Negotiations on maritime transport liberalisation under GATS and China's strategies

Weimin Ren

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NEGOTIATIONS ON MARITIME TRANSPORT LIBERALISATION UNDER GATS AND CHINA'S STRATEGIES

By

REN WEIMIN
The People's Republic of China

A dissertation submitted to the World Maritime University in partial fulfilment of the requirement for the award of the degree of

MASTER OF SCIENCE
in
GENERAL MARITIME ADMINISTRATION & ENVIRONMENT PROTECTION

1995

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DECLARATION

I certify that all the material in this dissertation that is not my own work has been identified, and that no material is included for which a degree has previously been conferred on me.

The contents of this dissertation reflect my personal views, and are not necessarily endorsed by the University.

Signature: ..................................................
Date: .................................................. Oct. 9 1995

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ABSTRACT

This dissertation is a study of the negotiations on maritime transport liberalisation within the framework of the General Agreement on Trade in Services (GATS) and China's strategies for the negotiations.

A brief look is taken at the background to initiating multilateral negotiations on trade in services and at the negotiations in the Uruguay Round. The basic concepts and main principles of GATS and its specific provisions on maritime transport services are introduced, taking into account its importance in liberalising maritime transport services.

The existing protectionist measures in international maritime transport services are identified with a view to evaluate the effects of application of GATS principles on this sector. The provisions relating to developing countries are also addressed and evaluated, considering the state of uneven development in maritime transport services between developed and developing countries.

Several outstanding issues in the negotiations are analysed in order to identify the attitudes of various participating countries and to assess the possible impact of the negotiations on maritime transport liberalisation. Particular attention is paid to the roles of the European Communities and the United States, taking into account their respective impacts on the negotiations. The present situation of the continued negotiations is introduced and assessed, and the likely result is forecast.
China's currently operating maritime transport policy is explored from the point of view of the context of GATS. China's participation in the negotiations on maritime transport services in the Uruguay Round is reviewed with a view to identifying its position. China's strategies for the negotiations are proposed based on the considerations of three basic elements: the national economic development strategy, the competitiveness of its domestic maritime transport services, and the unfavourable conditions faced by its domestic maritime transport service suppliers in the international market.

The concluding part suggests China rethink its existing maritime transport policy and strengthen international co-operation in order to pursue its requests in future negotiations.
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<td>CFB</td>
<td>Central Freight Bureau</td>
</tr>
<tr>
<td>COSCO</td>
<td>China Ocean Shipping Company Group</td>
</tr>
<tr>
<td>CPC</td>
<td>Central Product Classification</td>
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<tr>
<td>DSB</td>
<td>Dispute Settlement Body (of the WTO)</td>
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<tr>
<td>dwt</td>
<td>dead-weight tonnage</td>
</tr>
<tr>
<td>EATA</td>
<td>European Asia Trade Agreement</td>
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<tr>
<td>EC</td>
<td>European Communities</td>
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<td>EU</td>
<td>European Union</td>
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<tr>
<td>FOC</td>
<td>flag of convenience</td>
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<td>GATS</td>
<td>General Agreement on Trade in Services</td>
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<td>GATT</td>
<td>General Agreement on Tariff and Trade</td>
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<td>GNS</td>
<td>Group on Negotiations on Services (of the Uruguay Round)</td>
</tr>
<tr>
<td>HMM</td>
<td>Hyundai Merchant Marine</td>
</tr>
<tr>
<td>ITO</td>
<td>International Trade Organisation</td>
</tr>
<tr>
<td>MFN</td>
<td>Most-Favoured-Nation Treatment</td>
</tr>
<tr>
<td>MINCOMAR</td>
<td>Ministerial Conference of West and Central African States on Maritime Transport</td>
</tr>
<tr>
<td>NGMTS</td>
<td>Negotiation Group on Maritime Transport Services (of the WTO)</td>
</tr>
<tr>
<td>ODS</td>
<td>Operating Differential Subsidy</td>
</tr>
<tr>
<td>OECD</td>
<td>Organisation for Economic Co-operation and Development</td>
</tr>
<tr>
<td>RBPs</td>
<td>restrictive business practices</td>
</tr>
<tr>
<td>SINOTRANS</td>
<td>China National Foreign Trade Transportation Corporation Group</td>
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<tr>
<td>TAA</td>
<td>Trans-Atlantic Agreement</td>
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<tr>
<td>TSA</td>
<td>Transpacific Stabilisation Agreement</td>
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<tr>
<td>TEU</td>
<td>Twenty Equivalent Unit</td>
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<td>TNC</td>
<td>Trade Negotiations Committee (of the Uruguay Round)</td>
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<tr>
<td>UNCTAD</td>
<td>United Nations Conference on Trade and Development</td>
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<td>WTO</td>
<td>World Trade Organisation</td>
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Chapter 1
Introduction

Over recent years, the general trend of the world economy has been towards liberalisation. This has been evidenced by the conclusion of the Uruguay Round multilateral trade negotiations. A major outcome of the Uruguay Round was that it embraced the negotiations on the new area of trade in services, and produced a set of new multilateral disciplines, General Agreement on Trade in Services (GATS), governing this field under the institutional umbrella of the World Trade Organisation (WTO) and its dispute settlement mechanism.

The important role of services in economic development has been increasingly recognised in both developed and developing countries. Its growing share in both output and employment has changed the traditional economic structure in many countries and represented a general shift towards a more service-orientated economy. In the present globalised world economy, services have been closely integrated with other industries so that it is not surprising to observe initiatives to broaden international trade rights and obligations in this field. However, despite increasing attention to services from both institutional study and personal research, services have eluded a satisfactory definition due to the wide range of activities that they cover. This has caused most analyses to just list activities which should be considered as part of the services sector without relying on a systematic definition. Nevertheless, for the purposes of this dissertation, services can be roughly defined to cover all activities not
included in the primary and secondary sectors such as communications, financial, tourism, and maritime transport services, which is the concern of this study.

Maritime transport services is very closely linked to international merchandise trade, and has been recognised as a traditional pillar of international exchange. While maritime transport services remains an important part of international economic activities, there is still lacking an adequate set of rules governing relevant commercial policy issues at the international level. Therefore, most countries develop their policies on a unilateral or bilateral basis. As a result, today’s international maritime transport policy presents a complex picture of both freedom and protectionism.

Since the 1980s, poor economic performance and external pressures exerted by foreign creditors have forced a number of developing countries to reform their economic policies. A partial result of this economic reform at the macro level has been a move towards liberalisation of maritime transport services. However, for those countries, which have exercised strong governmental involvement in this field for decades, the conflicts between liberalism and interventionism is difficult to resolve. This has been particularly reflected in the Uruguay Round negotiation.

Maritime transport services has always been a key sector in the Uruguay Round. Liberalisation in this sector presented both political and technical problems. Although considerable progress was made towards significant liberalisation by certain countries during the Uruguay Round, participants felt that further negotiations were needed in order to ensure a higher level of liberalisation in this sector. As a result, a decision was made to extend the negotiations on maritime transport services, and conclude the negotiations no latter than June 1996. At present, the negotiations are ongoing.
China was one of the 23 original contracting parties to the General Agreement on Tariff and Trade (GATT), but withdrew from GATT in contentious circumstances in 1950. In 1982, China become an observer of GATT. In June 1986, China formally submitted a request to GATT to resume its status as a contracting party. This request has been under consideration by a working group since March 1987. In parallel, China has fully participated in the Uruguay Round, including the negotiations on maritime transport service. China is a major maritime transport services supplier as well as a major user. On the one hand, the rapid expansion of its merchant fleet has increased its participation in the international maritime transport market. A favourable international maritime transport environment will further help to promote its maritime transport services. On the other hand, under the outward-oriented economic development strategy, China’s economic development has become increasingly dependent on foreign trade. This requires China to develop an efficient maritime transport services system in order to facilitate its foreign trade. The negotiations on maritime transport services under the framework of GATS provides both China’s users and suppliers with opportunities to fully utilise both the domestic and the international resources of maritime transport services. Although there exists uncertainties concerning the negotiations, it is clear that further maritime transport policies will have to be geared towards liberalisation, and the international efforts towards this goal will be made through negotiations within the framework of GATS. Therefore, it is necessary for China to pay close attention to the negotiations on maritime transport services under GATS and carefully develop its related strategy.

The objective of this study is to help China to develop its strategy for the negotiations on maritime transport services within the framework of GATS, aimed at creating, through negotiation, a favourable domestic and international maritime transport environment for both the country’s maritime transport services users and suppliers in order to support China’s economic development. The negotiation on maritime transport services within the framework of GATS is a complex issue,
involving political, economic, legal and technical aspects. This study makes an attempt to touch all the important aspects in order to provide a clear picture of the issue for readers. However, it should be understood that this ambitious work cannot be easily accomplished at this level of study. Therefore, it does not go into too much detail but merely focuses on some of the basic elements. During the research certain difficulties were encountered because of limited information available. In addition, the uncertainties of the negotiation’s future results further added to the difficulties. As a result, this study is, to a large extent, based on the author’s personal experiences gained from involvement in the previous negotiations. Personal biases will be unavoidable. Therefore, further research is recommended on many of the issues raised in this study for a deeper understanding of the issues concerned.

The paper is broken down into four main parts. Following the introduction, Chapter 2 explores the initiatives of the inclusion of the negotiations on trade in services in the Uruguay Round, and introduces the provisions of GATS from a legal point of view. Chapter 3 then analyses the implications of applying GATS to maritime transport services through some selected principles. Chapter 4 reviews several key issues raised in the negotiations on maritime transport services in the Uruguay Round, and forecasts the likely result. Chapter 5 explores how China should develop its strategies for the negotiations and makes some proposals. The concluding chapter suggests that China should rethink its existing maritime transport policy and offers a number of recommendations.
Chapter 2
General Agreement on Trade in Services

The most impressive feature of the GATS is that it has extended the scope of international trade rights and obligations to the field of trade in services (UNCTAD, 1994a, Page XII). This reflects the view of some developed countries that the potentially large role of services in world trade has been restricted by the lack of multilaterally accepted rules governing this area.

The GATS establishes a set of entirely new rules and disciplines for international trade in services and has an universal coverage of application, including maritime transport services which this study concerns. Its effect is expected to reduce trade barriers and discrimination to foreign services suppliers, through progressive liberalisation, thereby expanding world trade in services.

This chapter examines the background of the negotiations on trade in services and GATS. Section 1 explores the initiation of the negotiations on trade in services, and provides a brief overview of such negotiations in the Uruguay Round. Section 2 introduces GATS, with particular attention to its several important provisions. The last section provides a general introduction to the negotiations on maritime transport services.

