

## I

(Acts whose publication is obligatory)

**COUNCIL REGULATION (EEC) No 15/89**

**of 4 January 1989**

**introducing a redressive duty on containerized cargo to be transported in liner service between the Community and Australia by Hyundai Merchant Marine Company Ltd of Seoul, Republic of Korea**

THE COUNCIL OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 4057/86 of 22 December 1986 on unfair pricing practices in maritime transport<sup>(1)</sup>, and in particular Articles 2 and 11 thereof,

Having regard to the proposal from the Commission, submitted after consultations within the Advisory Committee as provided for under the above Regulation,

Whereas :

**A. PROCEDURE**

- (1) In August 1987 the Commission received a complaint lodged by the 'Comité des Associations d'Armateurs des Communautés Européennes' (CAACE) on behalf of Community liner shipping companies from Denmark, France, Germany, Italy, the Netherlands, Spain and the United Kingdom operating in the liner shipping trade between the Community and Australia and organized in the Europe/United Kingdom to Australia Conferences. A shipping company from Belgium, not a member of the Conferences, later joined the complaint. The complainants represent all the Community shipowners operating in this trade. The complaint contained evidence that Hyundai Merchant Marine Company Ltd of Seoul, Republic of Korea, hereinafter referred to as 'Hyundai', was engaged in unfair pricing practices in the liner shipping trade between the Community and Australia and was causing major injury to the Community shipowners. The evidence was, after consultation, considered sufficient to justify the initiation of a proceeding. The Commission accordingly announced, by a notice published in the *Official*

*Journal of the European Communities*<sup>(2)</sup>, the initiation of a proceeding concerning unfair pricing practices in maritime transport allegedly carried out by Hyundai in the liner shipping trade between the Community and Australia and commenced an investigation.

- (2) The Commission officially so advised Hyundai, the representatives of the Republic of Korea, the shippers known to be concerned and the complainants and gave the interested parties the opportunity to make known their views in writing and to request a hearing. Hyundai, the complainant shipowners, shippers and the Community seafarers made their views known in writing. With the exception of the seafarers, the parties also requested, and have been granted, hearings.

At a late stage of the proceeding Hyundai requested the opportunity to meet the complainants for the purpose of presenting their opposing views. The Commission was prepared to grant this request but the complainants refused to attend the meeting and it was not, therefore, possible to arrange a confrontation.

- (3) The Commission sought and verified all information it deemed to be necessary and carried out investigations at the premises of the following shipping companies :
- ABC Containerline NV, Antwerp, Belgium,
  - Associated Container Transportation (Australia) Ltd, London, United Kingdom,
  - Compagnie Générale Maritime, Paris, France,
  - Eagle Container Line Ltd, Ipswich, United Kingdom,
  - Hapag Lloyd AG, Hamburg, Germany,
  - Hyundai Merchant Marine Company Ltd, Seoul, Republic of Korea,

<sup>(1)</sup> OJ No L 378, 31. 12. 1986, p. 14.

<sup>(2)</sup> OJ No C 308, 18. 11. 1987, p. 3.

- Lloyd Triestino di Navigazione SPA, Trieste, Italy,
- Nedlloyd Lijnen BV, Rotterdam, the Netherlands,
- P & O Containers Ltd, London, United Kingdom,
- and at the secretariat of
- the Australian Conference, Crawley, United Kingdom.

- (4) The investigation of unfair pricing practices covered the period from 1 January to 31 October 1987.
- (5) The investigation concerns the international cargo liner service between the Community ports and Australia. Although there are variations in the European ports of call between the different shipping companies concerned in this investigation and their sailing itineraries between Europe and Australia differ, they are normally in direct competition to pick up cargo from those Community regions which provide most exports to Australia. All companies service Sydney and Melbourne and provide for onward transport facilities to other Australian destinations or ports where they may not call.
- (6) All companies concerned operate fixed and published sailing schedules to which they generally adhere. The frequency of sailings varies.
- (7) The proceeding concerns goods loaded in the Community with destination Australia. The service Community to Australia is either eastbound or westbound or round South Africa; it is non-stop with the exception, however, of Hyundai, which calls at the South Pacific islands on the way, resulting in longer transit times than its competitors.
- (8) All companies concerned operate either full container vessels or combined container/bulk vessels. In general, however, containerized cargo represents the overwhelming majority of all cargoes on this liner service on which the investigation is concentrated. Other major aspects of the service offered by the companies such as inland haulage, port service and documentation are comparable.
- (9) In view of the characteristics of the cargo liner service between the Community and Australia in general and the services offered by the individual shipping companies concerned in this investigation, it is concluded that these services are offered on the same route (shipping market) and are generally comparable.

