

## **WTO AND MARITIME ISSUES**

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The opinions expressed in this paper are those of the author and do not necessarily reflect those of the UNCTAD secretariat.

Ladies and gentlemen,

It is indeed a great pleasure and honour for me to have been invited to address this Conference on Globalization and the Maritime Transport Industry. I would like at the same time to convey to you the greetings of the Secretary-General of UNCTAD, Mr. Rubens Ricupero, together with his best wishes for the successful conclusion of this event. We at UNCTAD attach considerable importance to conferences like this one, as they provide for a unique opportunity to discuss the activities of international organizations and their impact on trade and the maritime transport industry. The topic of my intervention today is the WTO in maritime transport. Before I turn to the substance of GATS negotiations and results of efforts to come up with a framework for liberalization of maritime transport services, I would just like to make a few brief introductory remarks.

On 29 June 1996, the Negotiating Group on Maritime Transport Services concluded its work without reaching agreement on the modalities for the process of liberalizing maritime transport services. At that time, only 29 countries had included maritime transport services in their schedule of commitments. Today, in October 2000, this number still stands at 29. In other words, over the last four years there has been no movement towards unilateral commitments in maritime transport services by member countries of the WTO. At the same time, no decision has been taken on the resumption of negotiations despite the provisions of article 19 of GATS. This does not mean though that we can afford to be idle, but need to prepare for a continuation of the negotiating process which will commence sooner or later in a form still to be decided. As a matter of fact, at the last meeting of the Special Session of the Council for Trade in Services, which took place on 6 October 2000, the European Communities; Hong Kong, China; Japan; Republic of Korea; Norway and Singapore in a joint statement called for a resumption of the negotiations on maritime transport services without however going into any details on the substance and form that such negotiations could take.

I will come back to the present situation after a brief résumé of the negotiations that took place up to 1996, their substance and importance for the development of the maritime transport industry.

### **The GATS Agreement**

On 15 December 1993 the Final Act of the Uruguay Round was adopted at Geneva after long negotiations under the auspices of GATT. Agreements reached included, *inter alia*, the "Agreements on Trade in Goods" and the "General Agreement on Trade in Services" (GATS), both of which have a significant impact on maritime transport and related services. Shipping is affected by the results of the Round firstly as a service sector falling under the GATS and, secondly, as the mode of transport carrying by far the largest share of world trade.

At the conclusion of the Uruguay Round, agreement could not be reached with regard to commitments in major service sectors, including maritime transport. The situation in shipping was reflected in the Ministerial Declaration on Negotiations on Maritime Transport Services, which called for negotiations to be continued on a voluntary basis, aiming at arriving at a schedule of commitments in international shipping, auxiliary services and access to and use of port facilities leading to the elimination of restrictions within a fixed time scale. In order to do so it was agreed to establish the Negotiating Group on Maritime Transport Services (NGMTS), which was to conclude negotiations and make a final report no later than June 1996.

### GATS – Some general considerations

The aim of the Agreement is to liberalize trade in services by progressively dismantling barriers to trade and opening services markets to foreign competition, in order to pave the way for ensuring a larger role for services in world trade and economic development. In order to achieve these objectives, services negotiations centred on three specific approaches. The first approach was to negotiate multilateral principles and rules that

would govern trade in all services. Secondly it was necessary to take into account particular aspects of individual service sectors that might require modifications to the general rules and disciplines of the Agreement. This is an important aspect of the Agreement as it gives due recognition to the fact that general characteristics, regulatory environments and business practices can vary considerably from sector to sector. Thirdly, it was recognized that the establishment of principles and rules would have little meaning if they were not applied to specific business situations. It was therefore decided to conduct negotiations in the form of a bargaining process of exchanging offers and requests for liberalization of trade in specific services, including maritime services.

