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Acts whose titles are printed in light type are those relating to day-to-day management of agricultural matters, and are generally valid for a limited period.

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I

(Acts whose publication is obligatory)

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the abolition, as between Member States, of obstacles to freedom of movement for services is laid down by Article 3 of the Treaty as one of the activities of the Community;

Whereas in accordance with Article 61 of the Treaty freedom to provide services in the field of maritime transport is to be governed by the provisions of the Title relating to transport;

Whereas the application of this principle within the Community is also a necessary condition for effectively pursuing, in relation to third countries, a policy aiming at safeguarding the continuing application of commercial principles in shipping;

Whereas Council Regulation (EEC) No 954/79 ⁽³⁾ preserves, *inter alia*, within conferences competitive access to that part of cargo liner shipping which is not covered by commitments to national shipping lines of third countries under the United Nations Convention on a Code of Conduct for Liner Conferences, when ratified by Member States;

Whereas, taking into account the fact that the Code of Conduct has not yet been ratified by all Member States and that certain third countries are not likely to ratify it, the Code is not yet applied in all Community trades nor is it likely to apply in the future in some of these trades;

Whereas the code of conduct applies only to liner conferences and the cargo carried by their members, and not to independent lines or to shipping companies operating in the field of bulk or tramp shipping, where the Community aims at maintaining a regime of fair and free competition;

Whereas the Community fully endorses Resolution No 2 adopted by the United Nations Conference of Plenipotentiaries on a Code of Conduct for Liner Conferences and which states that in the interests of sound development of liner shipping services, non-conference shipping liners should not be prevented from operating as long as they adhere to the principle of fair competition on a commercial basis;

Whereas the Member States affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trades and are convinced that the introduction of cargosharing in these trades will have a serious effect on the trading interests of all countries by substantially increasing transportation costs;

Whereas Community shipowners are increasingly faced with new restrictions, imposed by third countries, on the freedom to provide maritime transport services for shippers established in their own country, in other Member States or in the third countries concerned, which may have harmful effects on Community trades as a whole;

Whereas some of the abovementioned restrictions are incorporated in bilateral agreements between third countries and some Member States, while other restrictions are reflected in similar provisions in the legislation or in administrative practices of some Member States;

Whereas therefore the principle of freedom to provide services should now be applied to maritime transport between Member States and between Member States and

⁽¹⁾ OJ No C 255, 13. 10. 1986, p. 169.

⁽²⁾ OJ No C 172, 2. 7. 1984, p. 178.

⁽³⁾ OJ No L 121, 17. 5. 1979, p. 1.

third countries so as progressively to abolish existing restrictions and prevent the introduction of new restrictions;

Whereas the structure of the Community shipping industry is such as to make it appropriate that the provisions of this Regulation should also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation;

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

HAS ADOPTED THIS REGULATION:

Article 1

1. Freedom to provide maritime transport services between Member States and between Member States and third countries shall apply in respect of nationals of Member States who are established in a Member State other than that of the person for whom the services are intended.

2. The provisions of this Regulation shall also apply to nationals of the Member States established outside the Community and to shipping companies established outside the Community and controlled by nationals of a Member State, if their vessels are registered in that Member State in accordance with its legislation.

3. The provisions of Articles 55 to 58 and 62 of the Treaty shall apply to the matters covered by this Regulation.

4. For the purpose of this Regulation, the following shall be considered 'maritime transport services between Member States and between Member States and third countries' where they are normally provided for remuneration:

(a) *intra-Community shipping services:*

the carriage of passengers or goods by sea between any port of a Member State and any port or off-shore installation of another Member State;

(b) *third-country traffic:*

the carriage of passengers or goods by sea between the ports of a Member State and ports or off-shore installations of a third country.

Article 2

By way of derogation from Article 1, unilateral national restrictions in existence before 1 July 1986 on the carriage of certain goods wholly or partly reserved for vessels flying the

national flag, shall be phased out at the latest in accordance with the following timetable:

- | | |
|----------------------------------------------------------------------------------------------------|------------------|
| — 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 |

Article 3

Cargo-sharing arrangements contained in existing bilateral agreements concluded by Member States with third countries shall be phased out or adjusted in accordance with the provisions of Article 4.

Article 4

1. Existing cargo-sharing arrangements not phased out in accordance with Article 3 shall be adjusted in accordance with Community legislation and in particular:

- (a) where trades governed by the United Nations Code of Conduct for Liner Conferences are concerned, they shall comply with this Code and with the obligations of Member States under Regulation (EEC) No 954/79;
- (b) where trades not governed by the United Nations Code of Conduct for Liner Conferences are concerned, agreement shall 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, as defined in Article 1, to the cargo-shares due to the Member States concerned.

2. National action in pursuance of paragraph 1 shall be notified immediately to the Member States and the Commission. The consultation procedure established by Council Decision 77/587/EEC shall apply.

3. Member States shall report to the Commission on progress made on the adjustments referred to in paragraph 1 (b), initially every six months and subsequently every year.

4. When difficulties arise in the process of adjusting agreements to bring them into conformity with paragraph 1 (b), the Member State concerned shall inform the Council and the Commission. In cases where agreements are incompatible with paragraph 1 (b) and where the Member State concerned so asks, the Council shall, acting on a proposal from the Commission, take appropriate action.

Article 5

1. Cargo-sharing arrangements in any future agreements with third countries are prohibited other than in those exceptional circumstances where Community liner shipping

companies would not otherwise have an effective opportunity to ply for trade to and from the third country concerned. In these circumstances such arrangements may be permitted in accordance with the provisions of Article 6.

2. In cases where a third country seeks to impose cargo sharing arrangements on Member States in liquid or dry bulk trades, the Council shall take the appropriate action in accordance with Regulation (EEC) No 4058/86 concerning coordinated action to safeguard free access to cargoes in ocean trades ⁽¹⁾.

Article 6

1. If a Member State's nationals or shipping companies, as defined in Article 1, paragraphs 1 and 2, are experiencing, or are threatened by, a situation where they do not have an effective opportunity to ply for trade to and from a particular third country, the Member State concerned shall inform the other Member States and the Commission as soon as possible.

2. The Council, acting by qualified majority on a proposal of the Commission, shall decide on the necessary action. Such action may include, in the circumstances envisaged in Article 5 (1), the negotiation and conclusion of cargo-sharing arrangements.

3. If the Council has not decided on the necessary action within six months of a Member State providing information under paragraph 1, the Member State concerned may take such action as may for the time being be necessary to preserve an effective opportunity to ply for trade in accordance with Article 5 (1).

4. Any action taken under paragraph 3 shall be in accordance with Community law and provide for fair, free and non-discriminatory access to the relevant cargo shares by nationals or Community shipping companies, as defined in Article 1 (1) and (2).

5. National action in pursuance of paragraph 3 shall be notified immediately to the Member States and the Commission. The consultation procedure established by Council Decision 77/587/EEC shall apply.

Article 7

The Council, acting in accordance with the conditions laid down in the Treaty, may extend the provisions of this Regulation to nationals of a third country who provide maritime transport services and are established in the Community.

Article 8

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

Article 9

As long as restrictions on freedom to provide services have not been abolished, each Member State shall apply such restrictions without distinction on grounds of nationality or residence to all persons providing services within the meaning of Article 1 (1) and (2).

Article 10

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

Article 11

The Council, acting in accordance with the provisions laid down in the Treaty, shall review this Regulation before 1 January 1995.

Article 12

This Regulation shall enter into force on the day following its publication in the *Official Journal of the European Communities*.

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

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

⁽¹⁾ See page 21 in this Official Journal.

