

**Council for Trade in Services**

**MARITIME TRANSPORT SERVICES**

Background Note by the Secretariat

**INTRODUCTION**

1. This note has been prepared at the request of the Council for Trade in Services. It provides background information on maritime transport services for discussion in the information exchange programme of the Council. It contains basic and general information on trade in these services and should not be considered exhaustive.
2. During the Uruguay Round a special Working Group was set up for transport services. In the course of its work, this Group examined, in particular, a note by the Secretariat MTN.GNS/W/60 dated 4 July 1989 on "Trade in Transport Services", of which paragraphs 49 to 94 and Tables 6 to 10 are devoted to maritime transport. The Secretariat also produced at the request of this Group another document (MTN.GNS/TRANS/W/3 dated 24 September 1990) containing supplementary information on maritime transport. Notes on the Group's two meetings concerned with maritime transport are reproduced in documents MTN.GNS/TRANS/2 of 6 August 1990 and MTN.GNS/TRANS/6 of 30 November 1990. Also of interest is document MTN.GNS/TRANS/W/1, dated 19 September 1990, containing a communication from the Nordic countries about possible sectoral annotations.
3. The results of the Uruguay Round, while incorporating in the services schedules the maritime transport commitments made, also contain an annex to the GATS on negotiations in maritime transport services and a ministerial decision on maritime transport services whose effect was to prolong maritime transport negotiations until 30 June 1996 and create to that effect a Negotiating Group on Maritime Transport Services (NGMTS). This group held 17 meetings between May 1994 and June 1996. As a result of its work, the Council for Trade in Services adopted on 28 June 1996 a Decision on Maritime Transport Services (S/L/24 dated 3 July), which again incorporates the maritime commitments and the MFN exemptions related to those commitments in the schedules, suspends the negotiations until the commencement of the next comprehensive negotiations on services, and suspends the MFN obligation until the end of the negotiations. The text of this decision is in Annex 1.
4. Numerous formal and informal documents relating to maritime transport were produced in the context of the NGMTS. Among the informal documents the "Draft Schedule on Maritime Transport" (Job N°1872) dated 15 April 1996 in its last version is certainly the most important. A complete list of the NGMTS formal documents is appended in Annex 2.
5. Of particular interest among these are the answers to the questionnaire on maritime transport services (S/NGMTS/W/2 dated 21 October 1994). This questionnaire was answered by 37 Members - counting the EU as one - representing 46.6 per cent of the tonnage of the world fleet in terms of registration (237,250.3 million Gross Registered Tons out of a total of 509,465.62 million GRT) and more than 80 per cent in terms of ownership. (Ships registered in open registry countries (Bahamas,

Bermuda, Liberia, Malta, Panama, Vanuatu<sup>1</sup>) and which represent 192.61 million GRT (another 37.8 per cent) are almost entirely possessed by shipowners from developed countries<sup>2</sup>, which all answered except for Israel and South Africa.) The questionnaire was structured so as to include not only national flag vessels but also the nationally owned or operated fleet (see for instance question 1 and chart 1) in accordance with the definition of a "service of another Member" given in Article XXVIII (f) (i): "a service which is supplied... in the case of maritime transport, by a vessel registered under the laws of that other Member or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part".

6. The questionnaire includes questions on the type of vessels, the tonnage, the proportion of seaborne trade, the respective shares of bulk and liner and inside liner traffic, the share of conferences as compared to that of outsiders, the presence of foreign providers of port and auxiliary services, the regulatory structure, restrictions on maritime trade in the sense of Articles XVI and XVII of the GATS, access to and use of port facilities, bilateral agreements, retaliation measures, government procurement, competition law and shipper-carrier relations. Overall the corpus of information constituted by the answers, which run to several hundred pages, represents a unique source of reference which has no equivalent for any other service covered by the GATS.

7. The overall picture resulting from the answers to the questionnaire is of a very liberalised sector as compared to many other services sectors and in particular to other transport sectors.

8. The whole of bulk traffic (i.e. transport of oil, crude and refined, iron ore, grain, coal, bauxite) which accounts for 67.7 per cent of the volume of traffic faces no restrictions except in one or two countries. It is organized as a spot market, (there is also a futures market), and contracts are allocated on an extremely competitive basis; business is won on the basis of freight rates a few cents per ton lower than the competition.

9. On the liner side (i.e. the transport of containerised and general cargo by regular lines publishing in advance their calls in the various harbours) it appears that the operators are organized in two ways: in "conferences" that are more or less integrated cartels fixing prices and frequencies and as "outsiders" that are very big or very small independent operators. Two types of conferences exist in the world: open conferences on the US routes, closed conferences in the rest of the world. Conferences, which appeared around 1870 with the appearance of steamers on the UK to India lines, enjoy antitrust immunity and benefit from block exemption from the competition authorities as they are thought to constitute a factor of stability and a source of technical progress and better services red to customers.

10. In practice over the last 30 years the share of the traffic held by the conferences has been eroded as new state trading and South East Asian operators have emerged and become powerful enough to offer on their own services equivalent to those of the conferences.

11. The attempt of the UN Code of Conduct for Liner Conferences<sup>3</sup> which entered into force in 1983 to open the restricted "club" of the conferences to third world shipping lines through a cargo sharing arrangement (the famous 40-40-20 formula) has largely failed. The Code was only effectively implemented, in spite of its wide membership (more than 70 contracting parties) on a marginal part of the world traffic, that between Western Europe and West Africa, which accounts for less than 3 per cent of the world liner trade. Finally the competition directorate of the EU dissolved the conferences concerned on the grounds of abuse of dominant position towards outsiders.

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<sup>1</sup> List drawn by UNCTAD in its Review of maritime transport, 1997, Annex III A, page 113, Cyprus being excluded to avoid double counting as it has answered the questionnaire.

<sup>2</sup> *Ibidem*, table 13, page 24.

<sup>3</sup> United Nations, Treaty series 1983.

12. In the rest of the world the conference system has coexisted with a framework of bilateral intergovernmental cargo-sharing agreements that were either the result of historical and colonial links, or were developed to deal with state trading economies such as China and the USSR. Other bilateral agreements were inspired by similar import-substitution economic theories than the liner code (Latin America). There again this framework has gradually eroded .

13. This is linked to the erosion of the "mercantilist model" which dates back as far as the 17<sup>th</sup> century (British "Navigation Acts", French régime of the Colbert ordinances and of the "exclusif colonial"). Under such regimes the external trade of a country had to be transported by ships flagged in the country manned with nationals and where colonial traffic was reserves to the flag of the country. The UK abolished this model in 1847 but traces of it remain in the legislation of numerous countries. However, during the 1960's and 1970's the "mercantilist model" largely disappeared as a result of decolonisation, of the "deflagging" of bulk fleets, which has effectively severed the link between flag and ownership, and of the development of "third traffics" meaning trade between two countries carried in ships belonging to neither. (One of the first examples of this was the transport of Central American bananas to the US by Norwegian ships early in the present century.)

14. Finally on the harbour side the answers to the questionnaire show that many countries have adopted the principle of the "landlord harbour" where part of the operations is left in the hands of private operators, which are sometimes foreign-owned.

## **I. RECENT REGULATORY AND TRADE DEVELOPMENTS**

### **A. OVERVIEW OF ECONOMIC DEVELOPMENTS**

15. Shipping remains by far the main mode of international transport of goods, although the rate of growth of cargo transport by air is much higher: 5 per cent over the last ten years as compared to 2 per cent for shipping.<sup>4</sup> Maritime transport is also still an expanding activity; it registered in 1997 its twelfth consecutive year of growth with a volume of 5,074 billion metric tons.

16. Freight rates are diminishing as a proportion of the value of the goods transported. They represented 6.64 per cent of value in 1980, and 5.27 per cent in 1997. These costs are however higher for developing countries (8.3 per cent in 1997) than for developed countries (4.2 per cent), a difference that can be explained by several factors: a bigger volume with bigger and more efficient ships (carrying up to 6,600 containers), and stronger competition added to a higher average value of goods transported for the developed markets.

17. In spite of technical progress (the average container load of a ship has more than doubled in the last 15 years) recent productivity indicators show a certain decline due to overcapacity. This overcapacity is estimated at 10 per cent of the fleet for tankers and 6.7 per cent for the dry bulk sector.