## B. UNFAIR COMMERCIAL PRACTICES

### Freight rates charged by Hyundai

- (10) The normal freight rate was determined on the basis of figures provided by Eagle Container Line, hereinafter referred to as 'Eagle', a Swiss company operating from Ipswich/United Kingdom which offers a service between the Community and Australia comparable to Hyundai's, and which was a preferred choice as compared to members of the Conferences or the other complainant.
- (11) Eagle has been continuously operating since 1982 on this route, where it is thus an established company. With a market share of about 10 % of this trade and without any specific characteristics it is considered representative. Eagle does not enjoy non-commercial advantages. Both Eagle and Hyundai were found to transport a comparable cargo mix, in generally comparable vessels.
- (12) Hyundai claimed that the normal freight rate should be based on Jebesen, a Norwegian shipping company operating in the Europe to Australia trade, without, however, justifying this request in detail.  
  
It was found, *inter alia*, that Jebesen entered the trade only in 1985/86 and does not operate a fixed fleet and often calls only at one major Australian port. It is thus concluded that Jebesen does not represent a more appropriate choice for the determination of the normal freight rate.
- (13) It was found that the net freight rate charged by Eagle during the period of the investigation did not cover all its costs and was thus not a rate actually charged in the ordinary course of shipping. Therefore the normal freight rate was constructed by aggregating all costs incurred by Eagle, a comparable company, for the reasons mentioned above, in the ordinary course of shipping business, both fixed and variable, plus a reasonable amount of overhead expenses. The relevant cost elements were not substantially different from those of another comparable company, namely ABC. A profit margin of 3 % on costs was included; this margin is considered appropriate in view of the characteristics of Eagle's business.  
  
Adjustments were made to take account of differences in transit times between Community and Australian ports of between 9 and 19 days, depending on port, and the difference in sailing frequency of three days.
- (14) When finally comparing Hyundai's freight rates with Eagle's, it was established that Hyundai undercut the normal freight rate at all times during the period under investigation; the average rate of undercutting was 26 %, rounded down, or ECU 450 per twenty-foot container.

### Non-commercial advantages granted to Hyundai

- (15) The investigation centered on a number of non-commercial advantages granted to Hyundai by the Korean Government.

#### (a) Cargo reservation scheme

- (16) Article 16 of the Korean Maritime Transportation Fostering Act together with a number of decrees and ordinances imposes a cargo reservation scheme on trade to and from Korea:

- Korean shipping companies have sole rights to carry the principal bulk cargoes (e.g. crude oil, raw materials for the iron, steel and petrochemical industries, fertilizers, grain, coal, liquefied gas) on all routes to Korea,
- Korean shipping companies have sole rights to carry cement, iron and steel from Korea,
- Korean lines have preferential rights to carry all liner cargo to and from Korea on routes where Korean lines operate.

Cargoes for State industries are allocated by the Korean Government to the various Korean shipping companies. Exceptions ('waivers') to the rules above can be, and indeed are, granted by the Korean authorities where certain conditions laid down in the decrees and ordinances are fulfilled.

Waivers for bulk cargoes may be granted when Korean vessels do not have sufficient capacity, when unique circumstances at the port of origin of the cargo prevents the use of the Korean flag, when Korean vessels charge more than 10 % higher freight rates than non-Korean vessels, when Korean flag carriage is considered unsuitable or inappropriate in view of the terms of the contract, accepted trade practices or the law of the country of origin of the cargo, when disasters or acts of God make the use of Korean vessels impossible or difficult or when the Minister of Transport considers other reasons to justify granting a waiver.

Waivers for liner cargoes may be granted when international treaties, conventions or agreements to which Korea is party so stipulate, when Korean vessels form part of a Conference fleet and the Korean government has approved the Conference's cargo sharing arrangement, when the cargo cannot be shipped on a Korean vessel because of the cargo's nature or because no Korean vessel is available for at least five days after the cargo is ready for shipment, when disasters or acts of God make the use of Korean vessels impossible or difficult, when the authorities consider that in particular trades the allocation of cargo to a foreign flag line will contribute to the long-term and stable supply of transport capacity and when Korean

merchants are allowed by the authorities, in recognition of their general good record of using Korean flags, freely of choose carriers.

