

# **LIBERALISATION OF MARITIME TRANSPORT SERVICES: DIRECTIONS AND OPTIONS FOR ASIA**

by

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## **INTRODUCTION**

Over the past half century, the Asian developing economies have undergone several shifts in business orientation, beginning with the process of 'import substitution' and a shift from mass production of standardised products for restricted markets to a more flexible production of differentiated products for a much more diversified global and freer markets. Thomas (1996) and Wrigley *et al.* (1994) see globalisation of economic activity as referring to enhanced functional integration among internationally dispersed economic activities. Globalisation is also the increasing networking of national economies involving consumers, suppliers, and markets in general. As MNCs operating on a worldwide scale take advantage of the new international division of labour (NIDL), instead of worker specialisation in different parts of the production process within one plant, the production process is spread over several countries to achieve economies from various types of labour and resource inputs (Kini 1995)

All of these international activities occur within a framework of imported technology that generates significant productivity gains. Consequently, the traditional international economy of traders is giving way to a world economy of international producers. In turn, such economic globalisation results in further international trade as raw materials, parts and products are shipped among the MNCs' plants in different countries. Improvements in transport technology, particularly the bulking of goods and the introduction of containerisation and intermodalism, further support the growth of this spatial division of labour by reducing the real cost of transport and improving the reliability of the logistics chain (Wrigley *et al.* 1994).

The rapid expansion of international trade has led to an even faster growth in maritime transport. This process has driven competition and helped to open national borders for trade expansion. For the developed market economies of Europe, North America and Japan, the average proportion of the total gross domestic product (GDP) contributed by exports was about 18 per cent as at 1996. Within that group, the proportion for USA was 11 per cent and that for the European Union 28 per cent. For developing countries as a whole, exports represented about 35 per cent of GDP with Africa 29 per cent, Latin America 27 per cent and Asia 37 per cent. It is significant that some 80 per cent of world trade by volume is carried by sea (APEC 1996; Thomas 1996; Drewery 1998).

## **DEVELOPMENTS IN MARITIME TRANSPORT**

The primary concern of the negotiations for a more liberalised maritime transport is the wider role of maritime transport in facilitating the globalisation trend enveloping the whole economic structure and the integration of shipping services to meet real-time delivery requirements of shippers. The net result of these developments is that about 5.5 billion tonnes of goods valued at nearly \$4,000 billion is

traded between countries yearly with four-fifths of the goods accounted for by seaborne trade (*Containerisation International* 1997). Of these, 750 million tonnes are general cargoes that account for about 50 per cent of the value of goods carried, largely because they include semi-manufactured and finished products that have high value per tonne (APEC, 1996). The volume of this general cargo is growing yearly. It is predicted that, by the year 2005, seaborne cargo will total 5,350 million tonnes, of which general cargo will account for 960 million tonnes or 18 per cent of the total (Thomas 1996; *Containerisation International* 1997).

From the 750 million tonnes a year of seaborne general cargo, about 350 million tonnes or 47 per cent of the total are carried in sea freight containers. This is only about 8 per cent of the total seaborne trade by weight, but it represents over 40 per cent by value, which indicates its importance. However, this 350 million tonnes figure conceals considerable differences among the many trade routes. About 80 per cent of general cargo movement between the developed market economies (DMEs) and the newly industrialising economies (NIEs) is now containerised. By the year 2005, it is predicted that total ship-borne general cargo will reach 960 million tonnes and the proportion (by weight) of general cargo carried in containers will rise to 54 per cent or 520 million tonnes (APEC 1995; Drewery 1998). Table 1 shows the growth in world container traffic between 1990 and 1997

**TABLE 1. WORLD CONTAINER TRAFFIC, 1990-1997**

(Million TEUs)

<b>Region</b>	<b>1990</b>	<b>% Share</b>	<b>1997</b>	<b>% Share</b>	<b>% per annum* Increase</b>
North America	16.7	19.5	24.5	14.4	5.6
Western Europe	22.4	26.2	38.6	22.7	4.9
Asia	<b>37.9</b>	<b>44.3</b>	<b>81.7</b>	<b>48.1</b>	<b>12.8</b>
<b>Far East</b>	23.0	26.9	47.8	28.1	11.0
<b>Southeast Asia</b>	9.6	11.2	25.6	15.0	15.0
Middle East	3.5	4.1	8.0	4.7	12.5
South Asia	1.8	2.1	4.3	2.5	13.2
South America	4.8	5.6	11.5	6.8	13.3
Africa	1.8	2.1	3.2	2.0	8.9
East Europe	0.4	0.5	0.6	0.38	4.8
Oceania	2.1	2.5	2.4	1.5	4.2
Others	2.1	2.5	2.5	1.6	8.7
<b>World Total</b>	<b>85.6</b>	<b>6.4</b>	<b>169.9</b>	<b>5.8</b>	<b>8.5</b>

Source: Drewery (1998), *Containerisation International* (1996).

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 than 5 per cent over the last ten years, as compared to 2 per cent for maritime transport (World Bank 1996). Maritime transport is still an expanding activity; it registered in 1997 its twelfth consecutive year of growth with a volume of 5,074 billion metric tons. Table 1 shows that container traffic worldwide grew from 85.6 million TEUs in 1990 to 169.9 million TEUs in 1997 with an annual rate of increase of 8.5 per cent. For the Asian region,

the volume grew from 37.9 mil. tonnes in 1990 to 81.7 mil. tonnes in 1997, averaging 12.8 per cent per annum, the fastest of any region. It is expected that by 2005, over 50 per cent of all container movements will be in Asian ports, while container traffic in Europe is expected to grow by 20 per cent, in North America by 30 per cent, and Asia by as much as 60 per cent (*Containerisation International* 1996; APEC 1996). All countries must necessarily face the challenge of continually having to adjust their transport systems in order to cope with the rapidly increasing volume of cargo throughput. It is essential for international trade to be supported by an efficient transport system capable of carrying goods reliably, safely and without damage or loss, providing just-in-time (JIT) door-to-door delivery of goods, and point-to-point information to all interested parties. Economies that are not able to provide operations and management services that would facilitate speedier loading and discharge of cargo face the risk of reduced trade. Liberalisation would enable investors to freely operate shipping, port, and related services in these economies to facilitate trade.

The fundamental change in the geography of shipping has also been influenced by the development of intermodalism and the provision of fast JIT and door-to-door services. Shippers are increasingly demanding that just the required amount of goods arrive at their factories as near as possible to the time they are required for use. This is to avoid carrying high inventory costs and having to store supplies expensively (Kini 1995). Improvements in the capacity and reliability of inland transport systems has resulted in the widening the gap between the few large and efficient seaports from the smaller regional ones, particularly in Europe and Asia. There has also been heightened competition between neighbouring ports. WTO initiatives to liberalise maritime transport present real possibilities that would influence shippers' distribution strategies, which would impact on service quality of shipping lines, port operators, and the allied industries. Table 2 shows the top 20 container ports in 1997. Of this, 12 are from Asian countries. Asian countries have been able to catch up with ports operated in advanced western maritime countries.

**TABLE 2. TOP 20 WORLD CONTAINER PORT TERMINALS IN 1997**

Ranking	Port	Container Throughput (Mil TEUs)	Ranking	Port	Container Throughput (Mil TEUs)
1	Hong Kong	14.57	11	Shanghai	2.53
2	Singapore	14.12	12	New York	2.46
3	Kaohsiung	5.69	13	Tokyo	2.38
4	Rotterdam	5.45	14	Yohohama	2.33
5	Busan	5.29	15	Felixstowe	2.25
6	Long Beach	3.51	16	Bangkok	2.23
7	Hamburg	3.34	17	Kobe	2.10
8	Antwerp	2.97	18	Manila	2.01
9	Los Angeles	2.96	19	Keelung	1.98
10	Dubai	2.60	20	Tanjong Priok	1.90

Source: Chia (1998), *Containerisation International* (1998)

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). This

difference that can be explained by several factors: higher value and larger volume employing bigger and more efficient ships (carrying up to 6,600 containers) in advanced countries compared with developing countries. There is also stronger competition from shipping lines serving developed markets.

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 excess capacity is estimated at 10 per cent of the fleet for tankers and 6.7 per cent for the dry bulk sector. For many years, there has been concern expressed over severe excess capacity of containerships although there is again considerable variation among the various trade routes.

In terms of the 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. The proportion of liner trade which is containerised 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 -- and now represents 55 per cent of liner trade. More than half of this traffic is now handled in harbours of developing countries.

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 but developing countries own a significant part of it: 145.7 million tons (UNCTAD 1997). Table 3 shows the top 20 national registered shipping fleets as at 1997. Six of these fleets come from Asian countries. Table 4 provides additional information on ships registered under foreign registries. Asian countries led by Japan, China, the Asian NIEs, and to a less extent also Indonesia, Thailand, Malaysia, have substantial number of ships registered under foreign flags.