18. In terms of structure of the traffic, tanker traffic (i.e. the transport of both crude oil and refined products) accounts for 44.7 per cent in volume, dry bulk traffic (i.e. essentially the transport of iron ore, grain, coal, bauxite and phosphates) 23 per cent and liner traffic (i.e. the relatively high-value traffic essentially carried by container ships, roll-on-roll-off vessels and the remaining classic twin-decker cargo ships) 32.6 per cent. In terms of the value of goods transported the figures are higher for liner trade, due to the higher unit value of the goods transported. Detailed statistics on value are however lacking. The proportion of liner trade which is containerized is growing quickly (by nearly 10 per cent per annum in the 90's, the forecast for the years 1998 to 2000 being 7 to 8 per cent<sup>5</sup>) and now represents 55 per cent of liner trade. More than half of this traffic is now handled in developing

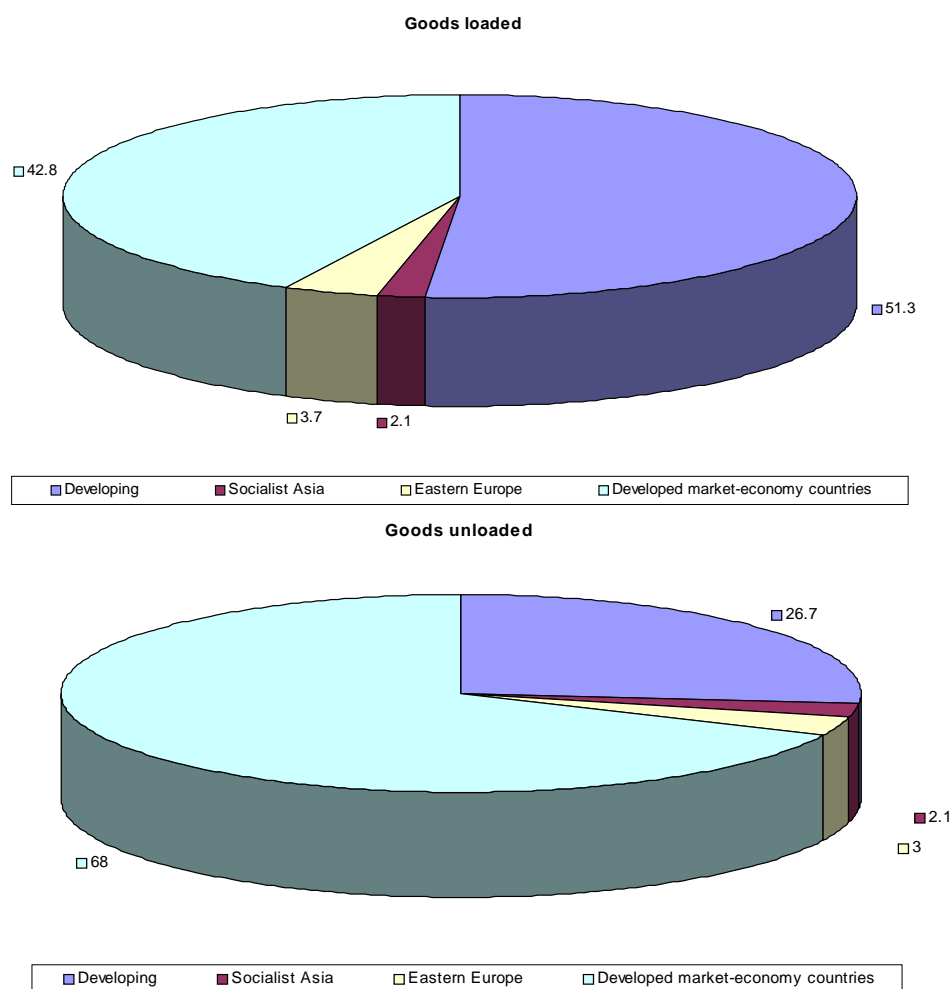
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<sup>4</sup> Source: World Bank "Lessons and practices – ports" operations evaluation department, number 9, June 1996.

<sup>5</sup> Source: Drewry Shipping Consultants.

countries harbours. Graph 1, compiled by UNCTAD, gives an idea of the geographical distribution of this trade.

**Graph 1: World Seaborne Trade By Country Groups**  
(Percentage distribution of tonnage, 1996)



19. The world fleet amounted in 1996 to 758.2 million dead weight tons(DWT). The vast majority of this, 542.5 million DWT, is owned by developed countries and major open registry countries<sup>6</sup> but developing countries own a significant part of it: 145.7 million tons. The following tables compiled by UNCTAD give a more detailed view of the distribution of the world fleet and of its evolution over time.<sup>7</sup>

<sup>6</sup> For details about the true ownership of the fleet of major open registries see UNCTAD's "Review of Maritime Transport", 1997, table 19, page 32.

<sup>7</sup> For information country by country see UNCTAD "Review of Maritime Transport" 1997, Annex III b), pages 117-121.

**Table 1: the 35 most important maritime countries and territories, as at 31 December 1996<sup>a</sup>**

Country of territory of domicile <sup>b</sup>	Number of vessels			Deadweight tonnage				
	National flag <sup>c</sup>	Foreign flag	Total	National flag	Foreign flag	Total	Foreign flag as percentage of total	Total as percentage of world total
Greece	912	2,003	2,915	46,444,947	71,954,723	118,399,670	60.77	17.41
Japan	922	1,829	2,751	22,116,501	65,171,700	87,288,201	74.66	12.84
United States	482	732	1,214	13,134,699	35,994,699	49,129,398	73.27	7.22
Norway	836	568	1,404	28,127,282	20,781,990	48,909,272	42.49	7.19
China	1,594	378	1,972	23,162,264	13,095,430	36,257,694	36.12	5.33
Hong Kong	104	503	607	5,401,167	28,079,400	33,480,567	83.87	4.92
Rep. of Korea	501	303	804	10,253,709	12,869,037	23,122,746	55.66	3.40
UK	388	510	898	5,269,713	15,875,697	21,145,410	75.08	3.11
Germany	478	984	1,462	6,140,698	11,918,853	18,059,551	66.00	2.66
Russian Fed.	2,595	239	2,834	12,231,787	5,113,585	17,345,372	29.48	2.55
Taiwan Prov. of China	179	254	433	7,577,719	7,534,148	15,111,867	49.86	2.22
Sweden	203	163	366	2,099,323	12,490,165	14,589,488	85.61	2.15
Singapore	402	252	654	8,876,995	5,544,741	14,421,736	38.45	2.12
Denmark	439	219	658	7,215,240	5,337,867	12,553,107	42.52	1.85
India	381	57	438	11,172,932	1,252,316	12,425,248	10.08	1.83
Italy	452	151	603	7,654,238	4,359,353	12,013,591	36.29	1.77
Saudi Arabia	69	58	127	1,078,603	9,749,334	10,827,937	90.04	1.59
Brazil	205	20	225	7,178,283	2,538,505	9,716,788	26.12	1.43
Turkey	420	23	443	8,997,546	107,859	9,105,405	1.18	1.34
France	178	105	283	4,313,260	3,446,166	7,759,426	44.41	1.14
Iran, Isl Rep.	147	6	153	6,133,908	206,284	6,340,192	3.25	0.93
Netherlands	463	199	662	3,597,792	2,196,115	5,793,907	37.90	0.85
Switzerland	14	191	205	618,880	459,769	5,168,649	88.03	0.76
Ukraine	577	64	641	3,587,740	1,261,689	4,849,429	26.02	0.71
Philippines	321	16	337	4,507,147	95,424	4,602,571	2.07	0.68
Romania	250	29	279	3,506,400	978,725	4,485,125	21.82	0.66
Belgium	30	140	170	148,155	4,105,155	4,253,310	96.52	0.63
Indonesia	463	86	549	3,060,844	1,154,412	4,215,256	27.39	0.62
Thailand	233	57	290	2,505,101	1,537,913	4,043,014	38.04	0.59
Malaysia	182	15	197	3,561,745	131,747	3,693,492	3.57	0.54
Spain	127	173	300	657,073	2,764,284	3,421,357	80.79	0.50
Finland	115	51	166	1,136,444	2,249,188	3,385,632	66.43	0.50
Croatia	68	106	174	696,043	2,591,991	3,288,034	78.83	0.48
Australia	68	29	97	2,807,519	479,388	3,286,907	14.58	0.48
Kuwait	33	6	39	2,863,725	351,028	3,214,753	10.92	0.47
Total (35 countries)	14,831	10,519	25,350	277,835,422	357,868,680	635,704,102	56.29	93.48
Percentage	58.5	41.5	100	43.7	56.3	100		
World total	17,274	11,480	28,754	303,417,789	376,626,659	680,044,448	55.38	100
Percentage	60.1	39.9	100	44.6	55.4	100		

Source: Lloyd's Maritime Information Services Ltd. (London).

<sup>a</sup> Vessels of 1,000 grt and above, excluding the United States Reserve Fleet and the United States and Canada Great Lakes fleets.

<sup>b</sup> The country of domicile indicates where the controlling interest of the fleet is located, in terms of the parent company. In several cases, this has required certain judgments to be made. Thus, for instance, Greece is shown as the country of domicile with respect to vessels owned by a Greek owner with representative offices in New York, London and Piraeus, although the owner may be domiciled in the United States.

<sup>c</sup> Including vessels flying the national flag but re-registered in territorial dependencies of associated self-governing territories. For the United Kingdom, British flag vessels are included under the national flag, except for Bermuda and Hong Kong (shown separately in the present table).