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Articles 84 (2) and 87 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the rules on competition form part of the Treaty's general provisions which also apply to maritime transport; whereas detailed rules for applying those provisions are set out in the Chapter of the Treaty dealing with the rules on competition or are to be determined by the procedures laid down therein;

Whereas according to Council Regulation No 141 ⁽³⁾, Council Regulation No 17 ⁽⁴⁾ does not apply to transport; whereas Council Regulation (EEC) No 1017/68 ⁽⁵⁾ applies to inland transport only; whereas, consequently, the Commission has no means at present of investigating directly cases of suspected infringement of Articles 85 and 86 in maritime transport; whereas, moreover, the Commission lacks such powers of its own to take decisions or impose penalties as are necessary for it to bring to an end infringements established by it;

Whereas this situation necessitates the adoption of a Regulation applying the rules of competition to maritime transport; whereas Council Regulation (EEC) No 954/79 of 15 May 1979 concerning the ratification by Member States of, or their accession to, the United Nations Convention on a Code of Conduct for Liner Conference ⁽⁶⁾ will result in the application of the Code of Conduct to a considerable number of conferences serving the Community; whereas the Regulation applying the rules of competition to maritime transport foreseen in the last recital of Regulation (EEC) No 954/79 should take account of the adoption of the Code;

whereas, as far as conferences subject to the Code of Conduct are concerned, the Regulation should supplement the Code or make it more precise;

Whereas it appears preferable to exclude tramp vessel services from the scope of this Regulation, rates for these services being freely negotiated on a case-by-case basis in accordance with supply and demand conditions;

Whereas this Regulation should take account of the necessity, on the one hand to provide for implementing rules that enable the Commission to ensure that competition is not unduly distorted within the common market, and on the other hand to avoid excessive regulation of the sector;

Whereas this Regulation should define the scope of the provisions of Articles 85 and 86 of the Treaty, taking into account the distinctive characteristics of maritime transport; whereas trade between Member States may be affected where restrictive practices or abuses concern international maritime transport, including intra-Community transport, from or to Community ports; whereas such restrictive practices or abuses may influence competition, firstly, between ports in different Member States by altering their respective catchment areas, and secondly, between activities in those catchment areas, and disturb trade patterns within the common market;

Whereas certain types of technical agreement, decisions and concerted practices may be excluded from the prohibition on restrictive practices on the ground that they do not, as a general rule, restrict competition;

Whereas provision should be made for block exemption of liner conferences; whereas liner conferences have a stabilizing effect, assuring shippers of reliable services; whereas they contribute generally to providing adequate efficient scheduled maritime transport services and give fair consideration to the interests of users; whereas such results cannot be obtained without the cooperation that shipping companies promote within conferences in relation to rates and, where appropriate, availability of capacity or allocation of cargo for shipment, and income; whereas in most cases conferences continue to be subject to effective competition from both non-conference scheduled services and, in certain circumstances, from tramp services and from other modes of transport; whereas the mobility of fleets, which is a characteristic feature of the structure of availability in the shipping field, subjects conferences to constant competition which they are unable as a rule to eliminate as far as a substantial proportion of the shipping services in question is concerned;

⁽¹⁾ OJ No C 172, 2. 7. 1984, p. 178; OJ No C 255, 13. 10. 1986, p. 169.

⁽²⁾ OJ No C 77, 21. 3. 1983, p. 13; OJ No C 344, 31. 12. 1985, p. 31.

⁽³⁾ OJ No 124, 28. 11. 1962, p. 2751/62.

⁽⁴⁾ OJ No 13, 21. 2. 1962, p. 204/62.

⁽⁵⁾ OJ No L 175, 23. 7. 1968, p. 1.

⁽⁶⁾ OJ No L 121, 17. 5. 1979, p. 1.

Whereas, however, in order to prevent conferences from engaging in practices which are incompatible with Article 85 (3) of the Treaty, certain conditions and obligations should be attached to the exemption;

Whereas the aim of the conditions should be to prevent conferences from imposing restrictions on competition which are not indispensable to the attainment of the objectives on the basis of which exemption is granted; whereas, to this end, conferences should not, in respect of a given route, apply rates and conditions of carriage which are differentiated solely by reference to the country of origin or destination of the goods carried and thus cause within the Community deflections of trade that are harmful to certain ports, shippers, carriers or providers of services ancillary to transport; whereas, furthermore, loyalty arrangements should be permitted only in accordance with rules which do not restrict unilaterally the freedom of users and consequently competition in the shipping industry, without prejudice, however, to the right of a conference to impose penalties on users who seek by improper means to evade the obligation of loyalty required in exchange for the rebates, reduced freight rates or commission granted to them by the conference; whereas users must be free to determine the undertakings to which they have recourse in respect of inland transport or quayside services not covered by the freight charge or by other charges agreed with the shipping line;

Whereas certain obligations should also be attached to the exemption; whereas in this respect users must at all times be in a position to acquaint themselves with the rates and conditions of carriage applied by members of the conference, since in the case of inland transports organized by shippers, the latter continue to be subject to Regulation (EEC) No 1017/68; whereas provision should be made that awards given at arbitration and recommendations made by conciliators and accepted by the parties be notified forthwith to the Commission in order to enable it to verify that conferences are not thereby exempted from the conditions provided for in the Regulation and thus do not infringe the provisions of Articles 85 and 86;

Whereas consultations between users or associations of users and conferences are liable to secure a more efficient operation of maritime transport services which takes better account of users' requirements; whereas, consequently, certain restrictive practices which could ensue from such consultations should be exempted;

Whereas there can be no exemption if the conditions set out in Article 85 (3) are not satisfied; whereas the Commission must therefore have power to take the appropriate measures where an agreement or concerted practice owing to special circumstances proves to have certain effects incompatible with Article 85 (3); whereas, in view of the specific role fulfilled by the conferences in the sector of the liner services, the reaction of the Commission should be progressive and proportionate; whereas the Commission should consequently have the power first to address recommendations, then to take decisions;

Whereas the automatic nullity provided for in Article 85 (3) in respect of agreements or decisions which have not been

granted exemption pursuant to Article 85 (3) owing to their discriminatory or other features applies only to the elements of the agreement covered by the prohibition of Article 85 (1) and applies to the agreement in its entirety only if those elements do not appear to be severable from the whole of the agreement whereas the Commission should therefore, if it finds an infringement of the block exemption, either specify what elements of the agreement are by the prohibition and consequently automatically void, or indicate the reasons why those elements are not severable from the rest of the agreement and why the agreement is therefore void in its entirety;

Whereas, in view of the characteristics of international maritime transport, account should be taken of the fact that the application of this Regulation to certain restrictive practices or abuses may result in conflicts with the laws and rules of certain third countries and prove harmful to important Community trading and shipping interests; whereas consultations and, where appropriate, negotiations authorized by the Council should be undertaken by the Commission with those countries in pursuance of the maritime transport policy of the Community;

Whereas this Regulation should make provision for the procedures, decision-making powers and penalties that are necessary to ensure compliance with the prohibitions laid down in Article 85 (1) and Article 86, as well as the conditions governing the application of Article 85 (3);

Whereas account should be taken in this respect of the procedural provisions of Regulation (EEC) No 1017/68 applicable to inland transport operations which takes account of certain distinctive features of transport operations viewed as a whole;

Whereas, in particular, in view of the special characteristics of maritime transport, it is primarily the responsibility of undertakings to see to it that their agreements, decisions and concerted practices conform to the rules on competition, and consequently their notification to the Commission need not be made compulsory;

Whereas in certain circumstances undertakings may, however, wish to apply to the Commission for confirmation that their agreements, decisions and concerted practices are in conformity with the provisions in force; whereas a simplified procedure should be laid down for such cases,

HAS ADOPTED THIS REGULATION:

SECTION I

Article 1

Subject-matter and scope of the Regulation

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

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

3. For the purposes of this Regulation:

- (a) 'tramp vessel services' means the transport of goods in bulk or in break-bulk in a vessel chartered wholly or partly to one or more shippers on the basis of a voyage or time charter or any other form of contract for non-regularly scheduled or non-advertised sailings where the freight rates are freely negotiated case by case in accordance with the conditions of supply and demand;
- (b) 'liner conference' means a group of two or more vessel-operating carriers which provides international liner services for the carriage of cargo on a particular route or routes within specified geographical limits and which has an agreement or arrangement, whatever its nature, within the framework of which they operate under uniform or common freight rates and any other agreed conditions with respect to the provision of liner services;
- (c) 'transport user' means an undertaking (e.g. shippers, consignees, forwarders, etc.) provided it has entered into, or demonstrates an intention to enter into, a contractual or other arrangement with a conference or shipping line for the shipment of goods, or any association of shippers.