As to the role individual Korean shipping companies play in the framework of the cargo reservation scheme, it is noted that a shipping company can only operate on a certain shipping route with a licence. This licence is granted by the Korean authorities where, *inter alia*, the start of the business is suited to supply and demand and where the applicant is a so-called 'designated maritime transportation businessman', i.e. a shipping company considered appropriate in view of its size whose role is to fulfil certain tasks imposed on it by the government in exchange for which it 'may be given preference in (its) development'. A 'designated maritime transportation businessman' may be given preferential assistance over other maritime businessmen with regard to, *inter alia*, the licencing of international liner routes and the transportation of designated cargoes under the cargo reservation scheme. Hyundai is a 'designated maritime transportation businessman'.

The Community, in line with the view expressed on numerous occasions by the OECD, considers a cargo reservation scheme in international shipping a unilateral impediment to the principle of free access to cargoes in ocean trades and thus a non-commercial advantage for the shipping companies benefitting from it.

- (17) Hyundai maintained that the cargo reservation scheme was *de facto* without any effect and referred to carriage statistics for container trade to and from Korea which showed a Korean share in the four routes where Korean shipping companies were best represented of 12,5 %, 33 %, 54,3 % and 81,1 % respectively. The complainants, in their assessment on both bulk and container trade to and from Korea, estimate 89 % of the trade, in weight terms, to be in bulk and, as such, more or less covered by the cargo reservation law. None of these sets of figures is conclusive: one only refers to containerized traffic, which constitutes the substantially smaller volume, the other does not refer to the volume of bulk cargo actually carried by Korean vessels and neither indicates the relevance of the scheme to Hyundai.

- (18) The Commission finds that Hyundai's activities were, and still are, largely home-trading activities. It is a cross-trader substantially only on the Australia-Papua New Guinea-South Asia-Europe-South Pacific islands-Australia service, of which the trade under investigation is one leg, and on the Canada/United States West Coast-Australia service. The numbers of vessels used in these services are five and one respectively of a total of 56 vessels. Apart

from the service using car carriers (18 vessels), transporting, *inter alia*, Hyundai cars, the services other than the one referred to above by and large fall under the scope of application of the Korean cargo reservation law. Hyundai, as the biggest Korean shipping company, is well placed to benefit from the advantages offered by the cargo reservation scheme.

Whenever Hyundai has capacity available it can rely on the application, by the Korean authorities, of the cargo reservation scheme to fill this capacity.

The guarantee of access to a substantial volume of business with, due to the licencing system, virtually no Korean and, due to the cargo reservation scheme, only limited non-Korean competition, secures Hyundai a base load and gives it valuable support in a world market still facing recession. As a result, a substantial part of Hyundai's revenue is generated from trade covered by the Korean cargo reservation law. The guaranteed home business provided by the cargo reservation scheme allowed Hyundai to enjoy commercial flexibility which competitors do not have.

- (19) Discrimination against non-Korean shipping lines by means of the cargo reservation scheme is exacerbated by Articles 34 and 35 of the Korean Maritime Transportation Business Act. They stipulate that non-Korean individuals or companies are not allowed to own, or have a share in, Korean enterprises engaged in maritime freight forwarding, maritime transportation, brokering, shipping agency, vessel chartering and vessel management business. In addition, non-Korean individuals or companies must not own assets such as offices and equipment in Korea, nor are they free to own inland-haulage companies.

As a result, non-Korean shipping companies cannot expect to be able to compete on equal terms in that part of the market open to them; they are not in a position to offer efficient intermodal transport and thus assure additional cargo that would otherwise come their way. In fact, the Korean government is on record as saying that 'the weak and depressed state of Korea's domestic trucking business makes it inadvisable to allow foreign competition'.

This different treatment by Korean legislation and authorities in favour of Korean shipowners gives them substantial operating advantages as compared with non-Korean shipowners operating in Korea.

- (20) It is thus considered that by virtue of the discrimination of non-Korean shipowners in Korea against shipping lines as manifested in the cargo

reservation scheme and the additional measures concerning on-shore activities, Hyundai is enjoying non-commercial advantages granted by the Korean Government.

