



COMMISSION OF THE EUROPEAN COMMUNITIES

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Proposal for a

COUNCIL DECISION

setting up
a consultation procedure on relations between Member States and third countries in shipping
matters and on action relating to such matters in international organizations
and an authorization procedure for agreements concerning maritime transport

(presented by the Commission)

EXPLANATORY MEMORANDUM

A. Foreword

As the Community has been developing its external action in the field of maritime transport, the need has been increasingly felt, i.a. in response to the request of the Member States, to establish agreed objectives and rules for such action.

B. Objectives of the Communication

The present communication, with the proposal annexed to it, responds to the need to provide a coherent concept for the external action of the Community in the field of shipping, a comprehensive framework within which such action can be undertaken, and rules necessary to complement existing related legislation.

C. Content of the Communication and proposals

The main points and conclusions of this Communication are presented in the *Executive Summary*.

Chapter II indicates the background and basic considerations for the development of EC action: the importance of shipping to the EC, its basic interest in the functioning of the international shipping market, recent developments in the world shipping market and the EC position, difficulties encountered in external maritime trade and recent shipping policy developments at national and international level.

Chapter III sets out the objectives pursued by the Community in its external relations in shipping, and considers the various means that may be used, and Community action that may be undertaken, in pursuance of such objectives. An overview of EC action to date relating to external aspects of maritime transport is provided in *Chapter IV*. It covers relevant legislation adopted by the EC, the application of EC instruments and policy so far, the developments and action in international organizations and within the framework multilateral agreements.

Chapter V first reviews the present international context in which external shipping relations develop, before proceeding to consider further the various components of Community action and criteria for identification of priorities, in respect of certain types of Community action. These concern relations with third countries or groups of countries, action aiming at the integration of the transport services and systems in Europe, and international organizations and multilateral Conventions, including particularly the question of participation and representation in international organizations dealing with economic and commercial aspects of maritime transport.

Chapter VI concerns arrangements in respect of action by the Community and the Member States in their bilateral relations with third countries.

A proposal for the legal instruments needed to set out the procedures to be followed in respect of the last two points is presented in *Annex II*.

The proposed Council Decision would replace Council Decision 77/587/EEC setting up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organisations.

It would also provide for a consultation and authorization procedure for agreements concerning commercial maritime transport relations between Member States and third countries.

EXTERNAL RELATIONS IN THE FIELD OF MARITIME TRANSPORT

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EXTERNAL RELATIONS IN THE FIELD OF MARITIME TRANSPORT¹

EXECUTIVE SUMMARY

1. In view of the international shipping and trade interests of the EC, the external dimension of its shipping policy is of vital importance.

The *central aim* of EC external action in the field of shipping is to serve effectively its shipping industry and trade interests by securing free access and fair competitive conditions in the world market.

2. Taking into account its policy interests, the existing conditions of the international shipping market and the present international context, the EC should, therefore, in the view of the Commission, and in accordance with its new Market Access Strategy, pursue a policy destined to improve the access of European shipping industry to third country markets and to create new business opportunities. This can be summarised by the following *general objectives*:

- seek to consolidate, bilaterally as well as multilaterally in international organisations, through consultations and negotiations, developments towards liberalisation, as well as obtain further roll-back of existing restrictions;
- address specific problems that arise with non-member countries, in particular in respect of market access;
- in particular, address the problem of unfair competition and the related problem of sub-standard shipping arising particularly, although by no means solely, from open registry shipping;

and should, in parallel,

- work towards the development of an integrated and efficient European transport system, including assistance for the transition of CEEC to the market economy and alignment of their policies in the perspective of accession.

Consideration of the specific problems faced by the shipping industry leads to the formulation of more *specific or particular objectives* as regards market access and related questions; operating conditions; and cooperative action.

3. To pursue its objectives in the external field, the EC has the following range of possible *means of action*:

1. *Preemptive initiatives to secure agreement on policy principles and a common approach to specific issues*
 - Agreements with third countries
 - Multilateral consultations and agreements
 - Consultations with individual countries

¹ This Communication does not address relations with the IMO, concerning safety and technical aspects of shipping; for such relations reference is made to the Communication on "A Common Policy on Safe Seas" (COM (93) 66 of 24.02.1993)

2. *Addressing problems arising from restrictive measures of third countries*
 - Démarches
 - Consultations to address restrictive measures or other specific problems
 - Measures to counter restrictions
3. *Seeking to secure fair competitive conditions*
 - Action to counter advantages to foreign shipowners from Government measures or support
 - Action to ensure compliance with internationally applicable rules and standards
4. *Cooperative activities*
 - Provide assistance to third countries to develop their shipping sector in a competitive environment.

The Commission considers that, in pursuing its efforts to achieve its key market access objectives, the main instrument should be the multilateral negotiations in the context of the World Trade Organisation (WTO). However, since they are due to resume in the year 2000, the Commission will use in the meantime all the instruments, negotiations and opportunities available to achieve these objectives, in the expectation that they could ultimately become a spring board for a multilateral agreement in the WTO. The present communication therefore stresses the different instruments and negotiations that the Community could use to achieve its key external objectives pending an agreement on a multilateral solution.

The Commission invites the shipping industry to inform the Commission of the problems they encounter in third countries, so that it can examine the best way to deal with them.

4. The role and powers of the EC have considerably increased since 1986, when the package of four Regulations forming the basis of Community maritime transport policy was adopted. A review of action undertaken to date indicates the potential for further effective development of EC action in this field. Intervening developments and the present international context provide a favourable environment for such development.

5. The EC has always privileged a consensual and cooperative approach and considered the resort to defensive measures only as a last option if effective solutions through consultation and negotiation are not achieved. Action to date has placed particular emphasis on this type of approach and the present international conjuncture in which external shipping relations develop appears generally favourable to the further development of external relations in this direction.

6. Taking into account the EC objectives and means of action in the external field with regard to maritime transport, the *main components of Community external action* should be:

- the further development of relations with, and related action *vis-à-vis* third countries, by means of
 - * Community agreements with third countries and consultation procedures leading to the progressive transformation of existing bilateral regimes, as well as forms of dialogue with third countries to promote a common approach to shipping policy issues;
 - * action to address problems arising from restrictive or discriminatory measures of third countries;
 - * action to secure fair competition on a commercial basis;
 - * cooperative actions and technical assistance to third countries;
- the development of cooperative action in the field of shipping as a component of a global approach to the transport services and systems of Europe, including those of Central and Eastern Europe, so that they can develop in as integrated a way as possible; and
- the reinforcement of the role of the Community within relevant international organizations to

reflect the full development of the Community shipping policy; and the negotiation by the Community within such organisations, in accordance with Community procedures, with a view in particular to consolidating positive developments in respect of shipping policy and obtaining further roll-back of existing restrictions.

7. Within the framework provided, the *scope* of appropriate external action under these components as well as related *priorities* are considered. A wide range of such action is envisaged to be undertaken, adopting the appropriate means to suit the particular situations and issues, as indicated in the Table in **Annex I**. Within this framework particular emphasis is placed on the use of consultation, agreement and cooperative action to the extent possible, whilst being prepared to address problems through defensive measures if this becomes necessary.

8. The appropriate and effective response to problems faced in the world shipping market may require the adaptation of existing EC legal instruments to present circumstances, in the light of experience to date. To this end the Commission

- will undertake a review of Council Regulations Nos. 4057/86 and 4058/86; and
- proposes the replacement of the consultation procedure set up by Council Decision 77/587/EEC by a new procedure (**Annex II**), with a view to (i) ensuring coherence of action of the Community and of the Member States in their relations with third countries and improving the efficiency of such action; and (ii) ensuring the pursuance of Community objectives in discussions or negotiations in international organizations.

9. The competence acquired by the EC and its increasing involvement in relations with third countries in the field of maritime transport should lead to a progressive transformation of existing bilateral régimes. This process can only be gradual, as the EC proceeds to develop various forms of relations with individual countries.

10. In order for the EC to develop a comprehensive external maritime transport policy, it is necessary to establish rules concerning the extension of existing maritime transport agreements and the authorization for Member States to conduct bilateral negotiations. To this end, the Commission proposes the adoption of a consultation and authorization procedure for agreements concerning maritime transport relations between Member States and third countries, which is included in the proposed Council Decision presented in Annex II.

11. The Council is invited to:

- endorse the concept of external policy action suggested in this Communication, encompassing
 - aims and objectives;
 - means;
 - components; and
 - priorities

and

- adopt the proposed instrument, presented in Annex II.

I. INTRODUCTION

1. It is now a decade since the adoption, by the Council, of the 1986 package of four Regulations which constituted the basis for a coherent Community policy in international maritime transport.² In view of the largely worldwide involvement of Community shipping, this policy addressed predominantly issues and problems arising in the external field.

In reporting previously on the application of the package³, the Commission has particularly also emphasized wider action involving or affecting relations with non-member countries. Such action has continued to be pursued and further developed.

2. There have been particularly significant political, economic and commercial developments worldwide during the intervening period, which have profoundly affected world shipping. In parallel, developments in the EC, including the completion of the internal market, have had implications for Community competence; and, in combination with the developments worldwide, have increased the weight of the Union on the international scene.

3. The Commission undertook in 1995 a review of the Community maritime transport policy. In so doing, it has been assisted by a Core Group of 12 individuals with wide-ranging experience of the world shipping, which submitted a Report in September 1995. The Commission presented the result of its re-assessment in a Communication "Towards a New Maritime Strategy"⁴ in March 1996. The Communication considered external action in the field of maritime transport, together with action to improve competitiveness and action relating to maritime safety as one of the three pillars of maritime transport policy, and announced a further Communication to consider more specifically external relations in this field.

4. The Commission considers, indeed, also in response to requests by the Member States, that it is appropriate at this stage to:

- take stock of results of actions in the external field in shipping undertaken so far;
- formulate explicitly a coherent set of objectives to be pursued and to guide the coherent development of the external action;
- consider the available means and modalities of such action;
- consider and, as relevant, set priorities;
- determine procedures and practical working arrangements that may be required and, in particular:
 - arrangements for action by the Member States;
 - arrangements for exchange of information concerning developments in external relations of the Community and Member States with non-Member countries;
 - arrangements for the participation and representation of the Community in certain international organizations.

5. The competence of the Community in this field arises from existing legislation, in particular from the package of four maritime Regulations adopted in 1986. This Communication is concerned with implementing action based on this competence.

6. The above mentioned subjects are considered in this Communication, which builds upon discussions on the subject in the Council, notably the Edinburgh High Level meeting in November 1992, and with High Officials in March 1993 and January 1994.

² See Section IV.A.

³ Report from the Commission to the Council: "Implementation of the four Regulations in the field of maritime transport adopted by the Council on 22 December 1986" (SEC(90) 1594 final - 1 August 1990).

⁴ COM (96) 81 final, 13.03.96

II. EC SHIPPING AND THE IMPORTANCE OF EXTERNAL RELATIONS

A. Importance of shipping to the EC

7. Reliable and efficient maritime transport services are of great importance for Community trade. The Community is the origin or destination of almost 25 % of the total world trade and 90 % of this external Community trade is carried by sea. A significant part of this trade is carried by Community shipowners. Estimates for 1992 indicate that around 42% was carried on vessels registered in the Community or beneficially owned by Community shipowners.

8. The importance of the Community shipping industry as an economic activity goes well beyond EC external trade. Seaborne trade between the then twelve Member States amounted to a significant 217 mt in 1994. A further amount of around 224 mt (in 1993) was domestic seaborne trade within the Member States, the largest part of which is carried by Community-registered ships.

9. Beyond this activity, the Community shipping industry is active in cross-trading between third countries. The magnitude of this activity has been particularly difficult to estimate for the EC as a whole, since no figures are available for several Member States; and those available are not on a uniform basis. Somewhat old estimates indicated that roughly one third of all income of the EC shipping industry came from such cross-trading activity.

10. In addition, the industry generates significant employment on ships and on-shore as well as for ancillary or other related or dependent services and industries, while the EC shipping industry is the main client of the EC shipbuilding industry.

Considerably reduced during recent years, from around 230.000 in 1985 to 140.000 in 1994, the number of seafarers remains significant, although in respect of some Member States the concern arises as to the future of the profession, particularly the more highly trained who are also the natural source of expertise needed for some on-shore, ancillary and related services.

B. The basic EC interest concerning the functioning of the international shipping market

11. From the foregoing the Community interest in world seaborne trade is obvious. Both for the sake of its exports and imports as well as for its own shipping industry the Community has an overriding interest in a worldwide shipping market free of restrictions.

12. Another consideration is that, over a period of several years, the Community shipping industry has faced a depressed world market in which, in trying to secure cargoes, an increasing number of third countries have been resorting to protectionist measures in order to develop their fleets. It has also had to face low price competition from lines which, benefitting from non-commercial advantages granted by their governments, do not have to meet the test of the market the way Community shipowners in general do.

13. In addition, Community shipowners have had to contend with the fact that the Community is a relatively high cost environment for their business and their competitive position has become increasingly vulnerable. This has led to a substantial decline of the merchant fleet registered in the Community, from about one third of the world tonnage at the beginning of the 80's down to around 13% - including the fleets of the new Member States - on 1.01.96, and this appears still not to be the bottom line.

14. It is in response to these facts and circumstances that the EC has defined its shipping policy. For the benefit both of its foreign trading to and from all continents and the deployment of its fleet on all seas, the Community strives to achieve the application of commercial principles and freedoms on an open world shipping market, free from distortions of competition.

15. At the same time the Community has to see to it that the operating conditions for the European shipping industry are such that the competitiveness of ships registered in the EC and manned as far as possible with seafarers from the Member States is safeguarded. The significance of this issue is evident in view of the heavy decline of the merchant fleet of the Community.

Furthermore, working conditions for seafarers should be optimal, and shipping services should be undertaken at a minimum level of risk for all directly or indirectly concerned and for the marine environment.

C. Recent developments in the world shipping market and EC position

The development of international seaborne trade

16. For well over a decade now, the world shipping industry has faced a depressed world market. In the late 1970's the steady and considerable growth of the world shipping industry that was witnessed from 1945 onwards, came to an end. In the years that followed, the industry plunged into crisis; the demand for shipping services fell considerably, whilst considerable new tonnage was coming into the market or was on order, causing prolonged overcapacity world-wide. As a result, freight rates came under severe pressure and this remained the case for a very long time. The economic recovery at the end of the 1980's did not prove to be a lasting one and 1992 and 1993 have been particularly bad years for the world economy and as a result the shipping industry was badly hit as well. Only in 1994 have appeared the first signs of a halt in the adverse trend and the expectation of an upturn.

17. The continuous growth of the world merchant fleet stopped in 1983 and turned into a yearly shrinkage until 1988. Only in 1991 did the total gross registered tonnage (grt/gt) of the world fleet reach the level of 1982 again and it has since 1991 shown a modest growth of 1,9%.

18. As for the world shipping market, it is expected that the volumes of seaborne cargoes will continue to be influenced by the slower growth in demand for primary commodities which have had to make way for the increased economic importance of the service sector. Apart from this, the composition of cargoes, as well as the growth rates in the international seatriade markets, will continue to be affected by other factors such as the further globalisation of manufacturing processes, changes in production techniques and organisation, relocation of industries and the development and integration of regional markets.

Development of EC shipping

19. During the long period of recession of the world shipping market the European Community has been relatively more affected by the general decline in shipping activities than other major regions in the world.