**Table 2: Development of shares of major national groups in the world fleet 1981-1995**

	Mid 1981		End 1994		End 1995	
	Million grt	% World tonnage	Million grt	% World tonnage	Million grt	% World tonnage
OECD countries <sup>a</sup>	214.7	51	143.1	30.1	139.5	28.4
NIS/CEESCs <sup>b</sup>	30.3	7.2	30.7	6.5	28.8	5.9
Developing Asian Economies <sup>c</sup>	17.8	4.2	36.7	7.7	40.5	8.3
China	7.7	1.8	15.8	3.3	16.9	3.4
Open Registry countries <sup>d</sup>	105.3	25	196.5	41.3	213	43.4
Developing market economy countries	42	10	50.4	10.6	46.5	9.5
Others <sup>e</sup>	3.1	0.7	2.7	0.6	5.5	1.1
Total	420.8	100	475.9	100	490.6	100

Source: Lloyd's Register, World Fleet Statistics 1995, London, 1996.

<sup>a</sup> Including Great Lakes Fleets and United States Reserve Fleets.

<sup>b</sup> Albania, Bulgaria, Croatia, Estonia, Georgia, Hungary, Latvia, Lithuania, Poland, Romania, Russia, Slovenia, Ukraine, Yugoslavia and other NIS.

<sup>c</sup> Hong Kong, Malaysia, Singapore, Korea, Chinese Taipei, Thailand.

<sup>d</sup> Antigua and Barbuda, Bahamas, Bermuda, Cayman Islands, Cyprus, Gibraltar, Honduras, Libanon, Liberia, Malta, Mauritius, Oman, Panama, Saint Vincent and Vanuatu.

<sup>e</sup> Cuba, Falkland Islands, Indonesia, Israel, North Korea, South Africa and Vietnam.

## B. OVERVIEW OF REGULATORY AND TRADE DEVELOPMENTS

20. One should distinguish between maritime transport in the strict sense and harbour activities.

### 1. Maritime transport

21. The process of "de-flagging", that is the transfer of ships registered in developed countries to open registries in order for the shipowners to enjoy the benefits of the low labour costs allowed by these registries, has continued to spread. The whole developed world bulk fleet is now under such flags as well as an increasing part of the liner fleet. To try to slow this movement, at least for the liner fleet, developed countries have had recourse since the beginning of the eighties to a series of fiscal measures and to the creation of "second registries" retain the national flag while allowing more flexible conditions of manning (the crew except for some officers does not have to be composed of nationals paid at national rates).

22. This tendency has now become general and has expanded outside Europe. In addition to the Norwegian, Danish, French and German examples that already existed before the end of the last maritime negotiations, second registries have been instituted or are envisaged in Italy, Spain, Korea, Brazil and Australia. In Japan a ministerial authorization is now required to de-flag from the Japanese registry. If this authorization is refused, the shipowner is entitled to a special tax treatment in compensation. This measure was triggered by the fact that the Japanese fleet is only one-fifth of what it was at its highest level. In the Netherlands a new fixed tonnage tax has been created to replace the corporate income tax. A similar tax was introduced in Norway as well as reimbursements of income tax for seafarers and additional depreciation for ships. Reimbursements of income tax for seafarers have also been instituted or are envisaged in Sweden and the United Kingdom. The UK has also

introduced roll-over relief on capital allowances balancing charges and assistance in relieving UK crews in foreign ports. France and Germany have recently eliminated certain fiscal advantages and depreciation allowances, but these measures were in both instances linked to non-shipping considerations. The Commission of the European Communities issued in July 1997 "State Aid Guidelines on Shipping" which are viewed by the European Communities Shipowners Association as a framework flexible enough to allow "positive measures" to be taken in favour of EC fleets. One may note however the relative absence of direct subsidies in all these recent packages of measures. In that respect the US Maritime Security Act dated October 1996, which creates a ten year, US\$ 1 billion programme providing payments to owners and operators of US vessels in return for a commitment to provide sealift support in time of war or national emergency, constitutes an exception.<sup>8</sup>

23. In parallel one may note a movement toward privatization of the last remaining state-owned shipping companies, for instance Australian National Lines, Compagnie Générale Maritime in France or Czech Ocean Shipping Joint Stock Company in the Czech Republic. This movement can also be observed in developing countries, notably under the impulsion of the World Bank, and has sometimes led, as in Western Africa, to the closure of shipping companies. Transnational take-overs have recently increased considerably, as witness the take-overs of American President lines (USA) by Neptune Orient Lines (Singapore), of DSR-Senator Linie (Germany) by Han Jin (Korea) or the merger between P and O (UK) and Nedlloyd (Netherlands). The liner sector, which ten years ago had dozens of actors, has seen a great concentration. In 1988 the 20 leading carriers controlled 35 per cent of world-wide capacity, in 1996 48,6 per cent and forecasts based on new building orders indicate that this share should exceed 60 per cent in 2000.<sup>9</sup> Alliances that were previously dedicated to specific routes (such as Scandutch or Trio between Europe and the Far-East or ACL on the Atlantic) have become global and imply world-wide cooperation between the shipowners concerned. Examples include the Maersk (Denmark)-Sealand (USA) arrangement (200 container vessels), the Global Alliance composed of American President Lines(USA), Mitsui OSK(Japan), Orient Overseas Container Lines (Hong Kong, China), Nedlloyd (Netherlands) and Malaysia International Shipping Company, the Grand alliance with Hapag Lloyd (Germany), Neptune Orient Lines(Singapore), NYK(Japan) and P and O (UK) and the alliance between Han Jin (Korea) DSR-Senator( Germany), Cho Yang (Korea) and United Arab Shipping Company (Arab, multinational).

24. However in spite of the emergence of mega-carriers and mega-alliances the picture remains very fluid. The alliances (whether be it consortia or conferences) are unstable, their membership varies constantly and the competition authorities monitor their activities closely. For instance the shipping companies members of the transatlantic agreement TIACA were recently fined heavily for illegal fixing of landleg tariffs by the competition directorate of the EU. Similarly the US Federal Maritime Commission has extended the geographic scope of the investigation started in 1994 for illegal rebating and considers it has indications of increasing malpractices in a number of trades. At the same time there is intense legislative activity tending, under the impulsion of Sealand and the National Shippers Association, to revise the US competition legislation in the sense of deregulation. The "Ocean Shipping Reform Bill" voted by the House of Representatives but still pending before the Senate foresees the suppression of the Federal Maritime Commission, which would be merged with the Surface Transportation Board, the suppression of the administrative filing of tariffs - which would nevertheless remain publicly available on the Internet - and the possibility for shippers to negotiate confidential services contracts. In Japan the competition law for maritime transport which provides a block exemption for shipping activities is also under review.

25. The multiplication of decisions by competition authorities, such as the grant of anti trust immunity to tolerated outsider agreements, the individual exemptions given to consortia and the

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<sup>8</sup> most of the information contained in this section 996 and 1997 annual reports of the OECD Maritime Transport Committee, which are available on the website: <http://www.oecd.org//dsti/sti/transport/sea/prod/ar>

<sup>9</sup> source. International Association of Ports and Harbors , "Biennial report on ships trends-1997", available on the website: [http://iaph.or.jp/shiptrends\\_97rep.htm](http://iaph.or.jp/shiptrends_97rep.htm)

authorization of mergers creates a risk of conflict of law. To try to prevent this conflict the OECD maritime transport committee published in November 1997 a report titled "Maritime Transport Committee Conclusions on Work on Promotion of Compatibility of Competition Policy Applied to International Shipping Including Multimodal Transport with a Maritime Leg".<sup>10</sup>

26. In terms of cargo reserved unilaterally to the national flag numerous liberalization processes can be observed. For example New Zealand liberalized its cabotage trade in 1994 and Australia is envisaging doing so. On becoming a member of the OECD Korea made in November 1995 a commitment to abolish gradually its "Designated Cargo System". Four items (raw materials for fertilizers, grain, petrochemicals, crude oil ) were removed from the list of cargo reservation by the end of 1996 and the three remaining items (coal, liquefied gas, iron ore) will be removed by the end of 1998.

27. A certain movement of liberalization can also be observed regionally and multilaterally. OECD members, for instance, signed in 1993 with the Newly Independent States and Central and Eastern European Countries ("NIS-CEEC") Bulgaria, Estonia, Latvia, Lithuania, Romania, Russian Federation and Ukraine, an "understanding on common shipping policy principles" largely inspired by the "common shipping policy principles" agreed inside the OECD in 1987. According to the annual reports of the Maritime Transport Committee of the OECD this understanding has not given rise to any problem of implementation. Similarly OECD members have begun a dialogue with the Dynamic Non Member Economies ("DNME" that is Argentina, Brazil, Chile, Hong Kong China, Korea, Malaysia, Singapore, Chinese Taipei). This dialogue has revealed much common ground on such issues as the promotion of free access to international maritime trade, respect of the principle of free and fair competition on a commercial basis, the promotion of maritime safety and the protection of the marine environment, the need to prevent the operation of substandard vessels and to improve the training of sea-going personnel and the promotion of modern business technologies such as electronic data interchange. OECD members and DNME are now working on a draft understanding on common shipping policy principles similar to the one concluded with the NIS-CEEC. OECD has also opened an initial dialogue with China on shipping questions through a workshop on maritime policies and practices held in Paris in November 1997 and has set itself the goal to broaden this dialogue to India, South America and selected African countries. Finally in preparation for the next WTO maritime negotiations the OECD is compiling a catalogue of existing impediments to maritime and multimodal trade in non-OECD countries.

