

# COMMISSION OF THE EUROPEAN COMMUNITIES

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## REPORT FROM THE COMMISSION TO THE COUNCIL

Implementation of the four Regulations in the field  
of maritime transport adopted by the Council  
on 22 December 1986

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(Report of the Commission to the Council)

**1. Introduction**

1. On 22 December 1986 the Council of Ministers adopted four Regulations which completed the foundations for a European shipping policy, following the steps taken since 1977 (consultation procedure<sup>(1)</sup>, monitoring system<sup>(2)</sup>, safety at sea<sup>(3)</sup> and "Brussels package"<sup>(4)</sup>).

The four Regulations are:

- Council Regulation (EEC) No. 4055/86 of 22 December 1986 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries
- Council Regulation (EEC) No. 4056/86 of 22 December 1986 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport
- Council Regulation (EEC) No. 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport
- Council Regulation (EEC) No. 4058/86 of 22 December 1986 concerning coordinated action to safeguard free access to cargoes in ocean trades.

The Regulations have been published in the Official Journal of the European Communities, Series L, No 378 of 31 December 1986.

The first Regulation entered into force on the day following its publication; the other three entered into force on 1 July 1987.

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(1) Council Decision 77/587/EEC, OJ L 239, 17.9.1977

(2) Council Decision 78/774/EEC, OJ L 258, 21.9.1978

(3) Council Directives 79/115/EEC and 79/116/EEC, OJ L 33, 8.2.1979;  
Council Recommendation 79/114/EEC, OJ L 33, 8.2.1979

(4) Council Regulation (EEC) No 954/79, OJ L 121, 17.5.1979

2. The four Regulations had been proposed in the Communication of the Commission, presented to the Council on 19 March 1985 under the title: "Progress towards a common transport policy - maritime transport"<sup>(5)</sup>. This Communication was prepared against the background of an alarming decline of the Community fleet, not in proportion to the impact of the world economic crisis on all fleets.

According to the Communication not only the recession but also a loss of comparative advantage and the growth of protectionist policies and practices of other countries were the causes of the relative decline of the Community fleet. It is, in particular, the threat of these policies and practices which may be countered by Community action.

3. A basic principle guiding Community action in shipping is that of pursuing a non-protectionist policy, aiming at safeguarding to the maximum extent possible the continuing application of commercial principles in world shipping. Seen from this point of view, the four Regulations make up a coherent package of Community legislative instruments in pursuance of such a policy, while applying basic provisions of the Treaty of Rome relating to the freedom to provide services and the competition rules.
4. The Regulation applying the freedom to provide services to maritime transport between Member States and between Member States and third countries removes, over a transitional period, existing restrictions for Community shipowners - either by unilateral measures or through bilateral cargo-sharing agreements - and prohibits cargo-sharing arrangements in future agreements with third countries, unless under specified exceptional circumstances in the liner sector.
5. In face of restrictions on free access to cargoes by Community shipowners or ships registered in the Community that may be imposed by third countries, the Regulation concerning coordinated action to safeguard such access provides the Community with the possibility to take the measures required. Such counter-measures may be taken jointly with other OECD countries with which an agreement has been concluded.
6. The Regulation laying down rules for the application of Articles 85 and 86 of the Treaty to international maritime transport services from or to one or more Community ports aims to ensure that competition is not unduly distorted through restrictive practices, while avoiding excessive regulation of the market. The group exemption of conference agreements from the general prohibition of restrictive agreements under the Treaty, already foreshadowed by the "Brussels package" (Regulation 954/79) concerning the UN Liner Code, is granted subject to a number of conditions and obligations and on the assumption that conferences operate in open trades. In circumstances where competition in a given trade is precluded by preventing the operation of non-conference lines as a result of, inter alia, action by a third State, a fundamental requirement is no longer met and the group exemption shall be withdrawn.

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7. Competition has to be conducted on a fair basis by all parties, conferences and independent lines. The Regulation on unfair pricing practices provides for the imposition of a redressive duty on foreign shipowners enjoying non-commercial advantages granted by a third State and persistently charging freight rates which are too low to be sustainable by companies operating on a commercial basis.
8. As a whole, the package of Regulations embodies the determination of the Community to ensure free and non-discriminatory access to cargoes for Community shipowners and to secure fair competition on a commercial basis in the trades to, from and within the Community, with due respect for the interests of shippers and ports. In respect of restrictive measures by third countries or unfair practices by foreign shipowners, the Regulations should serve to discourage such measures or practices or, when these do occur, to achieve effective solutions through negotiation. In cases where this is not achieved the Regulations provide the basis for defensive action to counter such measures and practices.

In developing its shipping policy, the Community has recognized the specific situation of developing countries, in particular in liner shipping, by adopting Regulation No. 954/79 on the UN Code of Conduct for Liner Conferences, which offers national shipping lines of developing countries particular opportunities to participate in liner conferences and the trade carried by them.

The possibility of achieving a further liberalisation in the shipping sector will also be taken up by the Community in the context of negotiations on an Agreement in Trade in Services in the Uruguay Round.

9. In its Conclusions on a debate on 4-5 December 1989<sup>(6)</sup> concerning measures to improve the competitive position of Community shipping, the Council stressed "that the active and consistent implementation of the Regulations adopted in 1986 should also help considerably in strengthening the competitive position of Community fleets" and invited the Commission to submit to it a report on the implementation of these Regulations.

The present report responds to the Council's request.

11. Council Regulation (EEC) No. 4055/86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries.

(a) Unilateral restrictions on the carriage of goods

10. Article 2 of the Regulation provides for a temporary derogation for those Member States which reserve cargo in international seaborne trade for vessels flying the national flag. These countries are France, Portugal and Spain. The relevant national restrictions must be phased out in accordance with the following time table:

- carriage between Member States by vessels flying the flag of a Member State: 31 December 1989

- carriage between Member States and third countries by vessels flying the flag of a Member State: 31 December 1991
- carriage between Member States and between Member States and third countries in other vessels: 1 January 1993

Pursuant to Article 10 of the Regulation Member States shall, before adopting laws, regulations or administrative provisions in implementation of the Regulation consult the Commission and shall communicate to the latter any such measures so adopted.

### France

11. The French cargo reservation laws (for international traffic) relate to the carriage of imported hydrocarbons and coal and the shipment of cargoes for the account of public services or firms holding public service licenses. With respect to goods shipped under export contracts involving the COFACE scheme (export credit guarantee), the latter scheme covers freight rates only if paid to French carriers. However, if French carriers are not in a position to carry freight on reasonable terms as concerns cost and delivery time, the scheme will also cover rates paid to foreign carriers, provided that the flag country does not impose sanctions against French flag vessels.
12. The reservation of hydrocarbons is based on a law of 30 March 1928 which made the import of oil subject to state control. In subsequent decrees provision was made for the transport of part of the imported oil by ships owned by the importer, by ships under French flag or by ships chartered with the approval of the French Ministries of Energy and the Merchant Marine. To date the reservation is 66 %, to be carried either on board French flag ships or ships chartered with the approval of the French Government. Dispensation from this regime can be obtained.
13. The reservation of coal imports is based on a law of 18 August 1936. The law stipulates that 40 % of coal imports are to be on ships flying the French flag. Dispensation can be granted if the French shipping companies cannot provide sufficient tonnage.
14. The Commission has written to the French Government on the reservation of part of the imported oil for French flag vessels. The French Government has replied that the legal regime covering this transport provides for the mere obligation for oil importers to have available sufficient transport capacity to carry at least 2/3 of their imports (measured in tonnes/miles) in times of crisis with a view to assuring the necessary supplies.