(b) *Shipping Industry Rationalization Plan (SIRP)*

- (21) Before 1984, the Korean Government's shipping policy encouraged shipowners to expand their fleets substantially. According to an assessment by the Korean authorities, this resulted in substantial purchases of ships at a moment when ship prices peaked, in large-scale debts, structural difficulties of the companies and excessive competition among as many as 70 ocean-going shipping companies with a result that 'the Korean merchant fleet was less competitive in international markets compared to foreign fleets'.

The SIRP provided a radical change in this policy. Its purpose was to rationalize Korean shipping, which was in a serious condition, on a voluntary basis and to make it a national strategic industry by providing concentrated assistance through the number of shipping firms, encouraging mergers and takeovers and increasing the tonnage of a unit firm, allocation of trades, replacing older ships with newer ships and getting rid of over-competition among domestic shipping firms.

- (22) The first part of SIRP in 1984, as far as it is relevant for this investigation, contained the following support measures:

- tax benefits: exemption from registration and acquisition taxes in connection with the acquisition of vessels and companies,
- debt moratorium for Won loans: a maximum five-year moratorium for the payment of principal and interest of funds for purchases of Korean-made vessels,
- debt moratorium for foreign currency loans: extension from 2 1/2 to 5 years of grace period for loans in foreign currency incurred for purchases of Korean-made vessels,
- refinancing of interest accrued during the moratoria.

The refinancing element did not include direct cash payments or debt write-offs.

The same rules apply for mergers carried out at a later stage than those in the course of 1984.

- (23) The effective advantages of the SIRD scheme to Hyundai were investigated as far as possible. The complainants claimed that Hyundai could not be commercially viable without the advantages derived from the SIRD scheme.

Hyundai admitted receiving the benefits referred to above but denied that the aspects other than the tax benefits constituted an advantage.

As to the financial implications of these aspects on Hyundai the following conclusions are drawn. The refinancing of the principal of loans is an unusual commercial practice, even in Korea. The refinancing of interest is normally not allowed and was not undertaken by Korean banks. The Korean authorities encouraged such refinancing for financially ailing industries such as shipping to be carried out by State-owned and other banks, thus granting advantages which under normal commercial conditions were not available.

In the relevant years (except 1987, not yet audited) Hyundai was making losses. Had the interest been repaid, these losses would have increased thus reducing Hyundai's credit-worthiness (details confidential). As a result, the refinancing, both of interest and principal, brought immediate cash flow advantages; these were linked with the advantage of an interest rate, applied for the refinancing of interest, which was at times up to three percent below the interest rates for normal loans.

It is therefore concluded that these financial implications constitute an advantage.

Alternatively, Hyundai claimed that these advantages only compensated for the damage inflicted on it by taking over financially and structurally weak shipping companies with partly outdated vessels.

It was found that participation in the SIRD was voluntary. Hyundai submitted detailed information supporting its claim that it had taken over considerable debts from the merged companies and incurred losses when selling off unwanted ships at less than book value. It did, however, not show that these disadvantages outweighed the advantages obtained through the mergers, such as the acquisition of movable and immovable assets, licences and goodwill and the continued and, through the mergers, extended right to benefit from the cargo reservation scheme.

It was furthermore established that participation in the SIRD scheme, which led to mergers and a general growth of its business, has allowed Hyundai

to more than double its revenue in only three years at a time of general depression of the shipping market.

Hyundai has derived substantial cash flow advantages from this doubled revenue which will allow it to finance its debts more easily when they eventually fall due. In addition, given this increase in revenue, the relative burden of Hyundai's debts is decreasing more and more.

- (24) In view of the above, it is concluded that the SIRD scheme afforded Hyundai a further non-commercial advantage granted by the Korean Government.

### (c) Conclusion

- (25) With regard to the findings detailed in points 15 to 24 above, the Council considers that both (a) and (b) constitute a non-commercial advantage.

It was established that when Hyundai started the service under investigation, it was a company with substantial debts making losses on its overall operations. In addition, it expected to incur losses on this service and all the indications are that it did. It expanded at a time when the world shipping market was in recession by starting a service in an area hitherto unknown to Hyundai which was just experiencing a substantial and visible reduction of trade.