28. In Africa too several countries, such as Côte d'Ivoire and Senegal, have liberalized their shipping policy and abandoned their cargo-sharing schemes.

29. In spite of this general tendency towards liberalization shipowners still consider that they are facing serious obstacles. For instance the European Communities Shipowners Association identifies in its 1997-1998 Report the following "negative factors": restricted/regulated access to port and port services, preferential cargo allocation, restrictions on establishment of owned branch offices, discriminatory measures favoring the use of national carriers, cumbersome procedures and/or personal harassment during port calls, abusive tariffs for services (often not rendered), unrealistic and unjustifiable liability claims by customs. The famous "list of sins" of the Council of European and Japanese Shipowners Associations (CENSA) has similar features. The individual cases mentioned by professionals, which include the limited granting of freight agency or terminal operators licences, the prohibition of transshipment, the blocking of amounts collected by shipping lines for containers demurrage, unilateral actions with extra-territorial impact are often of a kind that could be dealt through the negotiation of commitments.

30. Another important regulatory development is the extension outside Europe, and notably to the Pacific region, of the "port state control" principle, that is the right recognized to the state of the

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<sup>10</sup> See OECD document DSTI/SI/MTC(98)1 dated 24 January 1998...

harbour where the ship calls to arrest and detain substandard ships for safety reasons. OECD has also manifested a renewed interest in this question through its study "Competitive advantages obtained by some shipowners as a result of non observance of applicable international rules and standards"<sup>11</sup> containing a number of recommendations and through a declaration of its Members on the implementation of international rules and norms concerning maritime transport<sup>12</sup>, which has also been subscribed by the following countries: Bulgaria, Korea, Estonia, Hungary, Latvia, Lithuania, Poland, Czech Republic, Romania, Russia and Ukraine.<sup>13</sup> In the same area the International Maritime Organization has continue to elaborate international conventions on safety and has widened the membership of existing conventions.<sup>14</sup>

## 2. Harbour services

31. The same logic of restructuring and reform through privatization and liberalization is at work for harbour services.<sup>15</sup> This is true both in the developed and the developing world (it is worth noting that among the top 30 harbours in the world, 12 are located in developing countries). The aims of these reforms are to improve efficiency and to diversify sources of capital inflows.

32. For instance long term-leases, joint ventures and build-operate-transfer options have been agreed or will shortly be decided in Aden (Yemen), Cristobal and Balboa (Panama), Tanjung Priok (Indonesia), Yangon (Myanmar), Port Raysud (Oman), Kadok Island, Pusan and Inchon (Korea), Shantou, Tian Jin and Xiamen (China), Mumbai (India), Colombo (Sri Lanka), Karachi and Port Kasim (Pakistan).

33. Other examples include: Buenos Aires, where ship to gate terminal tariffs have dropped in the space of three years from over US\$ 600 to under US\$ 200 through long term leases of terminals and investment in container handling equipment and management systems; the ongoing industrial reform of the waterfront in Australia (new rules for the employment of dockers, corporatization of regional ports and in the long term privatization of all port functions except non commercial regulatory and community services obligation functions); the "commercialization" of the Great lakes-Saint Lawrence seaway in Canada (locks and channels remaining however operated and maintained by a non profit organization); and the separation of infrastructure and operational activities in Poland.

34. The World Bank, which has spent US\$ 8 billion between 1950 and 1996 in harbour projects (57 projects between 1980 and 1996), has developed a doctrine and practice going beyond the expansion and modernization of facilities to development of the political autonomy and economic viability of port authorities and more recently to promotion of the participation of the private sector in port investment and operation. The World Bank<sup>16</sup> notes a beginning of an evolution of the structures from "statutory companies" to "share companies". Between the two types of ports, the "landlord ports" (where port authorities limit their role to the building and owning of infrastructure, leaving superstructure, pilotage, cargo operations and towage to be conducted by private operators) and the "service ports" (where all operations are integrated and conducted by the port authority itself), the World Bank tries to privilege the first model. It notes that in some instances it has been possible to convince the private sector to finance port infrastructure, as has been the case in Hong Kong China, Mexico and Panama. In exchange the private sector has obtained long term monopoly rights on cargo handling and storage. The World Bank considers that the private sector should be encouraged to

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<sup>11</sup> Document OECD/GD(96)4.

<sup>12</sup> Documents OECD SG/PRESS(94)34 and (94)53.

<sup>13</sup> Document OECD SG/PRESS(95)32.

<sup>14</sup> For more details on this work, see the International Maritime Organization website: <http://www.imo.org>.

<sup>15</sup> For an overview of the ongoing reforms, see UNCTAD "Review of Maritime Transport 1997" para 103 to 111, pages 67-70.

<sup>16</sup> Those elements are drawn from "lessons and practices-ports", Operations Evaluation Department, number 9, June 1996 available on the website: <http://www.worldbank.org/html/oed/lp009.htm>.

invest in port facilities and heavy port equipment such as container cranes and to share the risks and rewards of financing these lumpy and massive investments through build-operate-transfer schemes and concessions. In this context lease of public facilities and management contracts may be used as initial steps towards fuller privatization.

35. This institutional development takes place in a context where the competition between harbours is fiercer than in the past because of technological evolution: the increasing size of containerships implies only a few calls in three or four harbours at each end of the trade (for instance on the Europe –Far East trade Hamburg, Rotterdam, Antwerp and possibly Le Havre on the one hand and Singapore Hong Kong and Kobe on the other) the rest of the traffic being served by smaller feederships. It is therefore essential for big harbours to be selected as one of these calls by the main shipowners, consortia and alliances to avoid marginalization. Hence the development of "hub and spoke" strategies similar to those existing in air transport. In developing such strategies shipowners sometimes create their own private hubs, often at the crossroads of several routes: for instance the Algeciras terminal of Maersk at the crossroads of the East-West (through the Mediterranean sea) and North –South routes in the Atlantic or the Gioia Tauro terminal in southern Italy developed by Contship at the crossroads of the Mediterranean routes and of the railroad routes towards north sea harbours (see Secretariat document on rail transport).

36. The harbours themselves tend not only to export their technical and managerial know how but also to develop direct management of foreign harbour or container terminals. For instance the Port of Singapore Authority is managing or planning to manage projects in China (Dalian), India, Indonesia, Korea and Sri Lanka.

37. Finally regional organizations are also undertaking work in the field of harbour services. The European Commission issued in December 1997 a green paper<sup>17</sup> which defines a neutral policy towards ownership and organization but tries to ensure that subsidies granted to infrastructures and tariffication do not distort competition between harbours and between their users. APEC has also created an expert group on maritime transport which has up to now focused its work on the efficiency of infrastructure and maritime safety.

## **II. ANALYSIS OF COMMITMENTS**

38. There are currently 29 WTO Members who have commitments in international shipping services. Of these 29 Members, 21 include both freight and passenger transportation services, five only freight services and three only passenger services. The most important limitations include foreign equity ceilings, nationality requirements for ownership and registration of vessels under the national flag, requirement to appoint a local agent, limitations on government owned cargoes, discriminatory taxation and discriminatory port charges. Twenty-six Members have scheduled commitments in services auxiliary to maritime transport, including cargo handling, storage and warehousing, freight agency and freight forwarding, pre-shipment inspection, custom clearance, container station and depot. Six Members have undertaken commitments on port services, such as towing, pushing, tug assistance, port dredging, and port captain's services, while 11 Members have scheduled additional commitments relating to access for consumers of port services on a non-discriminatory and reasonable terms. Finally ten Members have scheduled commitments on maintenance and repair of vessels and six Members on rental of vessels with crew. These commitments are described in a synthetic manner by the following chart.

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<sup>17</sup> "Green Paper on Sea Ports and Maritime Infrastructure", COM(97) 678 final, executive summary available on the website: <http://www.serv.caiw.nl/~empa/p11.htm>.

**SPECIFIC COMMITMENTS IN MARITIME TRANSPORT SERVICES**

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Antigua* and Barbuda	Freight: None except (3) MA&NT: reference to Merchant Shipping Act. No commitment on passenger	No commitments	No commitments	Maintenance and repair of vessels: (3), reference to Business Act
Aruba*	None except (3) NT: vessels registered in Aruba must fly Netherlands flag, must be owned by an Aruban company and captain must be Dutch national	Commitments on cargo handling, storage and warehousing, freight agency and freight forwarding	No commitments	
Australia	None except (1a) MA: requirement of representative agent who is a resident; NT, Trade Practices Commission can examine restrictive practices; (3a) establishment of companies operating a fleet under Australian flag nationality requirements for ownership and registration of vessels	Commitments on storage and warehousing services; and maritime freight forwarding services; pre-shipment inspection	No commitments	International rental of vessels with crew
Benin*	None except on freight transportation (1) MA: access to only 20%	None except often (3) MA: state monopoly, NT: unbound	No commitments	Rental of vessels with crew
Canada	Unbound	None except Customs clearance (1)-(4) MA: Requirement for a commercial presence/permanent residency	No measures shall be applied which deny reasonable and non-discriminatory access	
Cuba*	None except on freight transportation MA (3a): foreigners cannot register ships under Cuban flag	Commitments on (partially covered) cargo handling, and storage and warehousing	No commitments	Maintenance and repair of vessels
Egypt*	None except (1) unbound, and (3) only through joint ventures with max. equity of 49 per cent	No commitments	Commitments only on port dredging but (1) unbound and (3) through joint ventures with max. equity of 75 per cent	