20. The erosion of the comparative advantages of Community shipping, unfair competition and the increasingly protectionist practices adopted by third countries during the '70s and '80s, as well as low cost operations by third country shipowners have been the major causes of the substantial decline of the Community flagged fleet relative to world tonnage (see para. 13). The consequences are measured in terms of increased dependence on the services of third countries' operators, lost foreign exchange earnings, lost employment, lost influence in international trade and shipping negotiations and lost orders for Community shipyards.

21. The decline of the fleet was partly the result of the growing attraction of alternative non-EC registries to Community shipowners and consequently of the outflagging of EC-vessels. At the moment, around 55% of the fleet owned by EC nationals is under flags other than those of the Member States. This figure compares with the 49,7% of the fleet of the top 35 maritime countries under a flag other than that of the country of domicile of the owner.

22. From a macro-economic point of view, the situation has been equally bleak. Since 1981, maritime freight has shown a permanent deficit on the balance of payments of the twelve Member States combined. Between 1978 and 1990, in the EC more than 200.000 jobs for Member States' nationals as crew members on vessels registered in the EC were lost out of a total of around 335.000 in 1978, down to around 120.000 in 1990-92.

Organisational and technological developments

23. The container revolution has radically transformed the organization of world liner shipping. Practically every liner trade is now intermodal to some extent, at least at one end of the trade. Many shipping lines now offer a multimodal transport service to shippers.

24. The organisational and technological changes resulting from this development have been considerable, as the shipping lines need to control the logistics of the system and maximise and control the use of the container. The need for intermodal infrastructure has also stimulated demand for port terminals; port handling; inland haulage hardware; inland distribution centers and tracking systems; and is pushing the use of electronic data processing (EDP) and EDI systems.

25. In parallel to, and as part of this evolution which requires considerable investment, there has been a trend towards merger and acquisition, which is expected to continue in the coming years. These developments, occurring in a market subject to frequent excess capacity, have been also inciting the shipping lines to enter into new forms of cooperative agreements.

Expansion and proliferation of open registers

26. The flagging out from traditional, "genuine" registers has been a worldwide phenomenon. Since the late '80s there has been an unprecedented proliferation of open registers and the trend to register vessels under such flags has steadily increased.

27. Total tonnage registered in "open registry" countries increased by 107 million dwt between mid-1985 and end-1994, an overall growth of 51,8%, as compared to a 7,3% increase in the world total dwt tonnage. By 31 December 1994, the top ten open registry countries⁵ accounted for 44.6% of world total dwt of cargo carrying ships of 100 gt and over (with 314,1 mill. out of 704,0 mill. total dwt), as compared to 30.7% in mid-1985. This flagging out to open registers would have been even more pronounced but for the fact that a number of maritime countries established international/second registers during this period, leading to a slowdown or even, in some cases, a reversal of the flagging out trend.

28. In view of these developments, it has become increasingly important to consider how the open registry phenomenon could be controlled and contained, so that risks for safety and the marine environment can be minimised, and a level-playing field in terms of operating conditions attained, in view of the unfair competitive advantages gained by shipowners from not observing international rules and standards. Indeed, there is often an almost complete absence of effective control and regulatory oversight programs to ensure that consistent and competent maritime safety actions are taken. A shipowner who, due to inadequate regulatory oversight, can avoid compliance with the internationally agreed set of standards and regulations as regards safety and the pollution of the marine environment has a cost advantage - which can be very significant - over his competitor who fully respects all applicable international rules and standards.

D. Difficulties encountered in external maritime trade

29. In addition to the problems relating to trade and market developments, the Community shipping

⁵ Liberia, Panama, Bahamas, Cyprus, Malta, St. Vincent, Bermuda, Marshall Isl., Vanuatu and Antigua & Barbudá.

industry has been facing problems arising from policies and measures adopted by the governments of third countries which affect international shipping relations.

Whilst the traditional maritime nations as a whole - albeit with certain notable exceptions - have pursued a policy of maintaining an open trading, free-enterprise environment, a large number of Governments sought and adopted, over the previous two decades, measures to protect and develop their own national merchant fleet.

30. Such measures have often taken the form of restrictions on market access by foreign shipowners; in other cases, or in combination with such restrictions, governments have affected operating conditions to favour their national fleets, for example, through subsidies or fiscal advantages. Neglect or inadequacy of enforcement of internationally applicable rules and standards has greatly contributed to the problems of the industry; and all these adverse effects on free and fair competition have made it possible for shipowners benefiting from such advantages to offer their services under conditions which shipowners relying on their own commercial means and complying duly with applicable rules cannot meet.

Restrictions on market access

31. Protectionist measures used by governments restricting market access for foreign shipowners take various forms; they may be categorised as: national, unilateral regulations or requirements; bilateral or, sometimes, regional arrangements; and international agreements/conventions.

1. National regulations or requirements

32. Through national regulations governments have unilaterally imposed restrictions on access to the shipping market; restrictions on related doing business activities; discriminatory treatment of foreign vessels in ports; and restrictions on auxiliary services.

(i) Restrictions on access to the shipping market

33. The most overt unilateral restrictions take the form of national legislation which reserves part of national cargoes to national flag ships.

- Restrictions in several countries have taken the form of discrimination in favour of the national flag based on legislation and/or using various forms of allocating cargoes on a preferential basis; or through the inclusion of clauses in import licenses, or letters of credit, which give preference to the national carrier.
- Nomination of the national flag carrier by a requirement that all or certain categories of goods exported are sold on cif terms; and that goods imported are purchased on fob terms; this is often the case in practice through the imposition of terms in contracts with shippers, without necessarily the government being openly involved.
- Other administrative provisions can have the effect of preventing or limiting the participation of non-national lines in the trade.

(ii) Restrictions on "doing business" activities

34. Access to the trade has also been restricted by thwarting activities generally regarded as a perfectly normal part of day to day business. Examples of such restrictions are:

- impediments to door-to-door operations;
- difficulties, or prohibitions, on non-nationals establishing branch offices or agencies;
- impediments in obtaining necessary licences, work permits or visas for non-nationals;
- restrictions on inward investment or on the repatriation of profits;
- requirements that national agents, firms or organisations be used in preference to non-national

- interests;
- raising taxes or duties on these activities, which discriminate as compared to those imposed on a State's own nationals.

(iii) Discriminatory treatment of vessels in ports

35. Discriminatory treatment of vessels in ports may regard:
- the use of infrastructure and auxiliary maritime services, such as
 - . assignment of berths or facilities for loading and unloading,
 - . cargo handling,
 - . storage and warehousing,
 - . customs clearance services,
 - . container station services,
 - . maritime agency services;
 - fees and charges, depending on the flag of the ship or the nationality of the operator.

2. Bilateral arrangements

36. Particularly damaging to free market access has been the tendency to bilateralise trades through cargo-sharing agreements (mainly, though not exclusively, in liner trades), squeezing out of the market cross-traders or severely limiting their possibilities to participate in the trade. The intra-OECD trades have been free from such arrangements. But several developed countries, including Member States, have been involved in such agreements, either with developing countries or with State-trading countries; often, in the latter case, in order to be in a position to participate in the trade at all.

3. International agreements/conventions

37. Persistent efforts have been made by developing countries, in particular in UNCTAD, to regulate commercial aspects of shipping with a view to promoting and developing their fleets by preferential treatment rather than on the basis of commercial criteria.

38. Many of these efforts have been unsuccessful; but at least in the case of the UN Convention, adopted in 1974, on a Code of Conduct for Liner Conferences, they have significantly affected liner shipping between European and developing countries, in particular due to the way certain developing countries have used it to "legitimize" national restrictive measures.

Operating conditions

39. National rules and regulations, either specific to shipping or of a general application, affect the operating conditions of the shipping firms of the country concerned and of its merchant fleet. These range from manning rules and crew nationality and related conditions to subsidies and fiscal advantages, but also regulations on safety of ships and crew and the protection of the marine environment. The latter aspects may be particularly affected by inadequate enforcement of internationally applicable rules and standards. As a result, operating conditions vary considerably among countries and shipping registers to the extent that competition can be seriously distorted.

Unfair competition

40. Operators can take advantage of such conditions as referred to above, offered or allowed by governments, to a degree that such competition is unfair.

A guaranteed cargo base, subsidisation, low cost operation by neglect of safety and social rules, are all factors permitting the undercutting of rates to an extent that shipowners having to meet the test of the market while complying with their obligations and not enjoying any such advantages cannot compete.

E. Recent shipping policy developments

41. EC external action in the field of shipping needs to take into account conflicting economic, competitive and political forces influencing the international shipping environment.

42. The dramatic political and economic events of the late '80s and early 90's have left their mark on shipping policy developments worldwide. The rhythm of political, economic and social change over the last two decades has increased since 1989. Rapidly changing world events including new political and economic realities in both developed and developing countries, increased awareness of social, environmental and economic disparities and the perceived failure of previous policy approaches meant to increase the competitiveness of developing countries' fleets have significantly affected the approach of numerous countries to international shipping.

43. As a consequence, significant shipping policy developments have taken place in numerous developing countries, resulting in fragmentation of previously common shipping policy approaches. Liberalisation in the field of shipping has gained ground in Latin America and certain parts of Asia, although not yet in Africa.

44. The decisions made in UNCTAD VIII in Cartagena at the beginning of 1992, which radically changed the policy orientations of UNCTAD, signalled a significant reorientation of shipping policies in the developing world towards progressive liberalization. This was already noticeable in mid-1991 during the Review Conference on the Liner Code, when a number of significant changes became apparent with respect to the approach exhibited by developing countries. It has also been apparent during discussions on maritime services within the context of the negotiations of the GATS, although it has not so far been possible to reach a satisfactory worldwide agreement.

III. EC OBJECTIVES AND MEANS OF ACTION IN THE EXTERNAL FIELD

A. The need for, and the objectives of EC action

45. In view of the worldwide involvement of Community shipping, EC shipping policy was bound to give, and indeed has given from the outset, a predominant place to issues concerning seaborne trades with or between non-EC countries. Inevitably also, internal EC shipping policies have had to take account of the international context.

46. The basic policy orientation in favour of free and fair competition in world shipping has been the traditional one generally followed by the Member States, which as members of the OECD have subscribed to the Code of Liberalisation of Invisible Operations and have formulated common shipping policy principles. It has been pursued by the Community and the Member States in UNCTAD and, more recently, in the GATS negotiations.

47. An active policy to combat the problems arising from the protectionist policies of third countries was difficult to conduct individually or even as a group outside the Community framework. Developments in the '70s, and increasingly in the '80s, made the need for Community action imperative. Following the adoption in 1977 of a Council Decision "setting up a consultation procedure on relations between Member States and third countries and on action relating to such matters in international organizations"⁶ and of Regulation No. 954/79⁷ in 1979, the decisive step for a common policy was the adoption of the 1986 package, based on the proposals submitted by the Commission with the Communication of March 1985⁸.

48. In the Communication the Commission formulated a set of basic principles to guide Community action in shipping:

- considering that the predominant issues affecting shipping are those concerning trade with third countries, actions on matters internal to the Community have to take fully into account their effect on the international competitive position of Community shipping;
- the Community should seek, where regulatory action is necessary, and in particular where the competitive position of Community shipping is affected, wide international agreement rather than take unilateral Community action;
- the Community should ensure equality of treatment of Community shipowners;
- the Community should pursue a non-protectionist shipping policy, based on the principle of free and fair competition in world shipping, in the interests of Community shipowners and the users of shipping services, taking into account the interests of the Community's trading partners, including the developing countries;
- the Community should support international efforts to maintain and improve the standards of maritime safety;
- the Community should seek to improve the commercial competitiveness of Community shipping.

49. The 1986 package was designed to defend and promote EC commercial interests in international shipping, while at the same time applying basic provisions of the Treaty concerning the freedom to provide services and the competition rules. Thus the Council decided that this task would be henceforth the responsibility of the Community, since shipping policy objectives can be more effectively pursued through action at Community level.

⁶ Council Decision 77/587, O.J. L 239, 17.9.1977

⁷ O.J. L 121, 17.5.1979

⁸ "Progress towards a common transport policy • Maritime Transport", COM (85) 90 final of 19 March 1985. Also see section IV.A.

50. The central aim of EC external action in the field of shipping is to serve effectively the shipping industry and trade interests of the EC by securing free access and fair competitive conditions in the world market, where EC shipowners compete and offer their services. The guiding principles set out already in 1985 retain generally their validity under current conditions of the international shipping market and the present context in which the Community's external shipping relations develop, which are reviewed in Chapters II and V.A. Taking into account its policy interests, the existing conditions of the international shipping market and the present international context, the EC should, therefore, in the view of the Commission, pursue the following *general objectives*:

- seek to consolidate, bilaterally as well as multilaterally in international organisations, through consultations and negotiations, developments towards liberalisation, as well as obtain further roll-back of existing restrictions;
 - address problems that arise with non-member countries, in particular in respect of market access;
 - address the problem of unfair competition and the related problem of sub-standard shipping arising particularly, although by no means solely, from open registry shipping;
- and should, in parallel,
- work towards the development of an integrated and efficient European transport system, including assistance for the transition of central and eastern European countries (CEEC) to the market economy and alignment of their policies in the perspective of accession.

51. Considering the specific problems faced by the shipping industry, which are indicated in Section II.D, Community action in this field should aim at achieving a number of more *specific or particular objectives*:

As regards market access and related questions:

- (i) *the consolidation of developments towards liberalisation that have taken place in recent years in respect of shipping policy internationally;*
- (ii) *increased opportunities for EC shipowners in providing services in the trades with and between third countries, including the provision of multimodal transport services involving a sea leg, in particular by eliminating or countering restrictions on access to the shipping market and on connected land-side operations;*
- (iii) *removing other unilateral measures of third countries adversely affecting shipping activity, for example, discriminatory taxation or treatment of ships in ports;*
- (iv) *ensuring equal treatment, on the part of third countries, of Community shipowners without discrimination vis à vis their competitors;*
- (v) *promoting a market orientated, international shipping policy environment, also with due regard to the competition rules, in particular, Regulations no. 4056/86 and 870/95.*

There is a need to get rid of regulations that either distort competition or place unnecessary and unjustified burdens on commercial operators; this includes Government interventions in favour of shipping lines having agreements that restrict competition.

As regards operating conditions

In its relations with third countries the Community should:

(vi) *promote the adoption, observance and enforcement of appropriate international standards relating to the safety of ships and crew and the protection of the marine environment;*

(vii) *achieve fair competitive conditions in the world shipping market, i.a. through the adoption, observance and enforcement of internationally applicable standards as above;*

Third country shipowners can derive advantages from Government measures or support taking various forms (such as cargo preference, subsidies, non-enforcement of rules & standards), which distort competitive conditions.

(viii) *seek solutions to the economic and safety problems associated with the proliferation and expansion of open registers.*

As regards cooperative action

The Community should also, in pursuing the above objectives, give particular attention to

(ix) *promotion of co-operation with third countries, in particular developing countries and CEEC.*

In its relations in this field with developing countries, the Community should take account of the objectives referred to in Article 130u of the Treaty on European Union.

Cooperative actions and technical assistance can serve mutual interests by resolving problems and promoting convergent policy approaches.

More particularly, in Central and Eastern Europe, they can significantly contribute towards the development of an integrated and efficient European transport system and the preparation of the candidate European countries for eventual accession.

