

Proposal for a Council Decision concerning the conclusion of the Agreement on maritime transport between the European Community and its Member States, on the one hand, and the People's Republic of China on the other hand

(2002/C 181 E/08)

COM(2002) 97 *final* — 2002/0048(CNS)

(Submitted by the Commission on 22 February 2002)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 80(2) thereof, in conjunction with the first sentence of the first subparagraph of Article 300(2) and the first subparagraph of Article 300(3) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas the European Community should approve the Agreement on maritime transport between the European Community and its Member States on the one hand, and the People's Republic of China on the other hand,

HAS DECIDED AS FOLLOWS:

Article 1

The Agreement on maritime transport between the European Community and its Member States, on the one hand, and the

People's Republic of China, on the other hand, is hereby approved on behalf of the Community.

The text of the Agreement is attached to this Decision.

Article 2

The President of the Council is hereby authorised to designate the persons empowered to sign the Agreement in order to express the consent of the Community to be bound thereby.

Article 3

The President of the Council shall, on behalf of the Community, give the notification provided for in Article 15(2) of the Agreement.

Article 4

This Decision shall be published in the *Official Journal of the European Communities*.

ANNEX

DRAFT AGREEMENT ON MARITIME TRANSPORT BETWEEN THE EUROPEAN COMMUNITY AND ITS MEMBER STATES, OF THE ONE PART, AND THE PEOPLE'S REPUBLIC OF CHINA, OF THE OTHER PART

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Parties to the Treaty establishing the European Community and the Treaty on European Union, hereinafter referred to as the 'European Community Member States', and

THE EUROPEAN COMMUNITY,

of the one part, and

THE PEOPLE'S REPUBLIC OF CHINA

hereinafter referred to as 'China',

of the other part,

TAKING INTO ACCOUNT the Trade and Economic Co-operation Agreement between the European Economic Community and the People's Republic of China of May 1985;

TAKING INTO ACCOUNT the importance of the maritime relations existing between the European Community and its Member States and the People's Republic of China;

BELIEVING that the cooperation in the international maritime field between the Contracting Parties will be beneficial for the development of the trade and economic relations between the People's Republic of China and the European Community and its Member States;

WILLING to further strengthen and consolidate the relations, on the basis of equality and mutual benefit, in the field of international maritime transport;

RECOGNISING the importance of maritime transport services and wishing to promote even further multimodal transport involving a sea leg in order to increase efficiencies in the transport chain;

RECOGNISING the importance of further developing a flexible and market-oriented approach and the benefits to operators of both parties to control and operate their own international cargo transport services in the context of an efficient international maritime transport system;

TAKING INTO ACCOUNT the existing bilateral maritime agreements between the European Community Member States and the People's Republic of China;

SUPPORTING multilateral negotiations on maritime transport services in the World Trade Organisation;

HAVE DECIDED to conclude this Agreement and to this end have designated their plenipotentiaries:

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Parties to the Treaty establishing the European Community and the Treaty on European Union, hereinafter referred to as the 'European Community Member States', and

THE EUROPEAN COMMUNITY,

of the one part, and

THE PEOPLE'S REPUBLIC OF CHINA

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

*Article 1***Aim**

This Agreement is aimed to improve the conditions under which maritime cargo transport operations are carried out to and from China, to and from the European Community, as well as to and from the European Community and China on the one hand and third countries on the other, for the benefit of economic operators. It is based on the principles of freedom to provide maritime transport services, free access to cargoes and cross trades, unrestricted access to and non-discriminatory treatment in the use of ports and auxiliary services as well as regarding commercial presence. It covers all aspects of door-to-door-services.

*Article 2***Scope**

1. This Agreement applies to the international maritime cargo transport and logistic services, including multimodal operations involving a sea leg, between the ports of China and of the Member States of the European Community as well as to the international maritime cargo transport between the ports of the Member States of the European Community. It also applies to cross trades and to the movement of equipment such as empty containers — not being carried as cargo against payment — between ports of China or between ports of a Member State of the European Community.

If vessels of one Contracting Party sail from one port of the other Contracting Party to another or from one port of a Member State of the European Community to another to load cargo for foreign countries or discharge cargo from abroad, it shall be regarded as a part of the international maritime transport.

This Agreement shall not apply to domestic transport purely between the ports of China or between the ports of any particular Member State of the European Community.