## **2.1 Adoption of Advanced Technology**

The need for increased shipping activities to cope with the rapid rise in commodity trade has generated considerable pressures on the operating environment of especially major seaports and allied services. The result of this was to adopt new and improved technology in both the vessels as well as the landside operation of ports and land transport facilities in order to handle the fast increasing cargo throughput. It is important to note too that there have been shifts in customer preferences, greater rivalry and competition among ports, changes in the physical and business relationships among various segments within the maritime transport industry as well as with other transport modes. The increasing size and sophistication of ships and port facilities require heavy capital investment that is often beyond the means of developing countries. The start of the 1980s has been the emergence of global alliances, mergers and acquisitions (see Section 3.4) that duplicate the experience of the airline industry. Consequently, the emphasis of shipping since the 1960s to late 1980s has been on containerisation and through-transport systems. Containerisation has enabled the operation of the concept of multimodalism and had the effect of sharply raising productivity of both ocean and land transportation. Table 5 shows the continuous technical development in containerisation from the 1960s.

**TABLE 3. TOP 20 NATIONAL REGISTERED SHIPPING FLEETS, 1997**

<b>Country</b>	<b>Rank</b>	<b>Number</b>	<b>Gross Tonnage</b>	<b>Age</b>
Panama	1	5,043	90,035,081	16
Liberia	2	1,601	58,993,189	12
Bahamas	3	1,105	25,218,960	16
Greece	4	1,381	25,205,001	24
Cyprus	5	1,549	23,367,716	16
Malta	6	1,344	22,927,782	19
Norway (NIS)	7	683	19,632,477	15
Singapore	8	1,043	18,681,396	13
Japan	9	5,509	17,251,328	9
China	10	2,247	15,493,221	19
USA	11	461	10,250,055	28
Philippines	12	1,165	8,706,791	19
St Vincent	13	964	6,770,192	16
Russia	14	1,807	7,487,256	18
Korea South	15	882	6,770,192	16
Germany	16	753	6,757,666	14
India	17	432	6,566,605	15
Turkey	18	1,002	6,519,886	24
Marshall Islands	19	129	6,280,475	12
Italy	20	757	5,965,990	22

*Source: Drewery (1998), Containerisation International, 1996.*

**TABLE 4. THE 35 MOST IMPORTANT MARITIME COUNTRIES AND TERRITORIES, AS AT 31 DECEMBER 1996<sup>a</sup>**

Country/Territory of Domicile <sup>b</sup>	Number of vessels			Tonnage (Deadweight)			
	National Flag <sup>c</sup>	Foreign Flag	Total	National Flag	Foreign Flag (Percentage of Total)	Total (% of World Total)	
• China	1,594	378	1,972	23,162,264	13,095,430 (36.12)	36,257,694 (5.33)	
• India	381	57	438	11,172,932	1,252,316 (10.08)	12,425,248 (1.83)	
• Saudi Arabia	69	58	127	1,078,603	9,749,334 (90.04)	10,827,937 (1.59)	
• Brazil	205	20	225	7,178,283	2,538,505 (26.12)	9,716,788 (1.43)	
• Iran, Isl Rep.	147	6	153	6,133,908	206,284 (3.25)	6,340,192 (0.93)	
• Philippines	321	16	337	4,507,147	95,424 (2.07)	4,602,571 (0.68)	
• Indonesia	463	86	549	3,060,844	1,154,412 (27.39)	4,215,256 (0.62)	
• Thailand	233	57	290	2,505,101	1,537,913 (38.04)	4,043,014 (0.59)	
• Malaysia	182	15	197	3,561,745	131,747 (3.57)	3,693,492 (0.54)	
• Kuwait	33	6	39	2,863,725	351,028 (10.92)	3,214,753 (0.47)	
• Turkey	420	23	443	8,997,546	107,859 (1.18)	9,105,405 (1.34)	
♠ Hong Kong	104	503	607	5,401,167	28,079,400 (83.87)	33,480,567 (4.92)	
♠ Rep. of Korea	501	303	804	10,253,709	12,869,037 (55.66)	23,122,746 (3.40)	
♠ Taiwan	179	254	433	7,577,719	7,534,148 (49.86)	15,111,867 (2.22)	
♠ Singapore	402	252	654	8,876,995	5,544,741 (38.45)	14,421,736 (2.12)	
♦ Greece	912	2,003	2,915	46,444,947	71,954,723 (60.77)	118,399,670 (17.41)	
♦ Japan	922	1,829	2,751	22,116,501	65,171,700 (74.66)	87,288,201 (12.84)	
♦ United States	482	732	1,214	13,134,699	35,994,699 (73.27)	49,129,398 (7.22)	
♦ Norway	836	568	1,404	28,127,282	20,781,990 (42.49)	48,909,272 (7.19)	
♦ UK	388	510	898	5,269,713	15,875,697 (75.08)	21,145,410 (3.11)	
♦ Germany	478	984	1,462	6,140,698	11,918,853 (66.00)	18,059,551 (2.66)	
♦ Russian Fed.	2,595	239	2,834	12,231,787	5,113,585 (29.48)	17,345,372 (2.55)	
♦ Sweden	203	163	366	2,099,323	12,490,165 (85.61)	14,589,488 (2.15)	
♦ Denmark	439	219	658	7,215,240	5,337,867 (42.52)	12,553,107 (1.85)	
♦ Italy	452	151	603	7,654,238	4,359,353 (36.29)	12,013,591 (1.77)	
♦ France	178	105	283	4,313,260	3,446,166 (44.41)	7,759,426 (1.14)	
♦ Netherlands	463	199	662	3,597,792	2,196,115 (37.90)	5,793,907 (0.85)	
♦ Switzerland	14	191	205	618,880	459,769 (88.03)	5,168,649 (0.76)	
♦ Ukraine	577	64	641	3,587,740	1,261,689 (26.02)	4,849,429 (0.71)	
♦ Romania	250	29	279	3,506,400	978,725 (21.82)	4,485,125 (0.66)	
♦ Belgium	30	140	170	148,155	4,105,155 (96.52)	4,253,310 (0.63)	
♦ Spain	127	173	300	657,073	2,764,284 (80.79)	3,421,357 (0.50)	
♦ Finland	115	51	166	1,136,444	2,249,188 (66.43)	3,385,632 (0.50)	
♦ Croatia	68	106	174	696,043	2,591,991 (78.83)	3,288,034 (0.48)	
♦ Australia	68	29	97	2,807,519	479,388 (14.58)	3,286,907 (0.48)	
Total	14,831	10,519	25,350	277,835,422	357,868,680 (56.29)	635,704,102 (93.48)	
Percentage	58.5	41.5	100	43.7	56.3	100.0	
World total	17,274	11,480	28,754	303,417,789	376,626,659 (55.38)	680,044,448 (100.0)	
Percentage	60.1	39.9	100	44.6	55.4	100.0	

Source: Lloyd's Maritime Information Services, London; (cited in WTO, 1998 p.5)

• Developing Economy

♠ Newly Industrialising Economy

♦ Developed Economy

<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 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 table).

**TABLE 5. TECHNOLOGICAL IMPROVEMENT IN CONTAINER SHIPS**

	1960s	1970s	1980s	1984+	1992+	1996+	2000+
Length (m)	190	210	210-290	270-300	290-320	305-310	355-360
Width (m)	27	27	32	37-41	38-47	38-40	38-40
Draught (m)	9	10	11.5	13-14	13-14	13.5-14	15
Speed (kt)	16	23	23	24-24.8	25	25	?
Capacity (TEU)	1,000	2,000	3,000	4,000+	4,900+	6,000	6,600

Source: KMI, 1998 (cited in Kang and Findlay, 1998a), Kang and Findlay, 1998b.

### **Application of Information Technology**

The structural changes in shipping services referred to above have had a profound effect on the operation of seaports and terminals. Heavy investments are being made to provide quay cranes and terminal handling facilities to meet the needs of new and very large over 6000-TEU cellular vessels. Mechanisation is now being supported by automation and computerisation to improve cargo-handling performance and efficiency. The integration of maritime and inland transport services is having a significant impact on container flow patterns and is changing transport systems as well as the traditional role of organisations in the maritime industry. As a result, the relationship between port authorities, terminal operators, freight forwarders, shipping lines and agencies, customs brokers, warehousing and logistics companies in the maritime transport industry has undergone major changes through co-operative alliances to share information and enter into joint-partnerships in carrying and handling goods. These developments provide a platform for liberalisation of maritime transport and service.

From 1980s, therefore, new operating practices and procedures have been introduced. The high volume and speed of container movements require comprehensive and reliable control systems. Greater emphasis is placed on operational planning in terminals because of the sheer speed of the operation and the enormous penalties that result from any delays that may affect the very large, expensive container vessels while in port. Much of this work is presently carried out by advanced computer technologies and there have been significant advances in the development of systems to monitor and control container movements including the introduction of electronic data interchange (EDI) systems.

Customs formalities and documentation procedures have had to be revised and the introduction of computerisation and EDI has fundamentally altered the way in which information is relayed and greatly improved communications in the industry. The wider role of sea-land transport in facilitating the globalisation trend and the significant impact of information technology (IT) in the integration of the transportation chain to meet real-time delivery requirements of MNCs is the primary concern of IT revolution in the shipping industry.

EDI underlies a range of important business systems, including JIT manufacturing and logistics systems, and quick-response retail systems (Wrigley *et al.* 1994). With the establishment of publicly

available standards for many trade documents such as ANSI X.12 and EDIFACT, considerable penetration of EDI has occurred, and widespread adoption by the international trade community appears inevitable. In the Asia Pacific region, the development of EDI in Singapore, Hong Kong, Japan, South Korea and Taiwan has produced a radical shift from traditional business transaction based on paper documents to electronic transactions.

