



FCS/84/117

N.B.P.N.

SECRETARY OF STATE FOR TRANSPORT

A-2C. 12/4.

10 May Transport Council: Unfair Commercial Practices in Shipping
Services

see pt 23 attached

1. Thank you for your letter of 30 March.
2. I agree with you that the French proposal is distinctly unpalatable. Of the policy alternatives which you identify - outright rejection or a vigorous effort to re-draft the proposal to suit our own objectives - I agree with you that we should opt for the latter, though we should not be surprised if the French decide to withdraw their proposal and oppose our counter-draft, with nothing agreed as a result. We can certainly expect no support from those Member States which make a habit of providing state aid for their national shipping lines, France and Italy in particular.
3. There may well be a protracted wrangle over the proposed method of deciding what constitutes unfair competition, at what level the compensatory levy should be set, and particularly who should decide. The Department of Trade and Industry have much recent experience in this field through the complex negotiations on the draft Common Commercial Policy Regulation concerning unfair trading practices of third countries. The CCPR was virtually agreed at the Foreign Affairs Council on 9 April. I understand that Norman Tebbit's officials and ours are being consulted on the proposed amendments to the French text to be tabled at the Transport Working Group on 17 April.
4. If we are to succeed in our long-term objective of promoting open competition in shipping, the Commission will have to come up with the right response to any Council call for legislation. It would be prudent to let the Commission know in advance what we intend.

/5. I am

CONFIDENTIAL



5. I am copying this to the Prime Minister, to members of OD(E) and to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to be 'G. Howe', written in a cursive style.

GEOFFREY HOWE

Foreign and Commonwealth Office
12 April 1984

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The Rt Hon Norman Tebbit MP
Secretary of State for Trade and Industry
Department of Trade and Industry
1-19 Victoria Street
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MDPM

AT

1515

14 May 1984

N. Tebbit

Dear Norman

DRAFT EC RESOLUTION ON UNFAIR COMMERCIAL PRACTICES IN SHIPPING

Thank you for your letter of 1 May about this draft resolution, in which you set out some difficulties with the UK line which I proposed in my letter of 30 March to Geoffrey Howe.

Let me say, first, that there is no question of our accepting the French ideas on the subject of unfair commercial practices in shipping or of making any compromise moves towards their position. What the French want is a protectionist measure, which safeguards their fleet from aggressive competition, whether fair or unfair, from non-Community carriers, and which does nothing to hinder them from subsidising their national flag vessels. An initiative of this sort runs completely counter to UK shipowners' and shippers' interests.

What we want to do is to use the French initiative as a vehicle for our own ideas on unfair competition, by which we mean competition from subsidised and state-controlled carriers - particularly from the Soviet bloc. An initiative

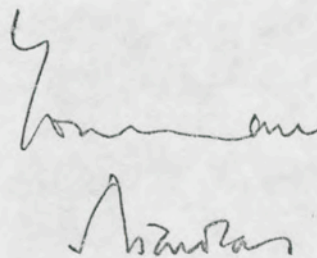
of this sort does no damage to our shippers' interests (they have, indeed, expressed sympathy with the idea) and would be of real value to our shipowners. I should need some very convincing reasons for abandoning the attempt to amend the French proposals in a direction that helps UK interests and relying, instead, on blocking tactics.

Clearly, worries about Community competence can occasionally deter us from pursuing EC action, even if that action is to our advantage. But the competence fears have to be pretty substantial and publicly defensible. I do not believe the competence implications in this case are sufficient to deter us from prosecuting British interests. Essentially, our proposal is that the question whether competition is unfair and is doing damage should be investigated by the Commission by reference to predetermined, objective criteria. Having conducted their investigations, the Commission would return to the Council with a recommendation for or against the imposition by the Community of a compensatory levy. The Council would have the final say-so on the matter. We are proposing that the Council should take such decisions on the basis of a qualified majority (rather than by unanimity, as under Treaty Article 84(2)) and we are hoping that a Commission proposal to take action would be rather difficult to thwart. This is because, taking our shipper and shipowner interests together, the UK has more at stake than any other Community country. Thus, we are the ones most likely to want to see action taken against unfair competition and have every reason to welcome the adoption of an EC machinery that promises us some prospect of support from our partners.

The price we would have to pay to secure such an EC machinery is the loss of our freedom to act unilaterally. This loss is less significant than it might seem. In theory, my powers under S14 of the Merchant Shipping Act 1974 could be used to take unilateral action against a third country which was a source of unfair competition. In practice, such unilateral action would often be circumvented by ships of the offending country unloading their cargoes at continental ports and trans-shipping them to the UK. Additionally, unilateral action by the UK (although it may be unavoidable in some cases) increases the risk that we suffer damaging retaliatory action and endanger our diplomatic relations.

For all these reasons, I believe that joint Community action is the right approach to unfair competition and that the UK should promote a Community instrument to this end. Whether we will actually succeed in getting such an instrument is a different and more doubtful matter. But we should be wrong not to try.

I am copying this to the Prime Minister, other members of OD(E) and to Sir Robert Armstrong.

A handwritten signature in dark ink, appearing to read 'Nicholas Ridley', is written over the typed name. The signature is fluid and cursive.

NICHOLAS RIDLEY

14 MAY 1964

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Secretary of State for Trade and Industry

1 May 1984

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*NRM
DR
2/15*

R Nicholas

TRANSPORT COUNCIL : DRAFT RESOLUTION ON UNFAIR COMMERCIAL PRACTICES IN SHIPPING

at Hops

Thank you for sending me a copy of your letter of 30 March to Geoffrey Howe.

2 I must say that I have strong reservations about giving competence to the Commission in shipping matters. I am concerned that, if the Commission were to decide to take action on a tit-for-tat basis against a third country, and that country took retaliatory action, it would be the UK - as the EC Member State with the greatest interest in shipping - which would be most likely to be injured. In addition, I am not at all confident that we can succeed in defining the scope of the competence transferred in such a way that it is limited to those areas which we are content to cede.

3 I believe we should take account of these concerns in dealings with the Community in this sphere, and that we should avoid any commitment to a proposal which would result in leakage of competence : on balance, therefore, I would opt for rejection of the French proposal on 10 May.

4 I am copying this letter to the recipients of yours.

Norman

NORMAN TEBBIT

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BOSTON
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2 - MAY 1984

