II

(Acts whose publication is not obligatory)

COMMISSION

COMMISSION DECISION

of 17 February 1993

on Spain's request for adoption by the Commission of safeguard measures under Article 5 of Regulation (EEC) No 3577/92 against applying the principle of freedom to provide services to maritime transport within Member States (maritime cabotage)

(Only the Spanish text is authentic)

(93/125/EEC)

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Economic Community,

Having regard to Council Regulation (EEC) No 3577/92 of 7 December 1992 applying the principle of freedom to provide services to maritime transport within Member States (1), and in particular Article 5 (1) thereof, which sets out the circumstances under which a Member State may request the Commission to adopt safeguard measures in the event of serious disturbance of the internal transport market due to cabotage liberalization or in the case of an emergency,

Whereas the competitive position of the Spanish shipping industry is not at the level of that of several other shipping industries in the Community, the operating costs of which decreased because of the use of special registers which give more favourable fiscal and other treatment to ships particularly when operating outside home waters;

Whereas Spain published on 25 November 1992 a new Law on Ports and Merchant creating a special register for vessels and shipping companies which will be open initially for vessels operating in international trade only; whereas the average tonnage of the Spanish fleet operating in cabotage is small compared to the competitive fleets from other Member States, therefore, causing a cost disadvantage; whereas the operating costs of Spanish vessels in Spanish waters can be adjusted only over a period of time given the need for further revision of applicable agreements and regulations, whereas for these reasons the likely appearance of ships registered in other Member States' special registers may pose a serious threat to the survival of Spanish operators in the cabotage market;

Whereas Spain adopted on 23 December 1992 a ministerial order adopting unilateral safeguard measures on the basis of the last subparagraph of Article 5 (1) of Regulation (EEC) No 3577/92 consisting of the suspension of the application of the said Regulation in Spain for a period of three months;

Whereas on the 8 January 1993 Spain formally comunicated the adoption of the above measure and, on the basis of a study prepared by the Spanish authorities on the impact of an immediate liberalization of cabotage on the carriers directly involved, requested the Commission to grant a derogation of 12 months from the application of the said regulation for continental cabotage traffic;

Whereas a meeting was organized by the Commission on the 20 January 1993 to consult other Member States on this request in accordance with Article 5 (1) of the abovementional Regulation;

(1) OJ No L 364, 12. 12. 1992, p. 7.

Whereas the Commission considers that the situation described in the study cannot be considered as an emergency, since the financial stability or existence of a significant number of Spanish shipowners was not threatened within such a short period of time and therefore cannot justify the unilateral measure adopted by Spain;

Whereas a careful examination of the present situation and of the study presented by Spain gives, on the other hand, sufficient indication that a serious disturbance of the internal transport market is likely to occur in Spain if a certain period is not allowed for the effective implementation of the abovementioned agreements and regulations including the special register; whereas the market is such that there are a large number of ports with relatively small capacity and installations but that Spain's geographical position makes it an attractive market for cabotage on both Atlantic and Mediterranean routes; that a combination of these factors means that there is likely to be a further increase in the alreday existing serious excess of supply over demand which will pose a serious threat to the financial stability of the Spanish cabotage fleet; whereas, however, the new Spanish legislation is likely to begin to improve the competitive position of the Spanish fleet within the near future;

Whereas of goods from a port in another Member State or in a third country to a continental port in Spain where they are transhipped on a vessel of the same company to be carried on the other mainland ports in Spain or *vice versa* (feeder services) should, however, not benefit from any such derogation, in order not to hinder an optimal operation of deep sea services by Community carriers between Spain and other countries, and should be completely free for other Member States' shipowners as defined in Article 1 of Regulation (EEC) No 3577/92;

Whereas in the event that no Spanish vessel is available to carry out mainland cabotage services no serious disturbance can derive from the possibilty for other Member States' vessel to carry out such services,

HAS ADOPTED THIS DECISION:

Article 1

The unilateral safeguard measure adopted by Spain on 23 December 1992, is hereby abrogated and the competent Spanish authorities shall take the necessary administrative measures to implement the abrogation.

Article 2

An exclusion of the Spanish mainland area during six months from the scope of Regulation (EEC) No 3577/92 is hereby granted to Spain as from the date of notification of the present Decision.

Article 3

The abovementioned exclusion shall not apply to feeder services.

Article 4

In the event that no Spanish vessel is available at a given moment to meet the demand for mainland cabotage transport services, the Spanish authorities will allow other Member States' vessels to offer such services.

Article 5

Two independent experts shall appointed, one by the Commission and one by the Spanish authorities, in order to prepare a joint study on the possible economic impact on the Spanish shipping sector of the liberalization of mainland cabotage. On the basis of the result of this study which shall be presented to the Commission at least 45 working days before the expiry date of the six months' derogation, the Commission will, on request from Spain, review the situation.

Article 6

The present Decision is addressed to the Kingdom of Spain.

Done at Brussels, 17 February 1993.

For the Commission

Abel MATUTES

Member of the Commission