B. Means of Community action

52. In pursuance of its objectives in external relations in shipping, the Community may, as appropriate, have recourse to a range of measures, whether unilateral (based on the Regulations adopted by the Council in December 1986) or on the basis of agreements (bilateral or multilateral) and cooperative action. The various means of Community action may be classified into the following types:

- **Preemptive action**, seeking agreement on policy principles and a common approach to specific issues, may be taken to achieve a situation where policies pursued by third countries are close or compatible enough in respect of the provision of international shipping services, as to allow the free exercise of shipping activity and to avoid as far as possible the occurrence of problems between the Community and those countries in the sector.
- In cases where third countries' policies impose restrictions, the Community has to be prepared to **address such specific problems** in appropriate ways, through consultation or, if this fails,

through other measures.

- Problems also arise from unfair competition based on non-commercial advantages provided by governments or on their failure to ensure compliance of their ships and/or operators with internationally applicable rules and standards; in such cases the Community should consider possible means of securing fair competitive conditions.
- Furthermore the Community should use its possibilities to develop further its cooperative activities with third countries in the shipping sector.

1. Preemptive action: seeking agreement on policy principles and a common approach to specific issues arising

53. Seeking agreement on policy principles and a common approach to specific issues arising may take the form of consultation with third countries, negotiation of agreements with them, or multilateral consultations and agreements:

- agreements with third countries, including agreements on principles of shipping policy, negotiated by the Commission on the basis of a Council authorisation and concluded by the Council. The need for such agreements arises in the absence of a multilateral agreement that would meet the Community objectives. Such agreements may be sectoral or part of more general agreements. The use of a sectoral agreement may be preferable in certain cases. The choice between a sectoral agreement or provisions on shipping as part of a more general agreement cannot be answered on the basis of a general rule, but should be decided in each case where the timing of negotiations on a general agreement raises such a possibility (see also in this connection paras. 114-116 below);
- multilateral consultations and agreements (such as in UNCTAD and the World Trade Organization).

A satisfactory multilateral agreement on maritime transport in the WTO, for which negotiations are to resume in the year 2000, would be the most effective means to achieve the widest possible liberalisation of the sector.

Multilateral consultations and agreements are considered under the section concerning participation and representation in international organizations dealing with maritime transport.

- consultations with third countries, whether or not within the framework of an existing agreement, to evaluate policy options better, influence policies of third countries, and reach understanding on a basic policy approach.

2. Addressing problems arising from restrictive measures of third countries

54. Addressing problems arising from measures taken by third countries may involve:

- demarches to third countries, which may need to be followed by consultations;
- consultations with third countries, whether or not within the framework of an existing agreement, to address restrictive measures taken or other specific problems that have already been identified with such countries; the outcome of such consultations may be reflected in appropriate documents, including agreed minutes, depending on the nature of the issues, the nature of the commitments made and the procedure under which the consultations are conducted (consultation procedure or a Council Decision based on Regulation no. 4058/86); where *legally binding commitments* are envisaged, negotiations conducted by the Commission would be based on an authorisation from the Council (procedurally as for agreements with

third countries under the previous paragraph, but normally of a more limited scope);

- measures to counter restrictions by third countries on market access, if consultations do not succeed (ref. Regulation no. 4058/86).

3. Seeking to secure fair competitive conditions

55. Seeking to secure fair competitive conditions may involve:

- action to counter advantages to foreign shipowners from Government measures or support:

The elimination of cargo preference measures would remove an advantage which shipowners benefiting from such preference enjoy and which places them in a better position when seeking to obtain cargoes open to competition.

In cases of unfair pricing practices in international liner shipping, Regulation No. 4057/86 can be used to address the problem and avoid further injury to the Community shipping industry.

In addition, a review of the Regulation will be undertaken, to evaluate the possibilities for more effective responses to problems arising from unfair practices of third-country shipowners.

Subsidies and fiscal advantages are difficult to handle through bilateral relations. A multilateral régime would also appear difficult to obtain, but a subsidy code is envisaged in the GATS.

The adoption, observance and enforcement of appropriate international standards relating to the safety of ships and crew and the protection of the marine environment, would help to achieve a more level-playing field. Besides promoting such action, the Community could seek to exercise its influence directly by addressing specific countries, for example, by offering its assistance in enforcing Port State Control (PSC) and Flag state responsibilities.

- Action to ensure compliance with internationally applicable rules and standards concerning the safety of vessels and crew and the protection of the marine environment:

This will involve:

- vigorous enforcement of port state control in the EC and the area covered by the Paris MOU;
- promotion of PSC in other regions by cooperating with interested third countries and groups of countries, as well as with IMO;
- promotion of the adoption and enforcement of appropriate international standards through consultation and assistance to third countries.

Such action relates to the Communication of the Commission on "A Common Policy on Safe Seas"⁹ and points to the possibility of taking action in the external field in support of the objectives relating to safety and environmental protection, thereby also seeking to achieve a level-playing field by removing an unfair advantage of shipowners who use substandard vessels.

⁹ COM(93) 66 of 24.02.1993

4. Cooperative activities:

56. The Community should continue to use its means to promote cooperation with third countries so as to serve mutual interest, by

- providing assistance to third countries (developing countries and CEEC), to orient their shipping sector and/or enable their shipping companies to provide competitive services in a free shipping market environment and to promote institutional reform, improve administrative and management infrastructure, and training for application of international Conventions.

This can take the form of seminars or workshops, to identify in common appropriate action programs, and technical assistance for carrying out agreed actions. Assistance actions generally come under existing programmes or are otherwise agreed with requesting countries, and the Commission is attentive that the objectives be served as far as possible.

IV. EC ACTION TO DATE RELATING TO EXTERNAL ASPECTS OF MARITIME TRANSPORT

A. Existing legislation, its application and initiatives to resolve specific problems

57. The main legal instruments on shipping adopted by the EC to date relate to important aspects of its external relations in this field.

*Council Decision 77/587*¹⁰ set up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organisations.

*Council Regulation No 954/79*¹¹ concerns the conditions of ratification by Member States of the UN Convention on a Code of Conduct for Liner Conferences, so as to preserve conditions of competition as regards liner conference shipping, while at the same time offering national shipping lines of developing countries particular opportunities to participate in liner conferences and the trade carried by them.

The *four Regulations adopted by the Council in December 1986*¹² concern:

- the application of the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;
- the application of Articles 85 and 86 of the Treaty to maritime transport;
- unfair pricing practices in maritime transport; and
- coordinated action to safeguard free access to cargoes in ocean trades.

They constitute a coherent package of Community instruments in pursuance of a non-protectionist policy, while applying basic provisions of the Treaty.

In respect of restrictive measures by third countries or unfair practices by foreign shipowners, the Regulations serve to discourage such measures or practices or, when these do occur, to achieve effective solutions through negotiation. In cases where this is not achieved the Regulations provide the basis for defensive action to counter such measures and practices.

58. In addition to phasing out unilateral restrictions by Member States, the Regulation applying the principle of freedom to provide services to maritime transport has put an effective brake on new initiatives for cargo-sharing arrangements between Member States and third countries.

59. Numerous cases have been raised under Regulation No. 4056/86 and related decisions made by the Commission. The Regulation has proved an effective means of ensuring compliance with Articles 85 and 86 in shipping and to ensure the effective competition in the liner shipping trades serving the European Union and the provision of high quality, low-cost services to shippers, i.e. the exporters and the importers of the Union.

60. The Regulation addressing unfair pricing practices in maritime transport has been used to good effect and there are, furthermore, strong indications that it has influenced the behaviour of certain third-country lines, in particular concerning their rate setting policies.

61. Apart from the actual implementation of defensive measures in cases where an effective solution through negotiations is not achieved, the Regulation providing for coordinated action to safeguard free access to cargoes constitutes a valuable deterrent. In the case of restrictions imposed by

¹⁰ O.J. L 239, 17.9.1977

¹¹ O.J. L 121, 17.5.1979

¹² Council Regulations Nos. 4055/86, 4056/86, 4057/86, 4058/86; O.J. L 378, 31.12.1986

the West and Central African states, where the use of the Regulation has been requested, the Community has continued to try to achieve a mutually acceptable solution through consultations. More generally, the possibility provided by the Regulation to take counter-measures, has been of particular value for the Commission in its discussions with a number of countries when seeking to secure market access and non-discriminatory treatment for Community shipowners.

62. Member States and Community shipowners have regularly raised with the Commission issues regarding specific problems arising in particular shipping trades. In its report to the Council on the implementation of the shipping Regulations¹³ the Commission reported, i.a., on action undertaken by that time to address such problems as arose with Algeria; Kenya; Korea; Taiwan; Indonesia; Japan; and on consultations with third countries, such as Brazil, Sri Lanka and the USSR. The Commission has continued to pursue such action, in close consultation with the Member States. It has, in particular, raised specific issues regarding maritime transport in discussions with a number of third countries, namely Taiwan; Korea; China; Ukraine; Japan. Such discussions have resulted in several concessions obtained from the competent authorities of the countries concerned.

63. The results obtained clearly show that the Community can efficiently secure the interest of the Member States collectively. It is obvious that the leverage of the Community vis-à-vis third countries can be used to obtain concessions that individual Member States would not be able to realise. Apart from its significant tactical advantage, a Community approach is distinctly preferable to that of individual Member States since they are not normally in a position to take account of the interests of the Community as a whole. In this respect, the need to establish a coherent and comprehensive maritime Community policy on the basis of well defined policy objectives can be considered essential for the further development of the EC merchant fleet and to prevent any internal distortions of competition.

64. Further information on matters referred to in this section can be found in Annex III.

B. Development of EC relations with third countries to-date

65. In the intervening years after 1986 an increasing number of third countries have developed their relations with the Community in shipping. The Commission has used, and intends to continue to use, its possibilities to work towards the objective of free and fair competition in the world market. It considers this effort as an essential component of implementing the established Community policy.

EC relations with third countries have developed to-date by means of (i) agreements, (ii) consultations, as well as (iii) various forms of cooperation, including technical assistance.

(1) Agreements with third countries

66. Although the Community has not, so far, concluded any sectoral maritime transport agreement with a third country, a number of **general agreements** between the EC and third countries (or groups of third countries) contain *substantive provisions which relate to shipping*. Other agreements, whilst not containing specific substantive provisions on shipping, provide for cooperation/technical assistance as well as for consultations, as necessary.

67. In the first category belong: the Lomé Convention, the Europe Agreements, the Partnership and Cooperation Agreements with countries of the former USSR, and the EEA Agreement¹⁴.

¹³ SEC(90) 1594 final, 1.08.1990

¹⁴ For more detail as regards, i.a., the content of the agreements concerning maritime transport see Annex V.

Association agreements have also been or are being negotiated with most third countries of the Mediterranean. They provide for early negotiations leading to liberalization of maritime transport along similar lines to those recent agreements with Central and Eastern European countries.

68. Over the years, the Community has concluded *trade and economic cooperation agreements* with numerous third countries; transport is generally included among the sectors for economic cooperation, and this has been the basis for consultations and cooperative action with a number of such countries. In several such agreements, maritime transport has been the subject of an exchange of letters annexed to the agreement, whereby the Parties undertake to address any issue relating to the operation of shipping with a view to finding solutions to problems that may arise. In several instances discussions in the framework of the Joint Committees have taken place with satisfactory results.

In more recent negotiations for such agreements, engaged with Korea and South Africa (as well as for a new partnership agreement with Mexico), the Community has proposed the inclusion of substantive provisions on shipping. The negotiations with Korea have been concluded and the agreement was signed recently.

(2) Consultations with third countries

69. The Commission has, for some time, engaged in discussions and consultations with important partners in maritime transport, which have been intensified with the development of EC shipping policy and activity relating to international shipping: several EFTA countries - Finland¹⁵, Norway, Sweden¹⁵ and Switzerland; the USA, within the framework of the Consultative Shipping Group; the Republic of Korea; Japan; and, until 1991, the USSR. Such consultations serve the purpose of exchange of information and views on developments and policy issues of mutual interest, as well as the pursuance of solutions to problems that arise¹⁶.

70. Consultations with other countries have so far been held on an *ad hoc* basis, where required. Use is made of opportunities offered in the framework of existing agreements or of less formal events, incl. workshops organised with representatives of third countries or groups of countries.

(3) Cooperation and Technical assistance

71. The Commission has organised several **seminars and conferences or workshops** with third countries or groups of countries on shipping issues. These have provided the possibility to discuss constructively with high-level officials as well as with commercial interests existing problems and to consider needs for technical assistance in the efforts to liberalise the sector, facilitate transport operations and promote compliance with internationally applicable rules and standards. A number of these conferences and workshops have resulted in joint action programs that are being followed-up and/or specific technical assistance projects¹⁷.

72. **Technical assistance** provides an important means to improve the functioning of the trade and help liberalisation of such trades by providing better conditions of operation for the lines. This serves the dual objective of development policy and shipping policy. Actions in respect of, i.a., India, countries of the Maghreb and of West and Central Africa, as well as for the ASEAN countries have been undertaken, in addition to numerous projects under the PHARE and TACIS programs.

¹⁵ Prior to their accession to the EC.

¹⁶ As far as the developed countries are concerned, the Maritime Transport Committee of the OECD has also traditionally served as the forum for multilateral contact among them as regards shipping matters; the Commission regularly participates at its meetings (see para. 83).

¹⁷ See also Section V.B.2

73. The Commission has also established cooperative relations with a number of international organisations and institutions: UNCTAD, the World Bank; and with the World Maritime University and the International Maritime Law Institute concerning study programs and fellowships for shipping officials of developing countries.

74. Experience with actions of cooperation and provision of technical assistance, as above, can be considered generally positive and promising in terms of serving the objectives of such actions as regards the third countries involved as well as the Community. The Commission intends to further pursue such activity as an integral part of its external relations in the field of maritime transport.

75. A more detailed review of developments covered in this section is provided in Annex IV.

C. Action in international organizations & multilateral agreements

76. The Commission participates systematically in the work of international organizations dealing with maritime transport and in the negotiation of international conventions concerning international shipping. These have included, in particular:

- the Uruguay Round negotiation for a GATS and the continuation of these negotiations on maritime transport in the Negotiating Group on Maritime Transport Services (NGMTS) in the World Trade Organization;
- UNCTAD, as well as UN conferences and negotiations organized under the auspices of UNCTAD;
- the Maritime Transport Committee (MTC) of the OECD;
- the Consultative Shipping Group (CSG);
- IMO and ILO.

77. *The Uruguay Round negotiations* have been conducted by the Commission under specific arrangements agreed by the Council so as to ensure the unified representation of the EC. The currently continuing negotiations on certain services are conducted by the Commission in conformity with the "Code of Conduct agreed between the Council, the Member States and the Commission on the post-Uruguay Round Negotiations on Services" approved by the Council in May 1994, as were the negotiations on maritime services.

78. Since its adoption in 1977, the consultation procedure set up in Council Decision 77/587 has been used as a basis to harmonize the position taken in other international organizations and international conferences. In certain cases of important negotiations common objectives have been adopted by the Council or directives have been given to the Commission for participation and representation of the EC, based on the recommendations submitted by the Commission (see para. 82 below).

79. *In UNCTAD* the EC has been represented, notably, at sessions of the Conference as well as the sessions of the Committee on Shipping, until the latter's demise in 1992; and of the subsequently established Standing Committee on Services: Shipping, since 1992.

80. The Commission has coordinated positions, as necessary, on subjects discussed at these meetings and on Resolutions adopted therein. Until 1992 this was regularly done within the coordination framework of Group B. It has, also, represented the Community on matters of specific relevance for the EC and on which Group B as a whole did not have a position or interest. The representation of the EC at these meetings and participation in their work has been facing considerable difficulties, not only because of the Community's status as an observer rather than as a full participant, but primarily because of the reluctance of the Member States to accept the implications of such role as regards their own independent voice.