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
European Community	No commitments	Storage and warehouse services (other than in ports); freight transport agency/freight forwarding services; pre-shipment inspection	No commitments	Rental of vessels with crew (F: prior notification requirement; D: unbound)
Finland	No commitments	Storage and warehousing services; freight transport agency; other supporting and auxiliary transport services	No commitments	Charter services: leasing of vessels with crew; sea and road
Gambia*	None No commitments on freight	No commitments	Commitments on towing and pushing and supporting services for maritime transport	Maintenance and repair of vessels
Ghana	None except (1) access to only 20 % of bulk and liner cargo, and (3a) unbound	Commitments on cargo handling, storage and warehousing, container station and depot, with a limitation on (3) state monopoly - privatisation envisaged in 5-7 years	Made available on reasonable and non-discriminatory terms	
Hong Kong	Freight none except (1-2) NT: unbound, and (3) NT: income tax exemption for operation of national flag ships No commitments on passenger	None except (1) unbound, and (2) NT: unbound. No commitments on freight forwarding	Made available on reasonable and non-discriminatory terms	Maintenance and repair of vessels; rental of vessels with crew
Hungary	No commitments	Commitments on storage and warehousing	Commitments not technically feasible	Maintenance and repair of vessels
Iceland*	None except (3a) MA&NT: Unbound for establishment of companies operating a fleet under Icelandic flag	None	Made available on reasonable and non-discriminatory terms	Additional commitments on multimodal

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Indonesia	None except (1) NT: requirement to appoint local agent, (1b) "Government's cargo" and (3) MA: "may establish owner's representative" and NT: horizontal	No commitments	Access to and use of facilities	
Jamaica*	Freight: none except (3) MA: registration and licensing requirement No commitments on passenger	No commitments	No commitments	
Japan	Unbound	Commitments on storage and warehousing (excluding petroleum products), and customs clearance.	Made available on reasonable and non-discriminatory terms.  Commitments on pushing and towing services; salvaging services; watering services; fuelling services; garbage collecting services.	
Korea RP	None except (1b) MA: Cargo preference for coal, iron ore and liquefied gas (3a) Unbound for establishment of companies operating a fleet under Korean flag	None except storage and warehousing excludes agriculture, fish and livestock products. Agency, freight forwarding, and brokerage require incorporation as a joint stock company (Includes commitments on shipping brokerage)	Made available on reasonable and non-discriminatory terms	Maintenance and repair of vessels
Malaysia	None except (3) MA: only through rep. office, or joint venture with max. equity of 30%, and (3a) nationality and ownership requirements for vessels registration in Malaysia	Commitments on agency services with (3) MA: only through rep. office, or joint venture with max. equity of 30%	Made available on reasonable and non-discriminatory terms	Vessel salvage and refloating services with (3) MA: only through rep. office, or joint venture with max. equity of 30%
Malta	None except (3) MA: horizontal	No commitments	No commitments	

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Myanmar	No commitments	No commitments	No commitments	Tourist transport operation: operating a tourist business by water craft: (3) NT: unbound
Netherlands Antilles*	None except (3) NT: vessels registered in N.A. must fly Netherlands flag, must be owned by an N.A. company and captain must be Dutch national	Commitments on cargo handling, storage and warehousing, freight agency and freight forwarding	No commitments	
New Zealand	None except (3a) MA&NT: unbound for establishment of companies operating a fleet under New Zealand flag	Storage and warehousing services; and maritime freight forwarding services	No commitments	
Nigeria	None except (1) unbound with cargo reservations (40% of liner cargo, 50% of bulk trade, 100% of government cargo, 50% of aid generated cargo)	No commitments	No commitments	Maintenance and repair of vessels, (2) NT: authorization required; rental of vessels with crew (1,3,4) unbound, (2) none
Norway	None except (3a) MA&NT: ownership requirements for nationally registered ships	None	Made available on reasonable and non-discriminatory terms	Additional commitments on multimodal
Papua New* Guinea	None	No commitments	No commitments	
Peru*	Commitments on passenger transportation by ferries exclusively for internal tourist services and (1,3) MA: authorization required, (1) NT: unbound, (2) MA&NT: unbound	No commitments	No commitments	
Philippines*	None except government owned cargoes to be shipped on board Philippines flag vessels. No limitation on (4) except time-limit for specialized vessels	None, but no commitments on customs clearance and maritime agency services	No commitments	Maintenance and repair of vessels but (2) MA: requirement to use domestic ship repair yards
St. Kitts and Nevis	Commitments on ship registration	No commitments	No commitments	

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
St. Lucia	None	Commitments only on trans-shipment services and free zone operations	No commitments	
St. Vincent and the Grenadines	None except (3) MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax	Commitments only on trans-shipment services and free zone operations with (3) MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax	No commitments	
Senegal	No commitments	Commitments on consignment, handling, forwarding and shiphandling with (1) MA: unbound	No commitments	
Sierra Leone*	None except (3) MA: compliance required with national laws for establishing business	Full commitments on MTN.GNS/W/120 list with (3) MA: joint venture requirement	Full commitments on supporting services for maritime transport	
Singapore	Freight: None No commitments on passenger	Commitments on shipping agency and brokerage	Made available on reasonable and non-discriminatory terms	
Slovenia	No commitments	Commitments on storage and warehousing, customs clearance, freight forwarding and pre-shipment inspection	No commitments	Maintenance and repair of vessels
Thailand	None except freight: (1) restrictions on traffic with China and Vietnam, (3a) unbound, (3b) MA: horizontal, NT: income tax exemptions for national flag vessel operators	Commitments on storage and warehousing, freight forwarding (and maritime surveys and classification services) with (1) unbound, (3) MA: horizontal, NT: no limitations as long as foreign equity not more than 49%	Made available on reasonable and non-discriminatory terms  Commitments on international towing, shore reception facilities (collection of waste), and port captain's services	
Trinidad and Tobago	No commitments	No commitments	Commitments on navigation aids, and communication /meteorological services	Commitments on ship surveys and repairs/building with (1,2) unbound

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Turkey	None except (1) NT: discriminatory port charges; (1b) 10% preference margins for public cargoes; (3a) MA: ownership requirements	No commitments	No commitments	Maintenance and repair of vessels; rental of vessels with crew: (1-2) NT limitations
Venezuela*	Freight: none, except (1) unbound. No commitments on passenger	Commitments on cargo handling and storage and warehousing	No commitments	

1 \*Shipping commitments include cabotage.

2 As in the Schedules none stands for no limitations to the commitments undertaken in the sector.

3 This table relies on the classification adopted in the model draft schedule on maritime transport services of 15 April 1996 as well as on the services sectoral classification of document MTN.GNS/W/120.

39. As far as MFN exemptions are concerned, 26 Members have MFN exemption lists in maritime transport services. However, according to paragraph 4 of the Decision on Maritime Transport Services of 3 July 1996 (S/L/24), Article II of the GATS and the Annex on Article II Exemptions are suspended for international shipping, auxiliary services and access to and use of port facilities until the conclusion of the next round of services negotiations. Paragraph 4 of the Decision, however, does not apply to any specific commitment on maritime transport services which is inscribed in a Member's schedule. The only MFN exemption lists which are not suspended are those taken by Members who have maintained specific commitments in the sector. There are therefore only 14 Members who have MFN exemption lists actually in force.

40. Four MFN exemptions among those whose effects are not suspended cover measures taken by Members under the UN Convention on a Code of Conduct on Liner Conferences. These exemptions are of a preferential nature in so far as they favour countries who are signatories to the Code. However, treatment under the Code is partially<sup>18</sup> based on reciprocity and has a partial exclusionary effect on third parties (which are limited to 20 per cent of the cargoes carried by the conference). Four other exemptions are specific to cabotage, three to tax treatment and four are of a broad and generic nature covering a bundle of existing and future measures in the maritime sector. The vast majority of exemptions (15) do not specify the intended duration and have entries such as "indefinite, unlimited or indeterminate"; three exemptions link the duration of the exemptions to the expiry date or termination of existing bilateral agreements. Finally six exemptions are both of a preferential and reciprocal nature, nine are only reciprocal and four are only preferential.

<sup>18</sup> For instance EC regulation 954//79 known as the "Brussels package" disappplies between EC shipping companies the strict bilateral cargo sharing (40-40) foreseen by the code.

