

COMMISSION DECISION

of 13 July 1993

on Spain's request for adoption by the Commission of a prolongation of safeguard measures pursuant to Article 5 of Regulation (EEC) No 3577/92 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)

(Only the Spanish text is authentic)

(93/396/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage) ⁽¹⁾, and in particular to Article 5 thereof, which sets out the circumstances under which a Member State may request the Commission to adopt safeguard measures in the event of a serious disturbance of the internal transport market due to cabotage liberalization or in the case of an emergency,

Whereas on 17 February 1993 the Commission adopted Decision 93/125/EEC ⁽²⁾ on Spain's request for adoption by the Commission of safeguard measures pursuant to Article 5 of Regulation (EEC) No 3577/92 by which it granted an exclusion of the Spanish mainland area from the scope of the above Regulation with the exception of feeder services and for a period of six months expiring on the 17 August 1993;

Whereas, in particular, Article 5 of Decision 93/125/EEC, established that two independent experts would be appointed, one by the Commission and one by the Spanish authorities in order to prepare a joint study on the possible economic impact on the Spanish shipping sector of the liberalization of mainland cabotage, on the basis of which the Commission would, on request from Spain, review the situation;

Whereas, in accordance with the above provision, a study was submitted to the Commission on the 14 June 1993;

Whereas on 21 June 1993 Spain formally requested the Commission to prolong the safeguard measures in the same terms for an additional period of six months as from 17 August 1993;

Whereas a meeting was organized by the Commission on 24 June 1993 to consult the other Member States on this

request in accordance with Article 5 (1) of the abovementioned Regulation;

Whereas on the basis of an analysis of traffic structure it was decided for the purpose of the study to pursue the analysis of the impact of cabotage liberalization through the segmentation of the cabotage market by vessel types and by market trades rather than by geographic areas, as the effects of liberalization will be geographically uniform;

Whereas each of the eight sectors into which the cabotage market was partitioned (supply services, transport of cement of clinker in bulk by specialized cement carriers, transport of reefer cargo, roll-on, roll-off transport services, transport of general cargo in containers, transport of break-bulk general cargo, transport of dry bulk cargo and transport of chemical products in specialized tankers) was analysed as to the expected impact of immediate liberalization on its international competitive position and the expected impact of the prolongation of the derogation;

Whereas the study has demonstrated the relatively unfavourable competitive position of the Spanish cabotage fleet under the Spanish Ordinary Register's conditions and under the Canary Island Special Register's present conditions as compared with representative foreign competitors;

Whereas the Royal Decree authorizing the registration of vessels and companies operating in cabotage trade in the Special Canaries Register has been approved on 11 June 1993 and will come into force on 1 July 1993, giving rise initially to a considerable labour adjustment and associated expenditure in view of new manning rules;

Whereas additional legislation on manning scales and increased flexibility in the nationality requirements for manning (introduced by the Law on Ports and Merchant Marine of 25 November 1992 for the Canary Islands Special Register), needs still to be implemented;

Whereas the fiscal and social security advantages for the shipowners and vessels registered in the Canary Islands Special Register will not be introduced until the Law on the Economic and Fiscal Regime for the Canary Islands is adopted;

⁽¹⁾ OJ No L 364, 12. 12. 1992, p. 7.

⁽²⁾ OJ No L 49, 27. 2. 1993, p. 88.

Whereas the Canary Islands Special Register, when fully implemented, is expected to considerably reduce operating costs of vessels registered in it;

Whereas, therefore, registration in the Canary Islands Special Register will only bring part of the expected advantages to the Spanish shipowners in the short term, i.e. within the six months which could still be granted at the most under the safeguard mechanism of Regulation (EEC) No 3577/92;

Whereas the study has demonstrated that, nevertheless, for five, out of the eight cabotage sectors (supply services, transport of cement or clinker in bulk by specialized cement carriers, transport of reefer cargo, roll-on, roll-off transport services and transport of general cargo in containers), no serious disturbance is to be expected from the immediate liberalization as from the expiry of the temporary exclusion on 17 August 1993;

Whereas the study also demonstrated that for the remaining three cabotage sectors: namely, transport of break-bulk general cargo, transport of dry bulk cargo (except for the transport of cement or clinker in bulk by specialized cement carriers) and transport of chemical products in specialized tankers, a serious disturbance may result from the immediate liberalization, *inter alia* because of the geographical position of Spain as a gateway between the Atlantic and the Mediterranean and as an attractive market for consecutive cabotage which could be carried out at marginal freight rates by other Community operators;

Whereas the evidence available to the Commission indicates that there has been a decline in the demand for mainland cabotage services in Spain in two of the three abovementioned sectors and, in particular, that this decline has been of 37,6 % in the sectors of break-bulk general cargo and of dry bulk cargo between 1985 and 1989 whilst there has been a very slight increase in demand of 3,7 % in the same period for the chemical products sector;

Whereas the combination of lower demand and lower freight rates offered by other Community shipowners entering the Spanish market will cause an excess of supply over demand in these sectors;

Whereas, in particular, shipowners in the three abovementioned sectors, representing 50 % of the total number of Spanish shipowners engaged in mainland cabotage would suffer as a result of immediate liberalization;

Whereas this percentage constitutes a significant number of shipowners engaged in mainland cabotage;

Whereas the financial position of these shipowners demonstrates their dependency on mainland cabotage services and that their profit margins have declined over the years;

Whereas immediate liberalization of the three abovementioned sectors will endanger the financial stability of these shipowners and such liberalization will cause many of them to disappear from these markets;

Whereas it is expected that the competitive position of Spanish shipowners in the three sectors concerned will improve once the registration in the Special Canary Islands Register yields the advantages it is intended to produce;

Whereas transport of goods from a port in another Member State or in a third country to a continental port in Spain where they are transhipped on a vessel of the same company to be carried on to the other mainland ports in Spain or vice versa (feeder services) should, however, not benefit from any such derogation, in order not to hinder an optimal operation of deep sea services by Community carriers between Spain and other countries, and should be completely free for other Member States' shipowners as defined in Article 1 of Regulation (EEC) No 3577/92;

Whereas in the event that no Spanish vessel is available to carry out mainland cabotage services no serious disturbance can derive from the possibility for other Member States' vessels to carry out such services,

HAS ADOPTED THIS DECISION:

Article 1

The following maritime transport services carried out in mainland Spain shall be exempted from the implementation of Regulation (EEC) No 3577/92 for a period of six months as from 17 August 1993: transport of break-bulk general cargo, transport of dry bulk cargo (except for the transport of cement or clinker in specialized cement carriers) and transport of chemical products in specialized tankers.

Article 2

The remaining mainland cabotage trades, with the exception of those foreseen in Article 6 (1) of Regulation (EEC) No 3577/92 which are subject to special derogations, shall be liberalized as from 17 August 1993.

Article 3

The exclusion contained in Article 1 shall not apply to feeder services.

Article 4

In the event that no Spanish vessel is available at a given moment to meet the demand for mainland cabotage transport services, the Spanish authorities will allow other Member States' vessels to offer such services.

Article 5

The present Decision is addressed to the Kingdom of Spain.

Done at Brussels, 13 July 1993.

For the Commission

Abel MATUTES

Member of the Commission