In port management and cargo movement/handling, EDI has been in use in United Kingdom where port operations, carriers, customs and freight forwarders are linked with 90 per cent of all imports cleared via EDI systems using the "period entry" system offered by customs. In other European countries, the systems used by ports include EDIPOT in Cherbourg, PROTIS in Marseille-Fos, the Teleport concept in Bremen, SEAGHA in Antwerp, and INTIS in Rotterdam. In Japan, the SHIPNETS system that include data transmission between certain carriers and trade participants is in use, while in Hong Kong, Tradelink has been in operation. In Singapore, PortNet and MAINS are used by Singapore's PSA Corporation to link up with all members of the maritime community. Because documentation requirements add several percentages to the cost of trade, the potential economic efficiency gains amount to billions of dollars per year. For example, the volume of EDI messages to and from the customs authorities will easily exceed 100 million per year by the end of the century (APEC 1995). In addition to the efficiency aspects of EDI, the capture, transmission and processing of documents offer new opportunities for providing informational services to the trading community. These services vary widely from port to port, but generally centre on the ability to provide flexibility in logistics, and facilitate integration with other sectors of the transportation chain. It is pertinent to note too that some smaller ports in the Asian and other developing regions have yet to adopt any of the available advanced technologies. There exists, therefore, considerable opportunities for bringing about quick improvements to raise efficiency levels substantially through liberalisation.

### **Multimodalism, Logistics Services and Hub Ports**

Related to the foregoing is the development of major hub ports and the shift toward multimodalism and, inevitably, toward logistics operation and increasing use of information technology. The deregulatory environment of the 1980s supported this. This is a progressive strategy aimed at meeting the increasing demand of shippers for not only fast but also just-in-time (JIT) and door-to-door delivery of cargo. This development matches the revolution in production processes in greater automation and JIT operation within the factory floor. This have radically altered ocean transportation through changing trading patterns, ship routeing and itineraries, ship design and size, cargo handling equipment and operations, inland transport and freight terminals, commercial practices and customs procedures. This sector of the maritime transport is another area where the WTO Maritime Transport Committee (MTC) negotiations need to pay special attention.

### **CHANGES IN BUSINESS AND OPERATIONAL ENVIRONMENT**

In line with the globalisation process, member countries of the World Trade Organisation (WTO) and earlier the General Agreement on Trade and Tariffs (GATT) have been negotiating to open up the world market. The end-point of the open market system is to enable free information access and unhindered flow of goods between countries with minimal government intervention. There should be east access to maritime transport services and, by implication also, the admission of foreign

operators in transport services across national borders. The following sections examine the existing organisational framework and shipping practices especially those affecting liner shipping.

### **Shipping Conferences, Consortia, and Rate Agreement Groups**

Shipping conferences are cartels in international liner shipping which origin has been traced to the trade between UK and Calcutta in 1875 (Frank and Bunel 1991). It is estimated that about 300 conferences are still operational in the industry at the present time. The first Asian shipping line to join the select company of conference membership was a Japanese line. There are two types of shipping conferences, the open conferences on the US routes until the mid 1980s, and closed conferences that operate in the rest of the world. Over the past 30 years, the share of the traffic held by the conferences has been eroded by the emergence of new so-called independent shipping lines including several Asian state-owned lines. They have become powerful enough to offer competitive services providing a quality of service equal to that of the established member lines of the conferences. As will be shown below, the power of conferences has been further diminished by the deliberate policy of the US to prohibit collusion of shipping lines setting freight rates on routes serving the country. (See section 4.2 for further discussion on shipping conferences and their relationship with shippers.)

The attempt of the UN Code of Conduct for Liner Conferences (World Bank 1996) that entered into force in 1983 to open the restricted "club" of the conferences to shipping lines of developing countries through a cargo-sharing arrangement (the 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, between Western Europe and West Africa. The volume accounted for less than 3 per cent of the world liner trade. Eventually, the competition directorate of the EU dissolved the conferences concerned on the grounds of abuse of dominant position towards outsiders. .

For the rest of the world, the conference system has coexisted with a framework of bilateral inter-governmental 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 in earlier years. Other bilateral agreements were inspired by similar import-substitution economic theories in addition to the Liner Code (Latin America). Elsewhere, many countries, including Asian countries, have adopted the Code and signed bilateral agreements to reserve cargo for their national flag ships on either a 40:40:20 or a 50:50 basis. However, in practice, this was confined to government-contracted cargo and could not be applied to private cargo due to difficulties in implementing such schemes. There again this framework has gradually faded away.

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 reserved for the flag of the country. The UK abolished this model in 1847 but elements 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 de-colonisation, and of the "de-flagging" of bulk fleets. The effect was to effectively sever 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.

The process of "deflagging", 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 entire developed world bulk fleet is now under such flags as well as an increasing part of the liner fleet (see Table 4). To slow this movement, at least for the liner fleet, developed countries have since the beginning of the eighties adopted a series of fiscal measures and create "second registries" to retain the national flag. These measures also allow more flexible conditions of manning (except for some key senior officers, the crew does not have to involve the payment of nationals at national wage rates).

This tendency has now become general and has expanded outside of Europe. In addition to the Norwegian, Danish, French and German examples that already existed before the end of the last maritime trade negotiations, second registries have been instituted or are envisaged in Italy, Spain, South Korea, Brazil and Australia. In Japan, a ministerial authorisation is now required to de-flag from the Japanese registry. If this authorisation 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 rollover 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, that 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 (OECD 1997). In the case of the core ASEAN countries, investigation by Trace and Chia (1984) has shown that there was no evidence of direct subsidies for national flag ships.

### **Alliances, Mergers and Acquisitions**

Globalisation may be defined as the process by which enterprises (related or unrelated) become interdependent and inter-linked globally through strategic alliances and international networks within firms and between firms. Alliances may be for individual projects or for a series of projects over a longer term. The maritime transport services have not been left behind in the movement toward privatisation, global alliances and international networking. Such privatisation of state-owned shipping companies, port operations, and alliances include for instance Australian National Lines, Compagnie Générale Maritime in France or Czech Ocean Shipping Joint Stock Company in the Czech Republic, and the closure of state-owned shipping companies in developing economies especially in the

Western African region. Alliances of major shipping lines include the Maersk (Denmark)-Sealand (USA) arrangement (200 container vessels), the Global Alliance comprising the American President Lines (USA), Mitsui OSK (Japan), Orient Overseas Container Lines (Hong Kong, China), Nedlloyd (Netherlands) and Malaysia International Shipping Company, the Grand Alliance that includes Hapag Lloyd (Germany), Neptune Orient Lines (Singapore), NYK (Japan) and P&O (UK) and, finally, the alliance between Han Jin (Korea) DSR-Senator (Germany), Cho Yang (South Korea) and United Arab Shipping Company (Arab, multinational).

Alliances within the framework of shipping conferences 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. This implies worldwide co-operation between the shipping lines concerned. Buy-outs or take-overs of trans-nationals include the acquisition of American President lines (APL)(USA) by Neptune Orient Lines (NOL)(Singapore), of DSR-Senator Linie (Germany) by Han Jin (Korea) or the merger between P&O (UK) and Nedlloyd (Netherlands). In the liner sector, the 20 leading carriers controlled 35 per cent of worldwide capacity in 1988. In 1996, the 20 leading carriers controlled 48.6 per cent. Forecasts based on the new building orders indicate that this share should exceed 60 per cent in 2000 (*International Association of Ports and Harbors 1997; WTO 1998*). Table 6 shows the estimated capacity of major global alliances in container shipping

**TABLE 6. SHIPPING ALLIANCES, OCTOBER 1998**

<b>Alliance</b>	<b>Members</b>	<b>Vessels</b>	<b>Fleet Capacity(TEUs)</b>
Grand	Hapag-Lloyd	23	73,372
	MISC	26	58,299
	NYK	68	128,154
	OOCL	30	85,940
	P&O Nedlloyd	106	221,531
New World	Hyundai	36	112,985
	Mitsui-OSK	62	115,763
	NOL/APL	74	165,582
United	Hanjin/DRS Senator	62	174,526
	Cho Yang	30	55,882
	UASC	33	71,592
Maersk/SeaLand	Maersk	106	232,257
	SeaLand	95	215,114
K-Line/Yangming/ Cosco	K-Line	45	84,198
	Yangming	42	96,145
	Cosco	139	201,593
Evergreen/Uniglory Marine Corp		108	228,248
<b>Total</b>		<b>1,085</b>	<b>2,321,154</b>

Source: UNCTAD (1998), Kang and Findlay (1998b), Chia (1998)

## SHIPPER-CARRIER RELATIONSHIP

This section clarifies the relationship between users (shippers) and providers (shipping lines) of maritime transport services. This relationship, enshrined in the *Hague Rules* adopted in the early 1920s, mirrors the earlier domination of maritime transport services by liner conferences. This examination is intended to draw out some of the impediments to access to ocean shipping services. The divergent positions of developed countries represented by the powerful maritime states of the US and Europe on the one hand and, on the other hand, the position of the developing countries that have for too long been dependent on western-owned ships to carry their exports. However, since the 1960s, developing countries have striven to increase their participation in the carriage of maritime cargo on national flag ships. shown above, the distinction between developed and developing countries--and between Western and Asian shipping nations -- is now blurred by the emergence of powerful Asian shipping nations led, much earlier on, by Japan, India, then the NIEs and other Asian countries such as Indonesia, Malaysia and the Philippines. China has also, over the last two decades, emerged as a major force as a major shipowning country. This is strongly bolstered by the very considerable tonnages owned by Hong Kong owners.