The oil importers are free, however, to program this capacity - which does not need to be French flag but can be chartered-in foreign flag ships with the approval of the French Government - as they like, i.e. where they can make the best rates and the best occupancy degree.

The French Government considers the legal regime, therefore, as a capacity requirement based on strategic considerations and not as an obstacle to the freedom to provide shipping services: in 1986 not more than 9 % of the imported oil products was carried by French flag ships.

15. The Commission is still studying the legal implications - in the light of Regulation No. 4055/86 - of the comments by the French Government. The Commission will deal at the same time with the reservation of part of the coal imports which has been explained by the French Government to be based also on strategic grounds only.

The French Government has referred to the freely granting of derogations which, in 1986, brought the percentage of French flag vessels carrying imported coal down to 10 %.

The Commission will also further study the implications of the COFACE practice referred to in paragraph 11.

16. As concerns the reservation of cargoes shipped for account of public services or firms holding public service licences: it is understood that this applies to military cargoes only. The Commission will seek confirmation of this.

### Portugal

17. Until 1987 cargo reservation in Portugal was laid down in Decree-Law No 75-U/77 which contained a preferential regime in favour of Portuguese flag ships or ships chartered by Portuguese shipowners for the transport of all goods imported or exported by any public administration or public enterprise.
18. After the entry into force of Council Regulation (EEC) 4055/86, this decree was revoked and replaced by Decree-Law No 34/87 of 20 January 1987.

The new legislation stipulated that 75 % of all goods considered to be essential by the Portuguese authorities for the country, must, when being imported by sea, be carried in ships sailing under the Portuguese flag or ships under bare-boat charter with a purchase option or in vessels chartered by Portuguese shipowners. The freight rates quoted by Portuguese operators must be in line with international market rates.

19. Although the Portuguese Government considered the new legislation (covering a lower percentage and only relating to imports) more liberal than the former decree law, the Portuguese Shippers' Council was of the opinion that in practice the volume of goods covered by the new decree was bound to be greater. The number of public enterprises had been strongly reduced because of privatization and the description of goods "essential for the country" gave rise for shippers' fear that the freedom to provide maritime services would decrease instead of increase. They lodged a complaint with the Commission.
20. During 1987 and 1988 the Commission and the Portuguese authorities regularly met to find a solution for the problem which was aggravated by the provision in the new Decree (taken over from the old Decree) that the reservation would also apply to bare-boat chartered ships under foreign flag. Article 2 of Regulation 4055/86 provides for a temporary derogation for goods reserved for national flag vessels only.

21. The consultations, which were marked by the sending of a Reasoned Opinion on the basis of Article 169 (EEC) by the Commission, finally led to an understanding between the Portuguese Government and the Commission that
- the restricted group of entities to which the reservation applied in the old Decree-Law No 75-U/77 would be the only beneficiaries of the reservation of the new Decree-Law No 34/87;
  - the reservation would also apply to:
    - 1) bare-boat chartered ships but only if they meet the conditions to fly the Portuguese flag and effectively fly that flag;
    - 2) ships which have temporarily been chartered-in to replace a Portuguese flag ship which is under repair and which was used to meet contractual obligations under a time charter with shippers.
22. The above understanding has been worked out by the Portuguese Government in amendments to Decree-Law No 34/87 and the Commission has considered that there was no longer a conflict with Regulation No. 4055/86. The Portuguese Shippers' Council has withdrawn its complaint.
23. With respect to the fulfillment of the obligation pursuant to Article 2 of Regulation No. 4055/86 - the liberalisation by 1 January 1990 of the trade between Member States to the benefit of nationals of other Member States, or companies controlled by nationals of a Member State, operating ships under the flag of a Member State, the Portuguese Government timely consulted the Commission on a relevant draft Decree-Law. The Decree-Law provided for an extension of the beneficiaries of the Portuguese cargo reservation legislation to ships flying the flag of a Member State in trades between Member States. Since the Portuguese legislation does not refer to shipowners but to the flag only, the Commission found the proposed text to be sufficiently meeting Portugal's obligations under Regulation No.4055/86, i.e. up to and including the first stage of phasing out cargo reservation.

Although the Decree-Law is not yet published at the time of writing, the extension is effectively in force since 1 January 1990 and the text of the decree, one published, will refer to its retroactive effect.

### Spain

24. Spanish cargo reservation existed before it was embodied in law: until 1963 the Government, acting as charterer under the existing state trading system, concluded contracts with private Spanish carriers concerning maritime transport. When the State trading system was brought to an end it became necessary to adopt new legislative measures to continue the custom of giving preference to national flag vessels.

Accordingly a Ministerial Order of 15th March 1963, placed certain limitations on the freedom of shipping for imports of essential commodities, "the prices of which, due to their absolutely essential nature, must not be exposed to the very frequent changes of freight rates in the international market and which, being considered as governmental trade, do not contravene, therefore, the rules of international organisations of which Spain is a member". This embraced a very large number of commodities, but the restrictiveness of the regime was in practice mitigated by the frequent granting of waivers in cases when and where there were no Spanish flag vessels available.

25. The 1963 legislation was modified by an Order of 12th December 1972, which shortened the list of commodities subject to these procedures, as did more recent measures in both 1985 (Regulation No 1382 of 18 January 1985) and 1986 (Decree No 990/1986 of 23 May 1986). As a result, the number of commodities subject to reservation measures has been substantially, and it is now the following commodities whose import is, in principle, entirely reserved to Spanish flag vessels:

- tobacco;
- cotton, cotton waste;
- meat, offal;
- coffee;
- wheat, rye, barley, oats, corn, rice, sorghum.

Waivers are granted when and where there are no Spanish flag vessels for the carriage of these cargoes.

In addition the import of the following commodities is partly reserved for Spanish flag vessels:

- 75 per cent of coal, coke and lignite;
- 90 per cent of crude oil derived from petroleum or bituminous minerals;
- 70 per cent of oil products, petroleum gases, bitumen and petroleum coke.

The carriage of the listed cargoes by foreign vessels is possible in cases where no adequate Spanish tonnage is available. Requests for waivers can be submitted by importers or by the carriers.

26. With a view to complying with the obligations falling on it under Regulation No. 4055/86 the Spanish Government has presented to the Commission the text of a draft Rule, which provides for the liberalisation foreseen in Article 2 of the Council Regulation, i.e. covering all three stages of the phasing-out scheme.