Article 2

Technical agreements

1. The prohibition laid down in Article 85 (1) of the Treaty shall not apply to agreements, decisions and concerted practices whose sole object and effect is to achieve technical improvements or cooperation by means of:
 - (a) the introduction or uniform application of standards or types in respect of vessels and other means of transport, equipment, supplies or fixed installations;
 - (b) the exchange or pooling for the purpose of operating transport services, of vessels, space on vessels or slots and other means of transport, staff, equipment or fixed installations;
 - (c) the organization and execution of successive or supplementary maritime transport operations and the establishment or application of inclusive rates and conditions for such operations;
 - (d) the coordination of transport timetables for connecting routes;
 - (e) the consolidation of individual consignments;

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

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

Article 3

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

Agreements, decisions and concerted practices of all or part of the members of one or more liner conferences are hereby exempted from the prohibition in Article 85 (1) of the Treaty, subject to the condition imposed by Article 4 of this Regulation, when they have as their objective the fixing of rates and conditions of carriage, and, as the case may be, one or more of the following objectives:

- (a) the coordination of shipping timetables, sailing dates or dates of calls;
- (b) the determination of the frequency of sailings or calls;
- (c) the coordination or allocation of sailings or calls among members of the conference;
- (d) the regulation of the carrying capacity offered by each member;
- (e) the allocation of cargo or revenue among members.

Article 4

Condition attaching to exemption

The exemption provided for in Articles 3 and 6 shall be granted subject to the condition that the agreement, decision or concerted practice shall not, within the common market, cause detriment to certain ports, transport users or carriers by applying for the carriage of the same goods and in the area covered by the agreement, decision or concerted practice, rates and conditions of carriage which differ according to the country of origin or destination or port of loading or discharge, unless such rates or conditions can be economically justified.

Any agreement or decision or, if it is severable, any part of such an agreement or decision not complying with the preceding paragraph shall automatically be void pursuant to Article 85 (2) of the Treaty.

Article 5

Obligations attaching to exemption

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

1. Consultations

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

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

2. Loyalty arrangements

The shipping lines' members of a conference shall be entitled to institute and maintain loyalty arrangements with transport users, the form and terms of which shall be matters for consultation between the conference and transport users' organizations. These loyalty arrangements shall provide safeguards making explicit the rights of transport users and conference members. These arrangements shall be based on the contract system or any other system which is also lawful.

Loyalty arrangements must comply with the following conditions:

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

- under the system of immediate rebates each of the parties shall be entitled to terminate the loyalty arrangement at any time without penalty and subject to a period of notice of not more than six months; this period shall be reduced to three months when the conference rate is the subject of a dispute;
- under the system of deferred rebates neither the loyalty period on the basis of which the rebate is calculated nor the subsequent loyalty period required before payment of the rebate may exceed six months; this period shall be reduced to three months where the conference rate is the subject of a dispute.

(b) The conference shall, after consulting the transport users concerned, set out:

- (i) a list of cargo and any portion of cargo agreed with transport users which is specifically excluded from the scope of the loyalty arrangement; 100 % loyalty arrangements may be offered but may not be unilaterally imposed;
- (ii) a list of circumstances in which transport users are released from their obligation of loyalty; these shall include:
 - circumstances in which consignments are dispatched from or to a port in the area covered by the conference but not advertised and where the request for a waiver can be justified, and
 - those in which waiting time at a port exceeds a period to be determined for each port and for each commodity or class of commodities following consultation of the transport users directly concerned with the proper servicing of the port.

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

3. Services not covered by the freight charges

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

4. Availability of tariffs

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

5. Notification to the Commission of awards at arbitration and recommendations

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

Article 6

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

Agreements, decisions and concerned practices between transport users, on the one hand, and conferences, on the other hand, and agreements between transport users which may be necessary to that end, concerning the rates, conditions and quality of liner services, as long as they are provided for in Article 5 (1) and (2) are hereby exempted from the prohibition laid down in Article 85 (1) of the Treaty.

Article 7

Monitoring of exempted agreements

1. Breach of an obligation

Where the persons concerned are in breach of an obligation which, pursuant to Article 5, attaches to the

exemption provided for in Article 3, the Commission may, in order to put an end to such breach and under the conditions laid down in Section II:

- address recommendations to the persons concerned;
- in the event of failure by such persons to observe those recommendations and depending upon the gravity of the breach concerned, adopt a decision that either prohibits them from carrying out or requires them to perform specific acts or, while withdrawing the benefit of the block exemption which they enjoyed, grants them an individual exemption according to Article 11 (4) or withdraws the benefit of the block exemption which they enjoyed.

2. Effects incompatible with Article 85 (3)

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

(b) Special circumstances are, *inter alia*, created by:

(i) acts of conferences or a change of market conditions in a given trade resulting in the absence or elimination of actual or potential competition such as restrictive practices whereby the trade is not available to competition; or

(ii) acts of conference which may prevent technical or economic progress or user participation in the benefits;

(iii) acts of third countries which:

- prevent the operation of outsiders in a trade,
- impose unfair tariffs on conference members,
- impose arrangements which otherwise impede technical or economic progress (cargo-sharing, limitations on types of vessels).

(c) (i) If actual or potential competition is absent or may be eliminated as a result of action by a third country, the Commission shall enter into consultations with the competent authorities of the third country concerned, followed if necessary by negotiations under directives to be given by the Council, in order to remedy the situation.

If the special circumstances result in the absence or elimination of actual or potential competition contrary to Article 85 (3) (b) of the Treaty the Commission shall withdraw the benefit of the block exemption. At the same time it shall rule on whether and, if so, under what additional conditions and obligations an individual exemption should be granted to the relevant conference agreement with a view, *inter alia*, to obtaining access to the market for non-conference lines;

(ii) If, as a result of special circumstances as set out in (b), there are effects other than those referred to in (i) hereof, the Commission shall take one or more of the measures described in paragraph 1.

Article 8

Effects incompatible with Article 86 of the Treaty

1. The abuse of a dominant position within the meaning of Article 86 of the Treaty shall be prohibited, no prior decision to that effect being required.

2. Where the Commission, either on its own initiative or at the request of a Member State or of natural or legal persons claiming a legitimate interest, finds that in any particular case the conduct of conferences benefiting from the exemption laid down in Article 3 nevertheless has effects which are incompatible with Article 86 of the Treaty, it may withdraw the benefit of the block exemption and take, pursuant to Article 10, all appropriate measures for the purpose of bringing to an end infringements of Article 86 of the Treaty.

3. Before taking a decision under paragraph 2, the Commission may address to the conference concerned recommendations for termination of the infringement.

Article 9

Conflicts of international law

1. Where the application of this Regulation to certain restrictive practices or clauses is liable to enter into conflict with the provisions laid down by law, regulation or administrative action of certain third countries which would compromise important Community trading and shipping interests, the Commission shall, at the earliest opportunity, undertake with the competent authorities of the third countries concerned, consultations aimed at reconciling as far as possible the abovementioned interest with the respect of Community law. The Commission shall inform the Advisory Committee referred to in Article 15 of the outcome of these consultations.

2. Where agreements with third countries need to be negotiated, the Commission shall make recommendations to the Council, which shall authorize the Commission to open the necessary negotiations.

The Commission shall conduct these negotiations in consultation with an Advisory Committee as referred to in Article 15 and within the framework of such directives as the Council may issue to it.

3. In exercising the powers conferred on it by this Article, the Council shall act in accordance with the decision-making procedure laid down in Article 84 (2) of the Treaty.

4. If the Commission, whether acting on a complaint received or on its own initiative, concludes that an agreement, decision or concerted practice satisfies the provisions both of Article 85 (1) and of Article 85 (3) of the Treaty, it shall issue a decision applying Article 85 (3). Such decision shall indicate the date from which it is to take effect. This date may be prior to that of the decision.