**MFN EXEMPTIONS IN MARITIME TRANSPORT SERVICES**

<b>Member</b>	<b>Sector affected</b>	<b>Countries to which the measure applies</b>	<b>Intended duration</b>	<b>Nature of exemption</b>
Benin	Coastal shipping (cabotage) and liner trade Maritime transport: UN Convention on a Code of Conduct on Liner Conferences	Not specified	10 years renewable	Preferential/reciprocal
		Not specified	Unlimited	Preferential/reciprocal
Canada	Maritime transport: tax exemption	All	Indeterminate	Reciprocal
Cuba	Freight transportation	All countries with which bilateral agreements have been concluded	Until end of notice of termination by one of the parties	Preferential
European Community	Rental/leasing services without operators, relating to ships; rental of vessels with crew (Chartering of foreign ships to consumers resident in Germany)	All	Indefinite	Reciprocal
Finland	Cabotage	All	Indefinite	Reciprocal
Jamaica	Cargo reservations under the UN Code of Conduct on Liner Conferences	Signatories to the UN Convention on a Code of Conduct on Liner Conferences	Indefinite	Preferential/reciprocal
New Zealand	Maritime (passenger and freight): supply of services by officers on New Zealand ships – qualification requirements	Eire, Hong Kong, United Kingdom, India, Malaysia, Singapore, Pakistan, South Africa	Indefinite	Preferential
Peru	Transport: land and sea	Andean Group countries	Indefinite	Preferential
Philippines	Cabotage	All	Expiry date or termination of bilateral agreements on Amity, Commerce and Navigation	Reciprocal
Senegal	Coastal shipping (cabotage) trade	25 countries	Near future, while the objective pursued takes root	Reciprocal
	Maritime transport: UN Convention on a Code of Conduct on Liner Conferences	Not specified	Unlimited	Preferential/reciprocal
	Maritime transport	Not specified	Unlimited	Preferential/reciprocal
Thailand	Selling and marketing of maritime transport services: value added tax collection	All	Indefinite	Reciprocal
Trinidad and Tobago	Cargo reservations under the UN Code of Conduct on Liner Conferences	Signatories to the Code	Unlimited	Preferential/reciprocal
Turkey	Transportation services: income and corporate tax rates. Value added tax exemption.	All	Indefinite	Reciprocal
	Treatment of transportation vehicles	All	Indefinite	Reciprocal
Venezuela	Maritime freight transport services	Not specified	Indefinite	Reciprocal
	Maritime freight transport services: cargo sharing	United States	Indefinite	Preferential

41. This table only lists the MFN exemptions of those Members who have commitments in maritime transport services as, according to paragraph 5 of the Decision on Maritime Transport Services of 3 July 1996 (S/L/24), the continued suspension of Article II and of the Annex on Article II exemptions does not apply to Members' specific commitments on maritime transport inscribed in the schedules and to the relevant MFN exemptions.

42. This table does not take account of MFN exemptions applicable to all sectors, it only lists MFN exemptions specific to the maritime sector.

### **III. POSSIBLE AREAS FOR FURTHER WORK ON CLASSIFICATION MATTERS**

43. Members may wish first to examine the modifications brought to CPC provisional by CPC rev1 with regard to maritime transport (A). They may also find of interest the fact that as a result of the discrepancies between the two classifications most frequently used (CPC and draft schedule) there are services mentioned in one classification which do not appear in the other and vice-versa, which seems to trigger the need for a composite all-encompassing classification (B). They may also be interested in finding ways to liberalize internal waterways transport and road transport only if they are the land leg of a maritime transportation (C), and finally they may wish to address the classification of certain peripheral services such as container leasing, dredging, and harbour services delivered to ships other than transport ships (D).

#### **A. EXAMINATION OF THE CHANGES RESULTING FROM CPC REV1**

44. Members will find a complete description of the changes brought by CPC rev1 to CPC provisional with regard to maritime transport in document S/CSC/W/6/Add.5, paragraphs 13 to 20. They will also find a discussion of the potential impact of these changes on the commitments already undertaken in document S/CSC/W/9 paragraphs 21 to 24.

45. In summary the main changes brought about by Revision 1 for maritime transport are the following. Transport is defined by geography ("coastal and transoceanic transport") instead of by the type of vessel ("sea going vessel"); cruises are explicitly included in passenger transport; freight is defined by type of vessel (refrigerator vessels/tankers/containerized ships/other vessels) instead of by type of goods (refrigerated goods/bulk liquids/containerized cargoes/others); and there is some additional precision in the definitions of the other cargoes (explicit addition of mail and dry bulk such as flours, cereals, cement, sand and coal). They do not affect the structure or the scope of corresponding items in the original CPC.

46. Unfortunately these changes do not solve the question of "sea-river ships". It was difficult with CPC provisional to schedule commitments on traffic on rivers (an important subject in certain countries in the process of accession) as the scheduling was based on the type of vessel (sea going/non sea going) with the assumption that inland water transport can only be made by non sea going vessels which is false as certain sea going ships, the "sea-river ships" can operate inland waterways transport. A distinction based on the geography as introduced by rev is better in that respect. However as the criterion of the nature of the vessel reappears in the definitions<sup>19</sup> it remains impossible to schedule the activity of sea-river ships on the basis of the CPC. It can of course be scheduled explicitly, without reference to the CPC.

#### **B. POSSIBLE NEED FOR A COMPOSITE CLASSIFICATION**

47. The negotiations were focused on the three pillars of the maritime transport sector: international shipping, maritime auxiliary services, and access to and use of port facilities. The draft

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<sup>19</sup> For instance rev. 65121 titled "coastal and transoceanic water transport services of freight by refrigerator vessels" is defined as "transportation **by seagoing vessel**..."

schedule contains a more detailed classification of these services, and indicates how commitments on each may be scheduled. While commitments on the first two pillars are scheduled under Article XVI (market access) and Article XVII (national treatment), commitments on the third pillar are scheduled under Article XVIII (additional commitments).

48. The new commitments made during the additional negotiations have generally followed the draft schedule. However, of the 31 countries which have maintained their Uruguay Round commitments on maritime transport services in their final schedules, only some have followed the draft schedule classification. Others have followed the classification given in document GNS/W/120.

49. The choice of different approaches creates difficulties in comparing the range of commitments undertaken by Members. More significantly, neither the draft schedule nor the GNS/W/120 classification offers the possibility of scheduling comprehensive commitments. The following developments identify the main problems and suggest possible solutions.

### **1. Differences in coverage**

50. The coverage of maritime transport services in the two classifications is not the same (Table 1). Most notably, the draft schedule does not include *rental of vessels with crew* (CPC 7213) and *maintenance and repair of vessels* (part of CPC 8868) - the latter being only partially included as *emergency repair facilities*. On the other hand, the GNS/W/120 classification does not explicitly list certain *auxiliary services* (such as *customs clearance* and *container station and depot services*) and certain *port services* (such as *port captains services*).

51. In the GNS/W/120 classification, the second pillar, i.e. auxiliary services, is not part of maritime transport services *per se*, but part of a general category *services auxiliary to all modes of transport*. Several countries who have followed the GNS/W/120 classification, have scheduled commitments in this sector (*storage and warehousing*).

### **2. Differences in scope of commitments**

52. A more significant difference arises in the manner of scheduling commitments, particularly with regard to port services. Port services are treated as a sub-sector in the GNS/W/120 classification (under *supporting services for maritime transport*). Thus, if a Member scheduled this sub-sector and did not impose prohibitive restrictions, it would be possible for the suppliers of another Member to provide these services. On the other hand, in the draft schedule, Members have the possibility of entering an additional commitment which states that port services shall be made available to international maritime transport suppliers on reasonable and nondiscriminatory terms. Whereas this assurance, contained in the draft schedule, of availability of these services is not provided by commitments under the GNS/W/120 classification, the draft schedule structure does not include the possibility of allowing the service suppliers of another Member to provide port services. To summarise: while the GNS/W/120 is concerned only with the rights of suppliers of port services, the draft schedule is concerned only with the rights of consumers of port services.

53. This gap in the draft schedule may be important. Many countries are in the process of privatizing port facilities and frequently seek to attract foreign investment in these areas. For instance Thailand is one of several countries which have already scheduled commitments on the supply of port services.

### **3. Possible further work**

54. If Members seek to make comprehensive commitments, there would be a need to supplement either the draft schedule or the GNS/W/120 classification. Members who have followed the draft

schedule, may wish to include in future *rental of vessel with crew* (CPC 7213), *maintenance and repair of vessels* (part of CPC 8868), and *port services* as additional sub-sectors.

55. Members who have followed GNS/W/120 may choose to explicitly list in the future certain *auxiliary services* (such as *customs clearance* and *container station and depot services*) and certain *port services* (such as *port captains services*) as sub-sectors. Furthermore, they may choose to make an additional commitment which states that port services shall be made available to international maritime transport suppliers on reasonable and nondiscriminatory terms.