The existing Royal Decree refers to reservation for a limited group of vessels owned by a limited group of owners: vessels flying the Spanish flag which are owned by shipping companies registered in the "Register of Shipping Companies". The liberalisation takes the form of a disapplication of this limitation in the case of the beneficiaries mentioned in Article 1, paragraphs 1 and 2, of Regulation No.4055/86, in accordance with the calendar provided for in Article 2 of the same Regulation.

The Commission saw no objection to this way of complying with the obligations of Spain under Regulation N° 4055/86. The Rule was published on 28 December 1989 and has been in force since 1 January 1990.

**(b) Cargo-sharing arrangements in bilateral agreements**

27. Under the provisions of Article 3 of Regulation (EEC) No. 4055/86, Member States must gradually phase out or adjust any cargo-sharing arrangements contained in existing bilateral agreements with third countries.

Article 4 of the same Regulation sets out how the adjustment is to be carried out and distinguishes between trades governed by the United Nations Code of Conduct for Liner Conferences, where agreements have to comply with the Code and the obligations of Member States under Regulation (EEC) No. 954/79, and trades not governed by the Code, where agreements must be adjusted as soon as possible and in any event before 1 January 1993 so as to provide for fair, free and non-discriminatory access by all Community nationals to the cargo-shares due to the Member States concerned under the original agreement.

The Regulation provides for immediate notification of national action taken with a view to adjusting existing agreements (Article 4(2)). It also provides for regular reports to the Commission on progress with regard to the adjustment process relating to trades not governed by the Code of Conduct (Article 4(3)) and for Member States to report on any difficulties that may arise in this process (Article 4(4)).

28. Since the entry into force of the Regulation on 1 January 1987, the services of the Commission have been in bilateral contact with the Member States in order to follow the fulfillment of the Member States' obligations under the Regulation concerned. This was followed by correspondence with the Member States which provided the information given in this document.
29. Implementation of the Regulation also resulted in a number of concepts being defined, particularly those of existing agreements and cargo-sharing arrangements. Where the latter is concerned, reference will be made in connection with the bilateral agreement between Italy and Algeria (see paras. 49-53).
30. As concerns the concept of existing agreements within the meaning of Article 4 of the Regulation, the criterion of the legal effect is considered as decisive. Generally speaking, the entry into force of a bilateral agreement is subject to certain procedures being completed or instruments of ratification deposited.

This may produce any one of three different situations:

- A signed agreement: Here the legal effect of signing does not extend beyond the signatory's obligation to complete its internal procedures with a view to ratification of the agreement which, up to the date of ratification by both parties, does not itself have any legal effect and therefore cannot be regarded as an existing agreement.
- A signed agreement with a provisional implementing clause: This clause must be regarded as a derogation from the reservation regarding ratification. The agreement has full legal effect from the date of signature and may therefore be regarded as an existing agreement. Nevertheless, the final arbiter of the fate of the agreement is the decision of the contracting parties' competent authorities on whether to ratify the agreement.
- A ratified agreement (ratified by both parties): This has full legal effect throughout its period of validity.

The Commission examined the various cases submitted to it in the light of the above. This report therefore covers bilateral agreements in force under the two headings of existing agreements and new agreements, i.e. agreements entered into force after the date of 1.1.1987 (entry into force of Regulation No. 4055/86).

This report does not prejudice the Commission's position with regard to any agreements not specifically mentioned.

(i) Examination of bilateral agreements between Member States and third countries existing on 1 January 1987

**Belgium**

31. On 1 January 1987 Belgium had existing agreements, including cargo-sharing clauses, with Algeria, Senegal and the Ivory Coast.

All these agreements cover codist trades and Belgium's obligations are therefore set out in Article 4(1)(a) of the Regulation. Belgium's attention has been drawn to these obligations and Belgium has stated that it is prepared to comply with them and proposed to this effect a draft of an exchange of letters which will be mentioned again below (paragraph 43).

**Federal Republic of Germany**

32. The Federal Republic has agreements including cargo-sharing clauses with the Ivory Coast and Brazil.

The agreement with the Ivory Coast concerns a trade governed by the Code and the Federal Republic has stated that it is prepared to follow the procedure involving the exchange of letters (see para. 43 below).

The agreement with Brazil concerns a trade not governed by the Code. The Commission has indicated to the Federal Republic its obligations in connection with this agreement on the basis of Article 4(1)(b).

### Spain

33. Spain has six ratified agreements, which include cargo-sharing clauses, and three agreements which include a clause concerning provisional entry into force.
34. The ratified agreements are with the Ivory Coast, Equatorial Guinea, Morocco, Mexico, Senegal, and the U.R.S.S. All these agreements relate to trades not governed by the Code of Conduct. The Commission has reminded Spain of its obligations and the latter has stated that it is prepared to comply with them.
35. Spain's agreements including a clause on provisional entry into force are with the following countries: Cameroon, Congo, Tunisia. The Spanish authorities have indicated that, as the ratification procedures are very advanced, the authorities prefer to complete them first and then proceed to the adjustments.

### France

36. France has an agreement with Tunisia including a cargo-sharing clause. The Commission has reminded France of its obligations under Article 4(1)(a) of the Regulation. France has indicated that it began discussions with the Tunisian authorities in 1988.

When Regulation No. 4055/86 entered into force, France also had an agreement with Algeria that included cargo-sharing clauses. As a result of Algeria's denouncing this agreement, the latter became nul and void in August 1988.

37. France is also party to a number of other agreements in respect of which the Commission has raised questions. These seek to determine whether the provisions of the agreements might lead to the establishing of cargo-sharing mechanisms. The agreements concerned are with Djibouti, the Ivory Coast, Niger, Burkina Faso and Brazil. Recently the French authorities sent the Commission a reply and this is now being examined.

### Italy

38. Italy has bilateral agreements including cargo-sharing clauses with Senegal, the Ivory Coast and Morocco.

All these agreements relate to trades governed by the Code. The Commission has reminded Italy of its obligations and the latter has indicated that it has started the process of adjustment of these three agreements and that, in the case of the agreement with Morocco, it is investigating the exchange of letters procedure. The Commission has also asked Italy to confirm that it will be able to apply the exchange of letters procedure to its agreements with Senegal and the Ivory Coast.

### Luxembourg

39. The agreements concluded by Belgium with Algeria, Senegal and the Ivory Coast were signed on behalf of the BLEU. Luxembourg is therefore party to these agreements and subject to the relevant provisions of Regulation No. 4055/86.

As any adjustments to these agreements that Belgium might make have to take into account the codist nature of the trades with Belgium, it would be necessary that Luxembourg either ratifies the Code of Conduct to ensure that the instruments now being drawn up to adjust the agreements can have the same effect in Luxembourg's trades, or denounces or takes the necessary measures to adjust the agreements, as far as it is concerned, on the basis of Article 4(1)(b) of Regulation No. 4055/86.

The Commission has requested Luxembourg to state its position.

#### Portugal

40. The Portuguese agreements have been examined in the light of the imminent ratification of the United Nations Code of Conduct by Portugal.
41. This Member State has agreements including cargo-sharing clauses with the following parties to the Code: the U.S.S.R., Romania, Bulgaria, Yugoslavia and Cape Verde. It also has agreements with the following countries that are not parties to the Code: Poland, Hungary, Brazil, Sao Tomé and Principe and Angola.