### The Established Regime for international Maritime Transport

International agreement on the regulation of international maritime transport services has always been difficult to reach and, in the few instances where agreements were made, they did not address the question of liberalisation of the sector. The *Hague Rules*<sup>1</sup> were intended to impose certain legal obligations on the carriers in respect of carriage of goods evidenced by a bill of lading, which could not be side-tracked by agreement as was hitherto the case.

The *Brussels Protocol of 1968* subsequently amended *The Hague Rules* and the amended rules are now known as the *Hague-Visby Rules*. These rules sought to extend the frontiers of the *Hague Rules* and were formulated to curb the abuses by carriers in the supply of international maritime services. Apart from this, there is nothing in the rules to suggest that they had liberalisation as one of their goals. If anything, it consolidated the monopoly position of the carriers in the supply of these services through conferences. Attempts at liberalising international maritime transport services were undertaken, to some extent, by individual states. An example of such attempt was made by the United States. This is discussed in the section 5 of this paper. The established regime for the supply of maritime services is considered below.

### Shipping Conferences and the Position Of Shippers

Shipping conferences was the predominant mode of carrying out the supply of international maritime transport globally. In what follows, we take a closer look at the operation of this system and how it affected the development of international maritime transport. The *modus operandi* of the conferences involves collusion among members to set prices and to limit competition among them. The members jointly set a schedule of freight rates applicable to all members. They also set maximum

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<sup>1</sup> The full name of this agreement is *The International Convention for the Unification of certain Rules relating to the Bills of Lading*. They were formulated at various Diplomatic Conferences in Brussels in 1922, 1923 and 1924 and eventually signed at Brussels on the 25 August 1924.

frequency of sailing by each company. To safeguard their interest and enjoy a near total monopoly, new entrants were vigorously opposed in the case of closed conferences and cargo allocation and freight rates were imposed by the cartels themselves. However, open conferences did not bar new entry and exit. While closed conferences have been banned in the US, they are still common in UK and other European countries. This way, the conferences controlled by the advanced countries were able to maintain a high degree of dominance of the sector, as it became very difficult from companies from developing countries to gain entry into them.

The introduction of containerisation and the operations of independent liners since the 1970 to 1980s is said to have reduced the influence of conferences in international shipping although world shipping trade was still largely controlled by shipping cartels from the advanced countries (Kang and Findlay 1998). This development led to the shipping lines merging their conference rights into consortia, which subsequently resulted in the formation of global alliances. Apart from the harmonisation of schedules and ports of call, liner operators share transport capacity in consortia, while in alliances, price setting has not been a common phenomenon and is being increasingly favoured, as regulators do not disapprove of their use. However, the existence of conferences with their power to set or increase rates has continued to elicit criticisms from shippers' councils.

Shippers' councils have continued the age-old conflict against shipping conference for raising rates and passing on additional costs in the form of Terminal Handling Charges (THCs) and currency adjustment charges. For instance, in one report, Singapore National Shippers' Council (SNSC), quoted figures given by the Malaysian National Shippers' Council that there are differences in THC charged by different conferences calling at Port Klang, Malaysia. In 1996, the Intra Asia Discussion Agreement (IADA) charged a THC of RM206 per TEU and 400 RM per FEU compared to the Asia Westbound Rate Agreement (AWRA) arm of the Far Eastern Freight Conference (FEFC), which charged RM230 per TEU and RM340 per FEU. In addition, AWRA increased its THCs by a massive 254 per cent per TEU between 1994 and 1996 while IADA increased the THC by only 71 per cent per TEU over the same period. The concern among shippers is that the increasing trend toward large global alliances of shipping lines could lead to increased price fixing and that they are moving in the direction of operating as monopolies (Hand 1999).

Another area of criticism against the Conferences has to do with the anti-trust exemptions these conferences enjoy in various part of the world. The European Shippers' Councils (ESC) complained about the automatic, open-ended antitrust exemption enjoyed by liner conferences serving the European Union. At the same time, individual members of ESC launched a campaign to convince their national governments that conference anti-trust immunity, as it exists today, is harmful to shippers.

Almost simultaneously, the Canadian Shippers' Council urged Ottawa to rethink its stance on conference antitrust immunity. Meanwhile, the Japan Shippers Council (JSC) began lobbying their Ministry of International Trade and Industry to review its regulation of liner shipping and end anti-trust immunity. The aim of all these shipper groups, including the National Industrial Transportation (NIT) League in the United States, is to see liner shipping treated like every other industry when it comes to anti-trust regulation. But these efforts have largely failed as conferences continue to enjoy this immunity.

International shipping has witnessed the demise of the traditional system of liner conferences and the formation of multinational consortia, partly in response to containerisation. Another force for change stems from the rapid growth of East Asian economies from about the 1970s decade. Developing countries in Asia doubled their share of world ship registration from 7.8 per cent in 1980 to 16.8 per cent in 1997, while the figure for industrial countries dropped from more than 50 per cent to 27.4 per cent in the same period. In the case of open-registry countries, UNCTAD (1998) analysed that developing countries' share has also increased since 1980 when such open-registered tonnage was negligible, reaching one-quarter in 1997. On the other hand, industrial economies' overall share has been on a downward trend, representing two-thirds of the total tonnage registered in 1997 (UNCTAD 1998). In the 1990s, competitive pressure from new developing economy entrants and the growing demand for global logistics brought about the disintegration of the consortia and the advent of huge global alliances that united the Asia-Europe, transpacific and transatlantic trades (Dick 1996).

### **Reaction of Developing Countries**

Domination of the shipping industry by the developing countries has been achieved through the operation of shipping conferences and a close relationship between them and powerful trading houses and manufacturing enterprises that were spread around the world. Developing countries have complained that they have had to bear large payments to foreign-owned shipping companies for freight charges and insurance. They have reacted through the adoption of many restrictive policies that were intended to protect and, at the same time, to promote their shipping industry. A few of these policies are briefly examined below.

#### ***Setting up ship registries***

Most of the developing countries set up national register of ships that had both symbolic and strategic importance. Symbolically, it marked the end of the era of reliance on shipping services provided by the metropolitan powers. Strategically, this was meant to provide a convenient administrative device to encourage the growth of domestically shipping industry (Trace and Chia 1988). To attract ship registration, incentives were offered based on local registration. Among the Southeast Asian countries, such policies were adopted in Singapore, Philippine, Thailand, Malaysia, Thailand, and others. At present, the offers made by Hong Kong and Thailand show that ships registered in their national register will enjoy some fiscal benefits not open to foreign-owned ships. In Thailand for instance, shareholders of Thai registered maritime companies may be given exemption or reduced tax in respect of dividends paid. A similar position is obtainable in Hong Kong. There, income derived from ships registered in the Hong Kong Register for international operations are exempted from paying profit tax.

#### ***Promotion of national shipping lines***

Some developing countries also established national shipping lines. This was done based on nationalistic sentiments brought about by the attainment of independence of these countries. The ASEAN countries also formed their national shipping lines. Malaysia established the Malaysian International Shipping Corporation as a national shipping line. According to the Ministry of Transport, it was set up with the primary objective of minimising the nation's dependence on foreign

shipping and was intended as a hedge against “the arbitrary freight rate increases imposed by the cartel line conferences” (Trace and Chia 1988, p.57). Other ASEAN countries including Singapore, Thailand and Viet Nam also set up national shipping lines.

### ***UNCTAD Liner Code of Conduct or the 40-40-20 rule***

The United Nations Convention on a Code of Conduct for Liner Conferences (UN Liner Code) was intended as a multilateral cargo-sharing scheme. It represents the first attempt at international regulation of the conference system. The code, which was first accepted in 1974, came into force in 1983. Wijkman argued that that the code has three basic aims:

- to increase the developing countries’ (LDCs) share in world shipping tonnage to a more “equitable” level as part of the New International Economic Order;
- to increase LDC’s share of income generated by world liner shipping and, in particular, to redistribute “monopoly profits” from rich to poor countries; and
- To improve LDC’s balance of payments through substituting domestic production of shipping services for imports (Wijkman 1980).

These aims were to be achieved in two ways. First, by reserving cargo for national flag shipping lines that may be owned by either public and/or private sector. Second, by regulating liner trader by having shippers and/or governments represented in the newly set up shipping lines (Trace and Chia 1988). This strategy was pronounced a failure for reasons given earlier.<sup>2</sup>

### ***Bilateral agreements and cargo reservation***

Another method of protectionism that was resorted to by developing countries, including ASEAN, was the negotiation and conclusion of bilateral shipping agreements. These are usually provided for as a clause in a bilateral trade agreement. The purpose of these agreements is to reserve all or a portion of the cargo that is typically reserved for ships owned by the participating governments and/or for vessels registered in the two countries in the agreement. Bilateral agreements are still common in the maritime transport sector up till today. This was the state of affairs until the need for liberalisation was felt and concrete steps taken to bring about full liberalisation in the international maritime transport sector.