56. Alternatively Members may want to agree at the outset of the next negotiations on a composite list drawn from both the draft schedule and from GNS W/120 and encompassing all the services possible. Such a list could be designed on the basis of the following chart:

**Alternative Classifications of Maritime Transport Services: Draft Schedule and GNS/W/120**

DRAFT SCHEDULE	GNS/W/120
MARITIME TRANSPORT SERVICES International Transport (freight and passengers) CPC 7211 and 7212 less cabotage transport	11A. MARITIME TRANSPORT SERVICES Aa. Passenger transportation CPC 7211 Ab. Freight transportation CPC 7212 Ac. Rental of vessels with crew CPC 7213
MARITIME AUXILIARY SERVICES - Maritime Cargo Handling Services (not including direct activities of independently organised dockers) - Storage and Warehousing Services CPC 742 (as amended) - Customs Clearance Services - Container Station and Depot Services - Maritime Agency Services - Maritime Freight Forwarding Services	11H. SERVICES AUXILIARY TO ALL MODES OF TRANSPORT Ha. Cargo-handling services CPC 741  Hb. Storage and warehouse services CPC 742  Hc. Freight transport agency services CPC 748
PORT SERVICES 1. Pilotage 2. Towing and tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies 8. Emergency repair facilities [9. Anchorage, berth and berthing services]	11Af. SUPPORTING SERVICES FOR MARITIME TRANSPORT CPC 745 (Af) Pilotage and berthing CPC 7452  Ae. Pushing and towing services CPC 7214  (Af) Other supporting services for CPC 7459 water transport  (Af) Navigation aids CPC7453  Ad. Maintenance and repair CPC 8868* of vessels  (Af) Pilotage and berthing CPC 7452  (Af) Port and waterway operation CPC 7451  (Af) Vessel salvage and refloating CPC 7454

C. POSSIBILITY TO COMMIT ROAD TRANSPORT AND INTERNAL TRANSPORT ONLY FOR THE LAND LEG OF A MULTIMODAL TRANSPORT

**1. Road transport**

57. The model schedule provides in its additional commitments section for the possibility for shipowners to consume land transport services, but not to provide them directly. However in many instances shipowners are interested in providing and complete multimodal door to door service where they would master the whole logistic chain. That explains why OECD members and DNME countries (see above paragraph 21) have also agreed during the course of their dialogue that although *"port to port shipping had been extensively liberalized, the continued existence of barriers to the development of land carriage activities prior to or following ocean shipping in multimodal transport, created real problems"*. Similarly one of the main requests of European Shipowners in the context of negotiations with China, be it in a bilateral EU-China context or in the perspective of China's accession to WTO, is *"the right to establish wholly owned branch offices for serving their customers and to arrange and control all operations necessary for modern door to door shipping service"*.

58. WTO Members may be willing to offer such possibilities without implying a complete liberalization of road transport services. The classical request of shipowners is limited to mode 3 and therefore does not imply liberalization of mode 1, which is politically more sensitive notably because of its non-MFN traditional regime. However, Members may want to limit the liberalization of mode 3 to shipowners only, excluding trucking companies for instance.

59. Technically speaking it is already possible to schedule commitments in the road transport section of the schedule while limiting the benefits of the mode 3 liberalization to the holder of a shipowner licence. However no such commitment has been taken because road transport commitments have been negotiated separately from shipping commitments and in a wider perspective. They all date back to the Uruguay round or to accession negotiations and were not included in the ambit of the NGMTS. Even there it would have been possible to take such commitments through a unilateral improvement of road transport schedules but no Member did so.

60. A practical solution could be to create in a revision of the draft schedule an item "road transport as an element of multimodal transport" in the sectoral column, which would be defined by a footnote in order to avoid circumvention as being a transport having a common transport document with the sea-leg, the through way bill of lading.

**2. Internal waterways transport**

61. The river extension of a multimodal maritime transport (say for instance Marseilles-Lyons or Belem-Manaus) raises similar problems and could be dealt through similar arrangements. This would by the same token solve the question of the difficulty of scheduling commitments for sea-river ships (see above). This would also present a certain commercial interest in the perspective of the negotiation of accession of CIS Member countries where sea-river transport is an important feature of the transport economy.

D. CLASSIFICATION OF CERTAIN PERIPHERAL SERVICES

**1. Harbour services delivered to non-transport vessels**

62. Harbour services are not delivered only to transport vessels but also to fishing vessels, leisure boats, tugboats, dredging barges and even to military ships. However the title of the first column of the draft schedule is "MARITIME TRANSPORT SERVICES ". This may imply that commitments on access to/and use of harbour services are limited to transport vessels.

63. Members may wish to clarify this point. A possible solution would be to agree that non-transport vessels are included because the titles of the harbour services concerned do not distinguish among the type of vessels. Even if a narrow interpretation limiting the scope of commitments to transport vessels because of the title of the first column, was to prevail, Members may wish nevertheless to open a *de novo* possibility to take commitments on access to and use of harbour services for non transport vessels.

## **2. Rental and leasing of containers**

64. Rental and leasing of containers is an important economic activity: according to UNCTAD 47 per cent of the containers used worldwide for maritime transport are the property of lessors. However, it is not adequately dealt with in the model schedule or in any of the classification systems. CPC rev1 seems to perpetuate the classification of containers as land transport equipment which is technically and economically an error. In view of the economic importance of the container leasing sector Members may wish to clarify this point.

## **3. Dredging**

65. The question of the classification of dredging services has already been raised during the Exchange of Information Program. However it may be sufficiently clarified by the definition of CPC 72140 "pushing and towing services": ("towing and pushing services on the high seas and in coastal waters. These services are generally provided by vessels which do not themselves carry freight or passengers. Included here towing services of oil rigs, floating cranes, dredging vessels...").

## **4. Classification societies**

66. Classification societies such as Lloyds or the American Bureau of Shipping or the Bureau Veritas, play an important role in maritime transport by inspecting and certifying ships and equipment. They are also a subsector of real economic importance.

67. Strangely the words "classification societies" do not appear at all in CPC provisional. CPC rev1 includes them in r83569 "other technical testing and analysis" with a definition clearly mentioning those services ("this subclass includes...certification of ships aircrafts, dams"). This rev1 item is put in correspondence with two provisional CPC items, CPC p86764 "technical inspection services" and CPC p86769 "other technical testing and analysis services". Certification of ships falls probably in the latter category ("not elsewhere classified").

68. However as the correspondence established by rev1 has no legal value for WTO Members, Members may wish to confirm that correspondence and to include classification societies services' in another category or institute them as a *de novo* category.

## **SOURCES OF INFORMATION**

Bimco:	<a href="http://www.bimco.dk">www.bimco.dk</a>
Chamber of shipping:	<a href="http://www.seanet.co.uk/classifi/marassoc/chamber">www.seanet.co.uk/classifi/marassoc/chamber</a>
Federal Maritime Commission:	<a href="http://www.fmc.gov">www.fmc.gov</a>
International Association of Ports & Harbours	<a href="http://www.iaph.or.jp">www.iaph.or.jp</a>
Lloyd's of London Press:	<a href="http://www.llplimited.com">www.llplimited.com</a>
IMO:	<a href="http://www.imo.org">www.imo.org</a>
UNCTAD:	<a href="http://www.unicc.org/unctad">www.unicc.org/unctad</a>
World Maritime University:	<a href="http://www.wmu.se">www.wmu.se</a>
OECD:	<a href="http://www.oecd.org//dsti/sti/transpor">www.oecd.org//dsti/sti/transpor</a>

ANNEX 1

WORLD TRADE  
ORGANIZATION

S/L/24  
3 July 1996

(96-2539)

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**Trade in Services**

**DECISION ON MARITIME TRANSPORT SERVICES**

Adopted by the Council for Trade in Services on 28 June 1996

*The Council for Trade in Services,*

*Having regard to the Annex on negotiations on Maritime Transport Services,*

*Having regard to the Decision on Negotiations on Maritime Transport Services, adopted at Marrakesh on 15 April 1994,*

*Noting the Report of the Negotiating Group on Maritime Transport Services and the commitments scheduled by Members in this sector,*

*Desiring to further the liberalization of international trade in maritime transport services within the framework of the General Agreement on Trade in Services (GATS),*

*Decides as follows:*

1. To suspend the negotiations on Maritime Transport Services and to resume them with the commencement of comprehensive negotiations on Services, in accordance with Article XIX of the GATS, and to conclude them no later than at the end of this first round of progressive liberalization. At an appropriate time decisions pursuant to paragraph 3 of Article XIX of the GATS will be taken on procedures for the conduct of such negotiations. It is agreed that negotiations will be resumed on the basis of existing or improved offers.
2. Members wishing to exercise their rights under paragraph 3 of the Annex on Negotiations on Maritime Transport Services may do so during a period of 30 days from the date of this Decision.
3. Any commitments resulting from these negotiations will be inscribed in Schedules of Specific Commitments annexed to the GATS.
4. Article II of the GATS and the Annex on Article II Exemptions, including the requirement to list in the Annex any measures inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities at the same time as the conclusion of the negotiations referred to in paragraph 1. During the course of negotiations the effects of the continued suspension of Article II will be kept under review by the Council for Trade in Services.

5. Paragraph 4 of this Decision shall not apply to any specific commitment on maritime transport services which is inscribed in a Member's Schedule.

6. Notwithstanding Article XXI, a Member may improve, modify or withdraw all or part of its specific commitments in this sector, during a period of sixty days the end of which shall coincide with the conclusion of the negotiations referred to in paragraph 1. During the same period, Members shall finalize their positions relating to MFN Exemptions in this sector.