Articles 4(1)(a) et 4(1)(b) of Regulation No.4055/86 therefore apply as appropriate and Portugal has stated that it is prepared to meet its Community obligations.

42. Portugal and Senegal are also parties to an agreement which, although it does not contain a specific cargo-sharing clause, does include provisions which might serve as a basis for restrictive practices. The Commission has requested the Portuguese Government to inform Senegal of the obligations imposed by Community law and the implications this has for the trade between Portugal and Senegal.

#### Adjustment of existing agreements

43. In consultation with the Member States concerned, the Commission has elaborated the text of an exchange of letters which could enable those Member States to meet their obligations under Article 4(1)(a) of Regulation No. 4055/86 relating to trades governed by the Code of Conduct.

The text of this exchange of letters is annexed.

44. At the request of one of the Member States concerned, the Commission is working on a draft of a possible exchange of letters in respect of trades not governed by the Code of Conduct. This exercise has shown that in some cases such letters could be exchanged subject to their having the same legal status and publicity as the agreement itself. Nevertheless, the Member States are still subject to their obligations under Article 4(1)(b) of Regulation 4055/86 and must be able to guarantee that such an exchange of letters would in fact meet the requirements of the Regulation.

(ii) New Agreements: entered into force after 1 January 1987

**Belgium**

45. Belgium has four agreements which were ratified after 1 January 1987. They are with Malaysia, Mali, Togo and Zaïre. All contain cargo-sharing clauses and relate to trades governed by the Code of Conduct.
46. The Commission has registered as infractions the agreements with Togo and Zaïre. Belgium has stated that it is prepared to implement a procedure which will enable it to comply with its Community obligations.

**Luxembourg**

47. Luxembourg is also affected by the agreements with Malaysia, Mali and Togo. (The Belgian agreement with Zaïre was not concluded on behalf of BLEU).

**Spain**

48. Spain has an agreement with Gabon which entered into force after 1 January 1987 as it was ratified by Gabon on 1 November that year. This agreement has been the subject of discussion by representatives of the Commission and the Spanish Government. It has emerged that this is a new agreement which includes the kind of cargo-sharing arrangement prohibited under Article 5(1) of Regulation No. 4055/86.

The Commission has informed the Spanish Government that this arrangement has to be eliminated and discussions are continuing on this matter.

**Italy**

49. In June 1989 Italy ratified an agreement concluded with Algeria in February 1987 which had been the subject of the procedure set out in Article 6 of Regulation No. 4055/86 and of a Commission proposal on the basis of which the Council decided on 17 September 1987 to authorize Italy to ratify the agreement as it stood, on the understanding that Italy would accede as soon as possible to the Code of Conduct and would remind Algeria that the provisions of the agreement would be applied in conformity with Community law.
50. The Commission considered that the agreement included a cargo-sharing clause and that the best way in which Italy could participate in the trade in question was not by way of a bilateral agreement but, instead, by ratifying the Code of Conduct. The Commission therefore had proposed that Italy should be authorized to ratify the agreement with Algeria on condition that certain provisions be modified and that Italy ratified the Code of Conduct by a given deadline.
51. As in the Commission's view the Council Decision was contrary to the provisions of Articles 5 and 6 of Regulation No. 4055/86 and Article 149 of the Treaty, the Commission brought a case before the Court of Justice of the European Communities. In its Judgment

of 30 May 1989 the Court confirmed the Council decision of 17 September 1987 on the grounds that the authorization to ratify the agreement was justified by the exceptional circumstances (Article 5 of Regulation No. 4055/86) and the Council decision had not departed from the aim of the Commission proposal or altered its objective.

52. On the other hand, the Court confirmed two of the Commission's points. The one was that the agreement did in fact include a cargo-sharing arrangement within the meaning of Articles 4 and 5 of Regulation No. 4055/86. The Court noted that Article 4 of the draft agreement laid down the cargo-allocation criteria to be followed by shipowners in that it required the latter to apply the cargo-allocation rules provided for in the Code of Conduct. The provision in question is likely to have the same effect as if Italy and Algeria had themselves divided up the trade in question and therefore represents a cargo-sharing arrangement. The other point confirmed by the Court is that a bilateral agreement including a cargo-sharing arrangement which would amount to discrimination between national shipowners and shipowners from other Member States may not be authorized by the Council.
53. Following the ratification of the Code by Italy on 30.5.189, the present situation amounts to there being an agreement in force in a Codist trade and Italy having to comply with the provisions of Article 4(1)(a) of Regulation No. 4055/86. The Italian administration subsequently indicated that it had informed Algeria of its Community obligations and that Italy was ready to meet its obligations with regard to non-discrimination between Community shipowners.

#### **Portugal**

54. Portugal is party to an agreement with Zaïre which was signed and ratified in 1988. The Commission services have examined the agreement, whose provisions could, in their view, provide a basis for certain protectionist mechanisms. The services of the Portuguese Government have indicated their readiness to provide any information required on the implementation of the agreement.

#### **(iii) Draft agreements that have been signed or negotiated**

#### **Belgium**

55. Belgium has signed bilateral agreements with a number of codist and non-codist third countries, which contain cargo-sharing arrangements (see list in para 61 below).
56. These agreements fall under the prohibition of cargo-sharing arrangements in Article 5(1) of Regulation No. 4055/86. Furthermore, they raise problems of competence which are the subject of the next section.

#### **France**

57. France has signed an agreement with Mauritania. The agreement does not contain any specific clauses on cargo-sharing, but contains a reference to the intention of the contracting parties to promote the implementation of the Code of Conduct. The Commission has

authorized France to ratify this agreement on the condition that France, in a unilateral declaration, clearly states that the Code of Conduct is taken to mean the Code together with the Community reservations and that its provisions cover only Conference cargo.

#### **Federal Republic of Germany**

58. Germany has negotiated an agreement with the USSR but recently indicated that it did not now intend to sign it.

#### **Italy**

59. Italy has signed an agreement with Tunisia thereby raising issues similar to those arising with agreements signed by Belgium (paragraph 56 above and next section).

#### **(iv) Negotiation of shipping agreements and Community competence**

60. In its Communication to the Council relating to air transport (COM(90)17 final of 23 February 1990) the Commission indicated that Article 113 had to be regarded as the legal basis for any Community action on commercial policy relating to services. Clearly this also applies to maritime transport.

The competence conferred by Article 113 is an exclusive competence and means that the Member States are not authorized to conclude or negotiate agreements falling within the scope of the common commercial policy.

As a consequence, also in matters of maritime transport, any agreement with third countries concerning these aspects must be negotiated by the Commission.

61. This new conception, whose details and modalities concerning maritime transport will be the subject of a separate communication of the Commission to the Council, has implications for a number of draft bilateral maritime agreements already negotiated or even signed by Member States and third countries but falling under the prohibition on cargo-sharing arrangements provided for in Article 5(1) of Regulation No. 4055/86. This concerns in particular the following agreements:

- . Italy - Tunisia;
- . Agreements between Belgium and codist third countries:  
Bangladesh, Benin, Cameroon, Congo, South Korea, Gabon, Guinea, Morocco, Mauritania, Pakistan and Tanzania.
- . Agreements between Belgium and non-codist third countries:  
Angola, Brazil, Burkina Faso, Guinea-Bissau and Mozambique.