SECTION II

RULES OF PROCEDURE

Article 10

Procedures on complaint or on the Commission's own initiative

Acting on receipt of a complaint or on its own initiative, the Commission shall initiate procedures to terminate any infringement of the provisions of Articles 85 (1) or 86 of the Treaty or to enforce Article 7 of this Regulation.

Complaints may be submitted by:

- (a) Member States;
- (b) natural or legal persons who claim a legitimate interest.

Article 11

Result of procedures on complaint or on the Commission's own initiative

1. Where the Commission finds that there has been an infringement of Articles 85 (1) or 86 of the Treaty, it may by decision require the undertakings or associations of undertakings concerned to bring such infringement to an end.

Without prejudice to the other provisions of this Regulation, the Commission may, before taking a decision under the preceding subparagraph, address to the undertakings or associations of undertakings concerned recommendations for termination of the infringement.

2. Paragraph 1 shall apply also to cases falling within Article 7 of this Regulation.

3. If the Commission, acting on a complaint received, concludes that on the evidence before it there are no grounds for intervention under Articles 85 (1) or 86 of the Treaty or Article 7 of this Regulation, in respect of any agreement, decision or practice, it shall issue a decision rejecting the complaint as unfounded.

Article 12

Application of Article 85 (3) — objections

1. Undertakings and associations of undertakings which seek application of Article 85 (3) of the Treaty in respect of agreements, decisions and concerted practices falling within the provisions of Article 85 (1) to which they are parties shall submit applications to the Commission.

2. If the Commission judges an application admissible and is in possession of all the available evidence, and no action under Article 10 has been taken against the agreement, decision or concerted practice in question, then it shall publish as soon as possible in the *Official Journal of the European Communities* a summary of the application and invite all interested third parties and the Member States to submit their comments to the Commission within 30 days. Such publications shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

3. Unless the Commission notifies applicants, within 90 days from the date of such publication in the *Official Journal of the European Communities*, that there are serious doubts as to the applicability of Article 85 (3), the agreement, decision or concerted practice shall be deemed exempt, insofar as it conforms with the description given in the application, from the prohibition for the time already elapsed and for a maximum of six years from the date of publication in the *Official Journal of the European Communities*.

If the Commission finds, after expiry of the 90-day time limit, but before expiry of the six year period, that the conditions for applying Article 85 (3) are not satisfied, it shall issue a decision declaring that the prohibition in Article 85 (1) is applicable. Such decision may be retroactive where the parties concerned have given inaccurate information or where they abuse the exemption from the provisions of Article 85 (1).

4. The Commission may notify applicants as referred to in the first subparagraph of paragraph 3 and shall do so if requested by a Member State within 45 days of the forwarding to the Member State of the application in accordance with Article 15 (2). This request must be justified on the basis of considerations relating to the competition rules of the Treaty.

If it finds that the conditions of Article 85 (1) and of Article 85 (3) are satisfied, the Commission shall issue a decision

applying Article 85 (3). The decision shall indicate the date from which it is to take effect. This date may be prior to that of the application.

Article 13

Duration and revocation of decisions applying Article 85 (3)

1. Any decision applying Article 85 (3) taken under Article 11 (4) or under the second subparagraph of Article 12 (4) shall indicate the period for which it is to be valid; normally such period shall not be less than six years. Conditions and obligations may be attached to the decision.
2. The decision may be renewed if the conditions for applying Article 85 (3) continue to be satisfied.
3. The Commission may revoke or amend its decision or prohibit specified acts by the parties:
 - (a) where there has been a change in any of the facts which were basic to the making of the decision;
 - (b) where the parties commit a breach of any obligation attached to the decision;
 - (c) where the decision is based on incorrect information or was induced by deceit, or
 - (d) where the parties abuse the exemption from the provisions of Article 85 (1) granted to them by the decision.

In cases falling within (b), (c) or (d), the decision may be revoked with retroactive effect.

Article 14

Powers

Subject to review of its decision by the Court of Justice, the Commission shall have sole power:

- to impose obligations pursuant to Article 7;
- to issue decisions pursuant to Article 85 (3).

The authorities of the Member States shall retain the power to decide whether any case falls within the provisions of Article 85 (1) or Article 86, until such time as the Commission has initiated a procedure with a view to formulating a decision in the case in question or has sent notification as provided for in the first subparagraph of Article 12 (3).

Article 15

Liaison with the authorities of the Member States

1. The Commission shall carry out the procedures provided for in this Regulation in close and constant liaison

with the competent authorities of the Member States; these authorities shall have the right to express their views on such procedures.

2. The Commission shall immediately forward to the competent authorities of the Member States copies of the complaints and applications, and of the most important documents sent to it or which it sends out in the course of such procedures.

3. An Advisory Committee on agreements and dominant positions in maritime transport shall be consulted prior to the taking of any decision following upon a procedure under Article 10 or of any decision issued under the second subparagraph of Article 12 (3), or under the second subparagraph of paragraph 4 of the same Article. The Advisory Committee shall also be consulted prior to the adoption of the implementing provisions provided for in Article 26.

4. The Advisory Committee shall be composed of officials competent in the sphere of maritime transport and agreements and dominant positions. Each Member State shall nominate two officials to represent it, each of whom may be replaced, in the event of his being prevented from attending, by another official.

5. Consultation shall take place at a joint meeting convened by the Commission; such meeting shall be held not earlier than fourteen days after dispatch of the notice convening it. This notice shall, in respect of each case to be examined, be accompanied by a summary of the case together with an indication of the most important documents, and a preliminary draft decision.

6. The Advisory Committee may deliver an opinion notwithstanding that some of its members or their alternates are not present. A report of the outcome of the consultative proceedings shall be annexed to the draft decision. It shall not be made public.

Article 16

Requests for information

1. In carrying out the duties assigned to it by this Regulation, the Commission may obtain all necessary information from the Governments and competent authorities of the Member States and from undertakings and associations of undertakings.

2. When sending a request for information to an undertaking or association of undertakings, the Commission shall at the same time forward a copy of the request to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

3. In its request, the Commission shall state the legal basis and the purpose of the request, and also the penalties provided for in Article 19 (1) (b) for supplying incorrect information.

4. The owners of the undertakings or their representatives and, in the case of legal persons, companies

or firms, or of associations having no legal personality, the person authorized to represent them by law or by their constitution, shall be bound to supply the information requested.

5. Where an undertaking or association of undertakings does not supply the information requested within the time limit fixed by the Commission, or supplies incomplete information, the Commission shall by decision require the information to be supplied. The decision shall specify what information is required, fix an appropriate time limit within which it is to be supplied and indicate the penalties provided for in Article 19 (1) (b) and Article 20 (1) (c) and the right to have the decision reviewed by the Court of Justice.

6. The Commission shall at the same time forward a copy of its decision to the competent authority of the Member State in whose territory the seat of the undertaking or association of undertakings is situated.

Article 17

Investigations by the authorities of the Member States

1. At the request of the Commission, the competent authorities of the Member States shall undertake the investigations which the Commission considers to be necessary under Article 18 (1), or which it has ordered by decision pursuant to Article 18 (3). The officials of the competent authorities of the Member States responsible for conducting these investigations shall exercise their powers upon production of an authorization in writing issued by the competent authority of the Member State in whose territory the investigation is to be made. Such authorization shall specify the subject matter and purpose of the investigation.

2. If so requested by the Commission or by the competent authority of the Member State in whose territory the investigation is to be made, Commission officials may assist the officials of such authority in carrying out their duties.

Article 18

Investigating powers of the Commission

1. In carrying out the duties assigned to it by this Regulation, the Commission may undertake all necessary investigations into undertakings and associations of undertakings.

To this end the officials authorized by the Commission are empowered:

- (a) to examine the books and other business records;
- (b) to take copies of or extracts from the books and business records;
- (c) to ask for oral explanations on the spot;
- (d) to enter any premises, land and vehicles of undertakings.