81. Following UNCTAD VIII (Cartagena, 1992) and the abandonment of the tradition of a coordinated position of the OECD countries, the Community has been speaking at the sessions of the

Standing Committee with one voice, represented jointly by the Presidency and the Commission. This has represented a significant shift in practice, which has been increasingly confirmed at the successive three sessions of the Standing Committee held since November 1992, as Member States have come to recognize the necessity of common action and representation and the significant risks involved if each of them were to express individually its views. At the same time this represents a fragile practical arrangement: it leaves open the question of an agreed and binding discipline which is needed in the light of the Court's requirement for unity of representation.

82. *In the UN framework*, in addition to participation in the work of UNCTAD as above, the Commission has also participated during recent years in negotiations organized under the auspices of UNCTAD, relating to international Conventions, and more specifically:

- Convention on conditions for registration of ships (from 1983 to 1986):
besides coordination of positions, as required, within Group B, the EC had to negotiate specific EC clauses necessary to ensure compatibility of the Convention with relevant Treaty provisions;¹⁸
- First Review Conference of the Liner Code (October/November 1989 and June 1991):
negotiation on behalf of the EC on the basis of directives adopted by the Council.¹⁹

83. *In the OECD* the Commission participates regularly in the discussions of the MTC and its subsidiary bodies. It seeks to ensure that views expressed by Member States on issues relating to the common policy are in line with it. It presents the EC position where relevant; it also presents the views of the Commission on matters within its own competence as well as on those on which it is exercising its initiative to formulate recommendations or make legislative proposals.

84. The nature of the discussions usually taking place in the MTC does not, as a rule, require a coordination of positions of the Member States; whenever such a need has arisen, coordination has taken place either in the Council Transport Working Group or on the spot. An unsatisfactory aspect of the OECD framework relates to the implications of the status of the Commission in meetings with groups of non-OECD countries.

85. The informal framework of the *Consultative Shipping Group* has traditionally been one which has not raised problems for the Commission to play its role in the dialogue of the CSG with the USA.

86. Coordination of positions in *IMO and ILO* is of increasing importance in view of the development of EC policy on matters within the area of work of these organizations. The modalities of such coordination have been the subject of discussions within the Council Transport Working Group; for practical reasons they will not be elaborated in this Communication which does not cover the fields of activity of these organizations.

¹⁸ COM(85) 388 final, 5.07.85

¹⁹ Communication from the Commission on a recommendation and proposal for a Council Decision authorising the Commission to participate on behalf of the Community in the Review Conference on the United Nations Convention on a Code of Conduct for Liner Conferences and in its preparatory work and on common action in this regard, SEC(87) 2063 final, 17.12.87;

V. FURTHER DEVELOPMENT OF THE EC EXTERNAL RELATIONS IN THE FIELD OF MARITIME TRANSPORT

A. The present context in which external shipping relations develop

I. International political, economic and commercial developments

87. The present context in which EC action is situated is in several respects considerably different from that prevailing only a few years ago.

- There has been in recent years a marked reorientation towards liberalisation worldwide, which could not fail to affect shipping policies as well. Thus significant improvement in lifting restrictions on access to the shipping market has been made in several Latin American and Asian countries. At the same time a similar reorientation has taken place in international organisations: this is to be seen in the reorientation of UNCTAD towards progressive liberalization, signalled by UNCTAD VIII at the beginning of 1992. The conclusion, more recently, of the Uruguay Round and the GATS confirm this trend although, regrettably, the negotiations on maritime transport could not be successfully concluded. This reorientation has been resisted by formerly protected industries in various countries; and this has made it difficult to achieve legally binding commitments that would make the changes irreversible.
- At the same time, we are witnessing tendencies towards unilateralism at the expense of the multilateral approach to seeking solutions to international problems. This tendency is particularly pronounced in the USA as manifested, for example, by the attitude of the USA with regard to the negotiations on maritime transport in the WTO as well as the recent reservation of Alaskan oil exports for US flag ships, and is a source of increasing concern.
- There have been considerable shifts in the relative importance of various trades, the most noteworthy in terms of its global significance being the growth of Asian trades, including the expansion of intra-Asian trades.
- Commercial developments involving global carriers and changes in patterns of cooperation accompanying the extension of multimodal transport and the evolution of logistic requirements.
- There has been further internationalisation of shipping activity with increasing separation of management from ownership, chartering of vessels of different nationality, recourse to foreign crew, and slot chartering arrangements.

88. Closer to the EC, there is a totally new situation as the disappearance of the State-trading system has radically altered the political and economic environment; from confrontation we have turned to cooperation and assistance programs, association or partnership agreements, and the prospect of accession of a number of CEEC in the not distant future. Thus the old preoccupation with the perceived threat from State-trading countries' shipping has disappeared as far as the CEEC and former USSR are concerned.

89. On the EC side, there has been a marked increase in the weight and role of the EC in international economic relations with the completion of the single market, the Maastricht Treaty, the enlargement of the Community and the development of closer and deeper ties with numerous countries and in particular CEEC, CIS and Mediterranean countries.

90. Effective external action in the field of maritime transport in pursuance of the Community's objectives (ref. Chapter III) should now be further developed so as to take advantage of the Community's changed position. In effect, the competitive position of Community shipping would be enhanced if, with regard to third countries and in international organisations, the EC were to take full advantage of its

changed position and speak with one voice.

91. Apart from the legal considerations (see next Section 2.a), the commercial advantages which can be derived from a common external policy in the maritime transport sector are considerable. The negotiating power of the Community representing the fifteen Member States is far greater than that of the individual Member States. The results obtained by the Commission so far, during discussions on maritime transport with the authorities of a number of countries, have proved that the Community, speaking with one voice on behalf of the Member States, can achieve more than individual Member States.

92. Given the competence of the Community, confirmed in the recent Opinion No. 1/94 of the ECJ, to conclude agreements on maritime transport with third countries, the Community has a responsibility to formulate external maritime transport policy. All actions *vis à vis* third countries in the field of commercial maritime transport matters should therefore be subject to Community oversight in order to safeguard consistency and clarity in its external relations. In summary, it is in the first place the responsibility of the Community to assume the task of negotiations with third countries.

93. This does not, however, mean that the Commission must immediately take up all the responsibilities that come with the Community's competence to conclude shipping agreements with third countries. The Commission intends at the present stage rather to concentrate on priority cases identified on the basis of the criteria considered in Section V.B.1.a.

2. Evolution of the role of the EC and its powers in the external field

a. Evolution of Community powers and scope of action in the field of external shipping relations

94. The evolution of Community competence in the external field was set out by the Commission in the White Paper on "The development of the Common Transport Policy" presented in December 1992.

95. Since then, the Court of Justice, in its Opinion Number 1/94, has pronounced itself on the long-running dispute regarding external competence for trade in services and, in this context, for transport. As far as maritime transport is concerned, the principal conclusion was that, in areas of exclusive Community competence, the legal basis for any such action was Article 84.2 of the Treaty. It also set out a certain number of considerations regarding the delineation of the areas which fell under exclusive competence.

96. Already, the Community had begun to exercise external competence in the shipping area based on Article 84.2 of the Treaty. The European Court of Justice held in Case 22/70 that as the Community develops common internal rules it also acquires authority over external negotiations which might affect these common rules (ERTA doctrine²⁰). Later, Case 1/76 of the Court of Justice constituted an important step in the definition of the external powers of the Community, declaring that if the Community has an internal competence to achieve a specific objective, it implicitly disposes of the exclusive external competence on that subject as far as such an external exercise is necessary to achieve that objective²¹. The Court's Opinion (1/94) did not in any way detract from the rationale of these two judgements. Accordingly, the legislation adopted by the Council gives the Community exclusive competence, in accordance with the ERTA doctrine, in particular for agreements relating to the provision of maritime transport services on the basis of Regulation 4055/86.

²⁰ Commission v. Council, Case 22/70 [1971] ECR 263

²¹ Case 1/76 (on the Agreement establishing a European laying-up fund for inland waterway vessels) [1976]

97. However, not all issues addressed in agreements with a third country in the field of shipping can be considered as necessarily falling within the area referred to in the previous paragraph. Agreements on such issues may therefore still be concluded by individual Member States. Furthermore, even where the Community has an exclusive power, Member States can, in certain circumstances, be authorised by the Council to negotiate bilaterally. The Court of Justice in a number of judgements has set out the principles for such a procedure²².

98. Given the arguments set out in Section V.A.1 above, allied to the fact that a number of significant issues fall under the area of exclusive competence, there is however a strong case for the pursuit, at Community level, of agreements covering the entirety of international maritime relations, if necessary on the basis of shared competence between the Community and Member States. Such an approach allows the demonstrably greater negotiating leverage of the Community to be used, while at the same time avoiding lengthy, and ultimately unproductive debate within Community institutions regarding the exact delineation of the Community's and Member States' respective competencies.

99. In view of the evolution of the Community's powers in the external field and its wider role in international economic relations, there is clearly a need for an increased scope of action by the Community and its Member States, acting as one, in the field of external shipping relations. The Court's Opinion confirmed that, where areas of shared competence are being addressed in international negotiations, there is an obligation on Member States to ensure close cooperation in the definition of positions.

b. Issues relating to the exercise of EC powers

1. Bilateral relations of Member States with third countries

100. The Member States have over a long period developed a system of bilateral agreements with third countries regulating maritime transport relations. These agreements deal with a wide range of issues, including market access.

Moreover, a number of the existing bilateral agreements concluded by Member States include provisions based on nationality which imply a different treatment of the nationals of the Member State involved than that accorded to nationals of other Member States. Such clauses, in particular clauses in the form of cargo-sharing arrangements, violate the principle of the freedom to provide services, as applied by Council Regulation No. 4055/86 in maritime transport between Member States and between Member States and third countries. All such provisions ought to have been appropriately adjusted or terminated in accordance with the Regulation, at the latest by the end of 1992. Nevertheless, there are still numerous agreements with such provisions in force, whose adjustment has not yet been achieved. The Commission has, as a result, opened procedures on the basis of Article 169 of the Treaty, seeking to terminate the infringements to the Regulation.²³

101. The conclusion of agreements between Member States and third countries negatively affecting the freedom to provide maritime transport services in the terms of Council Regulation No. 4055/86 is no longer allowed. Only in specified exceptional circumstances in liner trades may cargo sharing arrangements be permitted in accordance with a specified Community procedure.

More generally, in accordance with the ERTA doctrine (see para. 96 above), the Member States no longer have the competence to conclude agreements relating to the provision of maritime transport services.

²² Citations of *Donderwolke*, *Tezi*, *Bulk Oil*

²³ Commission Report on the implementation of Council Regulation No. 4055/86, SEC(94) 1570 final - 5.10.1994.

102. Bilateral agreements between Member States and third countries containing other provisions²⁴ falling within Community competence are a different subject. In addition to the question of competence, covered in the preceding section, there is the important question how best to attain the desired objectives. In comparison with each Member State the Community, acting as one, will be in a much better position to negotiate with trading partners than individual Member States. Not only because the Community as a whole is one of the most important trading blocs in the world but also because a consistent coordination of all interests involved will lead to a more coherent approach to third countries.

103. In view of the large number of cases in which a bilateral agreement is considered necessary by either a Member State or a third country, a Community approach is needed whereby cases should be identified which should be handled by the Community and others which could, for the time being, be left to the individual Member States, acting within a Community procedure.

The questions relating to Community agreements with third countries and possible transitional arrangements for bilateral agreements of the Member States are of particular importance for the development of the EC external relations in the field of maritime transport; they are dealt with in detail in Section B.1.a.1 and Chapter VI below.

2. Representation in international organisations dealing with economic and commercial aspects of shipping²⁵

104. EC action to date in international organizations, as well as difficulties arising in respect of EC participation and representation, have been the subject of Section IV.C above. Consideration of the question of participation and representation of the Community and the Member States in international organizations dealing with economic and commercial aspects of shipping has acquired considerable importance, in particular, because of the relatively recent developments in UNCTAD (UNCTAD VIII and the Cartagena Commitment, January 1992, and onwards). As far as representation in the WTO is concerned, there have so far been few practical implications resulting from the need to develop a code of conduct for defending Community interests, and maritime issues have been handled relatively satisfactorily. The difficulties that have arisen in discussions on shipping in the OECD relate more to formal aspects concerning the general status of the EC in the organization rather than with issues of substance in respect of shipping; these difficulties, as a result, are not addressed in this Communication.

105. The new orientation and organisation of work of UNCTAD require new working arrangements on the part of the Community. Work on shipping is now within the scope of wider work on services instead of being dealt in a specific Committee on Shipping, as had been the case previously.

In addition, there is no longer a spokesman for the OECD countries as a group nor is there coordination of positions of these countries.

106. In accordance with the provisions of the Treaty, the Community has to speak with one voice in all cases in which Community competence or common interest is involved.²⁶ The Group system that existed until recently in UNCTAD, whereby each Group's position was presented by its spokesman, led to the full implications of the Treaty provisions being avoided. The new circumstances impose new arrangements, in line with the requirements of the Treaty.

²⁴ On types of provisions contained in bilateral agreements see Section VI.C.1.

²⁵ As already indicated (see Executive Summary, footnote 1), this Communication does not address relations with the IMO, concerning safety and technical aspects of shipping. More particularly, representation in the IMO has been the subject of a specific arrangement.

²⁶ See also European Court Opinion 2/91 given on 19.03.1993, confirmed by Opinion 1/94.

In the past, the common position of the OECD countries was presented by the Group B spokesman; as a result, the question of representation of the EC outside Group B did not arise except on those infrequent occasions where the EC had a particular concern, not generally shared by the other OECD countries.

This is no longer the case. In the circumstances it is all the more important that the Community speaks with one voice instead of Member States trying to present their views individually.

107. In case of negotiation on subjects of importance leading to a legally binding document, the Commission acts on the basis of a Council Decision including directives for the negotiation; such has been the case, for example, at the Liner Code Review Conference. In other cases the course of action may be agreed at the level of the Council Working Group or in Coreper and, as appropriate, at coordination meetings on the spot, and be presented by the Commission or, for matters within the competence of the Member States, by the Presidency. In such cases, individual Member States' delegations may also intervene to provide additional information or support the common position with additional arguments, however, always within the commonly agreed line.

B. Components and priorities for Community action

108. The completion of the single market and the establishment of the EEA, the recent changes in Central and Eastern Europe and the new association or partnership with the countries of the region, continuing growth in the international mobility of goods and people, and the increasing interdependence in world trade and services, call for the further development of the external action of the Community in the field of shipping.

109. Taking into account the EC objectives and means of action in the external field with regard to maritime transport, considered in Chapter III, the *main components of Community action* in respect of the further development of its external action in this field should be:

- the further development of relations with, and related action *vis-à-vis* third countries, by means of
 - * Community agreements with third countries and procedures leading to the progressive transformation of existing bilateral regimes, as well as forms of dialogue with third countries to promote a common approach to shipping policy issues;
 - * action to address problems arising from restrictive or discriminatory measures of third countries;
 - * action to secure fair competition on a commercial basis;
 - * cooperative actions and technical assistance to third countries;
- the development of cooperative action in the field of shipping as a component of a global approach to the transport services and systems of Europe, including those of Central and Eastern Europe, so that they can develop in as integrated a way as possible; and
- the reinforcement of the role of the Community within relevant international organizations to reflect the full development of the Community shipping policy; and the negotiation by the Community within such organisations, in accordance with Community procedures, with a view in particular to consolidating positive developments in respect of shipping policy and obtaining further roll-back of existing restrictions.