2.1 Background
2.1.1 The initiation of the negotiations on trade in services

The service sector and international trade in services have become progressively more important to the economies of both developed and developing countries. According to UNCTAD statistics (UNCTAD, 1994b, page 4), the share of the service sector in GDP increased from 64 per cent to 72 per cent in the developed market-economy countries, and 48 per cent to 55 per cent in developing countries from 1970 to 1991. There seems to be a general trend towards a more service-oriented economy around the world.

However, these figures also suggest an uneven development of the service sector between developed and developing countries. The increased dependence on the service sector in developed countries is also reflected by the areas of employment. In many developed counties the share of services in total employment is more than 60 per cent, and about 70 per cent for some of them (Hoekman, B. M, 1991, Page 30). In countries like the United States, France, Germany, Japan and the UK, the movement of labour has been from the primary and the secondary sectors to the service sector since the 1960s. For example, in France the share of the primary and the secondary sectors in total employment decreased by 9 and 4 per cent respectively from 1965 to 1980, but during the same period the service sector increased by 13 per cent (UNCTAD and World Bank, 1994, Page 6). This picture was similar in the other developed countries.

Accompanying the growth of the service sector in the domestic economies, international trade in services has also experienced a rapid increase. International Monetary Fund and World Bank databases (UNCTAD and World Bank, 1994, Page 12) show that the annual growth of world trade in services was 9.2 per cent from 1980 to 1990. In 1993, the share of commercial services in world exports reached
21.4 per cent (GATT, 1995, Page 8-9). It is also important to note that while the trade in services remained at a constant rate of increase, the growth rate of merchandise trade was relatively low during the same period.

The developed countries are the largest producers of the trade in services. The top fifteen service exporters accounted for 77.6 per cent of total global service exports in 1990; and among them, only Singapore and Hong Kong did not belong to the OECD club (UNCTAD and World Bank, 1994, page 15). Recognising the importance of the service sector to national economic development and its potential role in the world trade by some developed countries, it became obvious that a freer world market of trade in services would be of benefit if not vital to their economies. Therefore, in the early 1980s, there was mounting interest among developed countries in opening up world trade in the services market.

The United States was the main proponent of initiating multilateral negotiations aimed at liberalising world trade in services. The United States is one of the biggest service exporters in the world. In 1993 it ranked the first place in the list of leading exporters in world trade in services, with a share of 16.7 per cent in total world services exports. In the same year, its commercial service exports accounted for 26.8 per cent of its total exports in terms of value (GATT, 1994, Page 8-9). Trade in services is also important to the United States balance of payment. In 1984 its deficit in merchandise trade was US$114 billion, but it had a US$14 billion surplus in trade in services (Kakabadse, 1987, Page 56). These two figures were changed to US$138.6 billion and US$53.5 billion respectively in 1993 (GATT, 1994, Page 8-9). In its domestic market, 17 million new jobs were created in the service sector in the 1970s, while the total number of new jobs was only 20 million (Kakabadse, 1987, Page 56).
As early as 1980 the United States already initiated a public campaign for negotiating trade in services under GATT. Three reasons which resulted in the United States advocacy were summarised by UNCTAD (1994c, page 145) as follows:

(a) response to pressures from a group of transnational corporations;
(b) its desire to strengthen the “free trade lobby” to offset the growing political power of protectionist interests; and
(c) the recognition that services were of growing importance to the United States’ exports and investment abroad.

The effective way to liberalise the world’s service market would be the negotiations within a multilateral forum. In this respect, GATT offered the possibility. GATT is a multilateral treaty that lays down general rules, accepted by over 120 parties, for the conduct of international trade relations. GATT was established on October 30, 1947, to become effective on January 1, 1948. It was intended to be a temporary measure. Its institutional functions were to be exercised on a permanent basis by the proposed International Trade Organisation (ITO) which was to be created by the so-called Havana Chapter. When the ITO failed to materialise, the institutional element of GATT was developed.

A major objective of GATT, when negotiated in 1947, was to bring order to trading relationships and thereby to avoid the protectionist trade practices of the 1930s. This is reflected in the preamble to the GATT which calls for “reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international commerce”. Since 1948, GATT has been the main forum for the liberalisation of trade barriers and for the settlement of international trade disputes. By the end of the 1970s, seven rounds of multilateral trade negotiations had been conducted by the GATT. As a result, GATT has fostered the evolution of the world
trading system from a highly restrictive form towards a more liberal and evenly balanced form.

However, GATT previously did not apply to the area of trade in services. This gap in the GATT's coverage drew the attention of the United States, and since the end of the Tokyo Round the United States had urged including trade in services in the new round of GATT talks. In 1978, the United States changed its trade laws, which were enacted on 30 October 1984, entitled Trade and Tariff Act of 1984, to broaden the definition of trade to include both goods and services. Thus, the law provided the United States trade negotiating body with a coherent integrated approach to negotiate on both goods and services. Section 305 of Title III of this Act contains the negotiating objectives on services, which mainly includes the reduction and elimination of barriers and development of international rules.

In 1982 the United States submitted to the GATT a document which emphasised the importance of trade in services and urged the preparation of multilateral negotiations in this field. This proposal was met with disagreement from developing countries and some developed countries. In their opinion, the discussion of services under GATT could create an assumption that trade in services would be bound by GATT principles which had not been adopted multilaterally in this field, and the link between concessions on goods and services in a single instrument would help to legitimise the cross-sectoral (between goods and services) retaliatory provisions of the United States trade law (Gibbs, M and Mashayekhi, M, 1991, Page 7).

After several years of preparatory work, the United States' position, supported by the EC and other developed countries later, was largely met at the special session of the GATT Contracting Parties held in Punta de Este, Uruguay in September 1986. At that meeting, the ministers decided to launch a new round of multilateral trade negotiations, the Uruguay Round, and adopted the Punta de Este
Ministerial Declaration. Part II of the Declaration deals with the negotiations on trade in services. The objectives of the negotiations on trade in services are threefold: first, to establish a multilateral framework of service trade rules; second, to expand trade under transparency and progressive liberalisation; and third, to promote economic growth of all countries and the development of developing countries. Although the language in the Declaration was so carefully designed that the ultimate objective is the expansion of trade, not the liberalisation, it actually implied a more liberal world trade environment and domestic economy. In this respect, Maconini (1990, Page 20) commented that this wording only satisfied those countries that "would see the merits of expanded trade".

The Declaration established a Group on Negotiations on Services (GNS) to deal with the matters related to the negotiations on trade in services. The GNS reports to the Trade Negotiations Committee (TNC) which was established by the Declaration to look after the whole Uruguay Round negotiations.

2.1.2 A brief overview of the negotiations on trade in services in the Uruguay Round

At the initial stage of the negotiations, the GNS started its work with some basic elements, such as definitions and statistics. By mid-September 1989, the examinations had been completed on six sectors: telecommunication, construction, transportation, tourism, financial and professional services.

From December 1989 the Group began to concentrate its work on drafting the framework of GATS. Various proposals were submitted by the participants, from which extremely different views could be seen. The submission of the "Afro-Asian" proposal (Cameroon, China, Egypt, India, Kenya, Nigeria and Tanzania), which has considerably influenced the final text of GATS, made a clear distinction between the
general obligations which shall apply to all sectors and parties upon the entry into force of the agreement, and the market access and national treatment principles which shall be implemented through the negotiations of specific commitments on sectors or sub-sectors in the course of progressive liberalisation (i.e. the positive list approach). This approach was totally different from the one proposed by some developed countries, which suggested establishing a set of general obligations applicable to across-the-board access commitments, with very few strict reservations (i.e. the negative list approach). In December 1990, the chairman of the GNS presented to the Brussels Ministerial meeting a draft GATS on his own responsibility, which, to a large extent, reflected the positions of the developing countries (UNCTAD, 1994c, Page 148).

From July 1991, participants were required to submit their conditional offers on liberalisation of markets as a basis for the negotiations on initial commitments. On 13 January 1992, a four-track approach for rapidly concluding the Uruguay Round was adopted by the TNC based on the well-known Dunkel Draft. Track two concerned non-stop negotiations on initial commitments in trade in services. In the following period the negotiations on the maritime transport, financial, telecommunication and audio-visual sectors became the outstanding issues, and no satisfactory agreements on these sectors were achieved by the end of the Uruguay Round. Finally at the Ministerial Meeting of the TNC held in Marrakesh from 12-15 April 1994, it was agreed to continue negotiations on the sectors of financial, basic telecommunication and maritime transport services.

2.2 General Agreement on Trade in Services

GATS establishes a multilateral framework of principles and rules for trade in services. Its purposes are to expand trade in services under conditions of transparency
and progressive liberalisation and as a means of promoting the economic growth of all trading partners and the development of the developing countries.

GATS has three main components (Appendix 1): a general framework; a set of annexes; and national schedules of specific commitments. All these three parts have equal importance, and each one constitutes an integral part of the GATS. The general framework lays down the basic rules on trade in services applying to all parties; the annexes address the specifics of several individual service sectors and modes of supply and the Most-Favoured-Nation (MFN) treatment exemption issue; the national schedules are the specific commitments undertaken by parties relating to the conditions on market access and national treatment. The main provisions of GATS are described below.

2.2.1 Definitions and the scope of application

GATS has a universal coverage and applies to any forms of measures by Members affecting trade in services with respect to the purchase, payment, use, and access of services as well as the presence of service suppliers. Still, GATS does not contain a precise definition of “services”. Article I.3 states that “services include any service in any sector except services supplied in the exercise of government authority”. The GATT secretariat has provided a services sectoral classification list which contains 11 services sectors and 155 sub-sectors, and has been used by the participants for negotiating and drawing up their schedules of commitments. “Measures by Members” does not include the measures taken by private sectors not in the exercise of powers delegated by government bodies.

For the purpose of GATS, “trade in services” is defined as “the supply of a service: (a) from the territory of one Member into the territory of any other Member (cross-border supply); (b) in the territory of one Member to the service consumer of
any other Member (consumption abroad); (c) by a service supplier of one Member, through commercial presence in the territory of any other Member (commercial presence); (d) by a service supplier of one Member, through presence of a natural person of a Member in the territory of any other Member (presence of natural person)". Such a broad definition reflects the mobility characteristic of trade in services, including the service itself, suppliers and consumers, and capital. It also reflects a compromise between developed countries, which emphasised the importance of capital movement, and developing countries, which claimed labour movement.

2.2.2 General obligations and disciplines

As mentioned before, the “Afro-Asian” submission considerably influenced the text of GATS. The structure of the framework of GATS clearly separates the general obligations and disciplines which apply to all parties and almost all service sectors, and specific commitments which are negotiated undertakings particular to each GATS signatory with respect to the related sectors. Part II of the agreement contains 14 general obligations, including the MFN treatment, Transparency, Increasing Participation of Developing Countries, Business Practices, Government Procurement, General Exemption, Subsidies and other important rules.