2. The officials of the Commission authorized for the purpose of these investigations shall exercise their powers upon production of an authorization in writing specifying the subject matter and purpose of the investigation and the penalties provided for in Article 19 (1) (c) in cases where production of the required books or other business records is incomplete. In good time before the investigation, the Commission shall inform the competent authority of the Member State in whose territory the same is to be made of the investigation and of the identity of the authorized officials.

3. Undertakings and associations of undertakings shall submit to investigations ordered by decision of the Commission. The decision shall specify the subject matter and purpose of the investigation, appoint the date on which it is to begin and indicate the penalties provided for in Article 19 (1) (c) and Article 20 (1) (d) and the right to have the decision reviewed by the Court of Justice.

4. The Commission shall take decisions referred to in paragraph 3 after consultation with the competent authority of the Member State in whose territory the investigation is to be made.

5. Officials of the competent authority of the Member State in whose territory the investigation is to be made, may at the request of such authority or of the Commission, assist the officials of the Commission in carrying out their duties.

6. Where an undertaking opposes an investigation ordered pursuant to this Article, the Member State concerned shall afford the necessary assistance to the officials authorized by the Commission to enable them to make their investigation. To this end, Member States shall take the necessary measures, after consulting the Commission, before 1 January 1989.

Article 19

Fines

1. The Commission may by decision impose on undertakings or associations of undertakings fines of from 100 to 5 000 ECU where, intentionally or negligently:

- (a) they supply incorrect or misleading information, either in a communication pursuant to Article 5 (5) or in an application pursuant to Article 12; or
- (b) they supply incorrect information in response to a request made pursuant to Article 16 (3) or (5), or do not supply information within the time limit fixed by a decision taken under Article 16 (5); or
- (c) they produce the required books or other business records in incomplete form during investigations under Article 17 or Article 18, or refuse to submit to an investigation ordered by decision issued in implementation of Article 18 (3).

2. The Commission may by decision impose on undertakings or associations of undertakings fines of from 1 000 to one million ECU, or a sum in excess thereof but not exceeding 10 % of the turnover in the preceding business year of each of the undertakings participating in the infringement, where either intentionally or negligently:

- (a) they infringe Article 85 (1) or Article 86 of the Treaty, or do not comply with an obligation imposed under Article 7 of this Regulation;
- (b) they commit a breach of any obligation imposed pursuant to Article 5 or to Article 13 (1).

In fixing the amount of the fine, regard shall be had both to the gravity and to the duration of the infringement.

- 3. Article 15 (3) and (4) shall apply.
- 4. Decisions taken pursuant to paragraphs 1 and 2 shall not be of criminal law nature.

The fines provided for in paragraph 2 (a) shall not be imposed in respect of acts taking place after notification to the Commission and before its Decision in application of Article 85 (3) of the Treaty, provided they fall within the limits of the activity described in the notification.

However, this provision shall not have effect where the Commission has informed the undertakings concerned that after preliminary examination it is of the opinion that Article 85 (1) of the Treaty applies and that application of Article 85 (3) is not justified.

Article 20

Periodic penalty payments

- 1. The Commission may by decision impose on undertakings or associations of undertakings periodic penalty payments of from 50 to 1 000 ECU per day, calculated from the date appointed by the decision, in order to compel them:
 - (a) to put an end to an infringement of Article 85 (1) or Article 86 of the Treaty the termination of which it has ordered pursuant to Article 11, or to comply with an obligation imposed pursuant to Article 7;
 - (b) to refrain from any act prohibited under Article 13 (3);
 - (c) to supply complete and correct information which it has requested by decision taken pursuant to Article 16 (5);
 - (d) to submit to an investigation which it has ordered by decision taken pursuant to Article 18 (3).

2. Where the undertakings or associations of undertakings have satisfied the obligation which it was the purpose of the periodic penalty payment to enforce, the Commission may fix the total amount of the periodic penalty payment at a lower figure than that which would arise under the original decision.

- 3. Article 15 (3) and (4) shall apply.

Article 21

Review by the Court of Justice

The Court of Justice shall have unlimited jurisdiction within the meaning of Article 172 of the Treaty to review decisions whereby the Commission has fixed a fine or periodic penalty payment; it may cancel, reduce or increase the fine or periodic penalty payment imposed.

Article 22

Unit of account

For the purpose of applying Articles 19 to 21 the ECU shall be that adopted in drawing up the budget of the Community in accordance with Articles 207 and 209 of the Treaty.

Article 23

Hearing of the parties and of third persons

- 1. Before taking decisions as provided for in Articles 11, 12 (3) second subparagraph, and 12 (4), 13 (3), 19 and 20, the Commission shall give the undertakings or associations of undertakings concerned the opportunity of being heard on the matters to which the Commission has taken objection.
- 2. If the Commission or the competent authorities of the Member States consider it necessary, they may also hear other natural or legal persons. Applications to be heard on the part of such persons where they show a sufficient interest shall be granted.
- 3. Where the Commission intends to give negative clearance pursuant to Article 85 (3) of the Treaty, it shall publish a summary of the relevant agreement, decision or concerted practice and invite all interested third parties to submit their observations within a time limit which it shall fix being not less than one month. Publication shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 24

Professional secrecy

- 1. Information acquired as a result of the application of Articles 17 and 18 shall be used only for the purpose of the relevant request or investigation.

2. Without prejudice to the provisions of Articles 23 and 25, the Commission and the competent authorities of the Member States, their officials and other servants shall not disclose information acquired by them as a result of the application of this Regulation and of the kind covered by the obligation of professional secrecy.

3. The provisions of paragraphs 1 and 2 shall not prevent publication of general information or surveys which do not contain information relating to particular undertakings or associations of undertakings.

Article 25

Publication of decisions

1. The Commission shall publish the decisions which it takes pursuant to Articles 11, 12 (3), second paragraph, 12 (4) and 13 (3).

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

Done at Brussels, 22 December 1986.

2. The publication shall state the names of the parties and the main content of the decision; it shall have regard to the legitimate interest of undertakings in the protection of their business secrets.

Article 26

Implementing provisions

The Commission shall have power to adopt implementing provisions concerning the scope of the obligation of communication pursuant to Article 5 (5), the form, content and other details of complaints pursuant to Article 10, applications pursuant to Article 12 and the hearings provided for in Article 23 (1) and (2).

Article 27

Entry into force

This Regulation shall enter into force on 1 July 1987.

For the Council

The President

G. SHAW

COUNCIL REGULATION (EEC) No 4057/86
of 22 December 1986
on unfair pricing practices in maritime transport

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas there is reason to believe, *inter alia* on the basis of the information system set up by Council Decision 78/774/EEC ⁽³⁾, that the competitive participation of Community shipowners in international liner shipping is adversely affected by certain unfair practices of shipping lines of third countries;

Whereas the structure of the Community shipping industry is such as to make it appropriate that the provisions of this Regulation should also apply to nationals of Member States established outside the Community or cargo shipping companies established outside the Community and controlled by nationals of Member States, if their ships are registered in a Member State in accordance with its legislation;

Whereas such unfair practices consist of continuous charging of freight rates for the transport of selected commodities which are lower than the lowest freight rates charged for the same commodities by established and representative shipowners;

Whereas such pricing practices are made possible by non-commercial advantages granted by a State which is not a member of the Community;

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

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

Whereas, in order to determine the existence of unfair pricing practices, provision should therefore be made for an

appropriate method of calculation; whereas when calculating the 'normal freight rate' account should be taken of the comparable rate actually charged by established and representative companies operating within or outside conferences or otherwise of a constructed rate based on the costs of comparable companies plus a reasonable margin of profit;

Whereas appropriate factors relevant for the determination of injury should be laid down;

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

Whereas there should be cooperation between the Member States and the Commission both as regards information about the existence of unfair pricing practices and injury resulting therefrom, and as regards the subsequent examination of the matter at Community level; whereas, to this end, consultations should take place within an Advisory Committee;

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

Whereas, in order to discourage unfair pricing practices, but without preventing, restricting or distorting price competition by non-conference lines, providing that they are working on a fair and commercial basis, it is appropriate to provide, in cases where the facts as finally established show that there is an unfair pricing practice and injury, for the possibility of imposing redressive duties on particular grounds;

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

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

⁽¹⁾ OJ No C 255, 15. 10. 1986, p. 169.