110. These components of Community action are the subject of Sections V.B.1 to 3 below. The scope of action required for the full implementation of a comprehensive policy on relations with non-member countries makes it necessary also to consider the relative priorities of particular actions to be pursued. This raises the need for appropriate arrangements in respect of existing bilateral agreements of Member

States with third countries.

I. Relations with third countries or groups of countries

111. The components of Community external action as regards relations with non-member countries, referred to in para. 109, are considered below.

The development of these relations would greatly benefit from efficient exchange of information and timely consultation with the Member States concerning their relations with third countries and related problems. The existing consultation procedure set up by Council Decision 77/587/EEC does not well fulfil present needs. New, practical and effective rules and procedures are therefore required in order to ensure adequate, regular and timely exchange of information and views on issues relating to third countries.

The proposed Council Decision, presented in **Annex II**, aims at adapting to this effect the consultation procedure as regards developments concerning shipping relations with third countries.

a. Seek agreement with third countries on policy principles and common approach to shipping policy issues

112. The Community has an interest in other countries following similar policy principles so that problems of the kinds described in Section II.D do not arise and, if they do arise, to address them through consultation rather than by recourse to defensive measures. It should therefore, as a matter of priority, seek agreement with third countries on policy principles and a common approach to shipping policy issues.

This can take the form of (i) agreements with third countries on policy principles and cooperation, as appropriate, (ii) consultations and (iii) informal discussions in, for example, policy workshops that can promote a common understanding concerning shipping policy principles.

1. Agreements with third countries on shipping policy principles

113. With regard to agreements with non-member countries, and taking into account the considerations in Section A of this Chapter, it is necessary also to consider the question of the bilateral agreements of the Member States. This question is dealt with in Chapter VI, whereas this section considers only EC agreements with non-member countries.

Provisions on shipping in horizontal agreements between the EC and third countries

114. In the framework of agreements between the EC and third countries, the Commission considers it important to insert appropriate provisions when new or renewed agreements are negotiated. The timing of such negotiations is determined by considerations beyond transport. Thus the question of setting priorities as among third countries does not arise as a sectoral question; however, the nature and specificity of appropriate provisions needs to be considered in each case, taking into account that Community agreements with third countries are of various types, ranging from traditional co-operation agreements to agreements of economic integration.

115. In the first place, appropriate provisions concerning in particular the cross-border provision of services and establishment, similar to those negotiated so far with CEEC or CIS countries, should be included in Association or Partnership agreements with other CEEC, CIS and Mediterranean countries. Negotiations with several Mediterranean countries already have been or are to be engaged in the near future:

implementation of agreements with Egypt, Israel, Jordan, Morocco and Tunisia;

- * forthcoming negotiations, as soon as the situation allows, with Algeria; in accordance with the concept of the recent Communication on Mediterranean policy, agreements should be foreseen to gradually cover all non-member countries of the area.

116. In the cases of negotiation of new Trade and Cooperation agreements the Community should systematically take advantage of the opportunity to insert provisions relating to shipping.

A cooperation provision, as in several agreements concluded so far, allows the development of certain activities that assist the third country concerned and which may improve the conditions of operation of the shipping activity to the benefit of all involved. They may also allow, indirectly, improved market access through the promotion of market orientated policies.

Whenever possible, it is desirable to go beyond a simple cooperation clause and include provisions reflecting agreement on key, substantive issues of shipping policy.

Sectoral agreements and understandings between the EC and third countries on maritime transport

117. As far as sectoral agreements between the EC and third countries on maritime transport are concerned, which would cover shipping generally (rather than addressing specific problems covered in para. 128 below), the need for such agreements would generally depend on problems that may exist or arise and that may be brought to the attention of the Commission by Member States or otherwise. This would be the case, for instance, if similar provisions were of interest to several Member States or if a Community agreement were necessary to ensure free access and/or equal treatment of Community shipowners by the third country concerned.

118. The Commission considers at this stage that shipping agreements with certain maritime countries should be envisaged in order to consolidate positive policy developments in such countries or improve the conditions of market access of Community shipowners. Among countries other than those which would be adequately covered through the Association or Partnership and Cooperation Agreements, such as CEEC and CIS, the EC should seek agreements with significant maritime countries such as Brazil, among the Latin American countries, and China, Taiwan, India, and a number of ASEAN countries, among the maritime countries of Asia.

As a first step and based on contacts held so far, the Commission has very recently submitted recommendations to the Council to authorize it to negotiate agreements on maritime transport with India and China.

119. There may be instances where a formal agreement with a particular country appears, for the time being, not feasible; a less formal, and not legally binding, understanding may in such instances be feasible and appropriate. This will depend on particular circumstances, to be considered by the Commission in making appropriate proposals.

120. The case of *ad hoc* issues that may need to be addressed, and which may result in agreements or less formal understandings on specific issues, is covered in Section B.1.b.1 below.

Implementation of agreements and development of relations

121. Finally, the relations with the countries with which the Community has concluded an agreement containing provisions on maritime transport, will need to be developed. The implementation of concluded agreements will require attention, in particular as regards agreements with substantive maritime provisions or foreseeing relatively extensive cooperative programs in specific fields, including transport, such as the Europe and the Partnership and Cooperation agreements. Among the tasks foreseen, the harmonisation of legislation of CEEC to that of the Community should also be noted (see para. 150 below).

2. Consultations with third countries

122. In several instances, cooperation agreements with third countries offer the possibility to consult, as appropriate or necessary. The need to establish regular consultations on shipping would therefore not appear to be the rule.

123. As far as regular consultations on shipping are concerned, as distinct from consultations in particular cases on specific issues that may arise, the Commission intends, therefore, to continue to be selective, devoting its attention to countries with which it has significant maritime trade relations and whose maritime transport policies directly affect the Community's interests.

124. The Commission intends therefore in the first place to continue the regular consultations engaged so far (see Section IV.B.2 above); and considers it desirable to also engage or intensify such consultations with countries such as the USA and Russia.

3. Policy workshops

125. The experience with the limited number of shipping policy workshops organised so far leads the Commission to consider that such events can positively contribute to promote the objectives of Community shipping policy. However, these events require allocation of considerable human and budgetary resources; consequently, they can be organised only very selectively in cases of considerable mutual interest where they can make an impact.

126. The case of neighbouring countries - CEEC, CIS, Mediterranean - will need particular attention, within the framework of established EU policies and relevant agreements. This includes the continuation of action launched at the Constanza workshop relating to the Black Sea (September 1994); and similar action in respect of the Baltic Sea region and the Mediterranean.

b. Address problems arising from measures of third countries

1. Elimination of restrictive or discriminatory measures

127. The Community needs in several instances to address either existing restrictive or discriminatory measures, or new measures introduced by one or another country:

Existing measures

In addition to cases that have already been identified and have to be further pursued (such as West and Central Africa, Kenya, South Korea, China), other cases may be taken up as they come to the attention of the Commission, by being raised through specific requests by Member States or Community shipowners or shippers or otherwise.

The approach to be followed would be problem-oriented so as to focus on measures of third countries of significance for the Community shipping industry.

New measures

In addition to existing restrictive or discriminatory measures, new ones are announced from time to time by one or another third country. The Commission will be attentive to any cases that will be brought to its notice by Member States or by the industry or that the Commission itself may identify.

It is important as a matter of priority to avoid, as far as possible, the introduction and enforcement of such measures instead of trying to reverse them once enforced.

128. Démarches, followed as appropriate by consultations, have been the course of action regularly, and often successfully, pursued in such cases. In that respect, actions of all kind should to the extent possible be co-ordinated within the Transport Working Group of the Council.

129. Following exploratory discussions with the country concerned, and if negotiations for an agreement appeared necessary, the Commission would request a Council mandate to that end.

130. In situations described above relating either to existing or to new measures, action based on Regulation no. 4058/86, as it may be modified (see para. 132 below), could become a priority to be identified, subject to international obligations that may be subscribed by the Community under the GATS.

2. **Review and possible adaptation of existing EC legislation: Council Regulation No. 4058/86**

131. Coordinated action using the procedures of Council Regulation No. 4058/86 has so far been undertaken and pursued only in the case of restrictive measures imposed by the West and Central African countries. As the Commission stated in its Report on the implementation of the maritime Regulations adopted in 1986, which it submitted on 1.08.1990, it has been pursuing its action in that case on the basis of the relevant Council Regulations, namely Nos. 4058/86, 4055/86 and 4056/86²⁷.

132. The Regulation has also served as a deterrent against restrictive measures by third countries; however, the question has been raised as to the possibility of its effective use in a number of circumstances. A review is therefore being made of the Regulation with a view possibly to adapting it to ensure a more efficient response to problems arising from restrictions by third countries, or their agents, on market access. Consideration may be given to widening of the scope of the third country measures covered and the eventual measures that may be adopted by the Community. Account has to be taken in this respect of the implications of developments in the negotiations on maritime transport in the framework of the World Trade Organisation.

c. **Action to secure fair competition on a commercial basis**

133. As mentioned in para. 39 above, operating conditions vary considerably among countries and shipping registers to the extent that competition can be seriously distorted by advantages deriving from Government measures or support. In addressing this problem in its Communication entitled "Progress towards a common transport policy - Maritime transport"²⁸ the Commission identified a number of such measures or factors:

- State ownership or control: this results in several instances in significant subsidisation of operations;
- preferential access to an international market to which other shipowners do not have access;
- operation under a flag of a country which has not ratified or does not correctly implement the main IMO and ILO conventions.

134. Community action to address restrictions on market access and recourse, in specific cases, to Council Regulation No. 4057/86 to counter unfair pricing practices by foreign shipowners, are means that may be used to secure conditions of fair competition on a commercial basis. The Commission considers unfair competition should also be addressed by ensuring, insofar as it is within the Community

²⁷ SEC(90) 1594 final, para. 90

²⁸ COM(85)90 final of 19 March 1985.

jurisdiction, and by otherwise promoting the adoption, observance and enforcement of appropriate international standards relating to the safety of ships and crew and the protection of the marine environment.

1. **Countering unfair pricing practices: review and possible adaptation of Council Regulation No. 4057/86**

135. The Regulation has proved a valuable instrument for adopting a specific, targeted ad hoc measure; the mere possibility of its use has allowed both the Commission to use its contacts so as to preempt the need to have recourse to it and the industry to secure healthier competitive conditions in at least a number of instances known to the Commission.

136. However, the Regulation has not been designed to address the more general problem of unfair competition. A review of the question is underway to consider the adaptation of the Regulation as a means for addressing the problem.

2. **Adoption, compliance and enforcement of international safety rules and standards through stricter PSC and possibly action vis à vis flag states**

137. Neglect by Governments of enforcement, and by shipowners of observance, of internationally applicable rules and standards can provide a significant competitive edge to shipowners using vessels not complying with them.

Thus, besides the paramount importance of observing such rules and standards for reasons of safety of ships and crew and for environmental protection, this is also of particular importance for the elimination of unfair competition from ships not observing such standards.

138. Measures in this regard comprise stricter Port State Control and possibly action *vis-à-vis* flag States not adequately enforcing internationally applicable rules and standards concerning the safety of vessels and crew and the protection of the marine environment.

139. This issue relates to the Communication of the Commission of 1993 on "A Common Policy for Safe Seas"²⁹ and points to the possibility of taking action in the external field in support of the objectives relating to safety and environmental protection. The Commission already submitted in March 1994 a proposal for a Council Directive "concerning the enforcement, in respect of shipping using Community ports and sailing in the waters under the jurisdiction of the Member States, of international standards for ship safety, pollution prevention and shipboard living and working conditions"³⁰; the Directive was adopted by the Council on 19.06.1995³¹ and implemented as from 1.07.1996.

140. This question is closely linked with the conditions of registration in open registers as well as the failure of the flag states concerned to adopt and enforce the relevant rules and standards.

Flagging out from national ("genuine") registers has assumed unprecedented proportions during recent years, so that by now close to half the world tonnage is under open registers.

There is increasing concern about this trend, and various responses by individual countries, with varying degree of success. The Commission considers that the Community has a major stake in this issue and an appropriate response to the challenge has to be considered. It would appear that, to the extent there were

²⁹ COM(93) 66 of 24.02.1993

³⁰ COM(94) 73 final, 16.03.1994

³¹ Council-Directive 95/21/EC of 19.06.1995, OJ L 157 of 7.07.95

a will to face the problem, this would necessitate a concerted approach by the major maritime countries, as well as appropriate intervention in the relevant international fora and selected major open registry countries.

The Commission considers the political stance adopted recently by the developed countries as a whole within the Maritime Transport Committee of the OECD³² as a step in the right direction.

141. In its relations with third countries the Community should also exercise its influence to :

- promote Port State Control in other regions through cooperation with interested third countries and groups of countries, as well as with IMO, as well as technical assistance where appropriate;
- promote the adoption of appropriate international standards through consultation and assistance to third countries.

d. Cooperative actions and technical assistance to third countries

142. The Commission considers as a potentially effective means of pursuing the Community's maritime transport interests assistance to third countries which may be receptive to a reorientation of their maritime policies in the direction of the shipping policies advocated by the Community. This can also be effective to remedy problems of common concern or interest and as an important means to improve the functioning of the trade and help liberalisation by providing better conditions of operation for the EC lines. Simplification of customs and other procedures and documentation, improvement of port and hinterland infrastructure are significant examples in this respect. Technical assistance, training of officials concerned with shipping policy issues, expert or financial support of activities promoting efficient commercial operations, including the use of new technologies, may also prove fruitful with respect to the attitude taken with regard to market orientated maritime transport and related activities. The exchange of information through seminars, workshops or courses or in specific instances, the exchange of senior officials are appropriate means to raise awareness, discuss issues, and develop appropriate action programs.

143. Such cooperative action serves the dual objective of development policy and shipping policy, by helping to achieve free access to the trade. Therefore the Commission intends to pursue such activities within the framework of existing programs, within the provisions of agreements with third countries, as well as within the possibilities of available resources, in particular resources available in connection with agreements with the countries concerned, taking into account the importance of issues and interest of partners.

2. Action aiming at the integration of the transport services and systems in Europe

144. As a follow-up to the first Pan-European Transport Conference in Prague of 1991 and in preparation for the second such conference held in Crete in March 1994, a Regional Conference for the Black Sea was held at ministerial level late in 1993. Conferences for the Baltic Sea and the Mediterranean area were also held following the Crete Conference. These regional conferences aimed at establishing the basis for a coherent transport network and transport system for the whole of Europe and they provided opportunities for exchanges of views and coordination.

145. The Black Sea Conference (Ministerial Conference on transport challenges in South-Eastern Europe) which was held in Constanza, Romania, in October 1993 decided to create a Working Group

³² "Statement by OECD Member Countries on Enforcement of International Rules and Standards", SG/PRESS(94)34 of 24.05.94

for Waterborne Transport in order to discuss pragmatic solutions for problems in that sector. That Working Group started its work with a meeting in Constanza in September 1994, following a first preparatory workshop organized in April 1994 for high-level decision-makers from the Black Sea region, where the European Community policy and the functioning of port and maritime industries in a free market environment were presented.

146. The Commission also intends to launch a comprehensive study on port development in the Black Sea area including the assessment on the shipping and port policies of the countries concerned. The study would be carried out with financial support from the Community's technical assistance programs. A second Black Sea transport conference at ministerial level is envisaged for mid-1997.