Article II on unconditional MFN treatment is the core general obligation of the agreement. It requires each Member to “accord immediately and unconditionally to services and services suppliers of any other Member treatment no less favourable than it accords to like services and services suppliers of any other country”. This implies that any discriminatory measures across different foreign suppliers would violate the agreement. To comply with this rule, any reciprocal preferential treatment arising from bilateral or other forms of treaties will have to be extended to others, or the parties concerned will have to phase out such agreements. It should be noted that
MFN treatment does not imply a particular level of market access because it simply requires non-discrimination across foreign suppliers regardless of the openness of the markets.

However, this provision should be read in connection with the following provision in the same article as well as the Annex on Article II Exemptions. Article II.2 allows for a party to maintain a measure inconsistent with this obligation provided that such a measure meets the conditions set out in the Annex on Article II Exemptions. The exemptions are subject to time limits, normally no more than 10 years, and periodic review. The following five elements are required to be covered in a country’s MFN exemption list: description of the sector or sectors in which the exemption applies; description of the measures; the country or countries to which the measures apply; the intended duration of the exemption; the conditions creating the need for the exemptions.

There are two major reasons that allow Members to deviate from the MFN obligation. First, as mentioned before, the MFN-treatment simply requires non-discrimination across foreign suppliers regardless of the openness of the markets. At present, the level of openness varies among countries, a binding requirement to apply unconditional MFN-treatment could be interpreted as approval for countries maintaining restrictive policies. For those countries which offer liberal market-access opportunities for the outside, foreign competitors would then continue to have liberal access to their home markets without having to offer any reciprocal access. Therefore, invoking exemptions from the MFN treatment can be used as a way to press certain countries to liberalise their markets. Second, due to the long existence of preferential arrangements in some service sectors, it takes time for them to be multilateralized (UNCTAD and World Bank, 1994, Page 142). Nevertheless, the provision on MFN exemptions does reduce the value of the GATS.
Developing countries successfully incorporated the objective of increasing their participation in trade in services into the framework as a legally binding obligation. Article IV, entitled “Increasing Participation of Developing Countries”, provides for concrete measures with a view to increase developing countries’ shares of the world market. It provides that the increasing participation of developing countries in world trade shall be facilitated through negotiated specific commitments relating to access to technology on a commercial basis; the improvement of their access to distribution channels and information networks; and the liberalisation of market access in sectors of export of interest to them. It also requires developed countries to establish contact points to facilitate access of developing countries’ service suppliers to information on commercial and technical aspects of the supply of services, registration, recognition and obtaining of professional qualification, and the availability of service technology. Special priority is given to the least developed countries in implementing these provisions.

It should be noted that Article IV does not exempt developing countries from any of the obligations in the agreement. From this article, it can be seen that how to achieve the objective of increasing participation of developing countries in trade in services will mainly depend on negotiated specific commitments. The author doubts the effectiveness of this obligation, bearing in mind that most sectoral negotiations are undertaken in bilateral form, and most developed countries have substantial negotiating leverage.

Anti-competition practices in the field of trade in services can be taken by both governmental sectors and private operators. While the agreement contains very strong provisions, Article VIII, on monopolies and exclusive providers, it does not provide strict obligations on the anti-competition behaviour of private operators. Article IX on Business Practices recognises that certain business practices of service suppliers may restrain competition and restrict trade in services; however, there is no specific
obligation to eliminate these practices. It only provides for consultations, co-operation and exchange of information. When drafting the text in the Uruguay Round, some developing countries intended to include a clear obligation which required parties to take measures to ensure that services suppliers do not engage in unfair trade practices, but developed countries resisted relevant provisions with respect to anti-competition practices of private corporations (Gibbs, M and Mashayekhi, M, 1991, Page 32). As mentioned above, the GATS only applies to the measures taken by governmental bodies or non-governmental bodies in the exercise of powers delegated by the governments. It seems necessary to develop international rules or encourage governments to take measures with respect to the area of private business practices, taking into account that business practices may seriously restrict market access.

Article XIII on Government Procurement stipulates that the provisions relating to MFN treatment, market access and national treatment shall not apply to laws, regulations or requirements governing the procurement by governmental agencies of services purchased for governmental purposes and not with a view to commercial resale or use in the supply of service for commercial resale. There are no detailed rules on this issue in the article. This question was left for further negotiations within two years from the entry into force of the Agreement Establishing the WTO. The lack of rules in this area may create the possibility of limiting market access by seeking the excuse of government procurement.

With respect to subsidies, during the negotiations in the Uruguay Round some developing countries required a freeze and rollback of subsidies practised by developed countries, while they sought flexibility in using subsidies to improve their service sector (Gibbs, M and Mashayekhi, M, 1991, Page 33). The question on subsidies is addressed in a way similar to government procurement. Article XV on Subsidies states that “Members recognise that, in certain circumstances, subsidies may
have distortive effects on trade in services”. No specific rules were made. The GATS requires further negotiations in this area.

2.2.3 Specific commitments and progressive liberalisation

The Specific Commitment part in the GATS contains three articles: Market Access, National Treatment and Additional Commitment. These provisions are not general obligations. They apply only to service sectors and sub-sectors which are included in the national schedules of contracting parties, subject to qualifications, limitations and conditions imposed.

According to Article XVI on Market Access, a Member grants full market access in a given sector and mode of supply when it does not maintain in that sector any type of the measures listed in this article. The measures listed include four types of quantitative restrictions: number of service suppliers, total value of service transactions, total quantity of service output, and total number of natural persons that may be employed. Limitations are provided as well on forms of legal entity and on foreign equity participation. It should be noted that quantitative restrictions refer to maximum limitations. Minimum requirements such as those common to licensing criteria do not fall within the scope of this article.

National treatment for foreign services and services suppliers is defined, in Article XVII, as treatment no less favourable than that accorded to like domestic services and service suppliers. A Member grants full national treatment in a given sector and mode of supply when it accords in that sector and mode conditions of competition no less favourable to services or service suppliers of other Members than those accorded to its own like services and service suppliers. Such treatment does not have to be identical to that applying to domestic firms, recognising that in some instances identical treatment may actually worsen the conditions of competition for
foreign based firms (e.g., a requirement for insurance firms that reserves be held locally). It is also useful to keep in mind that, unlike Article XVI, this article does not contain an exhaustive list of the types of measures which would constitute limitations on national treatment.

The impact of the specific market access and national treatment obligations will largely depend on the extent to which service sectors are listed in national schedules, and the extent to which limitations, conditions or qualifications are imposed on them.

Article XVIII on Additional Commitments allows for commitments to be negotiated on measures affecting trade in services not subject to scheduling under Articles XVI and XVII, such as qualifications, technical standards or licensing requirements or procedures. Additional commitments are expressed in the form of undertakings, not limitations.

The specific commitments undertaken by each Member are required by GATS to be listed in its national schedule (Box 1). The schedule contains the following types of information: a clear description of the sector or sub-sector committed, limitations on market access, limitations on national treatment, and additional commitments other than market access and national treatment. The commitments in the schedule are legally bound. They imply that a Member shall not be allowed to impose any new restrictive measures, affecting market access or national treatment on sectors or sub-sectors, than those described in the schedule. The commitments shall apply to all Members as a result of the MFN treatment obligation, even through these commitments are in many cases the results of bilateral negotiations. A Member may modify or withdraw its commitments in its schedule, but it has to compensate the affected Members, if the proposed modification or withdrawal affects their benefits.
### Box 1  Format of national schedule

<table>
<thead>
<tr>
<th>Sector or Sub-Sector</th>
<th>Mode of Supply</th>
<th>Limitation on Market Access</th>
<th>Limitation on National Treatment</th>
<th>Additional Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Cross-border supply</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. Consumption abroad</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. Commercial presence</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. Presence of natural person</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

A high level of liberalisation in trade in services cannot be expected to be achieved within a short time. To approach such a goal, Article XIX on Negotiations of Specific Commitments requires the Members to enter into successive rounds of negotiations, through either bilateral, plurilateral, or multilateral forms, beginning not later than five years from the entry into force of the Agreement Establishing the WTO.

### 2.2.4 Other provisions

It is necessary to mention the disputes settlement mechanism in the field of trade in services established by GATS. Under the WTO organisational structure, the General Council, which carries out the function of a Dispute Settlement Body (DSB), is responsible for disputes settlement relating to all matters within the WTO system, including trade in services. The Understanding on Rules and Procedures Governing the Settlement of Disputes, a separate instrument adopted in the Uruguay Round, shall apply to such disputes settlement.

Article XXIII on Dispute Settlement and Enforcement provides that the DSB may authorise a party to suspend the application of certain obligations and specific commitments to another party if the disputes cannot be otherwise satisfactorily
settled. It should be noted that, according to the rules of the Understanding on Rules and Procedures Governing the Settlement of Disputes, a suspension of concessions is not limited to the concessions resulting from GATS, a cross-retaliation with concessions on trade in goods or intellectual property would be permitted under certain conditions.

2.3 Specific provisions relating to maritime transport services

A higher level of liberalisation of maritime transport services was a central concern in the negotiations on trade in services. The main process of the negotiations was summarised by the WTO secretariat (TS/NGMTS/W1) as:

"At the end of 1991, interested participants started a process of informal discussions which aimed at securing liberalisation commitments by a "critical mass" of countries. Such discussions were viewed by many as needed in order to narrow the gap between those participants who were reluctant to accept the application of GATS disciplines to the sector and those who were in principle in a position to bind high levels of liberalisation under the GATS. Participants on both sides of the spectrum agreed that a satisfactory agreement in the sector required an overall meaningful level of liberalisation commitments. Interested participants had a series of informal consultations during the latter part of 1992 and 1993. From December 1992 discussions were based on a model schedule, a modified version of which was circulated informally in June 1993. By the end of the negotiating process, some participants felt that, notwithstanding the commitments offered by a significant number of countries, further negotiations were needed in order to ensure higher levels of liberalisation in the sector".
During the Uruguay Round negotiations, around 50 countries, including all important maritime countries such as the EC, Japan, Nordic countries, and the United States, offered conditional commitments on maritime transport services. However, the negotiations on this sector was not successfully concluded due to certain reasons (further discussed in Chapter 4). At the end of the Uruguay Round, 32 countries made commitments on maritime transport services in their final country schedules, 14 countries withdrew their conditional offers. In addition, 26 countries maintained their requests for MFN exemptions for maritime transport services in their final country lists. As a result, the NGS agreed to extend the negotiations on maritime transport services. At the Marrakesh meeting the TNC adopted the Decision on Negotiations on Maritime Transport Services (Appendix 2), and included it as well as the Annex on Negotiations on Maritime Transport Services (Appendix 3) in the GATS.