⁽²⁾ OJ No C 344, 31. 12. 1985, p. 31.

⁽³⁾ OJ No L 258, 21. 9. 1978, p. 35.

Whereas appropriate procedures should be established for examining applications for refund of redressive duties,

HAS ADOPTED THIS REGULATION:

Article 1

Objective

This Regulation lays down the procedure to be followed in order to respond to unfair pricing practices by certain third country shipowners engaged in international cargo liner shipping, which cause serious disruption of the freight pattern on a particular route to, from or within the Community and cause or threaten to cause major injury to Community shipowners operating on that route and to Community interests.

Article 2

In response to unfair pricing practices as described in Article 1 which cause major injury, a redressive duty may be applied by the Community.

A threat of major injury may only give rise to an examination within the meaning of Article 4.

Article 3

For the purposes of this Regulation:

- (a) 'third country shipowner' means cargo liner shipping companies other than those mentioned under (d);
- (b) 'unfair pricing practices' means the continuous charging on a particular shipping route to, from or within the Community of freight rates for selected or all commodities which are lower than the normal freight rates charged during a period of at least six months, when such lower freight rates are made possible by the fact that the shipowner concerned enjoys non-commercial advantages which are granted by a State which is not a member of the Community;
- (c) the 'normal freight rate' shall be determined taking into account:
 - (i) the comparable rate actually charged in the ordinary course of shipping business for the like service on the same or comparable route by established and representative companies not enjoying the advantages in (b);
 - (ii) or otherwise the constructed rate which is determined by taking the costs of comparable companies not enjoying the advantages in (b) plus a reasonable margin of profit. This cost shall be computed on the

basis of all costs incurred in the ordinary course of shipping business, both fixed and variable, plus a reasonable amount for overhead expenses.

(d) 'Community shipowners' means:

- all cargo shipping companies established under the Treaty in a Member State of the Community;
- nationals of Member States established outside the Community or cargo shipping companies established outside the Community and controlled by nationals of Member States, if their ships are registered in a Member State in accordance with its legislation.

Article 4

Examination of injury

1. Examination of injury shall cover the following factors:

- (a) the freight rates offered by Community shipowners' competitors on the route in question, in particular in order to determine whether they have been significantly lower than the normal freight rate offered by Community shipowners, taking into account the level of service offered by all the companies concerned;
- (b) the effect of the above factor on Community shipowners as indicated by trends in a number of economic indicators such as:
 - sailings,
 - utilization of capacity,
 - cargo bookings,
 - market share,
 - freight rates (that is depression of freight rates or prevention of freight rate increases which would normally have occurred),
 - profits,
 - return of capital,
 - investment,
 - employment.

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

- (a) the increase in tonnage deployed on the shipping route where the competition with Community shipowners is taking place;
- (b) the capacity which is already available or is to become available in the foreseeable future in the country of the

foreign shipowners and the extent to which the tonnage resulting from that capacity is likely to be used on the shipping route referred to in (a).

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

Article 5

Complaint

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

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

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

4. The complaint may be withdrawn, in which case proceedings may be terminated unless such termination would not be in the interest of the Community.

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

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

Article 6

Consultations

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

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

3. Where necessary, consultation may be in writing only; in such case the Commission shall notify the Member States

and shall specify a period within which they shall be entitled to express their opinions or to request an oral consultation.

4. Consultation shall in particular cover:

- (a) the existence of unfair pricing practices and the amount thereof;
- (b) the existence and extent of injury;
- (c) the causal link between the unfair pricing practices and injury;
- (d) the measures which, in the circumstances, are appropriate to prevent or remedy the injury caused by unfair pricing practices and the ways and means for putting such measures into effect.

Article 7

Initiation and subsequent investigation

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

- (a) announce the initiation of a proceeding in the *Official Journal of the European Communities*; such announcements shall indicate the foreign shipowner concerned and his country of origin, give a summary of the information received, and provide that all relevant information is to be communicated to the Commission; it shall state the period within which interested parties may make known their views in writing and may apply to be heard orally by the Commission in accordance with paragraph 5;
- (b) so advise the shipowners, shippers and freight forwarders known to the Commission to be concerned and the complainants;
- (c) commence the investigation at Community level, acting in cooperation with the Member States; such investigation shall cover both unfair pricing practices and injury resulting therefrom and shall be carried out in accordance with paragraphs 2 to 8; the investigation of unfair pricing practices shall normally cover a period of not less than six months immediately prior to the initiation of the proceeding.

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

(b) Where necessary the Commission shall, after consultation, carry out investigations in third countries, provided that the firms concerned give their consent and the government of the country in question

has been officially notified and raises no objection. The Commission shall be assisted by officials of those Member States which so request.

3. (a) The Commission may request Member States:

- to supply information,
- to carry out all necessary checks and inspections, particularly amongst shippers, freight forwarders, Community shipowners and their agents,
- to carry out investigations in third countries, provided the firms concerned give their consent and the government of the country in question has been officially notified and raises no objection.

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

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

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

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

(b) Shipowners subject to investigation and the complainant may request to be informed of the essential facts and considerations on the basis of which it is intended to recommend the imposition of redressive duties.

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

- be addressed to the Commission in writing,
- specify the particular issues on which information is sought.

(ii) The information may be given either orally or in writing, as considered appropriate by the

Commission. It shall not prejudice any subsequent decision which may be taken by the Council. Confidential information shall be treated in accordance with Article 8.

(iii) Information shall normally be given no later than 15 days prior to the submission by the Commission of any proposal for action pursuant to Article 11. Representations made after the information is given may be taken into consideration only if received within a period to be set by the Commission in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

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

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

7. (a) This Article shall not preclude the Council from reaching preliminary determinations or from applying measures expeditiously.

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

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

9. (a) An investigation shall be concluded either by its termination or by action pursuant to Article 11. Conclusion should normally take place within one year of the initiation of the proceeding.

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

*Article 8***Confidentiality**

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

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

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

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

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

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

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

*Article 9***Termination of proceedings where protective measures are unnecessary**

1. If it becomes apparent after consultation that protective measures are unnecessary, then, where no objection is raised within the Advisory Committee referred to in Article 6 (1), the proceeding shall be terminated. In all other cases the Commission shall submit to the Council

forthwith a report on the results of the consultation, together with a proposal that the proceeding be terminated. The proceeding shall stand terminated if, within one month, the Council, acting by a qualified majority, has not decided otherwise.

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

*Article 10***Undertakings**

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

Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made under Article 7 (4) (c) (iii). The termination shall be decided in conformity with the procedure laid down in Article 9 (1) and information shall be given and notice published in accordance with Article 9 (2).

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

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

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

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

*Article 11***Redressive duties**

Where investigation shows that there is an unfair pricing practice, that injury is caused by it and that the interests of the Community make Community intervention necessary, the Commission shall propose to the Council, after the consultations provided for in Article 6, that it introduce a redressive duty. The Council, acting by a qualified majority, shall take a Decision within two months.

Article 12

In deciding on the redressive duties, the Council shall also take due account of the external trade policy considerations as well as the port interests and the shipping policy considerations of the Member States concerned.

*Article 13***General provisions on duties**

1. Redressive duties shall be imposed on the foreign shipowners concerned by regulation.
2. Such regulation shall indicate in particular the amount and type of duty imposed, the commodity or commodities transported, the name and the country of origin of the foreign shipowner concerned and the reasons on which the Regulation is based.
3. The amount of the duties shall not exceed the difference between the freight rate charged and the normal freight rate referred to in Article 3 (c). It shall be less if such lesser duty would be adequate to remove the injury.
4. (a) Duties shall be neither imposed nor increased with retroactive effect and shall apply to the transport of commodities which, after entry into force of such duties, are loaded or discharged in a Community port.
- (b) However, where the Council determines that an undertaking has been violated or withdrawn, the redressive duties may be imposed, on a proposal from the Commission, on the transport of commodities which were loaded or discharged in a Community port not more than 90 days prior to the date of application of these duties, except that in the case of violation or withdrawal of an undertaking such retroactive assessment shall not apply to the transport of commodities which were loaded or discharged in a Community port before the violation or withdrawal. These duties may be calculated on the basis of the facts established before the acceptance of the undertaking.