The Commission will define its precise position on each of the above and will indicate it to the Member States concerned.

62. This evolution does not modify the possibility the Member States have of using the Article 6 procedure to inform the Commission, in the exceptional circumstances provided for in Article 5 of Regulation No. 4055/86, and it is for the Commission to put forward the proposal which it will consider most appropriate taking into account the approach under Article 113.

111. Council Regulation (EEC) No. 4056/86 laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport

63. Since July 1987 the Commission has received a number of complaints and of applications for individual exemption under this Regulation, which are summarized below.

EUROCORDE agreements (Cases No. IV/32.380 and IV/32.772)

64. Following two complaints lodged by the European Shippers' Councils (ESC) and the British Shippers Council (BSC) the Commission undertook in July 1987 an investigation concerning two agreements passed by the existing liner conferences in the Atlantic US-North Europe trades, with its major independent competitors. Two applications for individual exemption under Article 85(3) of the Treaty were filed subsequently, first by the Conferences and then by one of the outsiders involved.

The Commission has concluded that the agreements might fulfil the conditions for an exemption provided that some modifications are made, and conditions and obligations are imposed. The Commission's services are in consultation so that a decision could be issued before the end of this year.

Cross-Channel trades and trades between the United Kingdom and Ireland (Cases No. IV/32.383, 32.384, 32.385 and 33.045)

65. The Commission has been notified under the provisions of Article 12(1) of Regulation No. 4056/86 of joint operating agreements between the following shipping (ferry) companies:

- SNCF / Sealink (France/United Kingdom)
- SMZ / Sealink (Netherlands/United Kingdom)
- B&I / Sealink (Ireland/United Kingdom)

Copies of these notifications were sent to the Member States and, in accordance with the provisions of Article 12(3) of the above Regulation, the Commission informed the parties concerned that there are serious doubts about Article 85(3) of the Treaty being applicable to the agreements in question.

66. The Commission has since been informed that the agreement between B&I and Sealink ceased to apply on 1 January 1988.

The Commission is still examining the other agreements.

67. In response to a request for information the Commission was notified of an agreement between P&O and RTM (United Kingdom/Belgium) and is now examining it.

West and Central Africa (Cases No. IV/32.447, 32.448 and 32.450)

68. In 1987 the Commission was notified under Article 10 of Regulation 4056/86 of various complaints concerning restrictive practices in liner trades between the Community and the west coast of Africa.
69. Following a detailed enquiry into the facts submitted, the Commission decided to initiate a formal procedure by sending a statement of objections to four Europe/Africa Liner conferences and 11 Franco-African shipowners' committees (see action under Regulation No. 4058/86, paras 86 to 90).
70. The Commission also sent out three statements of objections, respectively to two liner conferences that refused to submit to an investigation required under Article 18(3) of Regulation 4056/86 and to the Secretariat of the shipowners' committees for transmitting incorrect information in response to a request under Article 16(3) of the same Regulation.

Brazilian and Colombian coffee trades (Case No. IV/32.808, Cobelfret Case No. IV/33.509)

71. In July 1988 the Commission received a complaint under Article 10 of Regulation No. 4056/86 made by two West German Coffee importers against the existing liner conferences in the North Europe-Colombia and North Europe-Brazil trades. Articles 4, 7 and 8 of the Regulation were allegedly infringed by the Conferences. The Commission undertook an investigation and, shortly after, the complainants withdrew from their complaint against the Brazilian Conference. The Commission, however, continued its investigation on its own initiative in the Brazilian case.
72. Some new developments have been detected in the trades recently. The Commission is assessing the situation in both trades. In particular, in the Brazilian context, a new complaint under Article 10 has been filed by an independent line in the trade against the conference (Grimaldi-Cobelfret vs. BEBFC, Case No. IV/33.509, filed on 2 April 1990). The Commission is at present examining this trade in light also of the information provided by the independent complainants.

Conflict between Sealink and B&I over use of the port of Holyhead (Case No. IV/33.054)

73. The Irish authorities approached the Commission in 1988 regarding the conditions of use of the port of Holyhead (United Kingdom). This followed the concern expressed by the Irish B&I company following the refusal of the port authority (Sealink Harbours Ltd.) to grant B&I commercially profitable peak slots.

SHL's position was that it was technically impossible to dovetail the slots requested by the Irish company for B&I with those already occupied by its competitor (Sealink).

74. Following a detailed examination of the arguments put forward, the Commission services intervened to advocate a compromise between the two parties. As a result, agreement was reached in principle in July 1989 and entered into force at the beginning of 1990.

Trades between Israel et the Community (Case No. IV/33.056)

75. At the beginning of 1989 the Commission received a complaint, based on Article 10 of Regulation 4056/86, concerning restrictive practices being applied by the two liner conferences operating between Israel and the United Kingdom and Northern Europe.

These practices were also affecting the liner trades between Israel and the Western Mediterranean and Adriatic.

The Commission is proceeding in the examination of the alleged facts on the basis of the arguments put forward by both sides and the answers provided in reply to requests for information under Article 16(3) of Regulation 4056/86.

Agreement 1237 (Case No. IV/33.168)

76. In July 1989 the Commission was requested by the members of the North Europe-US Rate Agreement (NEUSARA) and the MAERSK Line to exempt under Article 85(3) of the Treaty the agreement whereby the conference members and MAERSK as an independent line could discuss and agree on rates and conditions of carriage in the US-North Europe trades.

The Commission treated this application under Article 12 of Regulation No. 4056/86 and Article 12 of Regulation No. 1017/68, inland transport being also involved. A notice was published in the Official Journal on 9 March 1990, pursuant to said Article. The Commission awaits comments from interested third parties and must consider the possibility of granting an exemption within ninety days from that date.

Gulfway agreement (Case No. IV/33.304)

77. In August 1989 the Commission received an application for individual exemption under Article 85(3) of the Treaty of an agreement passed by some of the members of the North Europe-US Rate Agreement (NEUSARA) and of the USA-North Europe Rate Agreement (USANERA), with five of their independent competitors in the North Europe-US Gulf trades.

The Commission treated this application under Article 12 of Regulation No. 4056/86 and Article 12 of Regulation No. 1017/68. A notice concerning this agreement will be published soon. The Commission must await comments from interested third parties for a period of thirty days, and make up its mind as to the applicability of Article 85(3) within ninety days from the publication of the notice.

CMB/East Africa Conference (Case No. IV/33.397)

78. On 21 December 1989 the Commission received a complaint submitted by Compagnie maritime belge (CMB) against the other members of the East Africa Conference under Article 10 of Regulation No. 4056/86.