The Decision states that the negotiations "shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restriction within a fixed time scale". It establishes a Negotiation Group on Maritime Transport Services (NGMTS) to carry out this mandate and sets a deadline of June 1996 as the date to conclude the negotiations and make a final report. The negotiations are open to all countries.

The Decision and the Annex deal with the questions on specific commitments and MFN exemptions separately. According to paragraph 1 of the Annex and paragraph 5 of the Decision, the provisions relating to MFN treatment and MFN exemption in the GATS are suspended during the continued negotiations. This means that exemptions maintained by members have no legal effect during this period. The Annex provides that these provisions shall fully apply to this sector only on the date of implementation of the results of the continued negotiations, or the date of the final report of the NGMTS should the negotiations not succeed. With respect to the specific commitments maintained in the Members' schedules, they would keep effect
on a MFN treatment basis during the period of the continued negotiations. However, both the Decision and the Annex provide that from the conclusion of the continued negotiations, and before the date of the implementation, members shall be free to improve, modify or withdraw all or part of their commitments in this sector without offering compensation. The Decision also provides that at the same time Members shall finalise their positions relating to MFN exemptions in this sector. This provision makes it possible for Members to list MFN exemptions that were not listed at the end of the Uruguay Round. The Decision also provides that participants shall not apply any measures affecting trade in this sector in order to improve their negotiating position and leverage.
Chapter 3
Considerations Relating to The Application of GATS to Maritime Transport Services

Liberalisation of trade in services implies a process where measures need to be taken to eliminate trade barriers to market access and discrimination against and across foreign services suppliers. Under the framework of GATS, this process is expected to take place through general obligations and specific commitments resulting from negotiations. Therefore, it is important to first identify those restrictive measures that adversely affect liberalisation in trade in services.

Maritime transport services is a complex industry. Most of the activities are concerned with international trade and take place within a complicated world pattern involving suppliers and users from various countries, and governed already by numerous multilateral, bilateral agreements, governmental policies, as well as self-regulation by the industry itself. The importance of maritime transport services to national economic development and even national defence and sovereignty, particularly in the time of political crises, has led governments to take various measures to support their national maritime transport services. Therefore, it is unavoidable that a certain amount of protectionist measures exist in this field.

This chapter attempts to identify some major existing barriers to maritime transport liberalisation in line with several important principles and obligations of
GATS, and examine the implications of the application of these principles to the industry. The uneven development of the maritime transport services between developed and developing countries is also addressed, taking into account the increasing participation of developing countries as one of the main objectives of GATS.

3.1 Market access

Market access is a prerequisite for achieving trade liberalisation. For the purpose of GATS, market access is subject to the commitments made by each party through negotiations. Parties are not allowed to take more restrictive measures than those imposed under each mode of supply in their final country schedules. And, foreign services suppliers are entitled to choose any mode or modes to which they prefer to deliver their services.

In the four modes of delivery of maritime transport services, limitations on market access are mostly seen in the mode of cross-border supply, commercial presence, and presence of natural person. For consumption abroad, limitations on market access are seldom found because the essential feature of this mode is that the service is delivered outside the territory of the party making the commitments. Ship repair abroad can be considered as an example of consumption abroad. However, since ship repair is normally not considered as the activity for the purpose of transportation, it will not be discussed in this paper.

The essential element of transport services is to transport cargoes from one place to another. Thus, the relevant services are mainly delivered through the mode of cross-border supply since they can be completed without the necessity of commercial presence of suppliers within the territory of the country where the services are
delivered. Therefore, any restrictions on access to the carriage of cargo will constitute barriers to access to the maritime transport market through cross-border supply.

The instruments which restrict access to the carriage of cargo can be roughly classified as three types: cargo reservation, cargo preference, and cargo sharing. All these measures can result in limiting foreign carriers access to a country's maritime transport market. As cargo preference is of discriminatory nature, it will be addressed in the next section on national treatment. Cargo reservation policy is taken unilaterally and designed to promote national shipping capability by giving the domestic carriers a secure and stable cargo base. The forms of cargo reservation measures are various, ranging from reserving a certain quantity of cargo for national flag vessels to designating certain kinds of cargo to national flag vessels.

For example, Nigeria Decree No. 10 of 30 April 1987 provides that no less than 50 per cent of bulk trade is reserved for Nigerian carriers, and in Morocco 40 per cent of imports and 30 per cent of exports are required to be shipped on national flag ships (OECD, 1987, Page 152-154). Korea practises a designated cargoes system, which reserves the following cargoes for the Korean flag vessels: the imports of crude oil, ore, fertiliser raw materials, grain, coal, raw materials for petrochemical products, liquefied gases, reefer and refrigerated cargoes, government procurement cargoes, and exports of cement and steel products (UNCTAD TD/B/CN.4/34).

As a result, these measures reduce or completely exclude foreign carriers from participating in a country's seaborne trade. Cargo reservation is a quite common restrictive shipping practice and adopted by both developed and developing countries. In an OECD study of maritime protectionism in developing countries, 45 developing countries were found to have adopted legislation containing cargo reservation provisions (OECD, 1987, Page 130).
Since cargo reservation is a powerful instrument to decide whether or not and to what extent foreign maritime transport service suppliers can access a country's seaborne trade transport market, it is undoubtedly one of the biggest barriers to maritime transport liberalisation. Accordingly, to achieve maritime transport liberalisation the first step should be to phase out all kinds of cargo reservation measures. The effects of free access to the carriage of cargo have also economic significance. It has been argued that due to the lack of competition resulting from cargo reservation measures, it increases the cost of transportation, causes inefficiency, and hampers improvement of service quality and technological development. To eliminate cargo reservation measures would imply an increase in opportunities for all parties to participate in the world maritime transport market. However, developed countries will probably benefit more because the most countries practising cargo reservation policies are developing countries. Thus, those developing countries' carriers will face greater competition pressures resulting from removing protectionist measures in terms of access to the carriage of cargo.

Cargo sharing is another instrument which restricts access to the carriage of cargo. The relevant arrangements are usually made through bilateral agreements, which normally provide that the transport of seaborne trade between the two parties concerned is reserved for these two countries' national flag vessels on a certain sharing basis such as 50-50 or one-third for each. For example, the agreement between Argentina and Brazil reserves all liner cargo generated from their bilateral trade equally for the vessels flying these two countries' flags (OECD, 1987, Page 139). The effects of cargo sharing not only quantitatively limit the carriers of both countries concerned access to the bilateral trade transport, but more seriously refrain third countries from participating in the seaborne trade transport between those two countries. This practice also contradicts the principle of the MFN treatment, and will be further discussed in section 3.
The effects of bilateral cargo sharing arrangements seem to be limited due to their feasibility in practice. The most contentious issue relating to cargo sharing comes from the relevant provision in the United Nations Convention on the Code of Conduct of Liner Conference (the Code). Article 2 of the Code contains provisions for participation in the trade. It establishes the principle that in liner trade between any two Member States of the Code, the national shipping lines of those states shall have an equal right to participate in the freight and volume of traffic generated by their mutual trade, while third party shipping lines shall have a right to acquire a significant part such as 20 per cent of such traffic. This is widely known as 40-40-20 cargo sharing principle, and has, due to its wide application, had more serious effects on market access than bilateral cargo agreements.

While in practice the 40-40-20 formula has been largely limited by the “Brussels Package” provided by EEC-OECD countries, which stipulates that the cargo sharing provision does not apply to the traffic between those countries, the question on whether the Code should apply to liner conferences only or to liner trade as a whole has been under considerable debate recently. This has been happening particularly between EU and certain West African countries: Based on the paragraph 17 of Article 2 and paragraphs (a) and (b) of the Preamble of the Code, a number of West African countries interpret the provisions of the Code, in particular those relating to cargo sharing arrangements, as applying to the whole liner trade. This interpretation largely restricts foreign carriers, especially the EU members’ shipping companies, from participating in the EU-West African seaborne trade.

It is predictable that due to the cargo sharing provision, the Code will face a great challenge in the negotiations under the framework of GATS. However, it seems that this problem cannot be easily solved because since its entry into force in 1983, the Code has been accepted by 77 countries (UNCTAD, 1994(d), Page 77), and its principles have been adopted by many developing countries to form the basis of their
maritime transport policies. It should be kept in mind that the creation of the Code was originally aimed at increasing and securing participation of developing countries in liner trade. Although to eliminate this arrangement complies with the spirit of trade liberalisation, it will also imply the increase of difficulties of developing countries in participating in the liner shipping market. On the other hand, it should also be noted that evidence has shown that the 40-40-20 formula, and even the Code as a whole, have not brought the effective participation of developing countries into the world maritime transport market. How to deal with the Code in the GATS negotiations seems to be determined mainly by the political willingness of developing countries.

Another restriction on market access in the mode of cross-border supply is the restriction on cabotage. Cabotage is traditionally understood as the traffic or transport between two ports located in the same country. Due to sovereignty, economic concerns and other reasons, cabotage restricts trade to national carriers in most countries. With the evolution of containerised transportation, the restrictions of cabotage largely limit the expansion of liner services because the present trend in international containerised transport points out a distribution system within which feeder service plays an important role in connecting the dedicated hub ports with feeder ports. In some areas, shipping lines are facing difficulties in establishing the needed networks due to the issue of cabotage.

To liberalise cabotage seems not to be an easy matter. Nevertheless, the definition of cabotage needs to be clarified. The traditional concept of cabotage may not make allowances for the recent development of maritime transport services. The question has been raised: should cabotage be defined based on geographic considerations or on the cargoes? For example, should the transport of cargo imported from a European country from a transshipment port in which the cargo is first landed to the final destination port in the same country be defined as cabotage? Different countries may have different interpretations. It is necessary to unify the
definition of cabotage. In doing so, new trends of transportation development should be taken into consideration.

For the purpose of GATS, commercial presence means any type of business or professional establishment through various forms, such as constitution of a juridical person, or creation of a branch office. Limitations on commercial presence primarily come from a country's foreign investment policy. Two types of limitation measures are commonly seen: restrictions or requirements regarding type of legal entity (for example, only joint ventures are allowed), and limitations on the share of foreign capital investment (for example, 49 per cent or less is required).

In the field of maritime transport services, the immediate question raised relating to commercial presence is the question of ship register. Theoretically a totally opened shipping market shall allow foreigners to establish shipowning companies and operate their ships under the flag of country in which they are domiciled. Thus, the issue of flag of convenience is involved. Flag of convenience (FOC) is an old issue. The negative impacts of FOC on the world maritime transport service has long been realised, and efforts have been made to eliminate this regime.

