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(Acts whose publication is obligatory)

**COUNCIL REGULATION (EC) No 1177/2002
of 27 June 2002
concerning a temporary defensive mechanism to shipbuilding**

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 87(3)(e), 89 and 133 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the Opinion of the European Parliament ⁽²⁾,

Whereas:

- (1) The European Commission and the Government of the Republic of Korea, hereinafter 'Korea', signed the Agreed Minutes relating to world shipbuilding on 22 June 2000, hereinafter 'the Agreed Minutes', with the aim of restoring fair and transparent competitive conditions. However, the commitments under the Agreed Minutes, notably the commitment of ensuring an effective price surveillance mechanism, have not been effectively implemented by the Korean side and therefore a satisfactory result has not been obtained.
- (2) Operating aid has not been effective in ensuring that the European shipbuilding industry is not injured by competition not respecting normal competitive conditions in the shipbuilding market. Accordingly, as follows from Article 3 of Council Regulation (EC) No 1540/98 of 29 June 1998 establishing new rules on aid to shipbuilding ⁽³⁾, contract-related operating aid to shipbuilding may not be granted in respect of contracts agreed as from 1 January 2001.
- (3) However, as an exceptional and temporary measure, and in order to assist Community shipyards in those segments that have suffered adverse effects in the form of material injury and serious prejudice caused by unfair Korean competition, a temporary defensive mechanism should be authorised for limited market segments and for a short and limited period only. Regulation (EC) No 1540/98 should apply *mutatis mutandis*.
- (4) The situation in the Community shipbuilding industry is heterogeneous. According to the Commission's Fourth and Fifth Reports on the Situation in World Shipbuilding, approximately half of compensated gross tonnage produced in Community shipyards concerns the market segments in which Community shipyards are in a strong position on the international market. However, in other segments, there is evidence that Community shipyards have suffered adverse effects in the form of material injury and serious prejudice caused by unfair Korean competition. Therefore, contract-related temporary support may be authorised in certain circumstances in those segments, namely container ships and product and chemical tankers.
- (5) Considering the exceptional development in the sector of LNG carriers, the Commission will continue to monitor this market. Contract-related temporary support may be authorised in this sector if the Commission confirms, on the basis of investigations covering the period of 2002, that the Community industry has suffered material injury and serious prejudice in this sector caused by unfair Korean practices to the same extent as has been found for container ships and product and chemical tankers.
- (6) Support of 6 % of contract value before aid may be authorised in order to effectively enable Community shipyards to overcome unfair Korean competition.
- (7) The temporary defensive mechanism should only be authorised after the Community initiates dispute settlement proceedings against Korea, by requesting consultations with Korea, in accordance with the World Trade Organisation's Understanding on the Rules and Procedures for the Settlement of Disputes and may no longer be authorised if these dispute settlement proceedings are resolved, or suspended on the grounds that the Community considers that the Agreed Minutes have been effectively implemented,

⁽¹⁾ OJ C 304 E, 30.10.2001, p. 208.

⁽²⁾ OJ C 140 E, 13.6.2002, p. 380.

⁽³⁾ OJ L 202, 18.7.1998, p. 1.

HAS ADOPTED THIS REGULATION:

Article 1

For the purposes of this Regulation, the relevant definitions listed in Article 1 of Regulation (EC) No 1540/98 shall apply. In addition, the following definitions shall apply:

- (a) 'container ships' shall mean ships designed with a single deck hull with an arrangement of holds to carry containers (standard or non-standard; refrigerated or non-refrigerated), whose holds are fitted with cell guides to facilitate the positioning of the containers, as may be some of the deck storage space. Other ships combining cargo carrying capacity for containers and other cargo are considered as container ships if the larger part of the cargo carrying capacity is dedicated to containers;
- (b) 'chemical tankers' shall mean ships designed with a single deck hull with an arrangement of integral and/or independent tanks suited to carry chemical products in liquid form. Chemical tankers are characterised by the ability to carry and handle several substances at the same time and the particular equipment of the tanks with coatings, reflecting the nature and hazard of the cargo carried;
- (c) 'product tankers' shall mean ships designed with a single deck hull with an arrangement of integral and/or independent tanks suited to carry refined petroleum products in liquid form;
- (d) 'LNG carriers' (Liquefied Natural Gas carriers) shall mean ships designed with a single deck hull with fixed integral and/or independent tanks suited to carry natural gas in liquid form.

Article 2

1. Subject to paragraphs 2 to 6, direct aid in support of contracts for the building of container ships, product and chemical tankers as well as LNG carriers shall be considered compatible with the common market when there has been competition for the contract from a Korean shipyard offering a lower price.

2. Direct aid in support of contracts for the building of LNG carriers may only be authorised under this Article for final contracts signed after the Commission gives notice in the *Official Journal of the European Communities* that it confirms, on the basis of investigations covering the period of 2002, that Community industry has suffered material injury and serious prejudice in this market segment caused by unfair Korean practices.

3. Aid under this Article may be authorised for shipbuilding contracts up to a maximum intensity of 6 % of contract value before aid.

4. This Regulation shall not apply in respect of any ship delivered more than three years from the date of signing of the final contract. The Commission may, however, grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard due to exceptional circumstances, unforeseeable and external to the company.

5. The Commission will keep under review the market segments eligible for aid under paragraph 1, with regard to evidence clearly proving that a specific market segment within the Community has been directly injured by unfair and non-transparent competitive conditions.

6. Regulation (EC) No 1540/98 shall apply *mutatis mutandis*.

Article 3

Aid covered by Article 2 shall be subject to the provisions of Article 88 of the Treaty. The Commission shall adopt a decision in accordance with Regulation (EC) No 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 ⁽¹⁾ of the EC Treaty ⁽²⁾.

Article 4

The Regulation shall be applied to final contracts signed from the entry into force of this Regulation until its expiry, with the exception of final contracts signed before the Community gives notice in the *Official Journal of the European Communities* that it has initiated dispute settlement proceedings against Korea by requesting consultations in accordance with the World Trade Organisation's Understanding on the Rules and Procedures for the Settlement of Disputes and final contracts signed one month or more after the Commission gives notice in the *Official Journal of the European Communities* that these dispute settlement proceedings are resolved, or suspended on the grounds that the Community considers that the Agreed Minutes have been effectively implemented.

Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities* and shall expire on 31 March 2004.

⁽¹⁾ The numbering of Articles in the Treaty establishing the European Community has been changed in the Treaty of Amsterdam.

⁽²⁾ OJ L 83, 27.3.1999, p. 1.

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

Done at Luxembourg, 27 June 2002.

For the Council

The President

M. ARIAS CAÑETE