As a result of the non-commercial advantages referred to above, Hyundai was supplied with a commercial safety net for its business activities by the cargo reservation scheme; the preferential treatment of Korean shipowners on-shore in Korean ports gives Hyundai operating advantages; by relying on the advantages of the SIRD scheme Hyundai could rely, when expanding, on its long-term projections not being hampered by otherwise necessary and inevitable short-term commercial and financial considerations, but could expect that in future years, with increased revenues, it could meet its obligations without facing serious financial problems.

These advantages were substantial enough to make it possible for Hyundai to proceed in the way found in the investigation.

In view of the above, it is concluded that without the non-commercial advantages Hyundai could not reasonably have attempted to break into the trade between the Community and Australia with freight rates as low as those found in the investigation.

### C. INJURY

- (26) With regard to the injury caused by Hyundai's low freight rates, the evidence available to the Commission shows that Hyundai's market share on the route between the Community and Australia increased from 0,3 % in 1986, when its service began, to 4 % during the period under investigation. At the same time the Community shipowners' share fell from 54 to 53,6 %. This decrease in itself cannot be considered as major injury.
- (27) However, closer scrutiny of the data reveals that maintaining roughly the same level of market share coincided with a decrease in revenue and was only achieved by making very substantial concessions as regards freight rates; the same pattern has appeared for cargo bookings. Whereas the number of containers transported during the period of the investigation was substantially equal to that for 1986, the revenue generated by the Community shipowners decreased by 7,5 % as the result of a largely equivalent reduction in the average freight rate.

It was further found that the average freight rates generated by the Community company most comparable to Hyundai, namely ABC, was reduced by about 2,5 % in the course of the year 1986, during the last three months of which Hyundai entered the market, and by about 14,5 % during 1987, leading to depressed freight rates which could only be increased by the company if it was prepared to suffer a very substantial loss of cargo bookings (see point 34). This finding is supported by Eagle's records.

When actually comparing Hyundai's freight rates with those of the Community shipowners, account was taken of the differences in service. Adjustments were made for differences in transit times and sailing frequency, which were both considered material, and for the fact that the Community shipowners' rates were depressed (for details relevant to the latter see point 29).

With regard to the latter, break-even rates for the Community shipowners were established, with which, for simplicity, the comparisons were made. These were based on the net rates after deduction, where appropriate, of, in particular, end-of-year, loyalty and quantity rebates or repayments as well as of forwarding agents' commissions.

The comparison with ABC, the Community shipowner most comparable to Hyundai, revealed that Hyundai undercut its freight rate by 35,9 % on a global average basis since both companies transported a comparable cargo mix.

As to a comparison with the other complainants and in order to avoid the risk of comparing different cargo mixes, comparisons were made, after adjustments, between the freight rates for a number of the most important basic commodity groups, namely fabrics, plastics, chemicals, paper and food-stuffs (except refrigerated) and textiles. The comparisons showed that Hyundai's rates would have to be increased by between 17 and 43 % to reach a freight level corresponding to a comparable service.

Since it is considered that a reasonable profit should be included in the freight rates charged by Community shipowners, an inclusion of such profit margin, at whatever level is considered appropriate, would have further increased these percentage margins.

- (28) It was established that, despite Hyundai's appearance in the trade, the scheduled liner service operated by the complainants, either within the Conferences or separately, has been maintained and the number of sailings has not been reduced permanently. However, in view of the already existing overcapacity exacerbated by the addition of Hyundai's capacity, the Conference complainants temporarily withdrew one vessel from the service during the latter six months of 1987. As a result of this temporary withdrawal, it was possible for the complainants' capacity actually to be increased between 1986 and 1987 from 70 to 73 %, whereas it would otherwise have been reduced from 70 to 68 %.

In general, the complainants claimed that they could only maintain this level of capacity utilization by accepting substantially reduced freight rates. This assessment has been endorsed by the findings, especially those under point 27.

- (29) It was considered whether Hyundai's low freight rates led to a reduction in profit of the Community shipowners. Two years have to be looked at, namely 1986 and 1987. It was found that all companies suffered a very substantial deterioration since Hyundai's entry into the market. Their profitability decreased between 1985 and 1986; the decrease is largely attributable to the cargo volume decrease between 1985 and 1986 in the Europe to Australia trade and much less to the reduction in freight rates experienced by the time Hyundai entered the market in autumn 1986. The complainants remained, on average, profitable in the trade under investigation although the level of profitability was largely insufficient to guarantee the long-term continuation of the service, future investment and employment.