The purpose of FOC is originally designed to increase a country's fiscal revenue by attracting foreign shipowners through favourable terms to register their ships in the country, and it was practised primarily by the countries from the developing world. However, it should be noted that there is a trend in the developed world in which a second register approach has been adopted with a view to recover or maintain their commercial fleet. In 1987, Norway was first to establish an international register. During recent years several EU member states also established a similar system. So, open registers now exist in both the developed and developing world, despite the differences in their respective purposes. Ironically, those countries which advocate maritime transport liberalisation might not really wish other countries.
to open their registers, since it will provide the owners in the developed countries, who prefer to flag out their vessels for various reasons, with more opportunities to do so. It is interesting to note the development of negotiations on this issue within the framework of GATS.

Restrictions on flagging conditions do not in reality affect the possibilities for shipping companies to provide their services which remain essentially cross-border in nature. However, restrictions on the local presence of foreign shipping companies in the forms of branches or subsidiaries, for the purpose of conducting direct commercial activities such as marketing and contracting for their parent companies, would undermine in many circumstances their abilities to benefit effectively from market access opportunities.

In connection with this issue, the forms of commercial presence seem to be unique in the field of maritime transport, and need to be clarified. This is concerned with the status of "shipping agency". Shipping companies do not in all cases establish a personal or direct commercial office, branch or subsidiary when they seek a local commercial presence, but may often rely on a local agent who will undertake on their behalf their marketing and sales. For shipping companies, this can be construed as a form of commercial presence. Restrictions on the freedom of contracting do exist in practice. For example, Indonesia requires foreign shipping companies to appoint an Indonesian shipping company as its general agent (GATS/SC/43). Therefore, free contracting should be addressed in the negotiations.

Presence of natural person is a politically sensitive issue for many governments because the issue involves labour movement. Limitations on this mode include residence and work permits, qualification requirements, and quantitative restrictions. The critical issue relating to presence of natural person in maritime transport services is the labour export of seafarers. This is of special interest for some developing
countries which have the potential to provide seafarers to the world shipping market. Some questions arise with respect to the types of measures which fall within the scope of GATS in the movement of natural persons. The Annex on Movement of Natural Persons Supplying Services provides that GATS does not apply to measures affecting natural persons seeking access to a party's employment market, nor does it apply to measures regarding citizenship, residence or employment on a permanent basis. However, the question is how to distinguish the case of a person seeking access to the employment market from the case of entry and temporary stay for the purpose of supplying a service. The Annex also provides that parties may negotiate specific commitments applying to the movement of all categories of natural persons (e.g. specialist, skilled workers). Accordingly, to what extent foreign seafarers are allowed to access to a country's maritime employment market is subject to negotiation.

A liberalised seafarer labour market will have a certain impact on world maritime transport services. Both developed and developing countries will have certain positive and negative effects. For countries with high labour costs, while their shipping companies will increase competitiveness by employing a cheaper labour force, the domestic crew will probably have less opportunities of employment. Conversely, for the countries which supply cheap seafarer as labourers, while the export of labour will bring foreign currency to their nations, their shipping companies will perhaps face greater competition pressures from developed countries benefiting from the employment of a cheaper labour force.

3.2 National treatment

National treatment actually addresses the question of competition opportunity. Treatment is considered as less favourable if it modifies the conditions of competition in favour of national services or service suppliers. Without national treatment, the commitment on market access would be seriously undermined. Discriminatory
measures toward foreigners in maritime transport services are mainly reflected in the modes of cross-border supply and commercial presence. Subsidy is the most important issue in this field and will be discussed in a separate section.

With regard to cross-border supply, cargo preference policy is a typical discriminatory measure. Cargo preference measures have various forms, waiver system and specific requirements on trading terms are the most common ones. Waiver system refers to the practice that domestic vessels have preferential privilege to load cargoes over foreign vessels. For example, in Korea before 1 January 1995 on near sea routes liner cargoes were firstly reserved for Korean flag ships, except in the case of shortage of domestic supply of transport capacity. Regarding trading terms, a number of countries implement a policy which encourage their exporters to sell CIF or C&F, and their importers to buy FOB. This policy is designed to keep the right of designating the vessel to the country concerned in order to allocate the cargo to the national flag vessels.

To practise preferential treatment, institutional arrangements have been established in certain countries. Recently Central Freight Bureau (CFB) has alarmed OECD members. CFB is a kind of central booking arrangement established by some countries in the territories of their trading partners. CFB usually has strong powers to control cargo allocation. In its practice all shippers must channel their shipments to and from the country concerned through its CFB or a designated agency, which in turn uses its powers to allocate cargoes to the national flag ships. As a result, foreign carriers are automatically placed at a disadvantage in competition, despite the legal permit of market access.

Apart from cargo preference policy, discriminatory measures are also commonly reflected in the use of port facilities. These discriminatory measures include, but are not limited to: lower port dues and charges for the national flag
vessels than for foreign vessels, priority of berthing and cargo handling for national flag vessels, restrictions on currency exchanges or unfavourable rates for foreign shipowners. In a study by OECD (1987, Page 133), Angola, Argentina, Brazil, Peru, and Venezuela were identified to charge their national carriers for various marine services less than foreign flag ships. These services included various port charges such as mooring, dockage, demurrage and pilotage, and sometimes even bunker charges or taxes on bunkers.

The implementation of national treatment implies that those countries practising discriminatory measures against foreigners with respect to cargo and port facilities shall either grant the same treatment to foreigners or eliminate those policies. Consequently, a fair competition environment would be created. Meanwhile, domestic suppliers which will no longer be protected by these preferential measures, would face greater competition pressures. This may probably happen in the less developed maritime countries.

Regarding commercial presence, discriminatory measures are mainly reflected in taxation and in the scope of business activities which the like foreign shipping companies are allowed to undertake. For example, in the territory of Hong Kong the income derived from international operation of ships registered in the Hong Kong Shipping Register is exempted from Hong Kong's profits tax (GATS/SC/39). Shareholders of Thai maritime transport companies with ownership of Thai flag vessels may be granted exemption or reduced rates of income tax leviable on dividends paid by such companies (GATS/SC/85). With respect to business activities, foreign owned companies may not be allowed to do all business done by domestic companies. Foreign shipping companies may meet this problem in some particular business areas such as cabotage and inland waterway transport. As a result, they are restrained from effectively competing with local companies. With the continued development of multimodal transport, this issue seems to be of increasing importance.
3.3 Most-favoured-nation treatment

The MFN treatment is a core principle of GATS. It implies that parties are not allowed to impose any measures that discriminate across foreign services or service suppliers as far as the application of measures relating to market access or national treatment is concerned. Therefore, any benefits to one party or parties from existing preferential arrangements should become available to all GATS signatories if the MFN principle is implemented unconditionally.

The MFN treatment simply requires non-discrimination across foreigners regardless of the openness of the market. However, effective implementation of the unconditional MFN treatment in the maritime transport services sector may have special significance in liberalising the industry for the reason of the existence of the Code. As mentioned before, the 40-40-20 cargo sharing provision not only has effects on restricting market access but also has a discriminatory nature because cross traders are not granted the same treatment as the shipping lines at both ends of the trade in terms of cargo allocation. However, more attention should be paid to the GATS’ special provision on the MFN exemption, which allows parties to request exemptions from applying the MFN exemptions to certain measures under specified conditions. This provision provides those countries which intend to continue to apply the 40-40-20 formula with opportunities to limit foreigners access to their liner market. Therefore, the efforts to liberalise maritime transport will be undermined, considering that the Code has been widely accepted and a large number of countries have incorporated the Code’s provisions into their national legislation as an important part of maritime transport policies. If the 40-40-20 provision could be eliminated through the application of the MFN treatment, this would be a big step towards maritime transport liberalisation.
Cargo sharing arrangements in bilateral agreements have also discriminatory effects on third parties. For example, the agreement between Chile and Brazil reserves all freight between these two countries for the vessels flying the Chilean or Brazilian flags. As far as Chile is concerned, this agreement implies a less favourable treatment to other foreign carriers compared to Brazil's since they are not guaranteed the same favourable conditions relating to the carriage of cargo as Brazil. Application of unconditional MFN treatment implies that those countries, like Chile and Brazil, which have cargo sharing arrangements with other countries shall phase out such arrangements. As a result, all seaborne trade routes will be free to access by cross traders.

In the field of maritime transport, reciprocal conditions are imposed by law in some countries. For example, in Japan the Freight Forwarding Business Law provides that an operation permit of governmental registration for international freight forwarding services is granted only to those firms of the countries in which Japanese firms are eligible for such a permit or qualified for such registration. In some countries counter-measures are legitimised, which authorise the governmental agencies to take countervailing measures in the case that their shipping entities meet restrictions in foreign countries. Section 11 of the Coasting Trade Act of Canada authorises the competent agency to take appropriate measures if the Ministry of Transport considers that a government of any country has engaged in unfair, discriminatory or restrictive practices with respect to the use of Canadian ships in commercial activities in waters of that country. The incentives of these measures are to seek a reciprocal treatment of national companies when they operate in foreign countries. But once the counter-measures are taken to a party or its shipping companies, they contradict the MFN treatment principle of GATS. The MFN treatment does not require all parties to have the same level of liberalisation, it only requires a party to treat all parties on an equal basis.
3.4 Increasing participation of developing countries

The distribution of world maritime transport activities is quite uneven among various groups. According to UNCTAD statistics (UNCTAD, 1994(d), Page 24), in 1993 the developed market-economy countries, either directly or through open or international registers, handled 55.6 per cent of the world seaborne trade, while in the meantime the share of developing countries stood at 38.7 per cent. The uneven development of maritime transport capacity is reflected in the ownership of merchant fleets as well. UNCTAD (1994(d), Page 24) also suggests that while those developed countries controlled 67.6 per cent of the world fleet in 1993, the developing countries' merchant fleet only accounted for 22.2 per cent in terms of dead-weight tonnage.

The unsatisfactory state of maritime transport development in developing countries is also reflected in the following facts:

“(a) Not a single African country is among the 35 most important maritime countries, though six Asian developing countries rank among the 20 most important maritime countries; 

(b) In 1990, all developing countries of African taken together owned container tonnage with carrying capacity of 1819 TEU - less than the carrying capacity of a single third-generation container ship.

(c) A large part of the developing countries' bulk fleet is old and without the capacity to meet new safety requirements, and this implies operating outside mainstream bulk trades.