The dispute between the parties arose out of the fact that from 1 June 1989 CMB decided to operate to East Africa no longer as a member of the Conference but as a company offering regular services outside the conference. From that date CMB in fact began offering, to East Africa amongst other destinations, a new service known as the Indian Ocean Service which is in direct competition with the service offered by the EAC.

The EAC asserts that CMB is operating the new service in breach of obligations forming part of various agreements by which it is bound as a member of the Conference, and is thereby causing considerable financial damage to the other members of the Conference. The EAC is therefore seeking to use the law to enforce respect by CMB of the obligations allegedly contained in the various clauses of these agreements.

The matter has been put to arbitration in London and a decision is pending. At the same time, CMB has notified the Commission of the complaint and the latter is being examined.

IV. Council Regulation (EEC) No 4057/86 on unfair pricing practices in maritime transport

79. In August 1987 the Commission received a complaint lodged by the "Comité des Associations d'Armateurs des Communautés Européennes" (CAACE) on behalf of Community liner shipping companies from Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom operating in the liner shipping trade between the Community and Australia and organized in the Europe/United Kingdom to Australia Conferences.

The complaint alleged that Hyundai Merchant Marine Company Ltd of Seoul/Republic of Korea was engaged in unfair pricing practices in the liner shipping trade between the EC and Australia.

80. Since the complaint contained enough evidence the Commission decided to initiate a proceeding<sup>(1)</sup>. Subsequently a Belgian shipowner joined the complaint.
81. A detailed investigation led to the conclusion that the complaint was justified in substance. It was indeed found that Hyundai Merchant Marine (HMM) had engaged in unfair pricing practices on the Europe to Australia route thereby causing serious disruption of the freight pattern and major injury to Community shipowners. As a consequence the Council imposed a redressive duty on containerized cargo; no duty was imposed on bulk cargo.

For detailed findings of the proceeding reference is made to the motivation of the Council Regulation No 15/89<sup>(2)</sup>.

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(1) OJ No C 308, 18.11.1987, p. 3

(2) OJ No L 4, 6.1.1989, p. 1

82. The following conclusions can be drawn from the first case under the Regulation on unfair pricing practices:
- the legal instrument is adequate for its intended purpose;
  - a proceeding can be carried out sufficiently quickly to offer relief where this is justified;
  - national customs authorities can efficiently implement a specific regulation;
  - maritime transport appears to lend itself to attempts to circumvent a redressive duty. Although the current legislation seems to be sufficient for the institutions to cope with this problem where anticipated, it would appear preferable to discourage such attempts from the outset. A clarification of the current legislation therefore appears desirable;
  - a small number of points with regard in particular to customs rules and the procedural rights should be updated to keep up with post-1986 developments in EC customs and anti-dumping legislation on which latter a substantial part of Regulation No 4057/86 has been modelled.
83. HMM has challenged the redressive duty Regulation before the Court. A judgement is not expected before 1991.
84. Market reports seem to indicate that certain third country shipowners against whom complaints were being prepared have changed their rate policies subsequent to the imposition of the duty against HMM. Such reaction can only be welcomed: the value of Regulation 4057/86 is to be seen as much as a deterrent as a tool to take redressive action.

V. Action to safeguard free access to cargoes in ocean trades

85. In addition to action decided by the Council under Regulation No 4058/86, a number of actions have been undertaken by the Commission - in consultation with the Member States where appropriate - with a view to safeguarding free access to cargoes in trades with third countries.

In a number of cases, consultations with third countries have taken a broader scope. Shipping questions have also been raised within the framework of cooperation agreements between the Community and third countries. Furthermore, shipping has been included in agreements concluded with third countries.

Therefore, this part of the report contains information concerning all such related activity.

(a) Coordinated action under Council Regulation (EEC) No. 4058/86

86. So far only one request for coordinated action within the meaning of Regulation No. 4058/86 has been brought by a Member State.

In July 1987 the Danish Government requested coordinated action in respect of certain West and Central African countries. In October 1987, on the basis of a proposal from the Commission, the Council decided to make use of diplomatic representations, in the form of consultations, within the framework of the Lomé III Convention.

87. During 1988 the consultations permitted to elaborate a joint report to the ACP-EEC Committee of Ambassadors, including an Annex describing the principles of cooperation which were to govern maritime trade between Europe and West and Central Africa.

The Committee of Ambassadors took note of the report and forwarded it to the ACP-EEC Council of Ministers meeting held in Mauritius on 10 and 11 May 1988. The Council confirmed the position of the Committee of Ambassadors.

88. Nevertheless, when the next consultations were held (April 1989), the African representatives "rejected" the Mauritius report and the subsequent discussions prevented the Community from tabling the specific proposals that had been agreed by all the parties concerned (shipowners, shippers) and finalized in conjunction with the Member States.

89. The renegotiation of the Lomé Convention, and particularly the discussions on the provisions relating to maritime transport, which lasted until December 1989, have not permitted the resumption of the above discussion. Since then, the services of the Commission, in consultation with the European operators, have tried to work out a common basis for reopening the discussions. It does not seem, so far, that such a common approach can be defined.

90. The Commission nevertheless intends to pursue its action on the basis of the relevant Community Regulations, as follows:

- Regulation 4058/86: coordinated action, further consultations with the Commission's African opposite numbers;
- Regulation 4055/86: adjustment of agreements on trades governed by the Code as well as on trades not governed by the Code;
- Regulation 4056/86: further action under the competition rules by addressing statements of objections to four Euro-african conferences and eleven Franco-african shipowners' committees (see description of the action on Cases IV/32.447, 448 and 450).

The Commission will consider in the light of developments what further action should be undertaken.

**(b) Specific problems in relations with certain third countries**

91. The Commission services have also received a number of requests by Member States and/or Community shipowners concerning specific problems arising in particular trades.

## Algeria

92. During discussions on the bilateral agreement between Italy and Algeria and though contacts with shipowners from most of the European countries trading with Algeria, the Commission has been informed of the difficulties shipowners are encountering in trades between Europe and Algeria. The Commission services had a meeting with the Algerian authorities in September 1988 at which the latter explained their new laws (August 1988) which liberalized access to maritime trades whilst at the same time making access subject to certain rules, in particular the filing of freight rates. This legislation was followed in October 1988 by a further measure of liberalization, repealing the regulations under which socialist economic undertakings had had conferred upon them either exclusive rights to exercise an economic activity or a monopoly to market products and services.
93. In December 1988 the operators notified the Commission of difficulties over the matter of filing freight rates. When questioned on the subject, the Algerian authorities replied through the Commission's delegation in Algiers that the aim of this formality was to ensure that users enjoyed greater transparency with regard to the prices charged and that it in no way represented a barrier to maritime trade.
94. The Commission nevertheless continued to monitor liner trades between Europe and Algeria and gained the impression that, apart from the problem of an imbalance between north-south and south-north traffic and the consequent difficulty of making south-north operations pay, there were other problems which had to do with port infrastructures, Algerian maritime policy and the kind of competition provided by the national Algerian shipping company.
95. The two big Algerian ports of Algiers and Oran can no longer cope with the traffic generated by the maritime trades. Consequently, turn-around time is longer than necessary, averaging 8 to 10 days at a time. Port fees are also high and extremely difficult to check.
96. Algerian maritime policy is such that shipowners have to go through an Algerian agency, ENCATM, which issues the authorizations needed before anyone can load in Algeria and seems to operate more in the interests of Algerian traders than those of other shipowners. At the European end this policy is underpinned by the activities of CNAN and by the fact that this company is named in CIF contracts.

