



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 3 October 2001  
(OR. en)**

**12308/01**

**LIMITE**

**RC 17  
WTO 96**

**REPORT**

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from : the Working Party "Industry (state aid/shipbuilding)"  
to : the Permanent Representatives Committee  
No.prev.doc. 11335/01 RC 14 WTO 83

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Subject : Proposal for a Council Regulation concerning a **temporary defensive mechanism to shipbuilding**

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1. By letter dated 30 July 2001, the Commission transmitted to the Council the above-mentioned proposal<sup>1</sup>.
2. The European Parliament has not yet given its opinion on this proposal.
3. The Working Party on "Industry (state aid/shipbuilding)", at its meetings on 6, 20 and 27 September 2001, examined the proposal. The outcome of these proceedings are set out in the Annex to this document. Delegation's positions are reflected in the footnotes to the text. New text added to the proposal is underlined, deletions are indicated by "[...]".
4. At a general level, the following reservations are maintained:
  - a linguistic reservation by all delegations;
  - a general scrutiny reservation by the DK, F, NL, FIN, S and UK delegations
  - a parliamentary scrutiny reservation by the DK delegation.

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<sup>1</sup> Doc. 11335/01

Proposal for a  
**COUNCIL REGULATION**  
**concerning a temporary defensive mechanism to shipbuilding**<sup>1</sup>

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 87(3)(e), 89 and 133 thereof,<sup>2</sup>

Having regard to the proposal from the Commission<sup>3</sup>,

Having regard to the opinion of the European Parliament<sup>4</sup>,

Whereas:

- (1) The European Commission and the Government of Korea signed the Agreed Minutes relating to the world shipbuilding on 22 June 2000 (“the Agreed Minutes”), with the aim of restoring fair and transparent competitive conditions; however, the commitments under the agreed minutes, notably the commitment of ensuring an effective price surveillance mechanism, have not been effectively implemented by the Korean side and therefore a satisfactory result has not been obtained;
- (2) Operating aid has not been effective in ensuring that the European shipbuilding industry is not injured by competition not respecting normal competitive conditions in the shipbuilding market. Accordingly, as follows from Article 3 of Council Regulation establishing new rules on aid to shipbuilding<sup>5</sup> (“the 1998 Shipbuilding Regulation”), contract-related operating aid to shipbuilding may not be granted in respect of contracts agreed as from 1 January 2001;
- (3) However, as an exceptional and temporary measure, [...] and in order to assist Community shipyards in those segments that have been considerably injured by unfair Korean competition, a temporary defensive mechanism should be authorised for limited market segments and for a short and limited period only [...]. The 1998 Shipbuilding Regulation will apply *mutatis mutandis*;

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<sup>1</sup> **DK, F, NL, FIN, S and UK** doubt the compatibility of this proposal with the WTO rules. These delegations also oppose the link established between the proposed defence mechanism and the complaint to be lodged at WTO.

<sup>2</sup> **Cion** reservation on inserting Art.133 as a legal basis.

<sup>3</sup> OJ C ..., , p. .

<sup>4</sup> OJ C ..., , p. .

<sup>5</sup> OJ L 202, 18.7.1998, p.1

- (4) The situation in the Community shipbuilding industry is heterogeneous; whereas according to the Commission's Fourth Report on the Situation in World Shipbuilding, approximately half of compensated gross tonnage [...] produced in Community shipyards concerns the market segments, in which Community shipyards are in a strong position on the international market; however, in other segments, there is evidence that the Community shipyards are being considerably injured by unfair Korean competition. Therefore, contract-related temporary support may be authorised in certain circumstances in those segments, namely container ships and product and chemical tankers;
- (5) Support of 6% of contract value before aid may be authorised in order to effectively enable Community shipyards to overcome unfair Korean competition. Support of up to 14% of contract value before aid may be [...] authorised in certain circumstances;
- (6) The temporary defensive mechanism must not result in distortions of competition between Community shipyards<sup>6</sup>. Support above 6% may only be authorised if it is the minimum necessary to enable a Community shipyard to compete in a fair way for a particular contract, and if it respects the transparency requirements;
- (7) In order to ensure that the aid is the minimum necessary and to ensure the provision of information that is as complete as possible, all Community shipyards capable of building the shiptype for which a notification is received should be informed of the notification and have the opportunity to submit observations directly to the Commission on such notifications;
- (8) The temporary defensive mechanism should only be authorised after the Community initiates dispute settlement proceedings against Korea, by requesting consultations with Korea, in accordance with the World Trade Organisation's Understanding on the Rules and Procedures for the Settlement of Disputes and may no longer be authorised if these dispute settlement proceedings are resolved, or suspended on the grounds that [...] the Community considers that the Agreed Minutes have been effectively implemented;

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<sup>6</sup> Cf. UK suggestion in Annex 1.

HAS ADOPTED THIS REGULATION:

Article 1<sup>7 8</sup>

1. For the purposes of this Regulation, the relevant definitions listed in Article 1 of the 1998 Shipbuilding Regulation shall apply. Additionally, the following definitions shall apply:
  - a) “containerships” shall mean ships designed with a single deck hull with an arrangement of holds to carry containers (standard or non-standard; refrigerated or non-refrigerated), whose holds are fitted with cell guides to facilitate the positioning of the containers, as may be some of the deck storage space. Other ships combining cargo carrying capacity for containers and other cargo are considered as containerships if the larger part of the cargo carrying capacity is dedicated to containers;
  - b) “chemical tankers” shall mean ships designed with a single deck hull with an arrangement of integral and/or independent tanks suited to carry chemical products in liquid form. Chemical tankers are characterised by the ability to carry and handle several substances at the same time and the particular equipment of the tanks with coatings<sup>9</sup>, reflecting the nature and hazard of the cargo carried;
  - c) “product tankers” shall mean ships designed with a single deck hull with an arrangement of integral and/or independent tanks suited to carry refined petroleum products in liquid form.