(d) Developing countries are not sufficiently involved in large container traffic, they do not offer related downstream back-up services and consequently they are unable to diversify into multimodal transport operations” (Behnam, 1994, Page 21).
The failure of developing countries in the development of maritime transport services has been caused by various factors. But it should not be denied that the maritime transport policies which they adopted in the past decades have contributed to this situation to a large extent. In the 1960s, developing countries, including many newly independent nations, realised the importance of maritime transport to national economic development, and considered that their shipping problems resulted from their complete dependence on foreign flags for the transport of their international trade. Consequently they focused their attention on the issue of ship-owning rather than on the influence of shipping service on their trade needs. To support their ship-owning policy, they took measures relating to access to cargoes and quarantines for the carriage of such cargoes. The Code and the 40-40-20 cargo sharing arrangement was a result of their efforts at the international level.

In the eighties maritime transport services itself had experienced enormous changes through the introduction of new technology and the change of world politic and trade patterns. For developing countries, the eighties became a decade of stagnation of shipping development. Although the tonnage owned by developing countries increased to about 20 per cent of the world total, the objective of shipowning did not bring the expected outcome for most such countries. Three decades have past, the redistribution of ownership has come to the result that only a handful of developing countries owned almost 80 per cent of the developing countries’ total fleet. Most of them were Asian countries. It should be noted that these countries represent those who properly adjusted their shipping policies at earlier stages.

In the international community UNCTAD has made great efforts to increase participation of developing countries in the world’s maritime transport services. Now, GATS has also set the same goal and embodied it in the several provisions of the
agreement. In addition to Article IV, which has been addressed in Chapter 2, there are also several other provisions relating to developing countries. Article V on economic integration allows parties to enter into preferential trade-liberalising agreements. Such agreements are subject to certain conditions, the major ones being that they have substantial industry coverage, provide for national treatment for the industries involved and do not result in higher external barriers for services and services suppliers originating in non-member states. However, paragraph 3 of Article V states that where developing countries are parties to such agreements, “flexibility shall be provided for regarding the conditions ... in accordance with the level of development of the countries concerned, both overall and in individual sectors and sub-sectors”. Moreover, in the case of agreements “involving only developing countries, more favourable treatment may be granted to juridical persons owned or controlled by natural persons of the parties to such an agreement”.

Article XV on subsidy recognises the distortive effects of subsidy on trade in services and requires the parties enter into negotiations in this field. In the meantime it also mentions that such negotiations must recognise the role of subsidies in development programmes of developing countries and take into account the needs of the developing countries for flexibility in this area.

Article XIX states that, to achieve the objective of the agreement, the process of progressive liberalisation through the future commitment negotiations shall allow for “appropriate flexibility for individual developing countries for opening fewer sectors, liberalising fewer types of transactions, progressively extending market access in line with their development situation and, when making access to their markets available to foreign services suppliers, attaching to such access conditions aimed at achieving the objectives” - increasing the participation of developing countries in world trade.
In addition to Article IV, Article XXV on technical co-operation is the second provision that deals solely with the situation of developing countries. It consists of two paragraphs. The first one states that services suppliers needing assistance shall have access to the contact point required by Article IV. The second paragraph states that technical assistance to developing countries shall be provided to the multilateral level by the GATT Secretariat and shall be decided upon by the Council for Trade in Services. It seems that an effective technical co-operation, to a large extent, depends on the implementation by developed countries of the obligation set down in Article IV. The meaning of the second paragraph seems unclear. Actually, many multilateral organisations have already provided technical co-operation programmes. Examples include United Nations bodies and agencies such as the World Bank, the international Maritime Organisation.

To summarise these provisions, developing countries are accorded limited special and differential treatment. Although they have certain flexibility to offer less than developed countries, they are not allowed a free ride. The author thinks that this policy should be acceptable, because if the governments are concerned with economic efficiency, there is no reason why optimal policies would differ for developing countries as opposed to developed countries. Therefore, as stated in the Preamble of GATS, the author thinks that the best way to increase the participation of developing countries is to strengthen their domestic services capacity and their efficiency and competitiveness.

In the field of maritime transport, there is already an international trend of liberalisation in the developing world. The lessons learned from the past policies practised by most developing countries should remind them to re-think their policies, not just seek protection by closing the market. Developing countries should realise the need for change and adopt a more pragmatic, realistic and flexible approach to the issue of maritime transport services.
It needs to be mentioned that in May 1992, the Secretary-General of UNCTAD convened a group of experts on shipping policies to discuss the new programme for shipping in the nineties. The Group of Experts stressed that commercial criteria based on the economic factors endowed should be the basis for developing countries to expand their participation in world shipping; the objective of transportation services should be to facilitate trade; expansion by developing countries into shipping would have to recognise the new realities of the global economy, i.e. liberalisation of trade policies and privatisation of public sector companies.

The experts also pointed out the need for conferences to reconsider their price-setting mechanism and for the introduction of greater flexibility and commercial freedom among their members. On the question of participation of developing countries in trade, including bulk trade, they stressed the need to focus on an ability to have commercial control over transport services, rather than ship ownership and emphasised that further shipping policies would have to be based on progressive liberalisation and the principles of free and fair competition.

In making some fourteen recommendations at the national level and to UNCTAD, the experts highlighted the need for adoption of market-oriented shipping policies and the liberalisation of such policies by all countries, the compatibility of the two concepts of fleet development and commercial control, the commercialisation or privatisation of state-owned shipping enterprises, and joint ventures and regional approaches. The experts also recommended a new and evolving role for shippers' councils in developing countries (UNCTAD TD/B/CN.4/6).

It is obvious that future shipping policies of developing countries must be based on market orientation and minimum government intervention. The capacity of developing countries to compete is paramount for their participation in maritime
transport services. To increase their opportunities for participation, developing
countries should deregulate their markets and co-operate with their trading partners in
all aspects of maritime transport services. Co-operation between developed and
developing countries are equally important for developed countries, since maritime
transport liberalisation cannot be achieved by developed countries themselves.
Developed countries should extend assistance to the developing countries’ maritime
transport services in the current period of transition.

3.5 Subsidies and government procurement

Subsidy is an old and commonly practised protectionist measure in world
maritime transport services. The desire to have a national fleet for economic, strategic
or other reasons has led governments to heavily subsidise such operations. According
to a study of the US Department of Transportation in 1983 (White, 1988, Page 42-
43), very few countries among the 49 replies to a questionnaire did not offer any form
of assistance to its national fleet.

The origin of maritime subsidy goes as far back as the seventeenth century
when England started providing subsidies to its shipping industry to maintain its
supremacy in the world market. The aim of a subsidy is to maintain a national fleet on
a certain level, or further develop the national flag fleet. Its effect is to reduce the
shipowners’ total costs of operating a national flag vessel.

A review of the literature on shipping subsidies indicates that there is yet no
agreement on the classification of subsidies. J.E.Hawkin (1989, Page 2-3) grouped
shipping subsidies under two headings: direct and indirect subsidies. Direct subsidies
include: operating subsidies, construction subsidies, credit and loan subsidies, scrap
and built subsidies, investment grants. Indirect subsidies include: taxation allowances,
cargo/flag preference and reservation, cabotage, customs reductions, moratoria and
guarantees on loans, and deductions in social security contributions. Some of these measures have been discussed in the previous sections in this chapter, such as cargo reservation and cabotage. Among others, taxation allowance and operating subsidies are most widely available to shipowners and need to be discussed further.

In most countries taxes to the government are very important factors in the economy of the nation and of the individual shipping company. Therefore, any programme reducing the level of taxation will be an efficient instrument in making it possible to improve the financial position of the individual company. The form of taxation allowances are various, and normally include depreciation allowances, tax free reserves, tax exemptions, tax credits, low tax rates and reimbursement of certain taxes. The major benefit from these programmes is that the company can retain a higher amount of its income. Most countries opt for this kind of subsidy because it is less blatant than other forms of protectionist measures and is also easier to justify.

An operating subsidy is a direct subsidy to the shipowning company by subsidising a certain amount of its operating costs compared to operating a similar vessel under foreign flag. Such aids are given for the purpose of placing the operations of a national vessel on a parity with those of foreign competitors. The subsidy is normally based on the difference between the fair and reasonable cost of insurance, maintenance, repairs, wages, and the estimated costs of the same items if the vessels were operated under foreign registry.

Due to lack of adequate information with respect to maritime subsidy, it is difficult to evaluate its impacts on the whole industry. However, it is widely recognised that a subsidy can result in reducing ship operating cost and thus create the possibility of unfair practice, such as dumping. This issue has drawn the attention of certain countries which have begun to arm themselves with mechanisms for dealing with such unfair practice. The typical example is the measures taken by the EC to
countervail unfair pricing practice in maritime transport. In 1986, the EC adopted Regulation 4057/86 that authorises the competent authority of the EC to take measures against the practices of certain shipping companies which are believed to set low prices to secure freight contracts. The practices deemed to be unfair were described as

“the continuous charging on a particular shipping route to or from or within Community of freight rates for selected or all commodities which are lower than the normal freight rates charged during a period of at least six months, when such lower freight rates are made possible by the fact the shipowner concerned enjoys non-commercial advantages which are granted by a State which is not a member of the Community”.

In the first case under Regulation 4057/86, the EC commission carried out an investigation into a Korean shipping line, Hyundai Merchant Marine (HMM), in 1987. The European liner operators claimed that HMM was charging uneconomic and unfair freight rates on the southbound trip from North Europe to Australia. In its findings the Commission concluded that:

"— Hyundai MM has enjoyed non-commercial advantages granted by the Korean Government;
— Hyundai MM has operated lower than normal freight rates, which are made possible by the non-commercial advantages;
— Hyundai MM has inflicted major injury on the community shipowners;
— The community interests (e.g. the viability of the shipping industry, seafarers’ employment, etc.) calls for action.” (OECD, 1988, Page 16-17).

As a result, the EC commission imposed a redressive duty on HMM. The US Shipping Act 1984 also provides countervailing measures against certain unfair
practices in the “rate standard for controlled carriers”, and “predatory pricing provisions”.

The absence of adequate information or past experience with respect to subsidies on services led the Uruguay Round negotiators to postpone attempts to agree upon disciplines on subsidies on trade in services. Recognising that subsidy may have distortive effects on trade in services, Article XV of GATS provides that parties shall enter into negotiations with a view to developing the necessary disciplines to avoid such trade distortive effects in the context of a future work programme.

It seems that subsidy will be a contentious issue in the negotiations, since the perceptions as to the appropriate role of governments in the support of economic, social and development objectives and the acceptability of its effects on trade differ from country to country. In maritime transport services, the appropriateness of countervailing measures should be carefully addressed, because it is not easy to define in what sense the pricing is unfair. It is unfair to say that the price is unfair only because the freight is lower than that of others. The fact that some operators from developing countries offer lower freight rates is not necessarily caused by government support. It could result from high efficiency or other factors which present lower costs. On the other hand, the fact that some shipping companies from developed countries cannot offer relatively lower freight rates does not necessarily mean that these companies are not protected by their governments in various ways.