147. Similar initiatives have been launched for the Mediterranean and Baltic Sea areas. The first Regional Conference for the Development of Maritime Transport in the Mediterranean was held in Barcelona on 27-28 April 1995. A Working Conference on Maritime Transport in the Baltic Sea was held on 22-23 May 1995 in Copenhagen upon invitation from the Government of Denmark and the European Commission and under the auspices of the Council of the Baltic Sea States. Each Conference agreed to create a Waterborne Transport Working Group to prepare and, if possible, adopt a multi-annual work program for the respective region. The Mediterranean Waterborne Transport Group met in September 1995 and agreed on such a program; final agreement on a program for the Baltic Group is pending.

148. Within the framework of the Pan-European Transport Conference and the regional conferences as above, the Commission considers it appropriate to pursue cooperative action programs, focusing in particular on actions relating to:

- short-sea shipping;
- inclusion of the ports in the Trans-European Networks; and
- maritime safety, including Port State Control.

149. In parallel, and in accordance with the provisions on co-operation of the agreements concluded (or to be concluded) with the CEEC, CIS and Mediterranean countries, the Commission intends to privilege actions and projects aiming at:

- the restructuring and modernisation of transport;
- the improvement of the movement of passengers and goods and the access to the transport market by removing administrative, technical and other obstacles;
- the facilitation and development of multimodal transport.

150. It is further noted that the Europe Agreements provide for progressive harmonisation of transport legislation of the CEEC concerned in the perspective of these countries to accede. The Community is according particular attention to this process. The strategy for preparing the associated CEEC for accession to the European Union, decided by the European Council in Essen in December 1994, views the alignment of these countries' legislation as necessary for them to be ready to participate in the Internal Market on accession; the White Paper on the Internal Market³³ was the first step in implementing the Strategy in this area.

3. International Organizations & Multilateral Conventions

a. Adaptation of consultation procedure

151. The considerations in Section V.A.2.b.2 (paras. 104-107) underline the need to adopt practical and effective rules to ensure the pursuance of Community objectives in discussions or negotiations in international organizations.

³³ COM(95) 163 final

152. The consultation procedure adopted in 1977³⁴ does not fulfil present needs. The aim, in its Art. 2, "to consider jointly whether Member States' action within the international organizations concerned should be coordinated" has for some time been overtaken by events; and particularly, in view of the new situation in UNCTAD, as well as the Court's recent Opinion, this old concept is now obsolete.

153. A new procedure is therefore now needed, which would provide for the establishment of a common position at appropriate level, depending on the subject, its importance and circumstances, and for the presentation of such position.

The proposed Council Decision presented in **Annex II** aims, i.a., at the adoption of an adequate procedure as regards action relating to shipping matters in international organisations.

b. Tasks ahead for the short- and medium-term

154. The outcome of important negotiations, at present ongoing or forthcoming, in multilateral fora could have a significant effect on world shipping; the EC has a particular stake in this and must act so as to safeguard and further its interests.

155. The negotiation in the field of shipping in the WTO, which is to be resumed in the year 2000, is the most significant in terms of its potential impact on world shipping. In line with its shipping policy, the Community has been actively seeking commitments from the widest number of countries, including all countries with significant shipping activity, for effective standstill on restrictions in the provision of shipping services and elimination of existing restrictions within a fixed time scale. The satisfactory conclusion of such a multilateral agreement remains a fundamental objective for the Community.

156. The second Review Conference on the UN Convention on a Code of Conduct for Liner Conferences, which was to be convened in 1997, has been postponed. The relevance of key provisions of the Code seems to be increasingly open to question in view, in particular, of the declining importance of conferences and the reorientation of shipping policies in quite a number of countries; and the Convention may be significantly affected by the outcome of the NGMTS negotiations when they resume. Thus a Review Conference could pose important policy questions.

When the Conference is convened, the Commission will propose to the Council the appropriate Community position and the participation of the Community at the Conference, and will seek directives for the participation and negotiation on behalf of the Community.

157. In addition to the above negotiations, attention has also to be given to the ongoing consultations within the MTC of the OECD as well as to the joint consultations on shipping between the OECD countries and other regional groups, which aim at promoting a market orientated shipping policy and have become a regular and increasing activity of the MTC over the last few years.

³⁴ Council Decision 77/587/EEC, OJ L 239, 17.9.1977

VI. ARRANGEMENTS FOR PROGRESSIVE TRANSFORMATION OF BILATERAL REGIMES

A. The main principles

158. Among the components of Community action should be, as stated in Section V.B (para. 109), the progressive transformation of existing bilateral regimes by means of a framework of Community agreements and procedures.

159. There are cases where one or another Member State may consider necessary to conclude a bilateral agreement with a third country, which would be in conformity with EC law and in particular Council Regulation No. 4055/86. Given the exclusive competence of the Community to conclude agreements with third countries relating to the provision of maritime transport services, it is clear that it has a responsibility for the formulation of the external maritime transport policy. *Thus action vis à vis third countries in the field of commercial maritime transport matters should be under Community oversight in order to safeguard consistency and clarity in the external relations of the Community.*

160. On the other hand the Commission does not consider it at present either necessary or feasible to take up immediately all the responsibilities that come with the Community's competence to conclude agreements with third countries in all such cases. *The Commission intends at the present stage rather to concentrate on priority cases identified on the basis of the criteria considered in Chapter V.*

161. An appropriate approach would therefore be:

(i) Member States should inform the Commission adequately of the extension of agreements in force and of their intention to negotiate new agreements or modifications to existing ones. Such information is the essential prerequisite for effective machinery beginning with consultations between the Commission and the Member States, to ensure that Community competence is respected and the most appropriate solutions found for the different types of problem that will arise. Existing instruments, in particular Council Decision 77/587 are not adequate in this regard. It is accordingly important that a specific procedure be adopted and this is the objective of the provisions in this regard included in the proposal presented in **Annex II**.

(ii) In those cases in which the Community should negotiate an agreement, the close involvement of the Member States in the process should be ensured (see para. 162 below).

(iii) As regards matters falling within the powers of the Community, a Member State would need to be authorized, according to a Community procedure, to negotiate a bilateral agreement. A coordination procedure will be essential and conditions might also need to be placed on the scope of the negotiations. These might relate for example to the content of the agreement to be negotiated, in particular to take account of the interests of other Member States and to avoid any incompatibility with Community law.

B. Agreements between the Community and third countries

162. Agreements between the Community and third countries would be concluded on the basis of the normal Community procedures:

- recommendation for an authorization to negotiate an agreement;
- decision by the Council authorising the Commission to negotiate;
- negotiations by the Commission, in accordance with normal procedures;
- conclusion of the agreement by the Council.

An Advisory Committee of Member States' representatives would be established to advise the Commission throughout the whole process of the negotiations.

C. Bilateral agreements between Member States and third countries

163. Given the Commission's intention to focus for the time being on priority relationships, it is necessary for the time being that the Member States, so as not to hinder the normal progress and development of their external commercial relations, be allowed to continue negotiating and concluding bilateral agreements with third countries provided that in every case the common policy in maritime transport is respected and that proper consultation takes place at Community level.

164. Council Decision 69/494/EEC³⁵ on the progressive standardisation of agreements concerning commercial relations between Member States and third countries and on the negotiation of Community agreements, has established a notification and consultation procedure at Community level. The Decision also established a procedure for the negotiation of agreements with third countries by the Community.

Title II of this Decision provides the procedure to be followed in case a Member State or the Commission considers that a bilateral treaty, agreement or arrangement concerning commercial relations should be negotiated by the Commission on behalf of the Community. Title I and III deal with the extension of existing agreements and they provide transitional provisions according to which the Council may authorise bilateral negotiations between Member States and certain third countries, respectively.

165. In order for the Community to develop a comprehensive external maritime transport policy, it is necessary to establish similar rules concerning the extension of existing maritime transport agreements and the authorisation for Member States to conduct bilateral negotiations. These rules should be in accordance with the Treaty and should, more specifically, take into account Community legislation in the field of maritime transport. To this end, the Commission proposes the adoption of a Council Decision which would include, i.a., a consultation and authorization procedure for agreements concerning maritime transport relations between Member States and third countries (**Annex II**).

1. Types of provisions in bilateral agreements between Member States and third countries

166. The various provisions appearing in existing bilateral agreements relate to the matters indicated below, this list neither being exhaustive nor implying that all agreements contain provisions relating to all such matters:

- principles concerning access to the shipping market;
- reference to the application of the Liner Code;
- multimodal transport operations;
- landside operations;
- establishment of commercial presence;
- auxiliary services;
- treatment of vessels in ports;
- freight earnings remittances;
- definition of beneficiaries (companies; flag of vessels);
- recognition of seafarers' documents and treatment;
- assistance in case of accident;
- management of the agreement (e.g. Joint Committee, frequency of meetings, etc.)

167. Such provisions may, for practical purposes, be usefully distinguished, as far as their subjects

³⁵ OJ L 326 of 29.12.69

are concerned, into those relating to commercial aspects of transport and those dealing only with what may be called technical matters; and those in the first category either concern directly or affect the provision of shipping services:

- (i) provisions relating to commercial aspects of transport are those concerning: access to the market; multimodal transport; landside operations; establishment of commercial presence; auxiliary services; treatment of vessels in ports; and transactions and payments related to the provision of the shipping services;
- (ii) provisions relating what may be called technical matters concern: the mutual recognition of vessel documents; identity documents for crew; entry or leave of crew members from the country concerned; permission for delivery of crew members to hospital; national jurisdiction in matters occurring on board; necessary assistance in case of emergency of vessel.

2. Agreements relating to the provision of maritime transport services

168. In conformity with Regulation no. 4055/86, no new agreements by Member States affecting the freedom to provide services are allowed. For specified exceptional circumstances, the Regulation foresees a special procedure.

169. Council Regulation (EEC) No. 4055/86 applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries, and in particular Article 3 of the Regulation, requires that Member States phase out or adjust cargo-sharing arrangements which are contained in existing bilateral agreements with third countries. Obviously, this obligation demands action from the Member States which had cargo-sharing arrangements with third countries, concluded before 1 January 1987, the date on which Regulation No. 4055/86 entered into force. For such agreements, the provisions of Articles 4 of the Regulation can be understood to include an authorization for Member States to conduct the negotiations necessary to adjust the cargo-sharing arrangements.

170. Where agreements which were only ratified on or after 1 January 1987, or signed or negotiated after this date, fall under the competence of the Community, Member States may continue to deal with these agreements, on the condition that the Member States' actions take place in consultation with the Commission.

171. There could be cases where Member States may desire to include in an agreement to be negotiated with a third country provisions relating to the provision of maritime transport services and which would not raise questions of conformity with Community law, and in particular with Regulation No. 4055/86.

It would be acceptable that, for the time being, the Member State concerned negotiate an agreement containing such provisions, if it is not considered preferable, in view of the Community interest, to have a Community agreement with the third country concerned (see para. 103 above). The maritime provisions included in the Europe and Partnership and Cooperation agreements with third countries negotiated so far may serve at this stage as a standard, as to appropriate and acceptable provisions on the subjects they cover, in comparable circumstances.

172. A negotiation by a Member State with a third country would, however, be subject to a procedure established in a Council Decision. The envisaged arrangements for bilateral agreements, including such a procedure, are set out in the proposal for a Council Decision in **Annex III**. Its main features are the following:

- it authorizes the Member States to extend the validity of existing bilateral agreements insofar as they are in conformity with Community law and in particular Regulation No. 4055/86;

- it provides for the possibility that a Member State may be authorized to conclude an agreement with a third country regarding the provision of maritime services, without prejudice to Council Regulation No. 4055/86:
 - such authorization could be granted following notification by a Member State of its desire to conclude such an agreement, setting out the need for the agreement, its objectives and a draft of the agreement proposed;
 - the Member State concerned would be authorized to start negotiations if no question was raised by the Commission or by any other Member State within a specified period following receipt of the request;
 - otherwise, authorization could be given by the Commission, following consultations, if appropriate;
- it provides, if considered appropriate by the Commission, for conditions for the negotiation of such an agreement by the Member State;
- it provides for information to be submitted to the Commission at the end of the negotiation process and for consultation with the Commission before signing the agreement; and
- it provides for the possibility that the Council decides that a Community agreement is more appropriate and authorises the Commission to this effect.
- it provides for review of the procedure, on the basis of a report by the Commission, before 31 December 2000.

3. Agreements containing only provisions which do not relate to the provision of maritime transport services

173. Member States have the possibility, *as long as Community legislation has not been proposed or adopted on such matters*, to negotiate agreements containing only provisions which do not relate to the provision of maritime transport services, of which the Commission should be adequately informed.

174. Therefore, agreements which do not contain clauses relating to the provision of maritime transport services, are subject to the general rules which apply to the external policy of the Community. According to Community law Member States may negotiate and conclude such agreements *as long as Community legislation has not been proposed or adopted*.

175. However, in order to permit the Community to have the overall picture of the agreements concluded, it is necessary that the Member States inform the Commission on any such agreements they intend to negotiate.

TABLE: Scope of external action and specific actions and proposals foreseen

Component	Scope of action	Specific actions/proposals foreseen
1.1 General agreements	<p>Association or Partnership agreements: Negotiation of provisions concerning in particular the cross-border provision of shipping services and establishment (commercial presence)</p> <p>Trade and Cooperation agreements: Negotiation of provisions concerning shipping, as appropriate in each case</p>	<p>Negotiations engaged or foreseen:</p> <ul style="list-style-type: none"> - conclusion of current negotiations with Egypt, Jordan and Lebanon. - negotiations foreseen with Algeria; - negotiations with Mediterranean countries on shipping as foreseen in the present agreements
1.2 Sectoral agreements and understandings on maritime transport	<p>Seek agreements with significant maritime countries such as Brazil, among the Latin American countries, and China, Taiwan, India, and a number of ASEAN countries, among the maritime countries of Asia.</p> <p>In some instances a less formal understanding may be appropriate.</p>	<p>Recommendations to Council for negotiation of agreements with India and China</p>
1.3 Implementation of agreements and development of relations	<p>Implementation of concluded agreements with substantive maritime provisions or foreseeing cooperative programs in maritime transport</p> <p>Harmonisation of legislation of CEEC to that of the Community</p>	<p>Regular activity</p> <p>Follow up to White Paper</p>
1.4 Consultations with third countries	<p>Regular consultations with certain countries with which EC has significant maritime trade relations and whose maritime transport policies directly affect EC interests.</p> <p>Consultations as necessary with other countries in the framework of cooperation agreements.</p>	<ul style="list-style-type: none"> - continue the regular consultations engaged so far (Japan, Korea, Norway, Switzerland, CSG); - engage or intensify consultations with countries such as the USA, Russia, China and India.
1.5 Policy workshops	<p>To be organised in cases of considerable mutual interest where they can make an impact.</p>	<p>Follow up of action launched at the Workshops relating to:</p> <ul style="list-style-type: none"> - the Black Sea, the Baltic Sea, and the Mediterranean - the ASEAN countries

