a notice of intention from the Commission, do not object, provisional duties may be extended for a further period of two months.

6. Any proposal for definitive action, or for extension of provisional duties, shall be submitted to the Council by the Commission not later than one month before expiry of the period of validity of provisional duties. The Council shall act by a qualified majority.

Article 12

Definitive action

1. Where the facts as finally established show that there is an unfair pricing practice and injury caused

thereby and the interests of the Community call for Community intervention, a definitive duty shall be imposed by the Council, acting by qualified majority on a proposal submitted by the Commission after consultation.

2. (a) Where a provisional duty has been applied, the Council shall decide, irrespective of whether a definitive duty is to be imposed, what proportion of the provisional duty is to be definitively collected. The Council shall act by a qualified majority on a proposal from the Commission.

(b) The definitive collection of such amount shall not be decided upon unless the facts as finally established show that there has been an unfair pricing practice and injury.

Article 13

General provisions on duties

1. Redressive duties, whether provisional or definitive, shall be imposed on the foreign shipowners concerned by Regulation.

2. Such Regulation shall indicate in particular the amount and type of duty imposed, the commodity or commodities transported, the name and the country of origin of the foreign shipowner concerned and the reasons on which the Regulation is based.

3. The amount of the duties shall not exceed the difference between the rate charged and the lowest freight rate charged by the established and representative non-conference shipowner referred to in Article 3 provisionally estimated or finally established; it should be less if such lesser duty would be adequate to remove the injury.

4. (a) Duties shall be neither imposed nor increased with retroactive effect and shall apply to the transport of commodities which, after entry into force of such duties, are loaded or discharged in a Community port.

(b) However, where the Council determines that an undertaking has been violated, the definitive duties may be imposed on the transport of commodities which were loaded or discharged in a Community port not more than 90 days prior to the date of

application of provisional duties, except that in the case of violation of an undertaking such retroactive assessment shall not apply to the transport of commodities which were loaded or discharged in a Community port before the violation.

5. Duties shall be collected by Member States in the form, at the rate and according to the other criteria laid down when the duties were imposed, and independently of the customs duties, taxes and other charges normally imposed on imports of goods transported.

6. Permission to load or discharge cargo in a Community port may be made conditional upon the provision of security for the amount of a provisional or definitive duty.

7. After expiration of the period of validity of provisional duties, the security shall be released as promptly as possible to the extent that the Council has not decided to collect it definitively.

Article 14

Review

1. Regulations imposing redressive duties and decisions to accept undertakings shall be subject to review, in whole or in part, where warranted.

Such review may be held either at the request of a Member or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since the conclusion of the investigation. Such requests shall be addressed to the Commission which shall inform the Member States.

2. Where, after consultation, it becomes apparent that review is warranted, the investigation shall be reopened in accordance with Article 7, where the circumstances so require. Such reopening shall not *per se* affect the measures in operation.

3. Where warranted by the review, carried out either with or without reopening of the investigation, the measures shall be amended, repealed or annulled by the Community institution competent for their introduction.

Article 15

1. Subject to the provisions of paragraph 2, redressive duties and undertakings shall lapse after five years from the date on which they entered into force or were last modified or confirmed.

2. The Commission shall normally, after consultation and within six months prior to the end of the five-year period, publish in the *Official Journal of the European Communities* a notice of the impending expiry of the measure in question and inform Community shipowners known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with Article 7 (5).

Where an interested party shows that the expiry of the measure would again lead to injury or threat of injury, the Commission shall carry out a review of the measure. The measure shall remain in force pending the outcome of this review.

Where redressive duties and undertakings lapse under this article, the Commission shall publish a notice to that effect in the *Official Journal of the European Communities*.

Article 16

Refund

1. Where the shipowner concerned can show that the duty collected exceeds the difference between the rate charged and the lowest freight rate charged by the established and representative non-conference shipowner referred to in Article 3, consideration being given to any application of weighted averages, the excess amount shall be reimbursed.

2. In order to request the reimbursement referred to in paragraph 1, the foreign shipowner concerned may submit an application to the Commission. The application shall be submitted via the Member State in the port of which the commodities transported were loaded or discharged and within three months of the date on which the amount of the definitive duties to be levied was duly determined by the competent authorities or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty.

The Member State shall forward the application to the Commission as soon as possible, either with or without an opinion as to its merits.