The scope of application of GATS is extremely vast and defined in terms of sectoral coverage and of types of measures taken. The Agreement applies to all services sectors, i.e. no sector, including maritime transport, is excluded from the provisions of the Agreement. This is important to note when assessing the outcome of sectoral negotiations by the NGMTS. Secondly, the Agreement applies to all measures affecting trade in services. *Measures* are defined as "all laws, regulations, rules, procedures, decisions, administrative action or measures in any other form". Thus, any governmental action would in principle be covered by the present Agreement.

Another question that needed to be answered was what constitutes trade in services and how does it happen? During the negotiations it was decided to concentrate on the *how* and to define trade according to the *modes of supply* of services. For purposes of the Agreement the following four modes were identified:

1. The service itself can cross the borders between two countries parties to the Convention. This mode is simply an application to services of the traditional concept of international trade in goods.
2. The consumer of the service may move across a border from one country to another in order to consume a service supplied there.
3. The service supplier of one country may wish to establish himself commercially in another country and offer his services in that market.
4. A person may move from one country to another in order to supply his service in that market.

Of these *modes of supply*, the first, third and fourth ones are particularly relevant to maritime services.

The Agreement establishes the rights and obligations of the contracting parties. In terms of obligations it differentiates between *general obligations* and *specific commitments*. The basic general obligation that each party enters into is that it will not discriminate between suppliers from different countries members to the Agreement supplying the same service. In other words all parties to the Agreement enjoy most favoured nation (MFN) treatment. In certain cases exemptions from the MFN principle are possible but subjected to later rounds of negotiations. This point is taken up again below in relation to maritime transport services. Unlike *general obligations*, *specific commitments* are negotiable and basically relate to granting *market access* to foreign service suppliers and to *national treatment* of foreign service suppliers. There is a process of give and take that allows governments to open specific sectors more than others to foreign suppliers and to insist on export opportunities in those areas where national service suppliers are particularly strong. The commitments that a country enters into are recorded in *schedules* that become part of the Agreement.

## **Maritime transport services in the context of GATS**

### The work of the Negotiating Group on Maritime Transport Service (NGMTS)

The Negotiating Group on Maritime Transport Service (NGMTS) was created subsequent to the failure to reach an agreement on maritime services within the Uruguay Round negotiations, with the task to conclude negotiations "... aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time-scale." by June 1996. Its work centred around what had been identified as the "three pillars" of the maritime transport sector, as they relate to the provision of (1) "blue water" services, i.e. shipping services in the strict sense and (2) auxiliary services such as agency, freight forwarding, cargo handling etc. *Additional commitments* (3) were considered to be those relating to access on a non-discriminatory basis to services generally available in the port, such as pilotage, lighterage, repair, bunker, etc. The split of the sector into these three pillars was not necessarily to be seen as a reflection of how the sector works, but rather as a tool to facilitate negotiations. This would enable the negotiators to tackle the sector in the most pragmatic manner, given the fact that large differences existed with regard to the political acceptability of liberalization measures in specific areas of the maritime sector.

In its initial phase the NGMTS produced a draft model schedule on maritime transport, that reflected the three pillars and commitments with regard to the four modes of delivery mentioned before. The model, however, is not to be confused with the actual commitment that a country would wish to make. It was a model to be used as a yardstick in evaluating the extent and practical relevance of a country's commitment on *market access*, *national treatment* and *additional commitments*, as well as the sectoral coverage. It would probably have been expected that such commitments would not fall significantly short of the model schedule.

### Results of negotiations

The NGMTS was mandated to conduct negotiations "... aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time-scale" and to conclude them by June 1996. Unfortunately, the NGMTS was not able to reach this objective.

The decision on maritime transport services finally agreed upon and that marks the outcome of the NGMTS contains the following elements: (I) negotiations are suspended until the next Round of negotiations on services and are to be resumed on the basis of existing or improved offers, (ii) countries wishing to include their offers in their Schedule of Commitments can do so within the next 30 days, (iii) article 2 will be suspended until resumed negotiations on maritime transport will have been concluded, except for the application of MFN in relation to specific commitments inscribed in a country's Schedule, and (iv) a peace clause.