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<p>1.6 Address problems arising from existing or new measures of third countries</p>	<p>Démarches, followed as appropriate by consultations</p> <p>Recourse, in specific cases, to Regulation no. 4058/86</p> <p>Review of Regulation No. 4058/86</p>	<ul style="list-style-type: none"> - Cases that have already been identified and have to be further pursued (such as West and Central Africa, Kenya, South Korea, China) - other cases raised by Member States or Community shipowners or shippers.- <p>Eventually proposal to adapt Regulation No. 4058/86</p>
<p>1.7 Action to secure fair competition on a commercial basis</p>	<p>Recourse, in specific cases, to Regulation No. 4057/86</p> <p>Review of Regulation No. 4057/86</p> <p>Adoption, compliance and enforcement of international safety rules and standards</p>	<p>Eventually proposal to adapt Regulation No. 4057/86</p> <p>Stricter Port State Control; action <i>vis-à-vis</i> flag States not adequately enforcing internationally applicable rules and standards</p> <p>Supportive action in the external field :</p> <ul style="list-style-type: none"> - promote Port State Control in other regions through cooperation with interested third countries and groups of countries, as well as with IMO, as well as technical assistance where appropriate; - promote the adoption of appropriate international standards through consultation and assistance to third countries. <p>Eventually concerted approach by the major maritime countries, as well as appropriate intervention v.àv. the relevant international fora and selected major open registry countries.</p>
<p>1.8 Cooperative actions and technical assistance to third countries</p>	<p>Technical assistance, training of officials concerned with shipping policy issues, expert or financial support of activities promoting efficient commercial operations, incl. the use of new technologies.</p> <p>Exchange of information through seminars, workshops or courses or exchange of senior officials.</p>	<p>Pursue such activities within the framework of existing programs, within the provisions of agreements with third countries, as well as within the possibilities of available resources</p>

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<p>II. Action aiming at the integration of the transport services and systems in Europe</p>	<p>Follow-up to the Pan-European Transport Conferences and the regional Ministerial Conferences for the Black Sea, Baltic Sea and the Mediterranean area</p> <p>Regional Waterborne Transport Working Groups set up to prepare and adopt a multi-annual work program for the respective region.</p> <p>Progressive harmonisation of, i.a., transport legislation of the CEEC, in the perspective of these countries to accede.</p>	<p>Pursue cooperative action programs, focusing in particular on actions relating to:</p> <ul style="list-style-type: none"> - short-sea shipping; - inclusion of the ports in the Trans-European Networks; - maritime safety, including Port State Control. <p>In parallel, privilege actions and projects aiming, i.a., at:</p> <ul style="list-style-type: none"> - the restructuring and modernisation of transport; - the improvement of the movement of passengers and goods and the access to the transport market by removing administrative, technical and other obstacles; - the facilitation and development of multimodal transport.
<p>III. International Organizations & Multilateral Conventions</p>	<p>Adoption of practical and effective EC rules to ensure the pursuance of Community objectives in discussions or negotiations in international organizations.</p> <p>Tasks for the short- and medium-term</p> <ul style="list-style-type: none"> - second Review Conference on the UN Convention on a Code of Conduct for Liner Conferences; - consultations within the MTC of the OECD as well as the joint consultations on shipping between the OECD countries and other regional groups 	<p>Adoption of new consultation procedure (replacing the procedure of Council Decision 77/587) to provide for the establishment and presentation of a common position (proposal in Annex II)</p> <p>Recommendation to the Council on the Community position and the participation of the Community at the Conference</p>
<p>IV. Internal rules for relations with third countries</p>	<p>Ensure coherence of action of the Community and of the Member States in their relations with third countries and improved efficiency of such action</p> <p>Establish rules concerning the extension of existing maritime transport agreements and the authorization for Member States to conduct bilateral negotiations</p>	<p>Adoption of new consultation procedure (replacing the procedure of Council Decision 77/587) - proposal in Annex II</p> <p>Proposal for a Council Decision - Annex II</p>

97/0012 (SYN)

ANNEX II

**Proposal for a Council Decision setting up
a consultation procedure on relations between Member States and third countries in shipping
matters and on action relating to such matters in international organizations
and an authorization procedure for agreements concerning maritime transport**

THE COUNCIL OF THE EUROPEAN UNION,

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

Having regard to the proposal from the Commission,

Acting in accordance with the procedure referred to in Article 189c of the Treaty in cooperation with the European Parliament,

Having regard to the opinion of the Economic and Social Committee,

Whereas the development of external relations of the Community in the field of maritime transport requires adequate and efficient exchange of information and timely consultation between the Commission and the Member States;

Whereas Council Decision 77/587/EEC¹ set up a consultation procedure on relations between Member States and third countries in shipping matters and on action relating to such matters in international organizations;

Whereas consultations should also cover, in addition to developments that have taken place, ongoing developments in relations with third countries;

Whereas any problems arising in the field of shipping in the trades with and between third countries and appropriate means to address these problems should be considered;

Whereas therefore provision should be made for consultations to be held at regular intervals;

Whereas appropriate action to address problems arising in international organizations should be considered; whereas a procedure should be introduced for the establishment of the position to be taken by the Community and the Member States on questions of common interest discussed within international organizations; whereas such position, on matters within the competence of the Community or of the Member States, should be presented by the Commission or the Member State exercising the presidency of the Council, respectively.

Whereas maritime transport relations between Member States and third countries are regulated by bilateral agreements as well as by other bilateral and multilateral arrangements containing provisions on, or applicable to, matters relating to the provision of shipping services such as access to the shipping market, incl. multimodal transport operations, connected landside operations, establishment of commercial presence, access to ports, utilisation of port and related services and facilities, transactions and payments related to the provision of shipping services, and related provisions;

¹ OJ L 239, 17.09.1977.

Whereas a regulatory framework for negotiations by Member States with third countries should be provided for; whereas the Commission should have the possibility to authorize Member States to negotiate, conclude or renew agreements with third countries; whereas in appropriate circumstances such authorization could be tacitly granted;

Whereas an effective procedure to secure the examination of bilateral maritime transport agreements and other bilateral arrangements which Member States propose to conclude with third countries must be established;

Whereas the purpose of this examination must be to determine whether the proposed agreements are compatible with Community law and the common maritime transport policy and would not constitute an obstacle to this policy or its implementation;

Whereas in certain cases it may be appropriate that the Council or, as the case may be, the Commission, in authorising a Member State to negotiate or conclude an agreement attaches conditions thereto;

Whereas a committee should be set up for the implementation of this Decision;

Whereas the procedures for negotiations by the Commission of agreements with third countries or within an international organization are not covered by this Decision;

Whereas in view of the amendments of the procedure established by Council Decision 77/587/EEC and the introduction of significant new procedures such Decision should be replaced by a separate act;

HAS ADOPTED THIS DECISION:

Article 1

1. The Member States and the Commission shall consult each other, in accordance with the procedures laid down in this Decision:

- (a) on questions concerning shipping matters and dealt with in international organizations, and
- (b) on relations with third countries in shipping matters, and on the negotiation, conclusion and functioning of bilateral or multilateral agreements in this sphere.

2. The consultations shall be held

- at regular intervals, and at least once every two months, and
- at any other time upon the request of a Member State or of the Commission, within two weeks of the request or at the earliest opportunity in urgent cases.

Article 2

1. The main aims of the consultations provided for in Article 1 under para. 1(a) shall be:

- (a) to consider any questions that may raise problems of common interest;

(b) depending upon the nature of such problems:

- to consider whether Member States' action within the international organizations concerned should be coordinated;
- to consider any other approach which might be appropriate.

2. The Member States and the Commission shall as soon as possible exchange any information of relevance to the aims described in paragraph 1.

Article 3

1. The main aims of the consultations provided for in Article 1 under para. 1(b) shall be:

- (a) to review developments in shipping relations with third countries;
- (b) to consider the negotiation, conclusion and functioning of bilateral or multilateral maritime transport agreements or any other arrangements concerning matters relating to the provision of shipping services;
- (c) to consider problems arising in the field of shipping in the trades with and between third countries, i.a.,
 - restrictions on access to the shipping market and on connected land-side operations
 - any other unilateral measures of third countries affecting shipping activity, such as discriminatory taxation or treatment of ships in ports;
- (d) to consider any other questions that may raise problems of common interest;
- (e) depending upon the nature of such problems as may arise, to consider appropriate action to address these problems.

2. For the purposes of the consultations referred to in Article 1 under para. 1(b), each Member State shall inform the other Member States and the Commission of the various developments in its relations with third countries in shipping matters, and of the functioning of bilateral or multilateral agreements concluded in this field.

3. A Member State wishing to conduct negotiations with a third country or to proceed to the conclusion of an agreement which it has negotiated and initialled or signed but has not, at the date of this Decision, completed the procedures for its entry into force, shall submit a request to the Commission and inform the other Member States. In the request, the Member State shall set out the justification for the envisaged agreement, its objectives and a draft text of the proposed agreement.

A Member State wishing to proceed to the extension, whether express or tacit, of an agreement in force at the date of this Decision shall submit a request to the Commission and inform the other Member States at least 4 months prior to the date of express extension or of the expiry of the period during which notice of termination of the agreement may be given. It shall supply a copy of the agreement.

Article 4

1. Without prejudice to Article 5 of Council Regulation No. 4055/86, if neither the Commission nor any Member State has requested consultations within two months from receipt of a request from

a Member State under Article 3, para. 3, and the Commission has not submitted to that Member State, within three months from such receipt, any observations to the contrary, that Member State will be considered to be tacitly authorized to conduct the bilateral negotiations in accordance with its request or to complete the procedures for the entry into force of the agreement or to extend the agreement, as the case may be.

2. If the Commission determines, after consultations where these have taken place, that the provisions of the envisaged agreement are not contrary to the common maritime transport policy and its objectives and would not constitute an obstacle to this policy or its implementation, the Member State concerned may be authorized by the Commission, if appropriate subject to conditions, to conduct the bilateral negotiations with the third country concerned.

3. If the Commission determines, after consultations where these have taken place, that any provision of an envisaged agreement is not in line with the common maritime transport policy or its objectives, or could constitute an obstacle to this policy or its implementation, it shall so notify the Member State concerned and inform the other Member States. The Commission may accompany such notification with conditions subject to which the agreement could be authorized.

Article 5

1. At the end of the negotiation process the Member State concerned shall communicate to the Commission the final result of the negotiations. If the Commission does not raise objections within three months from receipt of the negotiation results, the Member State concerned may sign the agreement in question.

2. If the Commission raises any objections, the Member State concerned shall re-negotiate accordingly on the basis of the conditions, which the Commission has imposed.

Article 6

1. The consultations provided for in this Decision shall take place within the committee created in Article 7, paragraph 1.

2. With respect to Article 2, para. 1(b), the positions to take on economic and commercial aspects of maritime transport in international organizations by the Community and its Member States are adopted in accordance with the procedure set out in Article 7, paragraph 2.

Where the position corresponds to a matter of Community competence, it is presented by the Commission; if the matter is within the competence of the Member States, the position is presented by the Member State exercising the presidency of the Council. However, if the Commission or the Member State exercising the presidency does not have a status permitting it to express itself within the international organization in question, appropriate modalities shall be defined in the decision adopting the position.

Article 7

1. The Commission shall be assisted by a committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of any measures to be taken. The committee shall deliver its opinion on the draft within a time limit which the

chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 148 (2) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The Chairman shall not vote.

The Commission shall adopt the measures envisaged if they are in accordance with the opinion of the committee.

If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken. The Council shall act by a qualified majority.

If, on the expiry of a period of two months from the date of referral to the Council the Council has not acted, the proposed measures shall be adopted by the Commission.

Article 8

The procedures set out in this Decision are without prejudice to procedures relating to a recommendation by the Commission to negotiate an agreement with a third country or group of countries or within an international organization or relating to the conclusion of such an agreement

Article 9

Council Decision 77/587/EEC is hereby repealed.

Before 31 December 2000 the Council shall consider a report to be submitted by the Commission on the working of the procedures set up in this Decision and shall take action on any proposals for amending or supplementing it which experience shows to be appropriate.

Article 10

This Decision is addressed to the Member States.

EXISTING COMMUNITY LEGISLATION AND POLICY INITIATIVES ON EXTERNAL ASPECTS OF MARITIME POLICY AND THEIR APPLICATION

A. Legislation adopted by the Community

1. Among the legal instruments concerning maritime transport adopted so far by the Council, those forming the basis of shipping policy concern directly the external relations in the field of shipping.

2. **Council Decision 77/587**¹ was the first piece of legislation concerning maritime transport, adopted under Article 84(2) of the EEC Treaty in June 1977 in an effort to seize the opportunities which a common approach by the Member States on shipping matters would bring. It set up a consultation procedure on relations between Member States and third countries on shipping matters and on action relating to such matters in international organisations. That was the first step towards shaping the Community's external relations in matters concerning shipping. The procedure is used regularly to consult in the Transport Working Group of the Council on developments and problems arising in the relations with individual non-Member countries and to coordinate the position to be taken at meetings of international organisations.

3. **Council Regulation No 954/79**², widely referred to as the "Brussels package", concerns the ratification by Member States of, or their accession to, the UN Convention on a Code of Conduct for Liner Conferences. This ratification or accession is possible provided that the Member States make a number of reservations. The most important is that the Member States confirm that the provisions of the Code do not apply in conference trades between the Member States and, on a reciprocal basis, between Member States and the other OECD countries which are party to the Code. The regulation also preserves competitive access within conferences to that part of cargo liner shipping which is not covered by commitments to national shipping lines of third countries under the Code, when ratified by Member States.

In adopting this Regulation, the Community recognized the specific situation of developing countries, in particular in liner shipping, as the Liner Code offers national shipping lines of developing countries particular opportunities to participate in liner conferences and the trade carried by them.

4. In December 1986 the Community adopted four important Regulations³ the first of which entered into force on 1 January 1987, the other three on July 1 of the same year:

- **Council Regulation (EEC) No. 4055/86** applying the principle of freedom to provide services to maritime transport between Member States and between Member States and third countries;
- **Council Regulation (EEC) No. 4056/86** laying down detailed rules for the application of Articles 85 and 86 of the Treaty to maritime transport;
- **Council Regulation (EEC) No. 4057/86** on unfair pricing practices in maritime transport;
- **Council Regulation (EEC) No. 4058/86** concerning coordinated action to safeguard free access to cargoes in ocean trades.

¹ O.J. L 239, 17.9.1977

² O.J. L 121, 17.5.1979

³ O.J. L 378, 31.12.1986

5. These four Regulations were adopted against the background of an alarming decline of the Community fleet, out of proportion to the impact of the world economic crisis on all fleets, due to a loss of comparative advantage and the growth of protectionist policies and practices of other countries. It is, in particular, the threat of these policies and practices which could be countered by Community action.

6. The four Regulations make up a coherent package of Community legislative instruments in pursuance of a non-protectionist policy, aiming at safeguarding to the maximum extent possible the continuing application of commercial principles in world shipping, while applying basic provisions of the Treaty of Rome relating to the freedom to provide services and the competition rules.

7. As a whole, the package of Regulations adopted in 1986 embodied the determination of the Community to ensure free and non-discriminatory access to cargoes for Community shipowners and to secure fair competition on a commercial basis in the trades to, from and within the Community, with due respect for the interests of shippers and ports. In respect of restrictive measures by third countries or unfair practices by foreign shipowners, the Regulations serve to discourage such measures or practices or, when these do occur, to achieve effective solutions through negotiation. In cases where this is not achieved, the Regulations provide the basis for defensive action to counter such measures and practices.

8. The possibility of achieving a further liberalization in the shipping sector was also taken up by the Community in the context of negotiations on an Agreement in Trade in Services in the Uruguay Round in mid-December 1993. Regrettably, no satisfactory result could be obtained at the end of the Round. As a result the Community withdrew the commitments it had been prepared to undertake and obtained a Ministerial Decision setting up a Negotiation Group on Maritime Transport Services (NGMTS) to pursue the negotiations with the objective of reaching agreement on the elimination of restrictions within a fixed time-scale.

B. Application of EC instruments and policy

9. The adoption in 1986 of the four Regulations in the field of maritime transport has, together with the "Brussels Package" on the UN Liner Code, established a Community policy of free and fair competition on a commercial basis in international shipping. Adopted at practically the same time as the Single Act, it both embodied concretely in the field of shipping the movement to complete the common market and stood to benefit from the strengthening of the Community generally.