Government purchase of services, which is a common phenomenon in maritime transport, can also be considered as a kind of subsidy, if it provides the service suppliers with assured markets that would enable them to reduce their costs so as to compete more effectively internationally. Government procurement in maritime transport services can be mainly reflected in the concept of so-called “government cargo”. The term “government cargo” encompasses a broad range of cargoes and is
defined differently in different countries. In the same OECD study (Page 129) mentioned above, the following seven types of governmental or commercial activity, involving or involved in the seaborne trade, were identified as falling under the “governmental cargo” category:

“1) Government departments in pursuit of their own mandate, inter alia, defence supplies and mail;
2) Government departments engaged in commercial operations for their own accounts;
3) Quasi-governmental bodies (including local government authorities);
4) Nationalised corporations;
5) Commercial organisations in which governments hold a majority share-holding;
6) Commercial organisations engaged in operations involving government grants, loans, guarantees or subsidies, or tax exemptions;
7) Commercial organisations dealing with commodities regarded as of strategic importance.”

Various provisions on the carriage of “government cargo” exist in many countries. The absence of a unified definition of “government cargoes” at present can result in an unfair situation of market access among countries. It is also possible for certain countries to use the term “government cargoes” to protect their maritime market. The Article XIII of GATS on Government Procurement provides that the provisions relating to MFN, market access and national treatment do not apply to the procurement by governmental agencies of services purchased for governmental purposes. The question of the rules on government procurement are left for future negotiations. Accordingly, it is necessary to define what are “government cargoes” in
the maritime transport field to avoid abuse of the provision on government procurement of GATS.

3.6 Business practice

Apart from governmental measures, trade liberalisation can also be impeded by restrictive business practices (RBPs) or the anti-competitive behaviour of private service suppliers. RBPs are considered as those less justifiable practices restricting free and fair competition. Brusick P, Gibbs M, and Mashayekhi M (1990, Page 130) summarised four types of RBPs traditionally addressed by competition law. They are:

a). agreement between firms to eliminate competition by fixing prices or allocating markets; b). activities of eliminating competitor through refusal to deal, price maintenance, tied selling and predatory pricing; c). efforts to attain a dominant position of power through take-overs, mergers, or acquisitions; and d). efforts to attain a dominant position of power through control over technology or various techniques.

RBPs is a noticeable issue in maritime transport, especially in the liner shipping markets. The existence of various arrangements which have more or less an anti-competitive nature constitutes one of the major characteristics of the liner market. Today there are about 360 conferences in the world liner market (Stopford, M, 1993, Page 210). The conference systems have existed for more than a century, and have been recognised to have certain merits such as providing a stable and regular service, rationalising trade routes by avoiding overcapacity and minimising costs. However, the conference itself is a typical cartel organisation in the sense that it limits internal competition by agreement among members, who normally fix prices and set cargo allocation sharing. In addition, conferences also employ certain unjustifiable measures to limit competition from outsiders, such as rebates to loyal customers and fighting vessels.
The consortium is another kind of arrangement in the liner market as a result of containerisation which requires a large investment in operating liner services. It is designed to minimise operation costs and improve competitiveness by taking advantage of combining economies of scale and technical progress. Consortia generally help to improve productivity and quality of available liner shipping services by reason of the rationalisation they bring to the activities of member companies and through the economies of scale they allow in the operation of vessels and utilisation of port facilities; they also help to promote technical and economic progress by facilitating and encouraging the development and utilisation of containers. There are several types of consortia agreement; namely, joint scheduling, slot charting, vessel and/or port facility pooling, container and other equipment pooling, joint operation of port terminal and related services. However, due to their advantages in economies of scale and technology, consortia may attain dominant positions on certain trade routes. As a result, it is very difficult for outsiders to compete with them.

In addition to conference and consortium, there also exist many stabilisation agreements in liner shipping market. The most important ones are the Trans-Atlantic Agreement (TAA), the Transpacific Stabilisation Agreement (TSA), and the European Asia Trade Agreement (EATA). These agreements emphasise capacity limitations and freight rate stabilisation between conference members and independents, and have very large market shares on the respective routes. Under the TSA capacity management scheme, in the quarter of March/June 1995 a number of big carriers reduced their capacity by 14,000 to 20,000 TEUs each (Beargie T, 1995, Page 20). The co-ordination between conference and non-conference carriers under the stabilisation agreements actually limits competition among members, and may present dangers of unreasonable increases in transportation costs. To some extent, this kind of agreement can be simply considered as a conference by another name.
The high degree of concentration of industry seems to make the possibility of anti-competition practices more likely. Although such concentration does not imply lack of competition among these large enterprises, their practises may present barriers to new entrants, and thereby result in a further concentration of market powers on a larger scale. This phenomenon has already been seen in the liner shipping market. In 1991, the traffic of the world’s 20 biggest shipping lines covered 37 to 38 percent of the world market (UNCTAD TD/B/CN.4/5). It is estimated that this figure has been maintaining the increasing in recent years. The process of concentration has already led to the development of what is termed “mega carriers”. These mega carriers have their main trade on all important trade routes and have met very limited competition from other relatively small operators. Recently, following the announcement that Maersk line and Sea-Land Service have entered into another global alliance, 10 out of the top 20 carriers have already formed global alliances under three groups. It is considered that these supergroups will dominate the world’s trade lanes before the end of the century.

To counter RRBs, competition laws have been introduced in a number of countries. However, with respect to the maritime transport services, certain business practices such as the activities of conferences and consortia have been exempted from general competition rules in certain countries. For example, both EC regulation 4056/86 and US Shipping Act 1984 exempt liner conference from application of their respective competition law. In April 1995, the EC adopted a new regulation, Regulation 870/95, dealing exclusively with consortia in liner shipping. The regulation exempts consortia agreements, under certain conditions, from the competition rules laid down in Article 85 of the EC Treaty.

It needs to be noted that these national regulations normally apply only to the concerned business practices affecting these countries. They do not bind the behaviours of their home enterprises outside their countries. On the other hand, there
also exists certain conflicts between those laws. Therefore, national competition laws cannot effectively counter anti-competitive practices at an international level. Furthermore, the absence of multilateral rules may prompt countries to impose conditions on market access for foreign service suppliers to pre-empt their possible resorting to anti-competitive practices. Although this may have an effect on avoiding anti-competitive practices, in the meantime it could also result in new barrier of market access thus adversely affecting the process of maritime transport liberalisation.

GATS deals with this issue in its Article IX, Business Practice. Although the article stresses that certain business practices of service suppliers may restrain competition and thereby restrict trade in services, it does not lay down any rules to eliminate these practices. Thus, how to deal with RBPS issues in the maritime transport services has been left to the negotiations. However, this seems to be one of the most difficult issues, because it has been widely realised that for reasons of development of container transportation services and the size of the investments needed for the operation of such services, co-operation between carriers is necessary. Notwithstanding, a set of proper international disciplines on anti-competition practices would significantly increase the opportunities for participation by developing countries.
Chapter 4
Initial Assessment of The Negotiations on Maritime Transport Services in The Uruguay Round and Forecasts of The Continued Negotiations

Maritime transport services was always a key sector in the Uruguay Round negotiations. Liberalisation in this sector presented both political and technical problems. Different interests in the maritime world made it impossible to achieve instant global liberalisation. The breakdown of the bilateral negotiations on this sector between the US and the EC resulted in non-conclusion of the negotiations in the Uruguay Round. The transportation industry has experienced revolutionary changes in recent decades. Accordingly, traditional ways of viewing the sector in both economic and regulatory aspects have no longer fully met new requirements. Thus, great efforts were made to overcome technical obstacles to the negotiations.

A significant number of countries offered commitments in liberalising maritime transport services during the Uruguay Round negotiations. However, due to political reasons, only 32 participants made liberalisation commitments in their final country schedules. Most major maritime countries withdrew their initial offers. In spite of considerable progress made towards significant liberalisation, the level of liberalisation actually achieved was less than many wished. Participants realised that further negotiations were needed to ensure a higher level of liberalisation in this sector. As a result, a decision was made to extend the negotiations on maritime transport services.

Up to now, more than 50 governments have been involved in the intensive discussions. The continued negotiations aim at commitments in all three pillars of
maritime transport services, international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale. The current situation suggests a possibility to reach this goal.

This chapter examines some key issues in the maritime transport services sector in the Uruguay Round negotiations and the follow-up activities. The first section discusses issues concerning definitions of maritime transport services and the objectives of the negotiations. Section 2 summaries and evaluates the commitments made or offered by participants in the Uruguay Round. Section 3 analyses reasons which resulted in non-conclusion of the negotiations, with a particular attention to the US position. The last section, Section 4, introduces recent developments in the continued negotiations and forecasts its likely result.

4.1 The definitions of maritime transport services and the objectives of the negotiations

4.1.1 The definitions of maritime transport services

The issues of definitions and classifications have special significance in the negotiations on trade in services because commitments are usually limited to the specified service activities. Without a unified and precise definition and classification, commitments will cause difficulties in understanding and even may bring about disputes due to different interpretations. The maritime transport services sector was one of the service sectors that was first examined by the NGS. Great efforts were made during the Uruguay Round to clarify the activities that this sector comprises.

Conventional studies on maritime transport services have always been focused on the function as a mode of transportation, moving goods from one place to another by water. It ignores several other important elements such as auxiliary services, and
port services. Recent developments in the transportation industry have brought a new picture, which has emphasised the importance of all its activities. With the evolution of new technology, especially the introduction of containerisation and the concept of multimodal transport, maritime transport has no longer been an isolated process of moving goods from one place to another, but has become an integral part of total production and marketing processes in the context of market-logistic concepts. All relevant activities have contributed to this new trend. Therefore, the traditional concepts of maritime transport service may not any longer properly reflect the present situation.

At the beginning of the negotiations, the GATT Secretariat prepared a list of services classifications based on the UN Central Product Classification (CPC) system for the convenience of the negotiations. Under the heading of transport services in this list, maritime transport services was comprised of the following activities: a). passenger transportation; b). freight transportation; c). rental of vessels with crew; d). maintenance and repair of vessels; e). pushing and towing services; f). supporting services for maritime transport. Each service listed above may include several activities. Under the same heading, there is a sub-sector named services auxiliary to all modes of transport, which consists of cargo-handling services, storage and warehouse services, freight transport agency services, and other services related to maritime transport services. In addition, CPC gives each activity a general explanation and a reference number.