## **LIBERALISATION OF INTERNATIONAL MARITIME TRANSPORT SERVICES**

International regulation of maritime transport services though perceived by both developed and developing countries as being desirable have met with at best limited success. Governments, for economic and other strategic reasons very often have interfered in the regulation of the sector. The result is that the sector, although acknowledged to be international, continue to witness interplay of

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<sup>2</sup> See *Maritime Transport Services: Background Note* by the Council for Trade and Services S/C/W/62 of 16 November 1998, p.2.

national, bilateral and international regulation. Be that as it may, attempts have been made and are continuously being made to liberalise this sector.

### **US Effort in Liberalisation of Maritime Transport**

The US made an early attempt in this direction. United States regulation of the international ocean shipping industry began with the *Shipping Act, 1916*. The 1916 Act provided shipping conferences with immunity from US antitrust laws, imposed certain requirements on conferences (such as free entry and exit of their members, or more commonly known as open conference requirements), and prohibited discriminatory rates or services. The 1916 Act also created a separate government agency, the United States Shipping Board, to enforce the 1916 Act.

In 1961, Congress amended the 1916 Act to address certain concerns about anti-competitive conduct by ocean carrier conferences. The 1961 Amendments mandated tariff filing, introduced a limited form of independent action, and established an independent agency, the Federal Maritime Commission (FMC), to regulate ocean-shipping practices. Prior to the creation of the FMC, the Federal Maritime Board as part of the Department of Commerce was responsible for ocean-shipping regulation. The 1961 Amendments authorised the FMC to apply a public interest standard to the agency's review of ocean carrier agreements, strengthened the FMC's powers to investigate and punish ocean carrier transgressions, and authorised it to disapprove rates that were determined to be detrimental to the commerce of the United States.

The advances in ocean shipping productivity were dramatic in the 1960's and 1970's, but the general worldwide recession in the 1970's following the oil crisis of 1973/74 tightened the need for shipping services. Foreign carriers crowded into the US trades where the US policy requiring conferences to be open guaranteed that they would be entitled to conference cargoes. Uncertainty as to the legality of ocean shipping agreements that contained land-side intermodal agreements, widespread illegal practices brought about by competitive pressures, and delays in approval for agreements that increased productivity by allowing and facilitating intermodal containerisation, led to the call for reform of the 1916 Act.

Congress considered ocean shipping regulation throughout the 97th and 98th Congress, culminating in the enactment of the *Shipping Act* of 1984. The 1984 Act overhauled the ocean carrier agreement review process, allowed greater flexibility in the type of discount rate and contracts that could be offered by ocean carriers, recognised the increasing role of non-vessel-operating common carriers (NVOCCs) and shippers' associations in facilitating intermodal ocean transportation, and expanded the right of independent action to conference tariffs. While the 1984 Act allowed greater discrimination for service contracts than tariffs, it essentially preserved common carriage requirements for both types of transactions, and similarly situated shippers were afforded identical contract rights.

## The Impact of the US Shipping Regulations

The *1984 Shipping Act* has undergone important amendments. The *Ocean Shipping Reform Act 1997* was enrolled and sent to President Clinton in 1998 for assent and took effect on the 1 May 1999. The amendment proposed is aimed at achieving the following:<sup>3</sup>

- to provide shippers and common carriers greater choice and flexibility in entering into contractual relationships with shippers for ocean transportation and intermodal services. The most significant improvement is the right of members of ocean carrier agreements to negotiate and enter into service contracts with one or more shippers independent of the agreement;
- reduce the expense of the tariff filing system and privatise the function of publishing tariff information while maintaining current tariff enforcement and common carriage principles with regard to tariff shipments;
- protect US exporters from disclosure to their foreign competitors of their contractual relationships with common carriers and proprietary business information, including targeted markets;
- specifically exempt new assembled motor vehicles from tariff and service contract requirements and provide the FMC with greater flexibility to grant general exemptions from provisions of the 1984 Act;
- reform the licensing and bonding requirements for ocean freight forwarders and NVOCCs and consolidate the definitions of those two entities under the term 'ocean transportation intermediary';
- strengthen the provisions of the 1984 Act, the Foreign Shipping Practices Act of 1988, and section 19 of the Merchant Marine Act, 1920 that prohibit unfair foreign shipping practices to provide greater protection from certain discriminatory actions;
- provide for an orderly transition to a more deregulated ocean-shipping environment; and
- transfer the functions of the FMC to the Surface Transportation Board (STB), rename the STB as the Intermodal Transportation Board (ITB), and make appropriate changes in the qualifications of ITB members.

The Reform Act was backed by a broad coalition of shippers, carriers, unions and ports and will impact fundamentally on the relationship between shippers and carriers. Specifically, the current law allows certain key terms of shippers/carriers service contracts to be kept confidential. With this innovation, it will no longer be possible for shippers to insist on contracts identical to similarly situated shippers as they will not be in a position to know the terms negotiated by their competitors with carriers.

Besides, the requirement under the former regime that tariffs be filed with the FMC is to be abolished and this will create an environment for most cargo to move under negotiated service contracts instead of tariffs, as was hitherto the case. Despite strong opposition, carriers will continue to enjoy anti-trust immunity and the FMC will continue the monitoring of carrier agreements and conferences to prevent abuses. However, conferences will not be allowed to interfere with members'

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<sup>3</sup> See *Legislative History Ocean Shipping Reform Act*: Internet, <http://thomas.loc.gov/cgi-bin/cpquery/1>

negotiations of shipper services contracts. The above are some of the reforms of the new law that are intended to further liberalise the US maritime sector, but this is a unilateral effort.

One unavoidable observation has been that unilateral action on the part of a single powerful state can determine for a large portion of the globe relationship between shipper and carrier and overturn age-old established practices. Albeit, the new US regulation has gained support of shippers of developed as well as developing countries.

Be that as it may, one may observe that there is a particular statute in the United States that has the potential of greatly reducing the benefits of the above legislation. Here, it is the *Merchant Marine Act* of 1920 as amended. The purport of this legislation is to exclude some vessels owned or built outside of the United States from participating in coastal trade in the United States. Thus, it is provided that no merchandise, including merchandise owned by the United States Government, a State or a subdivision of a State, shall be transported by water, or by land and water, in any other vessel than a vessel built in and registered under the laws of the United States and owned by persons who are citizens of the United States, or vessels to which the privilege of engaging in the coastwise trade has been extended. The penalty for the contravention of this is the forfeiture of the merchandise (or a monetary amount up to the value thereof as determined by the Secretary of the Treasury, or the actual cost of the transportation, whichever is greater, to be recovered from any consignor, seller, owner, importer, consignee, agent, or other person or persons so transporting or causing said merchandise to be transported), The restriction covers transportation between points in the United States, including districts, territories, and possessions thereof embraced within the coastwise laws, either directly or via a foreign port, or for any part of the transportation. Although some exemptions have been made, it is our contention that the general tenor of the legislation is restrictive of trade in maritime transport services.

### **WTO and International Maritime Transport Liberalisation**

Attempts to reach a multilateral agreement on maritime transport services that will lead to expansion of trade in this area under "conditions of transparency and progressive liberalisation are being undertaken at the international level" (Kang and Findlay 1998). The World Trade Organisation (WTO) is championing current efforts in this direction. Though this was conceived as an interim arrangement to provide trade rules acceptable to the world's major trading nations, GATT now replaced by the WTO has nevertheless continued to exist and to negotiate tariff reductions in particular areas. The last round of negotiations, popularly known as the Uruguay Round, lasted from 1986 to 1993. This round resulted in the establishment of the General Agreement on Trade in Services (GATS), by Article 10(2), and Annex 1B sets out the GATS principles of Most Favoured Nations (MFN), national treatment, transparency and voluntary commitment among others.<sup>4</sup> The Ministerial Decision at the end of the round provided for "negotiations to be entered into on a voluntary basis in the transport services sector within the framework of the GATS". The decision envisaged a "comprehensive negotiations to achieve commitments" in the so-called three pillars namely; international shipping, auxiliary services, and access to the use of port facilities.<sup>5</sup>

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<sup>4</sup> See *The Result of the Uruguay Round of Multilateral Trade negotiations: The Legal Texts* (Switzerland, WTO 1995, pp.325-364)

<sup>5</sup> See paragraph 1 of Ministerial Decision on negotiations on Maritime Transport Services, *ibid.*, and pp. 459-461.

Multilateral trading forums aim to reduce restrictions while recognising the freedom of members to maintain regulation for their maritime industry and to ensure environmental pollution protection. Governments are generally permitted to set their own maritime regulation objectives, for example, being internationally competitive and meeting acceptable safety standards. Appendix 1 shows worldwide a summary of the level of restrictions on maritime services.

Restrictions on trade in services are typically not defined in trading agreements. For example, the General Agreement on Trade in Services (GATS) administered by WTO provides no specific definition of a restriction. The GATS covers limitations on market access and national treatment. Market access covers both discriminatory and non-discriminatory government regulations. For example, the agreement covers regulations that limit the entry of specific service suppliers, as well as measures that limit the entry of all service suppliers (Matt 1996). The GATS defines national treatment as a member providing ‘treatment no less favorable than it accords to its own like services and service suppliers’ (WTO 1994).