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

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

*Article 14***Review**

1. Regulations imposing redressive duties and decisions to accept undertakings shall be subject to review, in whole or in part, where warranted. Such review may be held either at the request of a Member State or on the initiative of the Commission. A review shall also be held where an interested party so requests and submits evidence of changed circumstances sufficient to justify the need for such review, provided that at least one year has elapsed since the conclusion of the investigation. Such requests shall be addressed to the Commission, which shall inform the Member States.
2. Where, after consultation, it becomes apparent that review is warranted, the investigation shall be re-opened in accordance with Article 7, where the circumstances so require. Such reopening shall not *per se* affect the measures in operation.
3. Where warranted by the review, carried out either with or without reopening of the investigation, the measures shall be amended, repealed or annulled by the Community institution competent for their adoption.

Article 15

1. Subject to paragraph 2, redressive duties and undertakings shall lapse after five years from the date on which they entered into force or were last amended or confirmed.
2. The Commission shall normally, after consultation and within six months prior to the expiry of the five year period, publish in the *Official Journal of the European Communities* a notice of the impending expiry of the measure in question and inform Community shipowners known to be concerned. This notice shall state the period within which interested parties may make known their views in writing and may apply to be given a hearing by the Commission in accordance with Article 7 (5).

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

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

Article 16

Refund

1. Where the shipowner concerned can show that the duty collected exceeds the difference between the freight rate charged and the normal freight rate referred to in Article 3 (c) the excess amount shall be reimbursed.

2. In order to request the reimbursement referred to in paragraph 1, the foreign shipowner may submit an application to the Commission. The application shall be submitted via the Member State within the territory of which the commodities transported were loaded or discharged and within three months of the date on which the amount of the redressive duties to be levied was duly determined by the competent authorities.

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

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

Article 17

Final provisions

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

Article 18

Entry into force

This Regulation shall enter into force on 1 July 1987.

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

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

COUNCIL REGULATION (EEC) No 4058/86

of 22 December 1986

concerning coordinated action to safeguard free access to cargoes in ocean trades

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community, and in particular Article 84 (2) thereof,

Having regard to the draft Regulation submitted by the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas an increasing number of countries resort to protecting their merchant fleets either unilaterally, through legislation or administrative measures, or through bilateral agreements with other countries;

Whereas certain countries, by virtue of measures they have adopted or practices they have imposed, have distorted the application of the principle of fair and free competition in shipping trade with one or more Community Member States;

Whereas in respect of liner trades the United Nations Convention on a Code of Conduct for Liner Conferences, which entered into force on 6 October 1983, grants certain rights to shipping companies which are members of a conference operating a pool;

Whereas, increasingly, third countries which are contracting parties or signatories to that Convention interpret its provisions in such a way as effectively to expand the rights given under the Convention to their companies both in liner and tramp trades, to the disadvantage of Community companies or companies of other OECD countries, whether conference members or not;

Whereas in respect of bulk trades there is an increasing tendency on the part of third countries to restrict access to bulk cargoes, which poses a serious threat to the freely competitive environment broadly prevailing in the bulk trades; whereas the Member States affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trades and are convinced

that the introduction of cargo-sharing in these trades will have a serious effect on the trading interests of all countries by substantially increasing transportation costs;

Whereas the restriction of access to bulk cargoes would adversely affect the merchant fleets of the Member States, as well as substantially increasing the transportation costs of such cargoes, and would thereby have a serious effect on the trading interests of the Community;

Whereas the Community should be enabled to provide for coordinated action by Member States if the competitive position of Member States' merchant fleets or Member States' trading interests are adversely affected by cargo reservation to shipping companies of third countries or if required by an international agreement;

Whereas Council Decision 77/587/EEC ⁽³⁾ provides, *inter alia*, for consultation on the various aspects of developments which have taken place in relations between Member States and third countries in shipping matters;

Whereas Council Decision 83/573/EEC ⁽⁴⁾ provides, *inter alia*, for concertation by Member States of any countermeasures they may take in relation to third countries and for the possibility of a decision on the joint application by Member States of appropriate countermeasures forming part of their national legislation;

Whereas it is necessary to elaborate and refine the machinery provided for in these Decisions with a view to providing for coordinated action by Member States in certain circumstances at the request of a Member State or Member States or on the basis of an international agreement,

HAS ADOPTED THIS REGULATION:

Article 1

The procedure provided for by this Regulation shall be applicable when action by a third country or by its agents restricts or threatens to restrict free access by shipping companies of Member States or by ships registered in a Member State in accordance with its legislation to the transport of:

- liner cargoes in Code trades, except where such action is taken in accordance with the United Nations Convention on a Code of Conduct for Liner Conferences;
- liner cargoes in non-Code trades;
- bulk cargoes and any other cargo on tramp services;

⁽¹⁾ OJ No C 255, 15. 10. 1986, p. 169.

⁽²⁾ OJ No C 344, 31. 12. 1985, p. 31.

⁽³⁾ OJ No L 239, 17. 9. 1977, p. 23.

⁽⁴⁾ OJ No L 332, 28. 11. 1983, p. 37.

- passengers;
- persons or goods to or between offshore installations.

This procedure shall be without prejudice to the obligations of the Community and its Member States under international law.

Article 2

For the purposes of this Regulation:

- 'home-trader' means a shipping company of a third country which operates a service between its own country and one or more Member States;
- 'cross-trader' means a shipping company of a third country which operates a service between another third country and one or more Member States.

Article 3

Coordinated action may be requested by a Member State.

The request shall be made to the Commission; the latter shall make the appropriate recommendations or proposals to the Council within four weeks.

The Council, acting in accordance with the voting procedure laid down in Article 84 (2) or the Treaty, may decide on the coordinated action provided for in Article 4.

In deciding on coordinated action, the Council shall also take due account of the external trade policy considerations as well as the port interests and the shipping policy considerations of the Member States concerned.

Article 4

1. Coordinated action may consist of:

- (a) diplomatic representation to the third countries concerned, in particular where their actions threaten to restrict access to trade;
- (b) counter-measures directed at the shipping company or companies of the third countries concerned or at the shipping company or companies of other countries which benefit from the action taken by the countries concerned, whether operating as a hometrader or as a cross-trader in Community trades.

Those countermeasures may consist, separately or in combination, of:

- (i) the imposition of an obligation to obtain a permit to load, carry or discharge cargoes; such a permit may be subject to conditions or obligations;

- (ii) the imposition of a quota;
- (iii) the imposition of taxes or duties.

2. Diplomatic representations shall be made before countermeasures are taken.

Such countermeasures shall be without prejudice to the obligations of the European Community and its Member States under international law, shall take into consideration all the interests concerned and shall neither directly nor indirectly lead to deflection of trade within the Community.

Article 5

1. When deciding upon one or more of the countermeasures referred to in Article 4 (1) (b) the Council shall specify, as appropriate, the following:

- (a) the developments which have caused countermeasures to be taken;
- (b) the trade or range of ports to which the countermeasures are to apply;
- (c) the flag or shipping company of the third country whose cargo reservation measures restrict free access to cargoes in the shipping area concerned;
- (d) maximum volume (percentage, weight in tonnes, containers) or value of cargo which may be loaded or discharged in ports of Member States;
- (e) maximum number of sailings from and to ports of Member States;
- (f) amount or percentage and basis of the taxes and duties to be levied and the manner in which they will be collected;
- (g) the duration of the countermeasures.

2. Where the countermeasures envisaged by paragraph 1 are not provided for by the national legislation of a Member State they may be taken in accordance with the Council Decision referred to in the third paragraph of Article 3 by the Member State concerned on the basis of this Regulation.