Nevertheless, as far as the final outcome with regard to country commitments is concerned, it is to be noted that by 1 August 1996 ( the deadline established by the Council Decision on Maritime Transport Services), 29 member countries had included maritime transport commitments in their schedules

### Negotiations of specific commitments on maritime and related services

#### *Shipping services*

In terms of blue water services, the possible implications of the agreement are fairly clear and straightforward. The objective is to grant market access to foreign carriers and to extend national treatment to such maritime transport services suppliers. Market access restrictions are quite common and used not only to

ensure competitive advantage for national carriers, but also for non-economic, basically national security reasons. The most common way of limiting market access is, of course, cargo reservation, and it is particularly such measures, the abolition or reduction of which is envisaged by the protagonists of liberalization of trade in services.

Specific commitments are furthermore expected in relation to *national treatment*. *National treatment* is defined by GATS as "treatment no less favourable than that accorded to national services and service suppliers". In the field of maritime transport, this would relate to such measures as direct subsidies, tax concessions to national carriers, the granting of soft loans, preferential port dues or service fees, etc. While these issues are of concern to a number of shipowners who feel discriminated *vis-à-vis* their competitors, particularly when it comes to the question of service fees, it is probably fair to say that the issue of *national treatment* is of less importance for the industry than that of *market access*.

In general it can be stated that maritime transport is a service sector with a comparatively low level of governmental regulation. The inherently international nature of the industry has already some time ago made national legislators understand that unilateral regulation of the industry could only produce sub-optimal results in terms of market performance and would give rise to conflicts. Nevertheless, developments particularly in liner shipping referred to above have given a new dimension to the question of liberalization of market access. Global carriers need to fill ever larger ships acquired in an attempt to reduce costs by realizing economies of scale. Additionally, complex alliances of service suppliers and employment patterns of vessels call for the existence of a regulatory framework ensuring not only access to markets for the carriers involved, but also a high degree of regulatory stability and predictability.

With regard to the third *mode of supply*, i.e. *commercial presence*, a number of countries had inscribed limitations to market access and to national treatment in their conditional draft schedules. These limitations basically relate to the possibility of foreign shipowners to establish themselves in the country concerned for the purpose of owning, operating and registering ships in that country. In an attempt to ensure effective control (genuine link) over ships flying their flags, most major ship owning countries, with the exception of open-registry countries, attach conditions to ownership and management before a ship can be accepted on their register. Depending on the country, these conditions principally relate to a certain minimum requirements with regard to equity participation by nationals and nationality requirements in management, either defined in terms of nationality of managers or of location of the principal place of business. The UN Convention on Conditions for Registration of Ships adopted in 1985 attempted to provide a bottom line for minimum conditions and a certain harmonization thereof. Up to now, however, this convention has not entered into force. It is probably fair to state, though, that in terms of liberalization of market access and its impact on the functioning of maritime markets, this *mode of supply* and specifically the limitations inscribed do not present a major problem to the industry.

The fourth *mode of supply*, i.e. *presence of natural persons* is probably the most problematic. Particularly developing countries were disappointed over the reluctance of the major ship owning nations to make more meaningful commitments in this field. Most countries did not bind (i.e. did not make any commitment for liberalization) this *mode of supply* in their draft country schedules. Developing countries are the main suppliers of labour for the world merchant fleet. The Philippines, the world's largest single supplier of shipboard labour accounts for some 20 per cent or 200 000 of total seagoing staff. Similarly, it is being estimated that about 50 per cent of crews on vessels flying flags of OECD member countries are nationals of non-OECD countries.