2. This Agreement shall not affect the application of the bilateral maritime agreements concluded between China and the Member States of the European Community for issues falling outside the scope of this Agreement.

3. This Agreement shall not affect the right of vessels of third parties to engage in cargo and passenger transport between the ports of the Contracting Parties or between the ports of either Contracting Party and a third party.

*Article 3***Definitions**

For the purpose of this Agreement:

(a) 'International maritime cargo transport and logistic services' cover the supply of services of international maritime

transport of cargo, and the related cargo handling, storage and warehousing services, customs clearance services, container station and depot services, port and inland located, shipping agency services and freight forwarding services;

(b) 'Multimodal transport operations' is the carriage of goods using more than one mode of transport including a sea-leg under a single document;

(c) 'Shipping agency services' means activities consisting in representing, within a given geographic area, as an agent, the business interests of one or more shipping lines or shipping companies, for the following purposes:

— marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, contracting of the necessary related services, preparation of documentation, and provision of business information;

— acting on behalf of the companies organising the call of the ship or taking over cargoes when required;

(d) 'Freight forwarding services' means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through contracting related services, preparation of documentation and provision of business information;

(e) 'Shipping company' means a company which meets the following conditions:

1. to be constituted in accordance with the public or private laws of China, or the European Community or a Member State of the European Community,

2. to have its registered office or central administration or principal place of business in China or the European Community respectively,

3. to engage in international shipping service with its owned or operated vessels.

Shipping companies established outside the European Community or China and controlled by nationals of a Member State of the European Community or of China respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in that Member State or in China in accordance with their legislation;

(f) 'Subsidiary' means a company owned by a shipping company and having legal personality;

(g) 'Branch office' means a place of business owned by a shipping company and not having legal personality;

- (h) 'Representative office' means a representative office of a shipping company of one Contracting Party established in the other Contracting Party;
- (i) 'Vessel' means any merchant ship registered in accordance with the laws of China, or the European Community or its Member States in the vessel registration office of either Contracting Party under the national flag of that Contracting Party and engaged in international maritime transport, including vessels flying the flag of a third country but owned or operated by a shipping company of China or a Member State of the European Community. However, this term does not include warships and any other non-commercial ships.

Article 4

Supply of services

1. Each Contracting Party shall continue to grant non-discriminatory treatment to vessels flying the flag of the other party or operated by nationals or companies of the other Party, as compared to the treatment accorded to its own vessels, with regard to access to ports, the use of infrastructure and auxiliary maritime services of those ports, as well as related fees and charges, customs formalities and assignment of berths and facilities for loading and unloading.
2. The Contracting Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a non-discriminatory and commercial basis.
3. In applying the principles of paragraphs 1 and 2, the Contracting Parties shall:
 - (a) not introduce cargo sharing clauses in future agreements with third countries concerning maritime transport services and terminate such provisions in the case they exist in previous bilateral agreements within a reasonable period of time;
 - (b) abolish, upon entry into force of this Agreement, all unilateral administrative, technical, or other measures, which could constitute an indirect restriction and have discriminatory effects on the free supply of services in international maritime transport;
 - (c) abstain from implementing on entry into force of this Agreement administrative, technical or legislative measures which could have the effect of discriminating against nationals or companies of the other Party in the supply of services in international maritime transport.
4. One Contracting Party shall allow shipping companies of the other Contracting Party to have access to and use of, on a non-discriminatory basis and on agreed terms between the companies concerned, feeder services provided by shipping companies registered in the former Contracting Party for the

international cargo between the ports of China or between the ports of a Member State of the European Community.

Article 5

Commercial presence

In respect of activities for the provision of international maritime cargo transport and logistic services, including door-to-door multimodal operations, each Contracting Party shall permit the shipping companies of the other Party, to establish wholly-owned or jointly-invested subsidiaries, branches or representative offices and, as regards subsidiaries and branches to engage in economic activities, in accordance with its laws and regulations. Such activities include, but are not limited to:

1. cargo soliciting and booking of space;
2. making, confirming, handling and issuing of the bill of lading, including the commonly accepted through bill of lading in the international maritime transport; preparation of documentation concerning transport documents and customs documents;
3. fixing, collecting and remitting freight and other charges incurred on the basis of the service contracts or tariff rates;
4. negotiating and signing service contracts;
5. signing contracts for trucking, railway transport, cargo dealing and other related auxiliary services;
6. quoting and publishing tariff rates;
7. engaging in marketing activities related to their service;
8. owning the equipment necessary for the economic activities;
9. provision of business information by any means, including computerised information systems and electronic data interchange (subject to any non-discriminatory restrictions concerning telecommunications);
10. setting up joint ventures with any locally established shipping agency to engage in agency related businesses, such as organising the call of the vessels or taking delivery of cargoes for shipment.