Article 6

1. If the Council has not adopted the proposal on coordinated action within a period of two months, Member States may apply national measures unilaterally or as a group, if the situation so requires.

2. However, Member States may, in cases of urgency, take the necessary national measures on a provisional basis, unilaterally or as a group, even within the two-month period referred to in paragraph 1.

3. National measures taken in pursuance of this Article shall be notified immediately to the Commission and to the other Member States.

Article 7

During the period in which the countermeasures are to apply, the Member States and the Commission shall consult each other in accordance with the consultation procedure established by Decision 77/587/EEC every three months or earlier if the need arises, in order to discuss the effects of the countermeasures in force.

or threatens to restrict the access of shipping companies of another OECD country where, on a basis of reciprocity, it has been agreed between that country and the Community to resort to coordinated resistance in the case of restriction of access to cargoes.

Such country may make a request for coordinated action and join in such coordinated action in accordance with this Regulation.

Article 8

The procedure provided for by this Regulation may be applied when action by a third country or its agents restricts

Article 9

This Regulation shall enter into force on 1 July 1987.

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

Done at Brussels, 22 December 1986.

For the Council
The President
G. SHAW

COUNCIL REGULATION (EEC) No 4059/86

of 22 December 1986

on the granting of financial support to transport infrastructure projects

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community and in particular Article 75 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Economic and Social Committee ⁽²⁾,

Whereas the Council, at its meeting on 11 November 1986, reached conclusions concerning the objectives and criteria to be applied to a medium-term programme;

Whereas the appropriations included in the 1985 budget for the support of transport infrastructure should be used in accordance with those objectives and criteria;

Whereas ceilings for the Community financial support per project for the 1985 programme should be fixed;

Whereas the methods and procedures for applying this Regulation should be defined,

HAS ADOPTED THIS REGULATION:

Article 1

1. Within the limits of the appropriations available under the 1985 budget, and on the terms set out in Articles 2 and 3, the Community shall grant financial support for transport infrastructure projects which comply with the objectives and criteria set out in the Annex.

2. The projects referred to in paragraph 1 are listed below:

Transit routes:

- Brenner—Bolzano — improvement of the railway line — (Italy),
- Construction of the tunnel of Chavants on the road access to the Mont Blanc Tunnel (France),

⁽¹⁾ Opinion delivered on 12 December 1986 (not yet published in the Official Journal).

⁽²⁾ Opinion delivered on 16 December 1986 (not yet published in the Official Journal).

- Increasing capacity on the Aachen—Cologne motorway in the region of Cologne (Federal Republic of Germany),
- Construction of a by-pass at Braintree on the A 120 road towards the East Coast ports (United Kingdom),
- Improvement to the Toulouse—Barcelona road in the region of Pensaguel—Le Vernet (France),
- Increase of capacity and safety on the railway line Bayonne—Hendaye (France).

Works in major corridors:

- Between the Netherlands and Belgium — works to complete the Bergen-op-Zoom / Antwerp motorway (Netherlands and Belgium),
- On the approaches to the Channel Ports and the planned Channel Tunnel — completion of the M 20 motorway between Ashford and Maidstone (United Kingdom),
- On the transit route through Zealand to/from Sweden, electrification and improvements to the Ringsted-Rungsted railway line (Denmark).

Works for the better integration of areas situated geographically on the periphery of the Community:

- On the main road between the Peloponnese and the Yugoslav frontier:
 - Inofita—Schimatari (Greece)
 - Ritsona—Thivai (Greece)
 - Solomos—Nemea (Greece).
- On the principal Athens—Salonica—Idomeni (frontier) railway line:
 - Sfingas—Allartos (Greece)
 - Tithoria—Domokos—Larissa (Greece)
 - Salonica—Idomeni (Greece).
- On the main north-south road in Ireland:
 - The Dunleer bypass (Ireland).
- On the principal transit axis in the Iberian peninsula:
 - Irun-Portugal road N 620 (E 82) — Tordesillas bypass (Spain),
 - Oporto — Spanish frontier road IP 4 (E 801) — Paredes — Peñafiel (Portugal).

Other projects:

- Works in association with the construction of a new loading ramp for vehicles in the port of Ostend (Belgium),

— Preparatory studies and works on the project for the improvement of the Brenner Route between the Federal Republic of Germany and Italy through Austria (Italy).

Article 2

1. The financial support granted under this Regulation to the projects chosen in accordance therewith shall not exceed 25 % of the total cost of each project or of the particular stage of the project to be supported. It may be increased to not more than 50 % in the case of studies carried out preparatory to construction work.

2. In no case shall contributions from all Community budget sources exceed 50 % of the total cost of a given project.

3. An advance payment of no more than 40 % of the Community contribution may be provided to accelerate the execution of projects.

4. For the purpose of granting the Community financial support referred to in Article 1, the Commission shall take the necessary steps to apply this Regulation, in agreement with the Member States involved and taking into account the amounts estimated to be necessary.

Article 3

1. Where a project which has received financial support has not been carried out as planned, or where the conditions laid down are not fulfilled, the financial support may be reduced or cancelled by a decision adopted by the Commission.

Any sum incorrectly paid shall be repaid to the Community by the recipient concerned within 12 months of the date of notification of such decision.

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

Done at Brussels, 22 December 1986.

2. Without prejudice to checks carried out by the Member States in accordance with national laws, regulations or administrative provisions, and without prejudice to Article 206 *bis* of the Treaty or to any inspection arranged on the basis of Article 209 (c) of the Treaty, on-the-spot checks or enquiries in respect of projects receiving financial support shall be carried out by the competent authorities of the Member State concerned and by representatives of the Commission, or other persons authorized for this purpose by the latter. The Commission shall determine deadlines for the performance of checks and inform the Member State in advance in order to obtain all the necessary assistance.

3. The purpose of these on-the-spot checks or enquiries relating to operations receiving financial support shall be to ascertain:

- (a) the conformity of administrative practices with Community rules;
- (b) the existence of supporting documents and whether they correspond to the projects receiving financial support;
- (c) the conditions under which operations are executed and checked;
- (d) the conformity of the execution of projects with the conditions for granting the financial support.

4. The Commission may suspend payment of the financial contribution in respect of an operation if a check reveals irregularities or a substantial change in the nature or conditions of the project for which the Commission's approval has not been sought.

Article 4

This Regulation shall enter into force on the day of its publication in the *Official Journal of the European Communities*.

For the Council
The President
G. SHAW

ANNEX

OBJECTIVES AND CRITERIA FOR COMMUNITY INFRASTRUCTURE POLICY IN A MEDIUM-TERM PROGRAMME

I. OBJECTIVES

To coordinate and promote infrastructure projects of Community interest, in order to create a modern and efficient transport network in the Community, designed to meet genuine transport needs arising at the European level on the main Community links. The infrastructure policy shall come within the common transport policy and efforts to increase economic and social cohesion in the Community.

Community activity, without prejudice as to the question of whether ports and airports should be included in the medium-term programme, shall aim at:

- the elimination of bottlenecks;
- the integration of areas which, geographically, are either landlocked or situated on the periphery of the Community;
- the reduction of costs associated with transit traffic in cooperation with any non-member States concerned;
- the improvement of links on land/sea routes;
- the provision of high-quality links between major urban centres, including high speed rail links.

II. CRITERIA

The assessment of transport infrastructure programmes for Community support under the medium-term programme, without prejudice as to the precise form that this should take, shall be based on the following criteria:

- (a) the benefit of the project to the Community, assessed by its contribution to the general and operational criteria set out in section I. Among the factors which must be included are:
 - the importance of present or potential intra-Community international traffic,
 - the importance of exchanges between the Community and non-member States on the route involved in the project,
 - the extent of the project's contribution to the creation of an homogenous and balanced network within the Community framework, geared to existing and future transport needs;
 - (b) the socio-economic return on the project;
 - (c) whether the project is consistent with other Community measures under the common transport policy or other Community policies, and with other national measures given priority in national transport infrastructure plans and projects.
-