#### *Port and auxiliary services*

As far as the port industry is concerned, all three pillars are of equal importance. As *auxiliary services* would also include port services, the dismantling of market access restrictions to providers of port services, such

as cargo handling, stevedoring, etc. would be part of a maritime services agreement. The types of services and the modes of supply would be subject to the schedule of commitments, i.e. to a political decision taken by the country concerned. The third pillar takes a somewhat different approach as it does not relate to the provision of port services but to the use thereof by the providers of international shipping services. The basic idea is to ensure that access to and use of facilities and services generally available in the port are to be ensured to port users on a non-discriminatory basis. This primarily concerns services provided by port or other authorities and often on a non-commercial basis.

While these changes will facilitate the changeover from a public utility to a commercial service approach in ports, there are other areas where the impact of liberalization will be felt more immediately. As in the case of shipping services, ports and auxiliary service providers that are still enjoying monopolistic positions will see these eroded and will have to face competition not only from national private sector suppliers but also from powerful multinational companies. With regard to maritime auxiliary services the draft model schedule particularly refers to progressive liberalization of maritime agency services, freight forwarding services, cargo handling services, storage and warehousing services and customs clearance services.

In the specific area of cargo handling services and terminal operations, this liberalization is already taking place in quite a few countries. In the 1990s more and more companies have become involved in the international management of container handling facilities. Privatization is slowly becoming the norm in the container industry which has resulted in a rapidly growing competitive market. A recent study by Drewry Shipping Consultants estimated that the global TEU throughput for 1997 exceeded 170 million TEUs and projected growth at 6 per cent per annum up to 2005. Investment on a huge scale is needed and much of this investment will be provided or managed by private terminal operating companies. This growth linked to good returns on investment makes participation in the container terminal sector an attractive opportunity with increasing involvement by both terminal operators and shipping lines.

The major terminal operating companies handling more than 4 million TEUs in 1997 were PSA Corporation, Hutchison Port Holdings (HPH), Europe Combined Terminals (ECT), P&O Ports and Stevedoring Services of America (SSA). PSA Corporation handled 15.5 million TEUs in 1997 through its facilities in Singapore, Dalian, Nantong, Fuzhou, Taicang, Cigadin, Aden, Genoa, Venice and Tuticorin. HPH handled 13.8 million TEUs through its facilities in Hong Kong, Shanghai, Yantian, Gaolan, Jiuzhou, Nanhai, Jiangmen, Shantou, Xiamen, Felixstowe, Thamesport, Harwich, Freeport, Cristobal, Balboa and Yangon. ECT handled 4.6 million TEUs through its facilities in Rotterdam, Duisburg and Trieste. P&O Ports handled 4.5 million TEUs through facilities in Sydney, Melbourne, Brisbane, Fremantle, Southampton, Tilbury, Larne, Genoa, Naples, Cagliari, Manila, Shekou, Bangkok, Laem Chabang, Vostochny, Port Qasim, Colombo, Nhava Sheva/JNPT, Buenos Aires and Maputo. The last of the top five operators was SSA who handled 4.0 million TEUs through its facilities in Seattle, Portland, Tacoma, Oakland, San Francisco, Long Beach, Los Angeles, Mobile, Charleston, Savannah, Jacksonville, Manzanillo (Panama) and Manzanillo (Mexico). Another global player that handled 1.75 million TEUs in 1997 was International Container Terminal Services Inc. (ICTSI) with facilities in Manila, Buenos Aires, Rosario, Veracruz, Karachi, Dammam and Ensenada. The international terminal operators are commercially oriented and normally will look for partners, often local companies, to spread the risk and provide local expertise.

The major terminal operating shipping lines are Sea-Land, Maersk Line, Evergreen, Cosco, OOCL and NOL/APL. Carrier participation is generally made to maximize their control over handling operations and terminal costs. Shipping lines are mainly involved in transshipment hubs. Sea-Land operates terminals in Hong Kong, Kaohsiung, Yokohama, Rotterdam, Algeciras, Long Beach, New York/New Jersey, Baltimore, Oakland, Tacoma, Rio Haina, Adelaide and Salalah. Maersk has terminals in Oakland, Long Beach, New York/New Jersey, Algeciras, Salalah, Laem Chabang, Yantian, Qingdao, Dalian, Yokohama and Kaohsiung. Evergreen runs terminals in Los Angeles, Charleston, Tacoma, Kaohsiung, Taranto, Coco Solo and Vung Tau. Cosco's terminals are in Hong Kong, Shekou, Yantian, Shanghai, Zhanjiagang, Qingdao, Taicang and Naples. OOCL has facilities in Kaohsiung, Vancouver (Canada) and plans to develop facilities at Port Botany (Australia).