10. In the intervening years an increasing number of third countries have developed their relations with the Community in shipping. The Commission has used, and intends to continue to use, its possibilities to work towards the objective of free and fair competition in the world market.

11. Whilst restrictions on access to cargo are to various degrees widespread among non-OECD countries, nevertheless there has been in recent years a noticeable move towards relaxation or lifting of restrictions in international shipping in a number of countries worldwide, belonging to all regions with, as yet, the exception of the African region. The Commission has consistently exercised its influence to encourage such moves. It considers this effort as an essential component of implementing the policy embodied in the 1986 package.

12. The application of the freedom to provide services appears to have made an impression on third countries as well as to have aroused concern in some countries wishing to ensure that their own access to the Community market is unrestricted. Regulation No. 4055/86 has put an effective brake on new initiatives, whether from within or from outside the Community, for cargo-sharing arrangements between Member States and third countries. The Commission considers that it is not only a matter of implementing legal obligations under Regulation No. 4055/86 but also a point of credibility and success of the EEC maritime transport policy towards third countries that the Member States with cargo-sharing

agreements pursue more actively the adjustment of these agreements. As regards the non-respect of legal obligations by Member States, the Commission has recently opened proceedings on the basis of Article 169 of the Treaty, to bring the infringements to an end.

13. Numerous cases have been raised under Regulation No. 4056/86 and related decisions made by the Commission. The Regulation has, in the view of the Commission, proved an effective means of ensuring compliance with Articles 85 and 86 in shipping and to ensure the existence of effective competition in the liner shipping trades serving the European Union and the provision of high-quality, low-cost services to shippers, i.e. the exporters and the importers of the Union.

14. Regulation No. 4057/86 has been used to good effect and there is, furthermore, a strong indication that it has influenced the behavior of certain third-country lines, in particular concerning their rate setting policies.

15. Apart from the actual implementation of defensive measures in cases where an effective solution through negotiations is not achieved, the effect of Regulation No. 4058/86 should also be judged for its value as a basis for consultation as well as a deterrent. In the case of restrictions imposed by the West and Central African states, where the use of the Regulation has been requested, the Community has continued to try to achieve a mutually acceptable solution through consultations. More generally, the possibility provided by the Regulation to take counter-measures, has been of particular value for the Commission in its discussions with a number of countries when seeking to secure market access and non-discriminatory treatment for Community shipowners.

Specific problems in relations with certain third countries

16. Member States and Community shipowners have regularly raised with the Commission issues regarding specific problems arising in particular shipping trades.

In its report to the Council on the implementation of the shipping Regulations⁴ the Commission reported on action undertaken by that time to address such problems as arose with Algeria; Kenya; the Republic of Korea; Taiwan; Indonesia; Japan; and on consultations with third countries, such as Brazil, Sri Lanka and the USSR.

17. The Commission has continued to pursue such action, in close consultation with the Member States. It has, in particular, raised specific issues regarding maritime transport in discussions with a number of third countries. Such discussions have resulted in several concessions obtained from the competent authorities of the countries concerned.

18. With **Taiwan** a Protocol on income tax exemption for shipping companies was concluded in August 1990 and on 1 October 1993 an Addendum was signed. It was agreed that the financial authorities of Taiwan and the EC Member States would not impose income tax on the operation of ships in international traffic by their respective shipping enterprises, including the customary surcharges and additional, will be tax exempted on a reciprocal basis.

19. From 1989 onwards, bilateral consultations have been regularly held to bring about further liberalisation of the traditionally restrictive **Korean** shipping policies. As a result, concessions from the Korean Authorities have been obtained concerning access for EC carriers to "inter-port"⁵ services and to landside activities in Korea, as well as the possibility to invest in freight forwarding. Lastly, in November 1993 the Korean authorities agreed that as from the same month, inter-port services would

⁴ SEC(90) 1594 final, 1.08.1990

⁵ Term indicating the intra-Asian services from/to Korea

be completely liberalised for EC carriers with the exception for services to and from Japan. The same applies for feeder services and any other part of normal deep sea maritime transport services from EC carriers. As from 1 July 1994, shipping services from Korea to Japan and vice versa have also been liberalized.

20. As for the **People's Republic of China**, in August 1992 it was agreed by the Chinese authorities that EC carriers shall have the right to establish entities in China as joint or sole ventures able to conduct business activities on the basis of equal treatment. EC carriers are also allowed to operate feeder services to and from Chinese ports open for international trade with no limitations as to which hub port should be used. However the effective application of this undertaking continues to meet considerable difficulties.

21. Consultations with **Ukraine**, starting in early 1994, resulted in a satisfactory outcome on the question of establishment of shipping agencies under non-discriminatory conditions in that country, in the form of a governmental Resolution of 15 May 1995.

22. In consultations with **Japan** the Commission has repeatedly raised its concern in respect of requirements of the Japan Harbour Transportation Association resulting in inefficient port services and unduly expensive port charges, having the effect of substantially increasing the cost of shipments and therefore restricting trade. In the absence of indications of improvement, the Community made a démarche to Japan on this issue in fall 1995. The US Federal Maritime Commission has also started an inquiry and indications are that there are concerns voiced in Japan itself. It is hoped that the Japanese Government will act to resolve the situation rather than having it raised by the EC in the WTO.

23. The foregoing shows that the Community in a number of cases has proved its effectiveness in securing the maritime interest of the Community and the Member States collectively. The leverage of the Community as a whole vis-à-vis third countries can be, and has been, used to obtain advantages that individual Member States would not be able to realise. The Community is able to benefit substantially from its unique negotiating position as it speaks with one voice on behalf of all the Member States. Apart from this significant tactical advantage, a Community approach is distinctly preferable to that of individual Member States since they are not normally in a position to take account of the interests of the Community as a whole. In this respect, the need to establish a coherent and comprehensive maritime Community policy on the basis of well defined policy objectives can be considered essential for the further development of the EC merchant fleet.

DEVELOPMENT OF RELATIONS BETWEEN THE EC AND THIRD COUNTRIES TO DATE

1. With reference to Section IV.B, this annex provides further details on the development of relations between the EC and third countries to-date by means of (i) agreements, (ii) consultations, as well as (iii) various forms of cooperation, including technical assistance.

1 Agreements with third countries***Agreements containing substantive provisions on shipping***

2. The Community has not, so far, concluded any sectoral maritime transport agreement with a third country. However, a number of **general agreements** between the EC and third countries (or groups of third countries) contain substantive provisions which relate to shipping. Other agreements, whilst not containing specific substantive provisions on shipping, provide for cooperation or technical assistance as well as for consultations, as necessary, in the maritime sector.

3. In the first category belong: the Lomé Convention, the Europe Agreements, the Partnership and Cooperation Agreements and the EEA Agreement. All these agreements have in common that, on the EC side, both the EC and the Member States are Parties; this is due to the very wide scope of fields included in the agreements and, on the other hand, has permitted the avoidance of questions regarding legal basis for external competence.

4. **Firstly**, there are the successive Lomé Conventions the third of which, concluded in 1984, for the first time contained a chapter dedicated to transport in general and several articles on shipping in particular, which were maintained in the fourth Lomé Convention, signed in 1989 and revised in 1995.

5. These articles establish the principles of unrestricted access to the trade on a commercial basis and the implementation of the Liner Code Convention for conferences serving the trades between the Community and its ACP partners. Cooperation also is foreseen to improve the ACP countries' shipping industries, safety of ships and crews. Furthermore, several areas for financial and technical assistance are identified.

6. **Secondly**, there are the so-called "Europe agreements" concluded with the countries of Central and Eastern Europe, namely, Bulgaria, the Czech Republic, Hungary, Poland, Romania and Slovakia. Similar agreements have also recently been signed with Estonia, Latvia, Lithuania and Slovenia.

7. These agreements establish a close association with the respective third countries and contain specific provisions on maritime transport. The latter cover the reciprocal right of establishment and the principle of unrestricted access to the market and traffic on a commercial basis. It is further provided that non-conference lines shall be free to operate in competition with a conference as long they adhere to the principle of fair competition on a commercial basis. Dry and liquid bulk trade is to be freely competitive. Cargo sharing arrangements in future bilateral agreements between the parties and third countries will be avoided. Any existing unilateral restrictions or measures that may have a discriminatory effect as regards the provision of maritime transport services are also abolished.

8. In addition, it was agreed that cooperation should be developed and strengthened to enable CEE countries to restructure and modernize transport and achieve operating standards comparable to those in the Community. Such cooperation includes the modernization, on major routes of common interest, of port infrastructure and the upgrading of technical equipment for containerization and transshipment as part of specified priority areas.

9. An "Agreement on trade and commercial and economic cooperation" has been concluded with Albania; it does not contain specific provisions relating to shipping but includes transport and ports as areas of mutual interest for economic cooperation.

10. Thirdly, with Belarus, Moldova, Russia and Ukraine, "Partnership and Cooperation Agreements" have been signed. These agreements include a number of specific clauses on maritime transport such as the guarantee of free access to the international shipping market on a commercial basis, national treatment for vessels in ports and the opening of inland waterways for international sea-river services. This last issue has not been resolved with Russia and it has been agreed to negotiate on it not later than 31.12.1996. National treatment for establishment to under-take shipping agency activities has also been agreed. In addition to providing that no cargo-sharing agreements will be concluded with third countries, they disapply any such provisions that exist between any Member State and the other party.

As is the case with the Europe agreements, extensive economic cooperation in a large number of sectors, including transport, is also envisaged in these Partnership and Cooperation Agreements.

Similar agreements - *mutatis mutandis* - have been subsequently signed with Kazakhstan and Kirgizstan, and very recently with Armenia, Azerbaijan, Georgia and Uzbekistan.

11. Fourthly, the EEA agreement entered into force on 1 January 1994. As a result, the *acquis communautaire* also with regard to maritime transport now applies in the relationship between the Community and the EFTA countries involved.

However, the measures referring to the external relations of the Community, such as Council Regulations 4057/86 and 4058/86, do not apply. Instead, the Community and the EFTA countries agreed to coordinate their actions and measures towards third countries and third country companies in the area of maritime transport.

12. The recently concluded customs union agreement with Turkey maintains the objective of dealing with the transport sector. New association agreements have been negotiated with Israel, Morocco and Tunisia and negotiations are nearing conclusion with Egypt, Jordan and Lebanon and foreseen with Algeria. These agreements provide for early negotiations leading to liberalization of maritime transport along similar lines to those recent agreements with Central and Eastern European countries.

13. The Barcelona Euro-Mediterranean Conference in November 1995 adopted a Ministerial Declaration whereby participants (EU and 12 Mediterranean countries) undertook to respect the principles of the freedom to provide services and free access to international cargoes.

Trade and economic cooperation agreements

14. Over the years, the Community has concluded trade and economic cooperation agreements with numerous third countries; transport is generally included among the sectors for economic cooperation, and this has been the basis for consultations and cooperative action with a number of such countries.

15. In several such agreements, which do not contain substantive provisions on services, maritime transport has been the subject of an exchange of letters annexed to the agreement. In these letters, the Community and the third country concerned have undertaken to address any issue relating to the operation of shipping with a view to finding solutions to problems that may arise. This can be done within the Joint Committee established under the auspices of the cooperation agreement. The wording of such letters varies; they generally make reference to free and fair competition as a guiding principle. In several instances discussions in the framework of the Joint Committees have taken place with satisfactory results.

16. Letters such as mentioned above have been exchanged with countries like Argentina; Brazil; Chile; in Central America, Costa Rica, El Salvador, Guatemala, Honduras, Nicaragua and Panama; the Andean Pact and its member countries, Bolivia, Colombia, Ecuador, Peru and Venezuela; Mexico; Paraguay; and Uruguay.

17. In more recent negotiations for such agreements, with Korea and South Africa as well as for a new partnership agreement with Mexico, the Community has proposed the inclusion of substantive provisions on shipping. The negotiations with Korea were concluded recently.

2 Consultations with third countries

18. The Commission has, for some time, engaged in discussions and consultations with important partners in maritime transport. Such consultations, which serve the purpose of exchange of information and views on developments and policy issues of interest to the two sides, as well as the pursuance of solutions to problems that arise, have been intensified with the development of EC shipping policy and activity relating to international shipping.

19. As far as the developed countries are concerned, the Maritime Transport Committee of the OECD has traditionally served as the forum for multilateral contact among them as regards shipping matters; the Commission regularly participates at its meetings.

20. In parallel, the Commission has held since as early as the late '70s regular consultations on shipping with several EFTA countries: Finland¹, Norway, Sweden¹ and Switzerland. It has actively participated in the Consultative Shipping Group and the dialogue of the Group with the USA, and it has established regular contacts and, more recently, annual high-level consultations, with Japan.

21. Following the adoption of the Regulation imposing countervailing duties on Hyundai Merchant Marine², regular meetings have been held between the Commission and the Korean authorities since 1989. These meetings have proved valuable in respect of improving maritime relations with Korea, solving a number of problems of concern to Community shipowners and seeking a reorientation of the shipping policy of the country.³

22. Consultations with other countries (apart from the USSR, with which regular consultations were held until 1991) have so far been held on an ad hoc basis, where required. Use is made of opportunities offered in the framework of existing agreements or of less formal events, including workshops organised with representatives of third countries or groups of countries (see para. 24 below), for example, with Brazil and India.

3 Cooperation and Technical assistance

23. Cooperation with third countries has taken the form of seminars and conferences or workshops organised by the Commission and technical assistance to individual countries or groups. In addition, the Commission is cooperating with international organisations and institutions.

Seminars and Conferences or Workshops

24. The Commission has so far organised several seminars and conferences or workshops with third

¹ Prior to their accession to the EC.

² Council Regulation No. 15/89, O.J. L 4, 6.01.1989

³ See para.76 above and SEC(90) 1594 final.

countries or groups of countries on shipping issues.⁴ These events have provided the possibility to discuss freely with high-level officials as well as with commercial interests current problems and to consider needs for technical assistance in the efforts to liberalise the sector, facilitate transport operations and promote compliance with internationally applicable rules and standards.

A number of these conferences and workshops have resulted in joint action programs that are being followed-up and/or specific technical assistance projects.⁵

Technical assistance to individual countries or groups

25. Technical assistance provides an important means to improve the functioning of the trade and help liberalisation of such trades by providing better conditions of operation for the lines. This serves the dual objective of development policy and shipping policy.

26. Actions in respect of India, countries of the Maghreb and of West and Central Africa, as well as for the ASEAN countries have been undertaken, in addition to numerous projects under the PHARE and TACIS programs.

Cooperation with international institutions

27. The Commission has also established cooperative relations with a number of international organisations and institutions: UNCTAD, the IMO, the World Bank; and with the World Maritime University and the International Maritime Law Institute concerning study programs and fellowships for shipping officials of developing countries.

28. Experience with actions of cooperation and provision of technical assistance, as above, can be considered generally positive and promising in terms of serving the objectives of such actions as regards the third countries involved as well as the Community. The Commission intends to further pursue such activity as an integral part of its external relations in the field of maritime transport.

⁴ - Central America (Costa Rica, 1991);
- Andean Pact (Venezuela, 1992);
- Brazil (1993);
- India (January 1994 and December 1995);
- Black Sea (September 1994);
- SADC (December 1994);
- Baltic States (January 1995);
- Mediterranean Conference (April 1995);
- Baltic Sea Conference (May 1995);
- Mediterranean (September 1995);
- ASEAN countries (October 1995).

⁵ See also Section V.B.2

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