Table 7 shows the new shipping regime under GATS general principles. The GATS recognises the right of domestic regulators to impose minimum standards and conditions that include qualification

**TABLE 7. NEW SHIPPING REGIME UNDER GATS GENERAL PRINCIPLES**

	<b>GATS general principles</b>	<b>Relevance to shipping regime</b>
MFN/Non-discrimination	Unconditional application	Removal of cargo reservation and other discriminatory measures
Transparency	Prompt (at least by the time of enforcement) announcement of all relevant measures pertaining to/affecting the operation of GATS	Transparency in government practices in cargo preference, private agreement/measures for cargo reservation and subsidies, technical standards, and so on
Increasing participation of developing countries	Promotion of service industries in developing countries	Removal of cargo allocation in developed countries; promotion of technology transfer and application; support for staff training; investment in ships
General exceptions	When related to national security or culture	For example, transportation of military items

*Source.* Kang and Findlay (1998a)

requirements and procedures, technical standards, licensing and authorisation (OECD 1994). In maritime services, many of these necessary regulations have been laid down to ensure safe shipping and port operations. All government regulation or restrictions on maritime services are covered by the restrictiveness index.

To facilitate the realisation of the objective of a liberal international maritime transport sector under GATS principles, the ministers set up a Negotiating Group on Maritime Transport Services (NGMTS) to carry out its mandate in this sector. The group was given up to June 1996 to conclude negotiations and submit its final report.<sup>6</sup> In line with the above objective, the NGMTS have met for over 17 times from its creation up to end of June 1996. Although negotiations have been successfully completed in other services, such as financial services and telecommunication services, the NGMTS was unable to reach agreement at the expiration of the June 1996 dateline and during their most recent talk in July 1996. Negotiations were, therefore, suspended following this failure, and are now scheduled to take place in the next round of negotiations in services, which is to take place in the year 2000. The decision to suspend negotiations also provided for a continued suspension of the provision on MFN (i.e. Article 11) in the sector until the conclusion of the resumed negotiations (WTO 1998).

Commentators have proffered reasons for the failure to obtain specific commitments in MTS despite the general progress made and the continuous pressure for liberalisation globally. One source has identified reluctance on the part of the United States to give up its unilateral measures to counter its perception [on] protectionism, and inadequate commitment to liberalism by large countries in the negotiations, for instance, Brazil and India. In addition, the US perceived a general lack of enthusiasm in the [shipping industry for WTO] on both sides of the Atlantic. These were some of the reasons for failure of the negotiations (Brownrigg 1999). Additionally, private interests affected by the new system, national perception of carrier interests, and the extent to which gains are likely under bilateralism, constraints imposed by accepting the roles of existing institutional structures, and unwillingness to permit foreign establishment or firms in the domestic market or routes are the other reasons identified as impeding agreement during the negotiations in this area (Choi, Kim and Findlay 1997). The United States specifically, requires a fourth area of multimodal services to be added to the three pillars for liberalisation. Developing countries, on the other hand, are reluctant to freeing up its services for fear of predatory encroachment into its protected economic interests. Even some developed countries have opted to put in exemptions as a matter of caution. Yet others have adopted a wait-and-see approach before committing themselves to liberalisation. Finally, the US prefers an all-or-nothing position thereby creating an impasse in the negotiations.

### **Asian Countries in WTO Negotiations on MTS**

Among the 35 major shipping nations, about 22 per cent of the world merchant fleet are registered under the national-flag ships of Indonesia, Malaysia, Philippines, Singapore, Thailand, New Zealand, Australia, Japan, US and other members of Asia Pacific Economic Commission (APEC). Apart from EU, these countries participated actively and made significant contributions to the MTS negotiations. However, though Asian countries participated in the WTO/NGMTS and voluntarily submitted conditional 'offers' at the end of two rounds of negotiation, there was no concerted effort towards a single or harmonised voice through regional associations such as ASEAN throughout the negotiations (See Appendix 1 for the specific commitments in MTS.)

Countries that made voluntary offers in 1993 are: Australia, China, Indonesia, Japan, Malaysia, Mexico, New Zealand, Norway, Philippines, Romania, Singapore, South Africa, Thailand, Turkey,

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<sup>6</sup> See paragraph 4 *ibid.* There was also provision for the extension of this period provided for by paragraph 5.

and USA. In 1996, the following countries made offers: Australia, Brazil, Canada, Columbia, EC, Hong Kong, Iceland, Indonesia, Japan, Korea, Malaysia, Mexico, New Zealand, Norway, Poland, Romania, South Africa, Singapore, Switzerland, Thailand, and Turkey. Offers may be withdrawn or amended. These offers will provide a basis for negotiations of the 2000 round of negotiations.

## **RESTRICTIONS IN MARITIME TRANSPORT**

Maritime transport has been traditionally one of the most liberal of all services. Compared with air services, ships are free to roam the seas and call at a large number of ports around the world without restriction. There are no restrictions on frequency and capacity of ships calling at ports. Restrictions for loading and unloading of cargo arise only when ships are limited by cabotage regulations. Some countries will allow foreign-owned ships to make calls in successive national ports open only to nationally registered vessels. For the carriage of cargoes intended for foreign trade, maritime services are characterised by the dominance of operators over users.

Nevertheless, there remain many impediments to free and open access to maritime transport services in many parts of the world, in both the developing and developed countries. Restrictions on trade in maritime services are barriers that limit maritime service suppliers from having access to and entering or operating in a market. Governments through legislation and regulation typically impose restrictions. Regulation of maritime services can be discriminatory or non-discriminatory against foreign-service suppliers. Discriminatory regulations treat foreign maritime service suppliers less favourably than domestic maritime service suppliers and often aim to restrict trade. For example, foreign maritime service suppliers may be prohibited from providing services around the coast of a country under cabotage rules. Non-discriminatory regulations treat domestic and foreign maritime service suppliers equally, but can still restrict activity, for example, by requiring mandatory use of a designated supply of port services by domestic and foreign shipping service suppliers. Such restrictions may be more burdensome than necessary to achieve an efficient maritime industry. A necessary first step in assessing such impacts is to identify and quantify the restrictions on maritime services.

From the conditional offers made by many countries in 1996 as to what they are willing to liberalise in international maritime transport services (see Appendix 1), it appears that the road to reaching a multilateral agreement for a truly liberalised international maritime transport services is still a long way off. From the tabulations, the following deductions concerning restrictions to liberalisation in international maritime transport services could be drawn.

### **Restrictions on International Transport (Pillar I)**

With respect to ‘international transport’ (‘pillar I’) in both freight and cargo transportation, it is evident that the sector is the most open of all the sectors, although there is still room for more liberalisation. The offers made show that there is a near unanimity among countries that cabotage be excluded from international maritime transport services open to foreigners. Thus, all the countries that made the offers excluded this sector from their offers.

It is evident that most countries will permit liberalisation in the freight and passenger transportation. A few exceptions however exist. Hong Kong specifically excludes passenger transport from its offer. Singapore’s offer is silent on passenger transport. South Africa’s offer also shows that it is not

bound by agreement on passenger transportation. Thus, it could be said that there is market limitation in these countries with respect to passenger transport.

Even among the countries that have offered to liberalise this sector, there are still some restrictions on market access. This is commonly seen in the offers made by the Southeast Asian, Latin American and some advanced countries. For instance, there are market limitations in Indonesia and Thailand. In Indonesia, services in this sector can only be provided in the form of a joint venture. Some cargoes, especially those paid for with government funds or loans are expectedly reserved for national ships. There are also restrictions in freight transport between Thailand and Vietnam that third countries may not participate. Some form of commercial presence is required for the provision of these services in almost all the countries in the region. Most of the countries are unbound with respect to the presence of natural persons, while some impose some restrictions. In Indonesia for instance, the presence of natural persons is only possible in the context of a joint venture company. Thailand is not bound with respect to crewing, while restrictions are imposed on other key personnel. The same situation is noticeable in Korea and to some extent Hong Kong and Singapore. These are all limitations on access to market.

With respect to limitations on national treatment in Pillar I services, some restrictions are also noticeable. In Thailand for instance, shareholders of Thai-registered maritime companies may be given exemption or reduced tax in respect of dividends paid. A similar position is obtainable in Hong Kong. There, income derived from ships registered in the Hong Kong Register for international operations are exempted from paying tax on profits. In Indonesia and in India, a foreign shipping company is obliged to appoint an Indonesian shipping company or joint stock company as its general agent to supply passenger transport services. Also, government cargoes are reserved for the national ships. All these are restrictions on national treatment.

Among the Latin American countries, Colombia for instance, is not bound by any agreement on cargo and passenger transport. Brazil also imposes some restrictions on some of its cargoes, which are by law, reserved for national ships. These include government cargoes and 40 per cent of conference cargoes. These are reserved for national ships. Bulk cargoes such as oil are by law, the monopoly of the state. Also, foreign ships alone pay lighthouse charges, while there are requirements for service contracts to be submitted to a government agency for authorisation. In Mexico, there is reciprocity requirement for scheduled and bulk cargoes, while some specified cargoes might be reserved for national ships. There is invariably restriction on foreign equity on all the Latin American states and some form of commercial presence is required to carry out services in this sector.