However, during the investigation period, in 1987, during which entire period Hyundai was present in the market, all companies with one exception were making losses in the trade under investigation. It was found that, on the basis of management accounts and expressed in indices (details confidential), the complainants' overall profitability was +100, +15, -248 in 1985, 1986 and during the investigation period respectively.

If 1986 were to be used as basis, a profit of +100 in 1986 turned into a loss of -1 653 during the investigation period.

- (30) Equally, the return on capital generated deteriorated in line with the developments described above.
- (31) With regard to investments, it would appear that no major investment decisions, such as the replacement of some vessels, will have to be taken in 1988. Such investments are unlikely to be made if the Europe to Australia trade were to continue losing revenue and making substantial losses.
- (32) With regard to employment, consideration has to be given to the fact that all complainants' ships fly Member States' flags and are manned by Community crews. Continuing losses increase the risk of flagging out and subsequent loss of employment. The recent event when one vessel was temporarily withdrawn from the service highlights this risk.
- (33) It was considered whether injury has been caused by other factors such as decreased cargo volume and low freight rates operated by other shipowners, which must not be attributed to Hyundai.

It was established that the total containerized cargo transported between the Community and Australia was 167 000 TEU's in 1985 and fell to 137 000 TEU's in 1986; it remained at that level during the period under investigation.

Hyundai thus entered a shrinking market and thereby added to a developing imbalance between tonnage and transport capacity. Whereas the decreased cargo volume during 1986 already had a 'negative effect on the Community shipowners with regard to, *inter alia*, revenue, capacity utilization and profitability, this development was exacerbated by Hyundai's low freight rates during the last months of 1986 and during all of 1987.

- (34) Hyundai claimed that, when entering the market, it merely aligned itself on the rates already operated by other non-complainant companies, in particular Gearbulk and Jebsen, two Norwegian companies. Hyundai did not supply any conclusive evidence for this claim. It was found, when examining one

representative company's monthly liftings and rates records, and the interrelation between the two, that:

- when, at the moment of Hyundai's entry into the market with lower rates, the company was not prepared to reduce the rate level, it immediately lost considerable cargo to Hyundai,
- when, some time later, this company changed policy and aligned its rate level more towards Hyundai's, it immediately regained cargo, albeit at substantially reduced rates.

In view of the relative size of Gearbulk and Jebsen, which are both much smaller than Hyundai in the trade under investigation, and the fact that Hyundai within a very short time span increased its market share from nil to 4 %, it is concluded that the decline in freight rates has to be attributed to Hyundai.

- (35) The above results lead to the determination that the effects of the unfair pricing practices by Hyundai in the trade between the Community and Australia, taken in isolation, have to be considered as causing serious disruption of the freight pattern on this route and major injury to the Community shipowners concerned.

#### D. COMMUNITY INTEREST

- (36) Hyundai and some shippers claimed that it was not in the Community interest to take measures against Hyundai, which constitutes an additional competitive element in the trade under investigation. Although it is Community policy to encourage competition wherever possible, it is not its policy to encourage unfair competition based on non-commercial advantages.

Moreover, the trade under investigation is characterized by a number of independent competitors; indeed, one new competitor started its service in spring 1988. Community shippers have thus a wide choice between, *inter alia*, several independent operators.

It was furthermore claimed that Hyundai's low rates have allowed certain exports to Australia to be made for the first time in substantial quantities. As far as the most important product in terms of volume was concerned, this proved factually incorrect. As to the other products, which are substantially less important, it is considered that there are enough companies on the market to guarantee continuing exports at competitive freight rates by outsiders.

Finally, as far as certain break-bulk products are concerned, it was found that the quantities involved were very limited and irregular and it was not considered in the Community interest to include break-bulk cargos in Community measures.

The seafarers claimed, and the Community supports this claim, that it is in the Community interest to defend their employment which is put at risk by unfair competition since in the past they have suffered a great deal from unfair competition.

External trade policy considerations, which are in favour of free trade, the port interests with, *inter alia*, ancillary industries, and the shipping policy considerations of the Member States concerned are not in conflict with the imposition of a redressive duty.

