



COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 21.1.2004  
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2004/0008 (CNS)

Proposal for a

**COUNCIL REGULATION**

**amending Regulation (EC) No 1177/2002 concerning a temporary defensive mechanism  
to shipbuilding**

(presented by the Commission)

## EXPLANATORY MEMORANDUM

### BACKGROUND

1. Further to the Republic of Korea's failure to implement the provisions of the Agreed Minutes relating to world shipbuilding (hereinafter "the Agreed Minutes") signed on 22 June 2000, the Council approved on 27 June 2002 the so-called "twin-track strategy" proposed by the Commission. This strategy involves two instruments: (i) the initiation of an action against the Republic of Korea at the World Trade Organisation (WTO) and (ii) the authorisation of temporary and limited contract-related operating aid under the Temporary Defensive Mechanism (TDM) to assist Community shipyards in those segments where they have suffered adverse effects caused by unfair Korean competition..
2. The TDM was established by Council Regulation (EC) No. 1177/2002 of 27 June 2002<sup>1</sup> (the "TDM Regulation"). From the outset, it was conceived as an exceptional, limited and temporary measure. Hence, the mechanism was strictly limited in both scope and time.
3. First, only those market segments where it has been demonstrated that the EU shipbuilding industry has suffered adverse effects caused by unfair Korean trade practices are eligible for aid: container ships; chemical and product tankers; as well as Liquefied Natural Gas (LNG) carriers. Second, the defensive mechanism expires on 31 March 2004, which was consistent with the anticipation, at the time of adoption of Regulation (EC) No. 1177/2002, that the relevant WTO proceedings would have been concluded at that date.
4. However, these proceedings are taking more time than what was originally foreseen and the Agreed Minutes have not yet been effectively implemented. The panel report is only expected in August 2004 and a final decision from the Appellate Body is not expected before early 2005.
5. It should also be stressed that, from the outset, the two instruments making up the twin-track strategy were closely interrelated, in particular as regards timing. Pursuant to the TDM Regulation, the support mechanism could only be activated after the Commission had initiated WTO dispute settlement proceedings against Korea - which was done on 8 October 2002<sup>2</sup>. By the same token, it was expressly provided that the mechanism was to be applied only until the conclusion of these proceedings or the suspension of such proceedings on the grounds that the Community considered that the Agreed Minutes had been effectively implemented (and, in any case, not after 31/03/04). In other words, the twin-track strategy is built on a simultaneous use of its two instruments.

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<sup>1</sup> OJ L 172, 2.7.2002, p. 1.

<sup>2</sup> Commission Decision of 8 October 2002 under the provisions of Council Regulation (EC) No286/94 concerning trade practices maintained by Korea affecting trade in commercial vessels (OJ L 281, 19.10.2002, p. 15

## THE PROPOSAL

6. The Commission considers that the “twin-track strategy” should be continued. Given the delays in the WTO proceedings and the continued failure by the Republic of Korea to implement the Agreed Minutes, it is proposed to prolong the application of the TDM Regulation until 31 March 2005 at the latest.
7. The TDM remains an exceptional and temporary instrument focusing on very specific trade allegations. It should be noted that, as it is already provided in the TDM Regulation, the support mechanism will be deactivated at any earlier date if the dispute settlement proceedings are concluded or if the Community considers that the Agreed Minutes have been effectively implemented by the Korean side.

Proposal for a

**COUNCIL REGULATION**

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THE COUNCIL OF THE EUROPEAN UNION,

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

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

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

Whereas:

- (1) The European Commission and the Government of the Republic of Korea signed the Agreed Minutes relating to world shipbuilding on 22 June 2000 with the aim of restoring fair and transparent competitive conditions. However, the commitments under the Agreed Minutes, notably the commitment of ensuring an effective price surveillance mechanism, have not been effectively implemented by the Korean side and therefore a satisfactory result has still not been obtained.
- (2) As an exceptional and temporary measure, and in order to assist Community shipyards in those segments that have suffered adverse effects in the form of material injury and serious prejudice caused by unfair Korean competition, a temporary defensive mechanism was established by Council Regulation (EC) No 1177/2002 for limited market segments and for a short and limited period only<sup>5</sup>. In particular, the temporary mechanism was only authorised after the Community initiated dispute settlement proceedings against the Republic of Korea and could no longer be authorised if these dispute settlement proceedings were resolved or suspended.
- (3) On 8 October 2002, the Community initiated dispute settlement proceedings against the Republic of Korea, by requesting consultations, in accordance with the World Trade Organisation's Understanding on the Rules and Procedures for the Settlement of Disputes<sup>6</sup>.

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

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

<sup>5</sup> Council Regulation (EC) No 1177/2002 of 27 June 2002 concerning a temporary defensive mechanism (OJ L 172, 2.7.2002, p. 1.)

<sup>6</sup> Commission Decision of 8 October 2002 under the provisions of Council Regulation (EC) No 286/94 concerning trade practices maintained by Korea affecting trade in commercial vessels (OJ L 281, 19.10.2002, p. 15).

- (4) The consultations which were held between the Republic of Korea and the Community, as envisaged in the WTO Agreement, did not reach any satisfactory solution. On 11 June 2003, the Community requested the WTO Dispute Settlement Body to set up a Panel over the unfair Korean shipbuilding practices.
- (5) Regulation (EC) No 1177/2002 expires on 31 March 2004. The Republic of Korea has still not effectively implemented its commitments under the Agreed Minutes and the WTO disputes settlement proceedings are not expected to have been resolved by that date. It is therefore needed to prolong the temporary defensive mechanism.

HAS ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 1177/2002 is amended as follows:

Article 5 shall be replaced by the following:

“This Regulation shall enter into force on the day following that of its publication in the *Official Journal of the European Communities* and shall expire on 31 March 2005.”

*Article 2*

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

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

Done at Brussels,

*For the Council*  
*The President*