The European Union (EU) offers show that there is no restriction with respect to services in this sector. The only restriction relates to liner cargoes that places limitation on national treatment based on parties to the UN Liner Code Convention. In all the countries covered in this sector, except for Romania, there are invariably requirements for registration and some form of commercial presence to fly a national flag. Most countries are not bound with respect to ships' crews. Some countries such as Turkey, however, allow a certain percentage of ship's officers to be foreigners. It must be borne in mind that these are conditional offers that can be withdrawn, modified or improved upon.

## **Restrictions on Auxiliary Services (Pillar II)**

With respect to 'Auxiliary Services', otherwise known as 'Pillar II' services, there are also observable restrictions on the supply of these services. With respect to restrictions on market access, some of the offers from the countries covered show that they will be unbound in the cross border supply of the services because it will not be technically feasible to do so. The restrictions were very prominent in almost all the countries.

Among the Southeast Asian countries, restrictions exist in the supply of auxiliary services, but are more pronounced in Indonesia and Thailand. In Indonesia, government cargoes are exempted from the offer and commercial presence is only possible in the form of a joint venture. Presence of natural person is only possible in the context of joint stock company. In Thailand, foreign equity in companies involved in the supply of these services is restricted and may not exceed 49 per cent. Also, in the supply of custom clearance services, the broker must be of Thai nationality. Various domestic requirements are also imposed for the supply of these services. In Korea, joint-stock company is required for the supply of most of the services that has full foreign ownership. The same restrictions also affect national treatment.

## **Restrictions on Access to Port Facilities (Pillar III)**

In Europe, for instance, for the supply of the various auxiliary services in Greek ports, there is public monopoly in most of the services. This is also true in the port of Bremen. As for customs clearance, Greece also has nationality requirement as market access limitation, while in Denmark, those who can supply the service must be residents. Use of public domain for the supply of these services attracts concession or licensing requirements.

Among the Latin American countries, the supply of auxiliary services has restrictions. In Mexico, for instance, foreign equity in companies involved in the supply of these services may not exceed 49 per cent. In Colombia, companies involved in the supply of towing and pushing services must be at least 60 per cent Colombian owners. In these group of countries, occupation of public domain for the supply of the services also attract concession or licensing requirements. In Turkey, only companies registered there can supply most of the services in the sector. In Japan, licenses for the supply of maritime cargo handling services may be limited to certain ports.

In most countries, maritime transport operators are not bound nor the presence of natural persons to supply services in this sector although some of them imposes various restrictions on this mode of supply. Most countries also require licences or concession to be obtained in case of the use of public domain for the supply of these services.

On the access to the use of ports, most of the countries made additional commitments to open up these services to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions. What these reasonable and non-discriminatory conditions are, are not defined at all. A few countries/regions including Hong Kong, Thailand, Turkey, Japan, Mexico, and the EU group of countries, made additional commitments on multimodal transport.

From the above discussions, it could be seen that the road to a fully liberalised international maritime transport services sector is still paved with problems. While there have been pronouncements on the need for liberalisation, practice has, however, shown that the political will and commitment to liberalisation are still lacking. There are restrictions on market access and national treatment and most countries make exemptions on MFN that are discriminatory.

## **DIFFICULTIES IN REGULATORY REFORM IN THE SHIPPING INDUSTRY**

The services sector is a challenge for the liberalisation process because of the constraints that have made it more difficult to achieve a 'big-bang outcome'. There is, however, an opportunity for groups of like-minded countries to promote services sector liberalisation. Countries with strong and competitive fleets are more likely to take the position of shipping liberalisation. Those with weak and small fleets having a vulnerable market position are more inclined to protect what they see as their interests against competition from more efficient foreign carriers. The conflict exists not only between traditional maritime powers and developing countries but also among industrial countries as well as among developing countries. Nevertheless, there are increasing pressures to achieve freer international trade in maritime services. These stem not only from market forces, including those brought about by mergers and global alliances among major shipping lines, but also international negotiations through the WTO regime and from technological developments and organisational changes affecting the industry.

All of these forces have, in turn, offered not only enhanced services and overall efficiency in operation but also reductions in operating costs and freight rates. They are promoting the liberalisation process in pursuit of all the benefits that are expected to flow from the operation of freer markets. Liberalisation is expected to permit firms to achieve greater economies of scale, to promote international division of labour and specialisation, to enhance effective management and to improve a wider range of services and enhanced quality. Shippers will be the immediate beneficiaries, but the reduction in natural protection through reduced transport costs will also facilitate trade in other sectors.

### **Contributions by Developing Economies**

The review of the WTO negotiations on MTS shows generally strong interest in achieving a more liberal MTS regime. In spite of the many restrictiveness mentioned, there is widespread and explicit support among developed and developing economies for change. Regional associations of developing economies may be interested in undertaking discussions of targets and strategies for the MTS negotiations in the WTO before they resume.

As explained by Choi *et al.* (1997), attempts at the liberalisation of maritime services have so far failed in the global trade negotiations. The process of liberalization needs to be further explored. For example, the bundling and sequencing of services sector negotiations in the WTO is not yet well defined. The isolation of individual service sectors in negotiating processes is one explanation why some failed to reach a conclusion. One suggestion is therefore to bundle MTS negotiations with other service sectors. Liberalisation of the cargo sector for all modes as a whole has been suggested by the Pacific Economic Co-operation Council (PECC) as one way of making progress (Pangestu *et al.* 1996). Land transport has been dealt with in the multilateral round, while multimodal services

have also been discussed. The remaining main issues in these areas appear to be those related to investment. All these services could be brought together under one banner with the aim to pursue 'free freight'.

It has been suggested that putting all transport modes on the table at the same time would help mobilise support for reform in economies where otherwise there is resistance to change when dealing with one sector at a time. Given the imminence of WTO negotiations starting in 2000, regional associations of developing economies should adopt a common goal. This can be achieved through first discussing and agreeing to some principles under which these sorts of negotiations could proceed. Examples are documenting impediments (or verifying existing data sets), refining end-points (such as free trade in MTS by 2010), or by discussing modes of negotiation (such as the scope of negotiating bundle).

This discussion prior to the WTO negotiations, starting in the year 2000, could also be used as an avenue to develop complementary programmes in economic and technical co-operation. Liberalisation of foreign investment regimes will lead to the transfer of shipping technology, including management methods. Other structural and operational programmes in which developing economies could take a direct interest include cooperation to transfer the experience in constructing policy-making institutions, in establishing industry training schemes, in privatising ports or financing their development, and so on. These programmes might overlap with measures associated with the facilitation of trade in shipping services; for example, anticipating the extent of technological change and the challenges that will arise for current standards or common practices in shipping or in cargo handling.

Additionally, one of contributions of regional associations could be to provide a better framework in which subgroup activities take place. Additionally, they can help to bring about greater transparency in the impediments to trade in MTS. To do so, its members could undertake the following:

- reassert the relevance of the GATS principles for maritime transport;
- clarify the impediments to international trade in MTS amongst its members (going beyond the GATS by detailing impediments rather than merely making commitments to liberalise);
- monitor the terms of any agreements amongst its members on MTS;
- comment on competition policy principles, or the compatibility of existing rules, that might be applied; and
- assert the relevance of its investment principles to this sector.

Regional Associations of developing economies, rather than being dominated by common forces of the EU and the US can help to redefine the relevant end-points for approaches to MTS liberalisation. They should also act as a monitor of the milestones, that the participants set for themselves.

A number of regional associations/groupings in Asia may be considered for shouldering the task of initiating and pushing for member countries to adopt common positions as well as to discuss measures and strategies to liberalise the maritime transport sector. In so doing, the Asian states could then be able to speak with a harmonised voice and be able to strengthen the group's bargaining position during the next round of negotiations. The best candidate for this would be the

30-year-old Association of South East Asian Nations (ASEAN). Indeed, the Association commissioned a study on cargo transport with a view to improving shipping and other transport services and to remove bottlenecks and restrictions on all forms of transport across international borders within the group. Close support would be given to the Association by the Economic and Social Commission of Asia and the Pacific (ESCAP) through its Division of Transportation and Communications that has already made considerable contributions to promoting shipping and other modes of transport within the region. APEC members have already made strong contributions in previous rounds of WTO/NGMTS negotiations.<sup>7</sup> APEC as a group should be able to help coordinate efforts to push for liberalisation of maritime transport services and help countries to prepare for the advent of a more liberal global environment in the maritime transport sector. In addition, APEC operates in a less formal way and may be better suited to provide the appropriate forums for discussion among its members. The disadvantage may be that the grouping includes the eastern Pacific States that may have the effect of detracting the discussions from reaching consensus among the Asian States. Other agencies that could render assistance would be the Asian Development Bank through its Technical Assistance arm as well as the World Bank.

Other Asian maritime organisations that are worthy of mention are: the Federation of ASEAN Shipowners' Association (FASA), the Federation of ASEAN Shippers' Councils (FASC), and the Association of ASEAN Port Authorities (AAPA), although these being private organisations are more directly concerned with serving their own clients but may be persuaded to adopt a more proactive and broader view of things. Finally, the Intra Asian Discussion Group (IADA) and the Asian Shipowners' Forum (ASF) as well as the International Association of Ports and Harbours (IAPH) all with strong Japanese leadership may also be able to take a lead in promoting maritime transport liberalisation.