Finally NOL/APL have terminals in Karachi, Los Angeles, Oakland, Seattle, Kaohsiung, Yokohama, Kobe and Ho Chi Minh City.

With the trend for mergers and acquisitions amongst the carriers likely to continue, there will also be a trend towards alliances or mergers of the global terminal operators. The coming years will see growing competition as more and more terminal operating port authorities welcome private investment.

The impact of liberalization on port operations is considerable. The nature of terminal operations in particular is in many countries changing from a public service to a commercially oriented activity increasingly subjected to competitive pressures. New patterns of operation also give a new dimension to port competition. Not only are ports increasingly being subjected to inter-port competition, a development observed for some time now particularly in containerised trades, but privatization and liberalization of services have given rise to increased intra-port competition, a phenomenon previously unknown in many ports.

#### *Access to and use of port services*

Finally, the Agreement calls for non-discriminatory access to and use of port and auxiliary services. This provision is conceptually different in as much as it does not affect the ability to provide services but can rather be seen as an attempt to eliminate discrimination of foreign consumers of services rendered in ports. The types of services envisaged by this provision are those referred to as "generally available to international maritime transport". In fact these are services that tend to be supplied by local or national authorities and are generally not available on a commercial basis. These include:

- pilotage
- towing and tug assistance
- bunkering
- waste disposal
- navigational aids
- emergency repair services, etc.

Without denying the importance of discrimination in access to ports services and the competitive distortions resulting therefrom, these provisions apparently did not pose any particular difficulty in the negotiating process. The concept of non-discrimination of users of services is generally accepted and is already part of the GATS. This, however, shall not conceal the fact that the levy of dues for certain services in ports has *de facto* been a source for discrimination and consequent distortion of competition. It would certainly be desirable that actual practices be brought more in line with legal undertakings, as discrimination in this context is basically to be understood as price discrimination. Outright non-availability of services to specific groups of users would be difficult to imagine. While the notion of *non-discrimination* is quite clear in this context, the draft schedule also called for access on "reasonable ... terms and conditions", a concept that is much more difficult to apply to specific business situations. Recently voiced complaints over excessive port dues in some countries could be an indication that such *unreasonable* conditions exist, particularly in monopoly situations or in those cases where services are being provided by cartel type organizations.

#### *Multimodal transport*

Another issue that remained largely unresolved by the NGMTS and that will certainly be subject of future negotiations is that of the treatment of multimodal transport. Given the way liner shipping is developing, there is clearly a need to include MT operations in the liberalization process. Possible scheduling options that were identified in the Group ranged from an *additional commitment* and thus as question of *access to and use of* to that of an auxiliary service in the context of commitments on the *second pillar* or even a new *fourth pillar*. From a political point of view it is doubtful, whether the option of progressive liberalization of the supply of multimodal transport as an auxiliary service could find many supporters because of the widespread concern that

this may open up the inland transport sector to GATS coverage. Consequently, countries that did make conditional commitments on multimodal transport in their draft schedules, chose to schedule it as an additional commitment. As far as large liner shipping operators are concerned, particularly those that have chosen to invest in inland transport of containers and not to subcontract inland haulage this option is rather disappointing and far from satisfying their specific requirements. This question is also of importance to terminal operators as it affects the operation of inland container depots.