Article 2

1. Subject to the following paragraphs, [...] direct aid in support of contracts for the building of containerships and product and chemical tankers, may be considered compatible with the common market when there has been<sup>10</sup> competition for the contract from a Korean shipyard offering a lower price<sup>11</sup>.
2. Aid under this Article may be authorised for shipbuilding contracts up to a maximum intensity of 6%<sup>12</sup> of contract value before aid.
3. The aid referred to in paragraph 2 may be increased if a Member State demonstrates that a higher aid intensity is necessary to ensure that the contract in question is awarded to a Community shipyard. The proposed aid amount must be the minimum necessary to achieve this purpose and may in no case exceed 14%<sup>13</sup> of contract value before aid.<sup>14</sup> [...]

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<sup>7</sup> E suggests additional shiptypes as set out in Annex 2; **GR** and **I** in favour of including ferries.

<sup>8</sup> **DK, NL, UK** consider that the market segments concerned should be more precisely defined.

<sup>9</sup> E suggests to add “or stainless steel”.

<sup>10</sup> **DK, FIN, NL, S and UK** suggest adding “unfair”.

<sup>11</sup> Cf. **UK** suggestion in Annex 1.

<sup>12</sup> **FIN, NL and UK** consider the 6% rate too high. See also footnote 17.

<sup>13</sup> **DK, NL and UK** consider the 14% rate too high. See also footnote 17.

<sup>14</sup> Cf. **UK** suggestions in Annex 1.

4. [...]
5. This Regulation shall not apply in respect of any ship delivered more than three years from the date of signing of the final contract. The Commission may, however, grant an extension of the three-year delivery limit when this is found justified by the technical complexity of the individual shipbuilding project concerned or by delays resulting from unexpected disruptions of a substantial and defensible nature in the working programme of a yard due to exceptional circumstances, unforeseeable and external to the company.
6. The Commission will keep under review the market segments eligible for aid under paragraph 1, with regard to evidence clearly proving that a specific market segment within the Community has been directly injured by unfair and intransparent competitive conditions.
7. The 1998 shipbuilding Regulation shall apply *mutatis mutandis*.

### Article 3

1. Council Regulation (EC) No. 659/1999 of 22 March 1999 laying down detailed rules for the application of Article 88 of the EC Treaty<sup>15</sup> shall apply to aid covered by Article 2(2) and (3).
2. In addition, any aid under Article 2(3) [...] shall be subject to individual notification and [...] <sup>16</sup> to the following conditions <sup>17</sup>:
  - a) On receipt of an individual notification the Commission shall without delay transmit the following information to all Member States: the name and address of the applicant shipyard and prospective purchaser; the relevant shiptype and size; and the amount of aid notified;
  - b) Each Member State shall immediately transmit this information to all shipyards within its territory that [...] it considers as capable of building the shiptype in question and shall inform such shipyards that they may submit to the Commission observations on the notification within ten working days from the date on which the Commission transferred the information referred to in point a) to Member States.
3. The Commission shall communicate to the Member States a standard form type to be used for the purposes of paragraph 2 a) above.
4. [...]

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<sup>15</sup> OJ L 83/1 of 27 March 1999.

<sup>16</sup> Deletion suggested by Cion and Council legal services.

<sup>17</sup> **DK, F, NL, FIN, S and UK** consider that individual notification should equally apply to aids under art. 2.2.

#### Article 4

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

#### Article 5

This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities* and shall expire on 31 December 2002<sup>18</sup>.

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

Done at Brussels,

For the Council  
The President

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<sup>18</sup> I, E, P wish to set expiry date at 31 December 2003.

Amendments suggested by UK

**1. Whereas clause (6)**

At the end of the first sentence, insert

" ..., and in particular not result in cross subsidisation of other segments of production not covered by this Regulation."

**2. Article 2.1**

Replace "offering a lower price" with

" below cost price".

**3. Article 2.3**

At the end of paragraph 3 add the following sentence:

"Where there is competition between different Member States for a particular contract the Commission shall ensure that the planned aid does not effect trading conditions to an extent contrary to the common interest."

**4. New Article 2.3 (bis)**

"In any case, ship-yards must ensure and be able to demonstrate, for example through accounting separation, that aid for contracts to build ships belonging to particular segments covered by this Regulation is not also assisting the delivery of other contracts, having particular regard to shared facilities. The Commission shall take this into account when assessing proposals for ad hoc aids and aid schemes. Arrangements may be subject to inspection by experts appointed by the Commission."

Amendment suggested by E

**Article 1**

insert the following additional points at the end of this article:

- "d) "LNG carriers" shall mean ships designed with a single deck hull with an arrangement of integral and/o independent tanks suited to carry liquefied natural gas;
- e) "LPG carriers" shall mean ships designed with a single deck hull with an arrangement of integral and/o independent tanks suited to carry liquefied petroleum gas;
- f) "ferries" shall mean ships with a multi-deck hull designed to carry both ro-ro cargo and passengers on a short haul service;
- g) "ro-ro ships" shall mean ships designed with a multi-deck hull specifically for the carriage of road and/or rail vehicles, and cargo which can be loaded/unloaded by wheeled transport;
- h) "cable ships" shall mean ships designed for the laying/repair of sea-bed cables.
- i) "oil tankers" shall mean ships designed with a single deck hull which includes an arrangement of integral or independent tanks specifically for the bulk carriage of oil;
- j) "bulk carriers" shall mean ships designed with a single deck hull which includes an arrangement of topside ballast tanks and holds specifically for the bulk carriage of various types of loose dry cargo of an homogeneous nature."

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