## **THE WAY FORWARD AND OPTIONS FOR ASIA**

It is important to be clear that, should the year 2000 round of negotiations be successful, a new paradigm for MTS would be created. Under this regime, the principle of MFN treatment will be more widely applied and the GATS schedule will be universally adopted in the settlement of trade frictions. Thus, as preparations are being made for the next round of negotiations, what should be uppermost in the minds of those interested in the international maritime transport is what should be done to move the negotiations on this sector forward. The following are our suggestions on the way forward.

Between now and the resumption of negotiations, the time should be used to explore an alternative, pragmatic, shipping-oriented approach to the liberalisation of maritime transport. This should be done through informal discussions between various interest groups within the maritime industry with the aim of softening the grounds in order to have concrete discussions when negotiations resume in the year 2000. The effort the OECD in initiating dialogue with non-OECD members in this regard is to be appreciated. However, Asian countries as a group need to take its own initiative rather than merely to react to pressures exerted from other major trade blocs. In appraising the problem of failure to reach an agreement in this sector the following points need to be borne in mind.

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<sup>7</sup> Among the 42 full participants of the group in the NGMTS, 15 are members of APEC and, of the 24 countries that have submitted conditional offers at the end of the negotiations, 8 are from APEC (Dr Dong Hyun Choi, personal communications).

First, the whole concept of liberalisation is still novel to some developing countries. It will be sheer utopianism to expect all of them to adjust to this new reality within a short time. There is already provisions in the existing rules for arrangement that allows countries some freedom to fix the time frame within which they will fully liberalise. Clearly technical assistance is called for and should be undertaken quickly.

Secondly, some countries have gained a strong position in the efficient supply of international maritime transport services, while others have yet to begin to build a credible capability and are encountering difficulties in doing so. To ask all countries to fully liberalise will mean that some countries will have a head start over others, as they will not all be in the same position to compete. This explains the reluctance on the part of some countries to liberalise. Again WTO provisions allow these countries more time to enable them to set in motion policies that will help them compete effectively in the supply of these services.

Thirdly, WTO/NGMTS has applied the approach of “informal bilateral R/O negotiations” to reach specific commitments. There is hence already a recognised need to allow for some flexibility by considering a progressive liberalisation of the three pillars. For instance, the pillar one services could be liberalised first, while a time frame is set for agreements to be obtained for the liberalisation of the other sectors. This, however, should not prevent any country that is ready to fully liberalise now from doing so. This will allow progress to be made, while affording countries that are still reluctant to commit to greater liberalisation to take stock of the benefits that could accrue to them from liberalisation.

While it is accepted that the GATS framework provisions has stipulated progressive liberalisation in Article XIX, and the extension of liberalisation through periodical review, and that the idea of “increasing participation of developing countries” provided in Article IV also concerns this matter, there is still need to assist the developing countries in institutional restructuring to cope with the demands of full liberalisation.

Finally, it is earlier suggested that Asian States need to come together to formulate a unified position on MTS matters. It is equally important for Asia as a group to engage the powerful western blocs and, in particular, to mobilise US interest. One way to achieve this is through broadening and to bundle other sectors such as air freight where the US is very keen to provide support.

## **ALTERNATIVE SCENARIOS**

Reaching an agreement in International Maritime Transport Services is important. A failure to come to an agreement in this important sector may lead to the following scenarios. Regional bodies such as OECD and EC will become the driving force in pushing for liberalisation in the sector and may pick and choose countries or other regional bodies and negotiate separate agreements covering maritime transport between the region's countries and the countries concerned. This will lead to a proliferation of agreements in the sector that may not really serve the cause of liberalisation especially in a global industry such as maritime transport.

Another fallout of this may be that some countries that are considered as strong rivals and those regimes seen as very restrictive may be isolated from such negotiations. The import of this development will be that a significant section of the maritime countries would remain excluded from the wind of liberalisation in this sector. Already, some Asian countries are complaining that this approach presently pursued by the EC is excluding some powerful Asian countries from the negotiations.

Secondly, some powerful maritime countries can impose unilateral regimes in the sector. Whether these developments will serve the cause of the international maritime community for a truly liberalised sector is difficult to say. So what should be the position of Asian countries in the next negotiations? It is important for Asian countries to support efforts at liberalisation, as there are a lot of advantages to be derived from it. To this end, Asian countries that still have legislation that restricts the supply of maritime services should take steps to abrogate such legislation and provide a legal framework with more liberal regimes for the provision of maritime services.

However, it must be recognised that the different Asian countries are at different stages of economic and technological development and may have genuine reasons why they cannot liberalise presently. Therefore, APEC (and ASEAN) should play a more proactive role in encouraging liberalisation among its members and supporting those that are lagging behind in the move towards liberalisation. Trying to understand the concerns of the countries that are lagging behind in the process and find ways to assist them could do this.

Thirdly, in order to speak with a common voice, APEC should push for negotiation with other regional groups that have interest in the liberalisation of the sector. Thus, APEC could spearhead negotiations with the EU, OECD and other regional blocks with a view to reaching acceptable agreements in the liberalisation of the sector.

## **ACKNOWLEDGEMENTS**

The authors wish to express our thanks for the support of the Singapore Trade Development Board (TDB) and Singapore Shipping Association (SSA) for making available documents and other material needed for the preparation of the paper. We are indebted especially to Mr David Chin and Mrs Tan Beng Tee of TDB for sharing their considerable knowledge and insights on the entire process of WTO/NGMTS negotiations and helping to clarify many issues. We benefited greatly too from the detailed comments and suggestions on the draft paper of Drs Dong Hyun Choi, Korean Maritime Institute, and Dr Christopher Findlay, University of Adelaide. Many of their comments have been incorporated into the final paper.

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**APPENDIX 1. 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	Maritime (3)
• 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	Maritime
• Jamaica*	Freight: none except (3) MA: registration and licensing requirement No commitments on passenger	No commitments	No commitments	
• Malta	None except (3) MA: horizontal	No commitments	No commitments	
• Papua New* Guinea	None	No commitments	No commitments	
• Peru*	Commitments on passenger transportation by ferries exclusively for internal tourist services and (1,3) MA: authorisation required, (1) NT: unbound, (2) MA&NT: unbound	No commitments	No commitments	
• St. Kitts and Nevis	Commitments on ship registration	No commitments	No commitments	
• 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	
• Trinidad and Tobago	No commitments	No commitments	Commitments on navigation aids, and communication /meteorological services	Coastal republic

Member	International Shipping	Auxiliary Services	Port Services	Other
• Venezuela*	Freight: none, except (1) unbound. No commitments on passenger	Commitments on cargo handling and storage and warehousing	No commitments	
♣ 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	
♣ Benin*	None except on freight transportation (1) MA: access to only 20%	None except often (3) MA: state monopoly, NT: unbound	No commitments	Re
♣ 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	
♣ Gambia*	None No commitments on freight	No commitments	Commitments on towing and pushing and supporting services for maritime transport	Ma
♣ 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	
♣ 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	Ma (2) rer uni
♣ 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	

Member	International Shipping	Auxiliary Services	Port Services	Ot
♣ 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	
♣ 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	Ve ser ref ma
♣ Myanmar	No commitments	No commitments	No commitments	To op wa
♣ Philippines*	None except government owned cargoes to be shipped on board Philippines flag vessels. No limitation on (4) except time-limit for specialised vessels	None, but no commitments on customs clearance and maritime agency services	No commitments	Ma bu do
♣ 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	
Δ 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	Ma rer

Member	International Shipping	Auxiliary Services	Port Services	Ot
△ 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	Ma
△ 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	
△ Singapore	Freight: None No commitments on passenger	Commitments on shipping agency and brokerage	Made available on reasonable and non-discriminatory terms	
◆ 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	Int cre
◆ 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	
◆ Finland	No commitments	Storage and warehousing services; freight transport agency; other supporting and auxiliary transport services	No commitments	Ch wi
◆ 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	Ac mu

Member	International Shipping	Auxiliary Services	Port Services	Ot
◆ 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.	
◆ Norway	None except (3a) MA&NT: ownership requirements for nationally registered ships	None	Made available on reasonable and non-discriminatory terms	Ac mu
Φ European Community	No commitments	Storage and warehouse services (other than in ports); freight transport agency/freight forwarding services; pre-shipment inspection	No commitments	Re pri uni
Φ 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	
Φ Slovenia	No commitments	Commitments on storage and warehousing, customs clearance, freight forwarding and pre-shipment inspection	No commitments	Ma
Φ Hungary	No commitments	Commitments on storage and warehousing	Commitments not technically feasible	Ma
Φ Turkey	None except (1) NT: discriminatory port charges; (1b) 10% preference margins for public cargoes; (3a) MA: ownership requirements	No commitments	No commitments	Ma rer NT

• Developing Economies of South America and Oceania  
Economies of Africa

♠ Developing Economies of Asia  
Economies

◆ Developed Economies

♣ Developing

Δ Newly Industrialised

Φ Other European Economies

- 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