Major shipping lines are increasingly moving into logistics services in an attempt to implement differentiation strategies, while maintaining ocean carriage as a core business. This move from hardware based service suppliers into a service industry that is know-how and information technology driven is expected to open new opportunities for shipping lines. It opens the door to an industry that is estimated to provide for an annual business volume of around US\$ 40 billion and, most importantly, for above average growth rates. Liberalization of multimodal transport operation is considered essential by those large companies as it conceivably provides them with a policy framework and subsequently the planning security needed to enter into competition with freight forwarders and other transport operators engaged in multimodal transport and logistics services.

Shipping lines moving into logistics services increasingly compete with freight forwarding companies that produce similar competing services. In fact, the freight forwarding industry can be considered more of a forerunner in logistics services than liner shipping or, for that matter, other modal carriers. Freight forwarders were pressured into multimodal and logistics services, as they had to realize already in the seventies that there was only a limited future, if any, in traditional agency based freight forwarding services. Today, the freight forwarding industry goes through a consolidation process, which is similar to that of the shipping industry. Additionally, linkages are becoming closer and more freight forwarding companies team up in one way or another with shipping or other transport companies. Negotiators will have to bear these developments in mind when seeking agreement on commitments relating to the various pillars of maritime transport services, both blue water and auxiliary.

Further concentration processes on the sea leg could characterize the future development, with companies providing shipping as a core around which logistics services will be built. This concentration process will further change the competitive environment on the sea leg, enable remaining companies to provide the necessary investment in hardware and employ them in a commercially viable fashion. Those companies that will not be among the global carriers can be expected to increasingly engage in niche operations, or become shareholders in globally operating companies or continue to provide global shipping and logistics services without owning or even operating sea based assets.

### Commitments and requests for exemptions

During the course of negotiations in the NGMTS, 24 countries (counting the European Community and their member States as one country) made new conditional offers or improved existing ones. Despite these relatively large numbers there was a certain apprehension among some of the negotiating partners with regard to the quality of some of the offers made. In fact, maritime transport is among those service sectors where liberalization is relatively advanced and regulatory activities impeding market access rather the exception than the rule. Given this situation, commitments entered into largely reflected prevailing practices -if at all- and thus had for all intents and purposes to be considered as offers for standstill. It was particularly the US delegation which repeatedly raised concerns about the quality of offers and which, as a result, claimed to be unable to make an offer of its own during NGMTS negotiations

The extent of liberalization offered by countries, i.e. the quality of their offers, differed indeed considerably. Nevertheless, some common problems prevailed particularly with regard to commercial presence which is usually governed by general provisions relating to the establishment of commercial entities in the

countries concerned and thus subject to horizontal commitments covering all service sectors. A number of countries in all regions entered specific limitations related to the possibility of establishing a company with the aim of flying the flag of that country, which is governed by prevailing conditions for registration of ships. Finally, the presence of natural persons remained problematic and unbound in most cases. The lack of commitments by major players in this area was particularly disappointing for labour-supplying countries. Additionally, shore-based personnel of shipping companies and those providing auxiliary services were to be subjected to certain restrictions generally in line with horizontal commitments.

*Additional commitments* appeared to be unproblematic for practically all countries. Nevertheless, the way they were treated leads to believe that the general tendency continues to be to retain these services under port authority control and not to subject them to private sector competition. Otherwise it would have been more appropriate to negotiate market access in the context of auxiliary services rather than simply as a question of access to *access to and use of* port and auxiliary services.

As was the case with *blue-water* services, conditional or final commitments varied widely with regard to access to ports services. Independent of the fact that no final agreement was reached on maritime services and that some of the conditional commitments had been subsequently withdrawn, it is interesting to look at some of the proposed commitments in the port area, as they reflect the regulatory situations prevailing in the countries and are indicative of the potential for private sector investment in the countries concerned.

