

Council Regulation (EEC) No 4058/86 of 22 December 1986 concerning
coordinated action to safeguard free access to cargoes in ocean trades

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

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

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

Having regard to the draft Regulation submitted by the Commission,

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

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

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

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

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

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

Whereas in respect of bulk trades there is an increasing tendency on the part of third countries to restrict access to bulk cargoes, which poses a serious threat to the freely competitive environment broadly prevailing in the bulk trades; whereas the Member States affirm their commitment to a freely competitive environment as being an essential feature of the dry and liquid bulk trades and are convinced that the introduction of cargo-sharing in these trades will have a serious effect on the trading interests of all countries by substantially increasing transportation costs;

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

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

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

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

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

HAS ADOPTED THIS REGULATION:

Article 1

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

- liner cargoes in Code trades, except where such action is taken in accordance with the United Nations Convention on a Code of Conduct for Liner Conferences;
- liner cargoes in non-Code trades;
- bulk cargoes and any other cargo on tramp services;
- passengers;
- persons or goods to or between offshore installations.

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

Article 2

For the purposes of this Regulation:

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

Article 3

Coordinated action may be requested by a Member State.

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

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

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

Article 4

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

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

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

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

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

Article 5

- 1 When deciding upon one or more of the countermeasures referred to in Article 4 (1)
 - (b) the Council shall specify, as appropriate, the following:
 - a the developments which have caused countermeasures to be taken;
 - b the trade or range of ports to which the countermeasures are to apply;
 - c the flag or shipping company of the third country whose cargo reservation measures restrict free access to cargoes in the shipping area concerned;
 - d maximum volume (percentage, weight in tonnes, containers) or value of cargo which may be loaded or discharged in ports of Member States;
 - e maximum number of sailings from and to ports of Member States;
 - f amount or percentage and basis of the taxes and duties to be levied and the manner in which they will be collected;
 - g the duration of the countermeasures.

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

Article 6

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

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

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

Article 7

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

Article 8

The procedure provided for by this Regulation may be applied when action by a third country or its agents restricts or threatens to restrict the access of shipping companies of another OECD country where, on a basis of reciprocity, it has been agreed between that country and the Community to resort to coordinated resistance in the case of restriction of access to cargoes.

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

Article 9

This Regulation shall enter into force on 1 July 1987.

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

Done at Brussels, 22 December 1986.

For the Council

The President

G. SHAW

Status: This is the original version (as it was originally adopted).

- (1) OJ No C 255, 15. 10. 1986, p. 169.
- (2) OJ No C 344, 31. 12. 1985, p. 31.
- (3) OJ No L 239, 17. 9. 1977, p. 23.
- (4) OJ No L 332, 28. 11. 1983, p. 37.