Article 6

Transparency

1. Each Contracting Party shall, after prior consultation and appropriate pre-notice, publish promptly all relevant measures of general application, which pertain to or affect the operation of this Agreement.

2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.

3. Each Contracting Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1.

Article 7

Domestic regulation

1. The Contracting Parties shall ensure that all measures of general application affecting trade in international maritime transport services are administered in a reasonable, objective and impartial manner.

2. In those cases where authorisation is required, the competent authorities of a Contracting Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of a Contracting Party shall provide, without undue delay, information concerning the status of the application.

3. To ensure that measures relating to technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade, requirements shall be based on objective, non-discriminatory, pre-established and transparent criteria, such as the ability to supply the service; and in the case of licensing procedures, not in themselves be a restriction on or a barrier to the supply of the service.

Article 8

Key personnel

The wholly-owned or jointly-invested subsidiaries, branches or representative offices of the shipping companies of one Contracting Party established in the other Contracting Party shall be entitled to employ key personnel, in accordance with the legislation in force in the host country, irrespective of their nationality. Each Contracting Party shall facilitate the acquisition of work permits and visas for foreign employees.

Article 9

Payments and capital movements

1. Revenues of nationals or companies of one Contracting Party derived from international maritime transport and multimodal operations in the other Contracting Party may be settled in freely convertible currencies.

2. The revenues and expenses of the economic activities of the subsidiaries, branches and representative offices of the shipping companies of a Contracting Party established in the other Contracting Party may be settled in the currency of the

host country. The balance after the payment of the local fees by the abovementioned shipping companies, subsidiaries, branches or representative offices may be freely remitted abroad at the exchange rate of the bank on the date of remittance.

Article 10

Maritime cooperation

The Contracting Parties shall, for the purpose of promoting the development of the maritime industry of the Contracting Parties, encourage their competent authorities, shipping companies, ports, relevant research institutions, universities and colleges to co-operate, including in, but not limited to, the following fields:

1. to exchange views related to their activities in the framework of international maritime organisations;
2. to formulate and perfect the legislation relating to maritime transport and market administration;
3. to promote efficient transport service for international sea trade by the effective exploitation of the ports and fleets of the Contracting Parties;
4. to guarantee shipping safety and to prevent marine pollution;
5. to promote maritime education and training, especially the training of seafarers;
6. to exchange personnel, scientific information and technology;
7. to enhance their efforts to combat piracy and terrorism.

Article 11

Consultations and settlement of disputes

1. The Contracting Parties shall establish appropriate procedures to ensure the proper implementation of the Agreement.

2. Should any dispute between the Contracting Parties arise from the interpretation or application of this Agreement, the competent authorities of the Contracting Parties shall seek to resolve the dispute through friendly consultation. In the event that no agreement is reached, it shall be settled through the diplomatic channel.

Article 12

Amendment

This Agreement may be amended by a written agreement between the Contracting Parties and the amendment will come into force in accordance with the procedures specified in paragraph 2 of Article 15 of this Agreement.

*Article 13***Territorial application**

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of China.

*Article 14***Authentic text**

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Chinese languages, each of these texts being equally authentic.

*Article 15***Duration and entry into force**

1. The Agreement is concluded for a period of five years. It shall be tacitly renewed on a yearly basis unless one of the Contracting Parties denounces it in writing six months before the date of expiry.

2. This Agreement will be approved by the Contracting Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Contracting Parties notify each other that the procedures referred to in the first paragraph have been completed.

3. If this Agreement is less favorable on certain issues than existing bilateral agreements between individual European Community Member States and China, the more favorable provisions shall prevail without prejudice to Community obligations and taking into account the Treaty. The provisions of this Agreement replace those of previous bilateral agreements concluded between European Community Member States and China, if the latter provisions are either inconsistent with the former, save for the situation referred to in the preceding sentence, or identical to them. Provisions of existing bilateral agreements not covered by this Agreement shall continue to apply.

IN WITNESS WHEREOF the undersigned Plenipotentiaries have signed this Agreement.