### **Where do we stand and where are we going?**

As I mentioned before, at the end of the negotiating Round in the NGMTS, 29 countries had made commitments in international shipping services. Of these 29 countries, 21 included both freight and passenger transportation services, 5 only freight services and 3 only passenger services. Limitations inscribed in the schedules of these 29 countries mainly relate to foreign equity ceilings, nationality requirements for ownership and registration of vessels under national flags, requirements for local agents and limitations on government-owned cargoes. 26 countries scheduled commitments in services auxiliary to maritime transport, while ports services were bound by 6 countries. Furthermore, 11 countries scheduled additional commitments relating to access to and use of services generally available in a port, on a non-discriminatory basis and on reasonable terms and conditions.

The final decision taken by the NGMTS and subsequently by the Council for Trade in Services, was not to apply MFN to maritime transport services unless it was contained in the schedule for specific commitments. Nevertheless, 26 countries have listed MFN exemptions relating to maritime transport services. However, given the exemption referred to above, only 14 of those are relevant as they refer to specific commitments contained in the schedules of the countries concerned. Of these 14, four MFN exemptions cover measures taken by member countries under the UN Convention on a Code of Conduct for Liner Conferences. These exemptions are partly of a preferential nature whenever they apply to other signatories of the Code of Conduct. Four exemptions relate to cabotage; 3 to tax treatment; and 4 are of a broad generic nature covering all sorts of existing and possible future measures in the field of maritime transport. It is also interesting to note that the vast majority of exemptions do not specify the intended duration, but are “unlimited”, “indeterminate” or “indefinite”.

The decision taken by the NGMTS also made reference to the resumption of negotiations in accordance with article 19 of GATS where it is stated that “... members shall enter into successive rounds of negotiations, beginning not later than 5 years from the date of entry into force of the WTO agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalization.” It can be noted that progress in the implementation of these provisions has been relatively slow. In the field of transport, the Council for Trade in Services has started deliberations in late September 2000 on the Air Transport Annex with a meeting reviewing the working of the industry. In a second meeting scheduled for 30 November and 1 December 2000,

it is intended to review the functioning of the Annex itself. With regard to maritime transport, no decision has been taken and a number of options remain open which range from general coverage within the GATS to a resumption of the work of the NGMTS.

In fact the unresolved organizational questions are linked also to substantive issues. One of the questions that arises and which determines the speed and urgency at which maritime transport negotiations will have to be resumed, relates to the time-frame of the peace clause contained in the final NGMTS decision. If one assumes that the validity of the peace clause in analogy of the one contained in the Agriculture decision runs out in 2002, this will of course imply a certain urgency in resuming the negotiations. If, on the other hand, there is no time-limit on the peace clause, there is much less pressure. It is also not clear whether future negotiations should concentrate on plurilateral negotiations or on a largely bilateral process of requests and offers.

As far as the organizational arrangements for the resumption of negotiations is concerned, different options exist that might in a way or another prejudice the outcome of negotiations. Maritime transport services could be dealt with in the context of

- the regular sessions of the Council for Trade in Services
- the special session of the Council for Trade in Services or
- a resumption of the NGMTS.

In the case of treatment in the regular sessions of the Council, one would have to live with the organizational set up and the resulting difficulties for long negotiations. A particular problem would be that the chairmanship changes every twelve months, thus lacking continuity in the negotiations. Another point is that there would be a considerable potential for trade-offs among different service sectors, but less of a possibility for individual members to avoid the maritime transport issues altogether. Some of these problems, particularly relating to the chairmanship can be avoided if treatment is moved to special sessions which would not be subjected to the rules of procedure of the regular sessions. The final step could be the revival of the NGMTS, with the same officers as up to 1996. It is not quite clear though whether a majority of countries would approve this course of action as some of the major players might not wish to take up negotiations again in the same context. A potential disadvantage of resuming the NGMTS would be its voluntary nature. Countries could thus avoid the maritime issue by not participating in its deliberations.