Developments of the kind investigated, involving rate erosions, decreasing revenue and financial losses, seriously endanger the commercial viability of those Community shipping companies whose revenues depend to a substantial extent on the service concerned; in addition, these developments endanger the viability of the services offered by the other Community companies and are therefore injurious to Community interests; in view of the particularly serious difficulties facing the Community shipping industry in general, and the trade under investigation in particular, the economic and social importance of the industry, and the normally relatively low incidence of a rate increase on the value of the exported goods, the conclusion has been reached that it is in the Community's interest that action be taken in the form of a redressive duty.

#### E. THE RATE OF DUTY AND COLLECTION

- (37) Having regard to the extent of the injury caused and, in particular, the undercutting in freight rates with its consequential effects, and to the fact that the normal freight rate was determined by reference to the costs of an operator charging lower rates than the complainant companies, it is concluded that the rate of the redressive duty cannot, if it is to remove injury, be less than the difference between Hyundai's freight rate and the normal freight rate determined as described under point 14.
- (38) The rate of duty should therefore be ECU 450 per 20-foot container or ECU 900 per 40-foot container and *pro rata* for other container sizes. In

order to allow an efficient collection of the redressive duty, the duty should be a fixed amount irrespective of the contents of the container.

- (39) The collection of duties shall be made by the customs authorities since they are best placed and most competent to carry out this duty. It is considered appropriate to follow as far as possible the rules of customs procedure applicable to the exportation of goods. In order to safeguard collection of the duty, the loading of cargo in a Community port shall be made conditional upon the provisions of security for the amount of the duties.

#### F. TIME LIMIT

- (40) The fact that this was the first case brought under Regulation (EEC) No 4057/86 meant that particular care was needed to ensure that the investigation complied in all respects with the requirements of the Regulation. This being so, the period of one year between initiation of the proceedings and their conclusion, as prescribed in Article 7 (9) (a) of the Regulation, has been slightly exceeded,

HAS ADOPTED THIS REGULATION:

#### Article 1

1. A redressive duty is hereby imposed on all containerized cargo loaded in a Community port on vessels operated directly or indirectly by Hyundai Merchant Marine Company Limited of Seoul, Republic of Korea, with destination Australia. The duty is to be paid by Hyundai.
2. The amount of duty shall be ECU 450 per 20-foot container or ECU 900 per 40-foot container and *pro rata* for other container sizes, irrespective of the contents.
3. The redressive duty shall be collected by the customs authorities. The customs provisions in force shall apply by analogy.
4. The arrival of a vessel operated directly or indirectly by Hyundai in a Community port and the expected number of containers to be loaded on that vessel shall be notified by Hyundai or its agents to the competent authorities three days before the vessel's expected time of arrival.
5. The loading of cargo in a Community port shall be made conditional upon presentation by Hyundai of proof that security for the amount of the duty has been provided.



*Article 2*

1. Before the containers are loaded, a loading declaration, accompanied by copies of the manifests, shall be lodged with the competent customs office.

2. The loading declaration shall be separate from the export declaration concerning the goods and shall be made out on form EX as introduced by Article 2 (1) of Council Regulation (EEC) No 1900/85 of 8 July 1985 introducing Community export and import declaration forms <sup>(1)</sup>, as amended by Regulation (EEC) No 1059/86 <sup>(2)</sup>. Only copies Nos 1 and 3 of form EX shall be used. The loading declaration may also be made on a commercial or administrative document as provided for in Article 18 (2) of Council Directive 81/177/EEC of 24 February 1981 on

the harmonization of procedures for the export of Community goods <sup>(3)</sup>.

3. The loading declaration shall be made by Hyundai or its agents. It shall refer to this Regulation and shall, as a minimum, contain information about the country of destination of the containerized cargo referred to in Article 1 (1) and the number of containers, broken down by type according to Article 1 (2).

4. The provisions in force with regard to export duties shall apply to the redressive duty imposed by this Regulation.

*Article 3*

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

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

Done at Brussels, 4 January 1989.

*For the Council*

*The President*

F. FERNANDEZ ORDOÑEZ

<sup>(1)</sup> OJ No L 179, 11. 7. 1985, p. 4.

<sup>(2)</sup> OJ No L 97, 12. 4. 1986, p. 7.

<sup>(3)</sup> OJ No L 83, 30. 3. 1981, p. 40.