What is more, the fact that Algerian shippers have a limited amount for their settlements in foreign currency means in practice that Algerian operators are in a preferential situation since they can be paid in local, non-convertible currency.

97. The CNAN has placed agents in Europe whose duty it is to obtain as much freight as possible, particularly by using FOB arrangements. In addition, a number of CIF contracts actually name the transport operator.

98. This means that the CNAN has a majority share in most of the bilateral trades, a fact which applies to both the trades governed by bilateral agreements (with Belgium and Italy) and trades not so covered.
99. The shipowners also mentioned a number of specific problems such as the repatriation of currency, the payment of demurrage and the returning of containers.
100. The Commission services have repeatedly tried to recontact the Algerian authorities, particularly through the local delegation. So far, however, they have been unsuccessful and they are now investigating the most appropriate way of gaining of free access for European operators to trade with Algeria.

#### **Kenya**

101. In March and May 1989 the Kenya Government adopted regulations relating to the implementation of the Code of Conduct which seem to be causing problems in respect of that convention and, possibly, the Lomé Convention. It appears that, later in 1989, the Kenya administration proceeded to implement its regulations.
102. The Commission services therefore contacted the Kenya Minister of Transport on 28 November 1989 and informed him of the Community's concern. Following a holding reply by the Kenya Embassy in Brussels, and because Kenya is apparently continuing to implement the above-mentioned regulations, in particular by requiring shipowners to conclude cargo-sharing agreements with the Kenyan National Shipping Line (KNSL), the Commission services received the Ambassador and handed him a Pro Memoria. In this the Commission again set out the Community's concern and indicated the possibility that the Kenya regulations might conflict with the Community's, including its competition rules, and with the international conventions linking the two parties. The Commission services finally requested the Kenya Government to proceed no further with implementing the regulations until exploratory consultations had taken place between the Commission services and the Kenya authorities.
103. Since the handing over of the memorandum on 23 February 1990, the Commission services have continued their efforts to organize the above-mentioned consultations, but without any success so far. They have also contacted the shipping companies active in the trade concerning any agreements that may have been made with the KNSL.

#### **Republic of Korea**

104. Following the adoption of the Regulation imposing countervailing duties on Hyundai Merchant Marine (see section IV), the Korean Government has changed its position with regard to taking up contact with the Commission on the subject of maritime transport.

A meeting was held with the Korean authorities (Korean Maritime Port Administration - KMPA) in June 1989. At this meeting the Commission raised, inter alia, the question of discrimination in Korea against non-Korean shipowners, restrictions placed on the activities of operators - whether maritime or land-based - and the opening-up to all comers of the Korean market.

The KMPA has assured the Commission that there is no longer any discrimination against non-Korean shipowners in ports or at port installations. Nevertheless, very recently, the Commission received information to the effect that this kind of discrimination still goes on.

105. The list of restrictions against non-Korean shipowners includes particularly cargo reservation and all land-based activities, including those of agencies. All investment in such activities is also prohibited. The Korean authorities described the general Korean policy on investment which provides for gradual liberalization.

The most recent development is that non-Korean shipowners may from now on establish agencies, but only hold a minority of shares. The other land-based activities are still reserved for Korean companies so that, since investment is still not permitted, non-Korean firms are still excluded.

106. The opening up of the Korean market is, in reality, the result of the political and commercial pressure applied by certain countries, particularly the United States. It is therefore important that any improvement in the Korean position, on whatever matter, should benefit all.

The KMPA has accepted this obligation and the signs are that it has kept it in respect of those measures of liberalization taken so far.

107. There will be further contacts with the Korean authorities in the near future.

#### Taiwan

108. The Taiwan Government levies a tax on all cargo leaving Taiwan. This has led to a protest on the part of the Member States, some of whom have been able to negotiate reciprocal exemption agreements. In 1989 a protocol was negotiated including a formula similar to the bilateral arrangements already adopted by two Member States. This is due to be signed by the European association of chambers of trade and industry (Eurochambres) and the "Taipei Economic and Cultural Centre".

#### Indonesia

109. On 17 November 1989 the French Government informed the Council that Indonesia was levying VAT on port services provided to Indonesian and foreign ships calling at Indonesian ports.

110. Following this, on 12 April 1990 the Commission services, through the good offices of the head of the Commission delegation in Jakarta, lodged a letter of protest with the Indonesian Ministry of Finance. The letter took account of certain new developments, particularly the fact that the Indonesian Government had agreed to exclude some port operations from the tax base. This concession was not, however, extended to all Member States of the Community.

111. The Indonesian Minister recognized the negative effect of the tax on trade and asked for a list of activities still subject to tax.

Subsequent contacts suggest that the Indonesian Government would extend the above-mentioned partial exemption to the whole of the Community. In addition, another operation - that of piloting - would also be exempt.

The list of activities still subject to tax is now being drawn up.

#### Japan

112. On 1 October 1989 an agreement was forced upon shipowners (Japanese and foreign) by Japanese stevedores (firms and unions). During a "trial" period of six months, shipowners were to make a financial contribution to a special "Harbour Management Fund", to be used for the financing of distribution centres and to secure the availability of port workers.

During the time the agreement was in force, earlier fears became substantiated that the contributions were not related to any services rendered.

113. At the request of Member States the Commission delivered a note verbale to the Mission of Japan, expressing concern about the possibility that Community shipowners might be forced to extend the agreement. In a subsequent démarche of the Community and its Member States, delivered in Tokyo on 26 April, and joined by the Nordic countries, the USA and Canada, the concern was reiterated and the assistance of the Japanese Government was requested to take the appropriate steps to avoid further pressures to extend the agreement.

#### USSR

114. A number of meetings between the Commission services and the maritime authorities of the USSR have been held since 1988 to establish the basis for the development of relations in the field of maritime transport. The discussions have permitted the regular exchange of information on developments in respective policies, including developments relating to the economic restructuring taking place in the USSR and having an impact in the field of shipping. Questions relating to market access have been among those raised during these discussions, as well as questions of cooperation between shipowners and of conditions of competition by Soviet independent lines in EEC trades.

115. Within the framework of these contacts, a Symposium on the development of EC/USSR relations in maritime transport is to be

held in Leningrad later this year with the participation of Member States' and Commission officials and those of the USSR and representatives of the shipping industry from the two sides.

**(c) Questions raised within the framework of Cooperation Agreements**

116. Cooperation Agreements between the EEC and certain third countries provide in some instances (particularly through an exchange of letters) that the joint committees established under the agreements should deal with maritime problems. In others, transport is mentioned as being one of the possible areas of cooperation.

**Brazil**

117. In July 1989, in accordance with the exchanged letters annexed to the cooperation Agreement, the EEC-Brazil Joint Committee placed maritime transport on the agenda for its meeting.