The substantive issues for negotiation would be similar to those already dealt with in one way or another under the auspices of the NGMTS. In fact the Group's final decision was taken on the understanding that conditional offers made up to 1996 would be the starting point for more negotiations in the Round to come. Bearing in mind the discussions of the NGMTS as well as the developments in the maritime transport that have occurred since 1996, it clearly emerges that discussions would have to centre around new approaches of door-to-door transport and logistics. Given the degree of liberalization in the blue water sector, the major problems that need to be tackled would rather relate to the inland portions of the transport chain, i.e. the multimodal transport question and the treatment of inland depots and terminals. As I mentioned before, there are various possibilities to treat these questions, either as a simple issue of access to and use of, or on the other extreme as a fourth pillar of maritime transport. Whichever way is chosen, the future negotiations would probably have to start amending the model schedule accordingly, something which will probably require intense and lengthy negotiations. It is to be borne in mind, though, that the model schedule does not provide for mandatory scheduling options, but rather serves as a yardstick to measure the specific commitments of a country in the context of the request and offer exercise.

Since the beginning of the year, there have been scattered reports in the press of countries wishing or declining to take up maritime negotiations again. The only official proposal along such lines was made in the Council for Trade in Services at its meeting on 6 October 2000. In a joint statement the European Communities and their member States; Hong Kong, China; Japan; Republic of Korea; Norway and Singapore recalled the importance of maritime transport as facilitator of world trade and request the proper treatment of the sector in the world trade system through the GATS agreement. They request member countries to seek solutions that

offer meaningful progress for multilateral liberalization in the maritime sector without however, making concrete proposals on the way to go about these negotiations. In line with the final decision of the NGMTS, they express the belief that previous work in the run up to the decision of the NGMTS should not be discarded and the decision itself should be the starting point for further liberalization in this sector. A copy of the statement is attached.

# WORLD TRADE ORGANIZATION

S/CSS/W/8  
6 October 2000

(00-4099)

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**Council for Trade in Services  
Special Session**

Original:

**JOINT STATEMENT FROM THE EUROPEAN COMMUNITIES  
AND THEIR MEMBER STATES; HONG KONG, CHINA; JAPAN;  
REPUBLIC OF KOREA; NORWAY AND SINGAPORE**

The Negotiations on Maritime Transport Services

The attached communication has been received from the delegations of the European Communities and their Member States; Hong Kong, China; Japan; Republic of Korea; Norway and Singapore with the request that it be circulated to Members of the Council for Trade in Services.

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Safe, reliable and competitive maritime transport services benefit the economy as a whole, and are key factors of efficiency for the production of both goods and services. It is estimated that 80 per cent of world trade in volume terms is carried by vessel. Maritime transport is thus an important facilitator of world trade, and this role becomes even more apparent and crucial in an expanded and diversified world trade system. A proper treatment of this sector in the world trade system through the GATS Agreement is thus essential.

As a result of the Uruguay Round and the negotiations in the Negotiating Group on Maritime Transport Services (NGMTS), the Council for Trade in Services adopted on 28 June 1996 the Decision on Maritime Transport Services (hereinafter "the Decision") which decided to suspend the negotiations and to resume them with the commencement of comprehensive negotiations on services. The negotiations on trade in services have commenced since the beginning of year 2000, and have been proceeding according to the "roadmap" document agreed at the Special Session of the Council for Trade in Services in May 2000.

Considering the progress of the negotiations on trade in services, we find it appropriate to address the issue of maritime transport services. We should try to seek solutions that would offer meaningful progress for multilateral liberalization in this important sector, and thus support the liberalization objectives of the multilateral trading system.

We look forward to real and meaningful liberalization and commitments during the course of negotiations. This liberalization should be premised on the fundamental principles of the GATS. In considering the most efficient way to tackle the subject matter, we believe that we should not discard the previous work done in the run up to the Decision. The Members presenting this statement subscribe to liberal policies for maritime transport services, and wish such policies to prevail more broadly in the GATS. The starting point of further liberalization in this sector should be based on the Decision.

We call on Members to express their views on the matter for the coming second phase of negotiations.

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