7. Commencing immediately and continuing until the conclusion of the negotiations referred to in paragraph 1, it is understood that Members shall not apply any measures affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

ANNEX 2

**Negotiating Group on Maritime Transport Services**

List of Documents

S/NGMTS/-			
S/NGMTS/1	10.6.94		Note on the Meeting of 5 May 1994
S/NGMTS/2	4.8.94		Note on the Meeting of 13 July 1994
S/NGMTS/3	31.10.94		Note on the Meeting of 17 October 1994
S/NGMTS/4	9.3.95		Note on the Meeting of 9-10 February 1995
S/NGMTS/5	21.4.95		Note on the Meeting of 6-7 April 1995
S/NGMTS/6	3.8.95		Note on the Meeting of 17-19 July 1995
S/NGMTS/7	16.11.95		Note on the Meeting of 30 Oct.-1 Nov. 1995
S/NGMTS/8	5.1.96		Note on the Meeting of 5 and 8 Dec. 1995
S/NGMTS/9	8.3.96		Note on the Meeting of 13 and 16 Feb. 1996
S/NGMTS/10	11.4.96		Note on the Meeting of 26 and 29 March 1996
S/NGMTS/11	14.5.96		Note on the Meeting of 14 May 1996
S/NGMTS/12	3.6.96		Note on the Meeting of 24 May 1996
S/NGMTS/13	11.6.96		Note on the Meeting of 4 June 1996
S/NGMTS/14	24.6.96		Note on the Meeting of 17 June 1996
S/NGMTS/15	27.6.96		Note on the Meeting of 25 June 1996
S/NGMTS/16	3.7.96		Report of the Negotiating Group on Maritime Transport Services

S/NGMTS/17	1.7.96		Note on the Meeting of 28 June 1996
S/NGMTS/W/-			
S/NGMTS/W/1	2.5.94	Note by the Secretariat	Negotiations on Maritime Transport Services
Questionnaire and Responses to the Questionnaire on Maritime Transport Services S/NGMTS/W/2/Add.---			
S/NGMTS/W/2	21.10.94	Note by the Secretariat	Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.1	17.1.95	Comm. fm Switzerland	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.1/Corr.1	20.2.95	Comm. fm Switzerland	Response to Questionnaire on Maritime Transport Services – Corrigendum
S/NGMTS/W/2/Add.2	18.1.95	Comm. fm New Zealand	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.3	20.1.95	Comm. fm Japan	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.3/Supp.1	5.4.95	Comm. fm Japan	Supplementary Information on the Japanese Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.3/Supp.2	18.7.95	Comm. fm Japan	Supplementary Information on the Japanese Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.4	24.1.95	Comm. fm Australia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.4/Corr.1* (English only)	17.2.95	Comm. fm Australia	Response to Questionnaire on Maritime Transport Services – Corrigendum
S/NGMTS/W/2/Add.5	24.1.95	Comm. fm Canada	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.5/Supp.1	24.4.95	Comm. fm Canada	Supplementary Information on the Canadian Response to the Questionnaire on Maritime Transport Services – Supplement
S/NGMTS/W/2/Add.6	26.1.95	Comm. fm Norway	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.6/Supp.1	23.3.95	Comm. fm Norway	Supplementary Information on the Norwegian Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.6/Supp.2	30.6.95	Comm. fm Norway	Supplementary Information on the Norwegian Response to the Questionnaire on Maritime Transport Services - Supplement

S/NGMTS/W/2/Add.7	1.2.95	Comm. fm Korea	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.7/Corr.1	17.2.95	Comm. fm Korea	Response to Questionnaire on Maritime Transport Services - Corrigendum
S/NGMTS/W/2/Add.7/Supp.1	23.3.95	Comm. fm Korea	Supplementary Information on the Korean Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.8	6.2.95	Comm. fm Cyprus	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.9	31.1.95	Comm. fm Egypt	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.9/Supp.1	26.6.95	Comm. fm Egypt	Supplementary Information on the Egyptian Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.10	31.1.95	Comm. fm Poland	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.11	31.1.95	Comm. fm the United States of America	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.11/Supp.1	6.4.95	Comm. fm the United States of America	Supplementary Information on the United States Response to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.12	19.2.95	Comm. fm the European Communities and their Member States	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.13	22.2.95	Comm. fm Chile	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.14	30.3.95	Comm. fm Indonesia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.15	10.2.95	Comm. fm Hong Kong	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.16	17.3.95	Comm. fm Mexico	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.16/Suppl.1	18.7.95	Comm. fm Mexico	Additional Information concerning the Response of Mexico to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.17	15.3.95	Comm. fm Côte d'Ivoire	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.17/Supp.1	18.7.95	Comm. fm Côte d'Ivoire	Additional Information Concerning the Response of Côte d'Ivoire to the Questionnaire on Maritime Transport Services - Supplement

S/NGMTS/W/2/Add.18	19.4.95	Comm. fm Tunisia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.19	13.3.95	Comm. fm Malaysia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.20	3.4.95	Comm. fm Romania	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.21	29.3.95	Comm. fm Ghana	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.22/Rev.1	12.6.95	Comm. fm Argentina	Response to Questionnaire on Maritime Transport Services - Revision
S/NGMTS/W/2/Add.23/Rev.1	25.9.95	Comm. fm Turkey	Response to Questionnaire on Maritime Transport Services - Revision
S/NGMTS/W/2/Add.24	5.4.95	Comm. fm the Philippines	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.25	6.4.95	Comm. fm Singapore	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.26/Rev.1	17.10.95	Comm. fm Morocco	Response to Questionnaire on Maritime Transport Services - Revision
S/NGMTS/W/2/Add.27	22.5.95	Comm. fm the Dominican Rep.	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.27/Supp.1	19.7.95	Comm. fm the Dominican Rep.	Additional Information concerning the Response of the Dominican Republic to the Questionnaire on Maritime Transport Services - Supplement
S/NGMTS/W/2/Add.28	14.6.95	Comm. fm Slovenia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.28/Corr.1	19.7.95	Comm. fm Slovenia	Response to Questionnaire on Maritime Transport Services - Corrigendum
S/NGMTS/W/2/Add.29	27.6.95	Comm. fm Thailand	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.30	17.7.95	Comm. fm Colombia	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.31	17.7.95	Comm. fm Mauritius	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.32	17.7.95	Comm. fm Nigeria	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.33	17.7.95	Comm. fm Cuba	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.34	18.7.95	Comm. fm Brazil	Response to Questionnaire on Maritime Transport Services

S/NGMTS/W/2/Add.35	20.10.95	Comm. fm the Czech Rep.	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.36	30.10.95	Comm. fm India	Response to Questionnaire on Maritime Transport Services
S/NGMTS/W/2/Add.37	19.12.95	Comm. fm Iceland	Response to the Questionnaire on Maritime Transport Services
S/NGMTS/W/3	26.6.95	Comm. fm the European Communities and their Member States	Conditional Offer on Maritime Transport Services
S/NGMTS/W/4/Rev.1	23.5.96	Comm. fm Norway	Conditional Offer on Maritime Transport Services - Revision
S/NGMTS/W/5	17.7.95	Comm. fm the European Communities and their Member States	[EC Position re: Measure about to be taken by the US Government]
S/NGMTS/W/6	18.7.95	Comm. fm Japan	Conditional Offer on Maritime Transport Services
S/NGMTS/W/7	18.7.95	Comm. fm Australia	Conditional Offer on Maritime Transport Services
S/NGMTS/W/8	18.7.95	Comm. fm Canada	Conditional Offer on Maritime Transport Services
S/NGMTS/W/9	18.7.95	Comm. fm New Zealand	Conditional Offer on Maritime Transport Services
S/NGMTS/W/10	22.1.96	Comm. fm Panama	Statement by the Republic of Panama
S/NGMTS/W/11	13.2.96	Comm. fm Korea	Conditional Offer on Maritime Transport Services
S/NGMTS/W/12	13.2.96	Comm. fm Switzerland	Conditional Offer on Maritime Transport Services
S/NGMTS/W/13	16.2.96	Comm. fm Chile	Conditional Offer on Maritime Transport Services
S/NGMTS/W/14	20.3.96	Comm. fm Colombia	Schedule of specific commitments and Final list of Article II (MFN) exemptions - Conditional Offer on Maritime Transport Services
S/NGMTS/W/15	26.3.96	Comm. fm Côte d'Ivoire	Conditional Offer on Maritime Transport Services
S/NGMTS/W/16	2.4.96	Comm. fm Brazil	Conditional Offer on Maritime Transport Services
S/NGMTS/W/17	13.5.96	Comm. fm Slovenia	Conditional Offer on Maritime Transport Services
S/NGMTS/W/18	15.5.96	Comm. fm Indonesia	Draft Offer on Maritime Transport Services

S/NGMTS/W/19/Rev.1	4.6.96	Comm. fm Mexico	Conditional Offer on Maritime Transport Services - Revision
S/NGMTS/W/20	3.6.96	Comm. fm the Dominican Republic	Conditional Offer on Maritime Transport Services
S/NGMTS/W/21	3.6.96	Comm. fm Morocco	Conditional Offer on Maritime Transport Services
S/NGMTS/W/22	3.6.96	Comm. fm Poland	Conditional Offer on Maritime Transport Services
S/NGMTS/W/23	4.6.96	Comm. fm Nigeria	Conditional Offer on Maritime Transport Services
S/NGMTS/W/24	4.6.96	Comm. fm Romania	Conditional Offer on Maritime Transport Services

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