118. The exchange of views permitted the Commission representatives to provide some information on the Community's maritime policies whilst their Brazilian counterparts had the opportunity to mention the possibility of new developments in their country and to refer to the existence of bilateral agreements with certain Member States of the Community.

119. It was agreed that contact should be maintained and that the discussions should be continued at the next meeting of the Joint Committee. To this end the Commission services had a preparatory meeting with Member State experts on 27 March 1990.

**Sri Lanka**

120. Discussions with Sri Lanka in the CSG\* on the subject of the Sri Lanka central freight bureau continued in 1989. At the meeting of the EEC-Sri Lanka Joint Committee the Sri Lankan representative was able to announce the new maritime policy of his country. This included liberalization with effect from 1 January 1990, except for trades with the United Kingdom and Northern Europe where liberalization would not take effect until 1 January 1991.

121. It seems that the only constraint on operators is the requirement to register with the central freight bureau and, in this connection, the Sri Lanka delegation gave the assurance that registration would be automatic. It has nevertheless been agreed to maintain contact, inter alia with the Sri Lanka Embassy in Brussels, and to follow developments relating to the implementation of the new policy.

**(d) New Cooperation Agreements or Conventions**

122. The negotiation of new trade agreements and the renewal of existing conventions have led to certain developments concerning maritime transport.

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\* Consultative Shipping Group

### Lomé Convention

123. The maritime transport provisions of the third Lomé Convention were transferred to the new fourth Convention. Nevertheless, a new Article on financial and technical assistance has been negotiated and both sides made unilateral declarations concerning the provisions which have been retained.

### Argentina

124. The Commission negotiated a Cooperation Agreement with the Argentine Republic on behalf of the Community. The Agreement was signed on 2 April 1990. It includes an exchange of letters covering maritime transport and providing, inter alia, that the subject can be dealt with at meetings of the Joint Committee set up under the Agreement.

### Chile

125. The Commission will shortly be negotiating a Cooperation Agreement with the Republic of Chile and it is probable that an exchange of letters on maritime transport will be negotiated at the same time.

### Paraguay

126. As in the case of Chile, the Commission services intend including an exchange of letters on maritime transport in the Cooperation Agreement which is due to be negotiated.

### East-European countries

127. The new commercial and economic Cooperation Agreements concluded by the Community (with Hungary, Poland and the USSR) and the draft agreements signed by the Community and Bulgaria, the Democratic Republic of Germany and the Czech and Slovak Federal Republic provide, inter alia, for cooperation in the transport sector.

Some of the clauses of these agreements, relating to economic and commercial cooperation, may also affect transport.

## VI. Concluding remarks

128. The adoption of the package of the four Regulations in the field of maritime transport has, together with the "Brussels Package" on the UN Liner Code, established a Community policy of free and fair competition on a commercial basis in international shipping. Adopted at practically the same time as the Single Act, it both embodied concretely in the field of shipping the movement to complete the common market and stood to benefit from the strengthening of the Community generally.

129. In the three intervening years an increasing number of third countries have been developing their relations with the Community in shipping. The Commission has used, and intends to continue to use, within the limits of available resources, its possibilities to work towards the objective of free and fair competition in the world market.

130. Whilst restrictions on access to cargo are at various degrees widespread among non-OECD countries, nevertheless there has been a noticeable move towards relaxation or lifting of restrictions in international shipping in quite a number of countries worldwide, belonging to all regions with, as yet, the exception of the African region. The Commission has consistently exercised its influence to encourage such moves. It considers this effort as an essential component of implementing the policy embodied in the package.
131. The application of the freedom to provide services appears to have made an impression to third countries as well as to have aroused concern to some countries wishing to ensure that their own access to the Community market is unrestricted. Regulation No. 4055/86 seems to have put an effective break to new initiatives, whether from within or from outside the Community, for cargo-sharing arrangements. The Commission considers that it is not only a matter of implementing legal obligations under Regulation No. 4055/86 but also a point of credibility and success of the EEC maritime transport policy towards third countries that the M.S. having cargo-sharing agreements pursued more actively the adjustment of these agreements even if the Regulation has allowed them a relatively long period to effect these adjustments.
132. Numerous cases have been raised under Regulation No. 4056/86. The Regulation has, in the view of the Commission, already proved an effective means of ensuring compliance with Articles 85 and 86 in shipping, and this will become more evident as a number of cases are soon reaching the point of a Commission decision.
133. Regulation No. 4057/86 has been effectively used and, furthermore, there is strong indication that it has influenced the behavior of certain third-country lines, in particular concerning their rate setting policies.
134. Apart from the actual implementation of defensive measures in cases where an effective solution through negotiations is not achieved, the effect of Regulation No. 4058/86 has also to be judged for its value as a basis for consultation as well as a deterrent. In the one case where its use has been requested, the Commission and the Council have persisted in trying to achieve a mutually acceptable solution through consultations; these have been difficult and protracted - not least because of the large number of third countries involved - and have not yet been concluded. When the package was adopted, the time span for consultations had not, admittedly, been anticipated as so prolonged.
135. As a whole the implementation of the Regulations is advancing in a satisfactory manner. The pace is uneven and in certain respects slower than anticipated. The cumulative impact, however, can be considered real and significant. It has certainly established the Community's role in world shipping in pursuance of a non-protectionist policy.

ANNEX

Draft exchange of letters between Member States and  
third countries concerning existing bilateral  
maritime agreements governed by the Code of Conduct  
(Article 4(1)(a) of Regulation 4055/86)

## EXCHANGE OF LETTERS

1. The Government of (Member State (MS)) presents its compliments to the Ministry for Foreign Affairs of (country x) and has the honour to refer to the bilateral maritime agreement signed on (date) at (place) by the Contracting Parties and in force from (date), and in particular to Articles (...) and (...) of the said agreement which relate to sharing of liner cargo.

It informs the Government of (country x) that (the Member State) has become party to the United Nations Convention on a Code of Conduct for Liner Conferences, signed in Geneva on 6 April 1974, with effect from .... and wishes to emphasize that the provisions of this instrument will replace those referred to above and will govern its liner trades, in conformity with the reservations which all Member States of the European Community are required to enter, as provided for in Council Regulation 954/79 of 15 May 1979 (see Annex 1) and with the statement on the position of non-Conference lines attached to the instrument of ratification and based on Resolution 2 annexed to the Final Act, adopted by the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences (see Annex 2 to this letter), in order to ensure free access to the trade.

2. (The MS), in agreement with the other Member States of the European Community, reaffirms that bulk and tramp transport is subject to a régime of unrestricted access to the trade.
3. Having regard to the above, (the MS) therefore wishes to reaffirm its intention of promoting in the future maritime relations with (country X) and of being available to clarify the maritime policy of the Community and of (the MS), if necessary.
4. The provisions of this letter will enter into force upon reciprocal notification of the instruments proving the completion of the formalities required by the respective legislations.
5. The Government of (MS) takes this opportunity to assure the Ministry for (.....) of (country x) of its highest consideration.

Done at ....., .....  
The Minister .....