The Commission shall inform the other Member States forthwith and give its opinion on the matter. If the Member States agree with the opinion given by the Commission or do not object to it within one month of being informed, the Commission may decide in accordance with the said opinion. In all other cases, the Commission shall, after consultation, decide whether and to what extent the application should be granted.

Article 17

Final provisions

This Regulation shall not preclude the application of any special rules laid down in agreements concluded between the Community and third countries.

Article 18

Entry into force

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.

LIST OF INTERNATIONAL CONVENTIONS
REFERRED TO IN ARTICLE 3
LISTE DES CONVENTIONS INTERNATIONALES
VISÉES A L'ARTICLE 3
LISTA DELLE CONVENZIONI INTERNAZIONALI
DI CUI ALL'ARTICOLO 3
LIJST DER IN ARTIKEL 3 BEDOELDE
INTERNATIONALE VERDRAGEN
LISTE DER INTERNATIONALEN ÜBEREINKOMMEN
NACH ARTIKEL 3
LISTE OVER DE I ARTIKEL 3 OMHANDLEDE
INTERNATIONALE KONVENTIONER
ΚΑΤΑΣΤΑΣΗ ΔΙΕΘΝΩΝ ΣΥΜΒΑΣΕΩΝ
ΠΟΥ ΑΝΑΦΕΡΟΝΤΑΙ ΣΤΟ ΑΡΘΡΟ 3

International Convention on Load Lines, 1966 ;
International Convention for the Safety of Life at
Sea, 1974 ;

Protocol of 1978 relating to the International Convention for the Safety of Life at Sea, 1974 ;
International Convention for the Prevention of Pollution from Ships, 1973 as modified by the Protocol of 1978 relating thereto ;
International Convention on Standards of Training, Certification and Watchkeeping for Seafarers, 1978 ;
Convention on the International Regulations for Preventing Collisions at Sea, 1972 ;
Merchant Shipping (Minimum Standards) Convention, 1976 (ILO Convention 147).

Convention internationale sur les lignes de charge, 1966 ;
Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer ;

Protocole de 1978 relatif à la Convention internationale de 1974 pour la sauvegarde de la vie humaine en mer ;
Convention internationale de 1973 pour la prévention de la pollution par les navires telle qu'amendée par le protocole de 1978 ;
Convention internationale de 1978 sur les normes de formation des gens de mer, de délivrance des brevets et de veille ;
Convention sur le règlement international de 1972 pour prévenir les abordages en mer ;
Convention concernant les normes minimales à observer sur les navires marchands, 1976 (Convention OIT-147).

Table 7: Status of ratification and entry into force of various relevant IMO and ILO instruments

Information as at 1.7.1984	Safety of life at sea (Solas 1974) RRD 1.1.1979	1978 Protocol to Solas 1974 RRD 30.6.1979	Prevention of Maritime Pollution (Marpol 1973/78) RRD 1.6.1980	ILO Convention No 147 on minimum standards on ships RRD 1.4.1979	Standards of Seafarers Training (STCW 1978) RRD 31.12.1880	Collision Regulation (Colreg 1972)	Loadlines (LL 1966)			
							1966	amen. 1971	amen. 1975	amen. 1979
Belgium	X	X	X	X	X	X	X	X	X	X
Denmark	X	X	X	X	X	X	X	X	X	X
France	X	X	X	X	X	X	X	X	X	X
Germany (FR)	X	X	X	X	X	X	X	X	X	X
Greece	X	X	X	X	X	X	X	X	O	X
Ireland	X	X	O	O	O	X	X	X	O	O
Italy	X	X	X	X	O	X	X	O	O	O
Netherlands	X	X	X	X	O	X	X	X	X	X
United Kingdom	X	X	X	X	X	X	X	X	X	X
Finland	X	X	X	X	X	X	X	O	X	O
Norway	X	X	X	X	X	X	X	X	X	X
Portugal	X	X	O	X	O	X	X	O	O	O
Spain	X	X	X	X	X	X	X	O	O	O
Sweden	X	X	X	X	X	X	X	X	X	X
Other contracting States	67	35	16	3	23	74	88	29	27	20
Total	81	49	28	16	33	88	102	39/64	36/64	29/64
Date of entry into force	25.5.1980	1.5.1981	2.10.1983	28.11.1981	28.4.1984	15.7.1977	21.7.1968			

RRD = recommended ratification date by Communities.

X = has ratified.

O = has not ratified.

European Communities — Commission

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After a number of policy proposals on specific shipping policy matters, the time has come to develop a more coherent overall framework for a Community shipping policy. That is the purpose of this paper.