THE RULES ON COMPETITION
OF THE EUROPEAN COMMUNITY
AID TO SHIPYARDS

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I. Introduction

The establishment of shipyards has been, and still is, a natural tradition for certain countries – particularly European countries – which follow an expansive maritime policy due to their large foreign trade and developed industry and, partly, inspired by a dearth of natural resources.

Furthermore, a country of but some size and international importance must look upon its merchant marine as a significant element in assessing the country's defensive potentialities. Likewise, the capacity to build and to repair is a prerequisite to this potentiality.

Since shipyards are demanding, in terms of capital as well as in terms of manpower, and since they frequently constitute the dominating industry in the geographical regions in which they are located, it becomes a logical consequence that fluctuations in the shipbuilding market will result in the creation of human and economic elements of unrest of such a nature and magnitude that national governments will, at least, have to come to the rescue when unrest becomes a reality.

Since fluctuations in the shipbuilding market are directly dependent upon fluctuations in the shipping market, and since experience has shown the latter fluctuations to be violent and recurrent, it must be seen as a natural consequence that the governments of most countries desire to stabilize the shipbuilding industry prior to unrest becoming a reality. In practice this results in subsidizing arrangements aiming at counteracting the effects of a slump in the market. This practice must be said to be a general one at the global level, even though the intensity and the modalities vary considerably from country to country. (See in regard to the above Hjorth Lorenzen, pp. 11-22).

On the other hand, there is inherent in subsidizing the latent side effect that in countries where shipbuilding is not regulated by the government, subsidizing not only contributes to the neutralizing of elements of unrest during slumps, but also acts as a general price reduction, for the benefit of the buyer, during booms as well as slumps. Under these conditions government subsidizing, once accepted, frequently becomes an incitement to continued support, the actual effect of which is distortion of the established situation of competition to one's own advantage at the cost of other shipbuilding nations.

To the extent to which such distortion is directly aimed at by the national government, it is obvious that public regulation of the shipbuilding industry does not diminish the harmful effect for other nations – on the contrary.

At the time when the European Community was established, the situation was about to develop into a foreseeable crisis. The European shipyards, which were

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kept alive more or less artificially, and consequently were not subject to any natural selectivity, could not cope with a renewal which could create any serious competition for the Japanese industry competing consciously and efficiently.

Consequently, it became a necessary task for the Community to recreate competitiveness in the light of the Community's fundamental principles – say principles of private capitalism. During a first phase the individual and mutually highly divergent arrangements of aid were to be harmonized at a joint level fixed in the light of the international context where the problem of subsidizing is felt and, at the same time, an attempt was to be made to fix a joint level within an internal Community context. Under the provisions of article 93 the work started with an examination of the subsidizing arrangements of Member States and an assessment of their ability to compete internationally; the work resulted in a memorandum of 13. April, 1965, to which was annexed a draft programme of action as well as a draft Council Directive (see Bulletin No. 6/65 and Supplement to No. 5/65).

The proposal was discussed in the European Parliament, which adopted the proposal of the Commission on 25 November, 1965, with certain minor amendments (see Bulletin 1/66 and 69/262 EEC Journal L 206/25). The Council did not adopt the Commission's submission but, once again, indulged in investigations (see Bulletin 1/69). And finally, on 28 July, 1969, adopted a Directive (69/262 EEC) which, in two respects, deviated considerably from the original proposal of the Commission: The scope was extended, among other things, to include also new buildings of 100 gross tons as against previously 3000 gross tons and, secondly, any aid was now optional, while it had previously been mandatory.

This Directive was to remain in force until 3 December, 1971, but the possibility of extending the duration until 30 June, 1972, was kept open, and during the period of validity the Commission was to follow developments. The 1971 yearly Report of the Commission says (p. 115) that the Directive fulfilled its goal, namely that of contributing to a controlled balance between the Community on the one hand and the international shipbuilding industry as a unit on the other hand. (See also the substantiation of the Directive of 20 July, 1972).

Another draft Directive was submitted to catch up with developments. The substance of the new proposal differed from the original Directive in a more detailed regulation and definition of the specific elements of the issue of subsidizing, but this proposal was likewise amended in several fundamental respect prior to a final version being adopted.

The amendments reflected serious divergences between Member States mutually and Member States versus the Commission. As a consequence this second Directive was not adopted prior to the expiration of the first one, namely on 30 June, 1972, but only on 20 July. Thus there was a brief interval without any limitations other than those following from the Rome Treaty itself.

The Directive which was finally adopted, is valid until 31 December, 1973. By that time it is incumbent upon the Commission to have carried out a study of all direct or indirect effects of various forms of subsidizing and intervention on the terms of trade and competition of the shipbuilding industry in the Community (see below V, article 7).