A further examination of CPC shows that the relevant classifications and definitions do not always coincide with and fully cover all activities of the maritime transport services. For instance, CPC does not include container station and depot services, which are important to maritime transport suppliers to provide multimodal transport services. Accordingly, efforts were made by the participants during the Uruguay Round to classify and define this sector properly and more clearly. In 1991,
the Nordic country group (Finland, Iceland, Norway and Sweden) submitted a proposal for a common approach to maritime transport negotiations. According to the proposal, maritime transport services were roughly classified into four fields: international shipping, cabotage, maritime transport auxiliary services, and port services. Auxiliary services were considered to be ones which can be supplied by foreign maritime transport operators directly or sub-contracted with a local company; these included such services as loading and unloading, stevedoring, warehousing and storage, clearing cargo with customs, and freight forwarding. Port services mainly referred to publicly available port infrastructure services as required by foreign maritime transport operators, such as berths and berthing services, provisioning, fuelling, watering, and port captains' services. The Nordic proposal created a more clear picture of the maritime transport services, and formed a basis for further defining and classifying the sector.

In June 1993, the EC circulated a Draft Schedule on Maritime Transport Services (Appendix 4) to the interested participants. This Draft largely corresponded to the Nordic proposal and made significant progress in solving the technical problems. It classified maritime transport services as three categories: international transport (including freight and passenger transport, excluding cabotage), maritime auxiliary services, and port services. Maritime auxiliary services consisted of six activities: a). maritime cargo handling services; b). storage and warehousing services; c). customs clearance services; d). container station and depot services; e). maritime agency services; f). maritime freight forwarding services. Port services included nine items: a). pilotage; b). towing and tug assistance; c). provisioning, fuelling and watering; d). garbage collecting and ballast waste disposal; e). port captain's services; f). navigation aids; g). shore-based operational services (including communications), water and electrical supplies; h). emergency repair facilities; i). anchorage, berth and berthing services. The Draft adopted a combined method in defining the relevant services. For some of them the CPC definitions were directly used such as
international transport, which referred to the CPC item 7211 (passenger transportation) and 7212 (freight transportation). In the Draft, most maritime auxiliary services were given new definitions. A summary of classifications and definitions of maritime transport services developed during the Uruguay Round can be found in Appendix 4.

It should be noted that these definitions are provisional, and further refinements are needed. Notwithstanding, the way of defining and classifying the sector in the Draft more closely reflected the current market structure and regulatory framework of the maritime transport services. At present, although international transport activity will continue to be a central part in this sector, auxiliary and port services have been playing more and more important roles in devoting to an integrated modern and efficient maritime transport services. Furthermore, they can provide more new opportunities, for those countries which lack adequate capabilities of providing international transport service, to participate in the trade of maritime transport services.

As the maritime market becomes more sophisticated, transport operators need a group of people having special knowledge to conduct certain business on their behalf. Maritime auxiliary services suppliers can function as such intermediaries between operators and users. The auxiliary services are becoming key elements through which transport operators can improve their service quality. The importance of ports to a nation's economic development has been recognised by many countries. In the context of an integrated transport system, ports have no longer been terminal points of a transport mode but rather essential links in a transport chain from consignor to consignee. The changes in port services are of vital importance not only for the competitive position of a port but equally for maritime transport services as a whole.
In conclusion, an efficient maritime transport service needs the activities in all these three categories to work closely together. Barriers to efficiency in any one activity would have disruptive effects on the whole sector. The classifications and definitions developed by the participants during the Uruguay Round properly reflect the whole picture of maritime transport services and to a large extent solved the technical problems, thereby facilitating participants review of their regulatory framework.

4.1.2 The objectives of the negotiations

What level of liberalisation should be achieved was the fundamental question in the negotiations. Of course, each participant had its own objective. However, in a multilateral forum there has to be a relatively common objective; otherwise, no deal would be done. Throughout the overall process of the negotiations on maritime transport services in the Uruguay Round, the objectives of the negotiations on this sector were mainly developed by OECD countries.

Over the course of the latter part of 1991, discussions on the maritime transport services sector focused largely on the Nordic proposal for a common approach to liberalisation. Generally speaking, this proposal was very ambitious. It was designed to form an integral part of GATS binding all parties, and aimed to completely liberalise this sector within a short time. The proposal covered all aspects affecting trade in the maritime transport services. It proposed a standstill on restrictive and trade distorting measures in international shipping, followed by a later rollback to eliminate cargo sharing agreements, cargo reservation schemes, and discriminatory measures against foreign shipping suppliers in the supply of international shipping services frozen by a standstill. With respect to the politically sensitive issue of cabotage, it simply mentioned the possibilities of negotiating specific commitments based on GATS principles of market access, national treatment and progressive
liberalisation. Standstill was also proposed to auxiliary services, and a rollback of existing restrictions on this field was suggested as well. In addition, it requested the parties to ensure that access to and use of port services by foreign users shall be on reasonable and non-discriminatory terms and conditions. The Nordic Proposal was generally supported by most OECD countries, which considered the approach to be a means of ensuring an acceptable level of liberalisation commitments.

However, not surprisingly, the Nordic proposal was, in particular, not acceptable to a number of developing countries especially, but not exclusively, those from Africa. In order to clarify their attitude as regards maritime transport services, twenty-four member states of the Ministerial Conference of West and Central African States on Maritime Transport (MINCOMAR) put forth a communication stating their positions on this issue. The communication pointed out that one of the cornerstones of their maritime policies was the UN Liner Code, and emphasised the importance of this policy to the economic development of those countries.

The position of MINCOMAR members and other countries on the UN Liner Code along with other factors led to two options for resolving the problems relating to maritime transport services. The first was an approach to liberalisation which would be ambitious enough to obviate the need for exemption from MFN treatment. The second was to seek exemptions from MFN for individual countries. The second option was based on the assumption that one could not realistically expect to achieve the necessary level of liberalisation by a "critical mass" of countries by the conclusion of the Uruguay Round negotiations. Under these circumstances, a third option was informally suggested by the NGS Secretariat, which featured: a) all developed countries and certain key developing countries (mainly Far Eastern, South East Asian and Latin American countries) should make a standstill commitment on existing restrictions affecting international shipping and auxiliary services, and roll them back over a relatively longer period of time (e.g. 10 years), and ensure access to and use of
port services on a reasonable and non-discriminatory basis, b) parties would be allowed to seek MFN exemptions, but limited in the scope and time table.

In 1992 and afterwards the EC played a leading role in the negotiations on the maritime transport sector. Based principally on the Secretariat’s informal proposal, the EC led a group of like-minded countries to discuss maritime issues aiming at reviving some momentum in the sector. After several months of informal discussions, the EC-led countries produced a discussion paper and circulated it to participants during the GNS meeting in December 1992. The main issues, in terms of level of commitment, that were featured in the discussion paper were as follows:

1. International maritime transport

While cross-border services and consumption abroad would not normally be subject to restrictions, the commitment for commercial presence and movement of persons could be limited to the shore-based presence necessary for commercial activities or organising the call of vessels.

2. Access to and use of port facilities

A commitment to allow market access in international maritime transport would also give the right of access on a non-discriminatory basis to port facilities.

3. Auxiliary services

Where auxiliary services are not liberalised, they should be made available on an access and use basis.

In June 1993, EC circulated the Draft, mentioned earlier, to the interested participants. This Draft reflected the positions of most OECD countries. It offered a free market on maritime auxiliary services, and an additional commitment on access to and use of port services on a reasonable and non-discriminatory basis. With respect to the international transport sub-sector, the Draft offered a limited free market. It did not bind the seafarer labour market and the commercial presence aspect of foreign firms for the purpose of operating a fleet under the flag of the country where the
commercial presence is established. It also limited granting national treatment to foreign carriers in liner shipping services due to the existence of the cargo sharing arrangements of the UN Liner Code. The details of the EC Draft can be seen in Annex 1.

To summarise, it might be concluded that the objectives of the negotiations on maritime transport services were to, at the first stage, legally secure the existing level of liberalisation in all three pillars, with a significant first step along the way to complete liberalisation, and secondarily to eliminate all restrictive measures frozen by a standstill commitment for a long term. These objectives were not expected to be achieved globally, but at least should be accepted by the critical mass countries.

4.2 The initial commitments on maritime transport liberalisation in the Uruguay Round

During the Uruguay Round negotiations, around 50 countries offered conditional commitments on maritime transport services. However, by the end of the negotiations, some participants felt that further negotiations were needed in order to achieve a higher level of liberalisation. As a result, the GNS agreed to extend the negotiations in this field. So, two spectrums came up with respect to the commitments. On the one hand, 32 countries made commitments on maritime transport services in their final country schedules. Most of these are developing countries, including a number of Far Eastern, South East Asian countries, and several African and South American countries. Australia, Canada, Japan and New Zealand also included maritime transport services in their final schedules, but the commitments were largely scaled down in comparison with their initial offers. On the other hand, a certain number of countries withdrew their conditional offers at the end of the Uruguay Round. These countries represented the most important maritime nations, including the EC, US, and Nordic countries. It might be more meaningful to take into
consideration all these countries' offers, no matter whether final or conditional, when evaluating the negotiations. Considering the leading roles that some of those countries played, it is possible that they will table their offers again in the continued negotiations.

A reading of all these offers makes it difficult to give a precise or consolidated illustration of the level of liberalisation achieved as a result of the Uruguay Round because different terms, classifications, definitions and forms were used by the participants. Nevertheless, some characteristics with respect to the existing level of liberalisation and the positions of different country groups can still be roughly outlined from these commitments.

Generally speaking, most countries offered only standstills, effective rollback offers were rare. To break them down, the levels of liberalisation reflected in the commitments and offers can be classified into three groups. Most OECD countries' offers were identical to the EC Draft. They covered all three pillars of maritime transport services, offering a free market on auxiliary services and ensuring access to and use of port services on a reasonable and non-discriminatory basis. With respect to the international transport sub-sector, there were no restrictions in general, except ship registration and seafarer movement. Compared with the existing maritime policies of most OECD countries, these offers are nothing but standstill proposals. Nevertheless, they represented a higher level of liberalisation in the world, at least within the regulatory scope covered by the Draft itself.

A number of Far Eastern, South East Asian countries and regions, and countries in economic transition in Eastern Europe belong to the second group. China, Hong Kong, Indonesia, Korea (Republic of), Malaysia, Philippines, Singapore, and Thailand made final commitments. The Czech Republic, Poland, Romania, and the Slovak Republic withdrew their conditional offers. Their commitments have a less
coverage than those in the first group. However, in the critical sub-sector of international transportation, they generally committed to no restrictions on cross-border trade, i.e. no restrictions on access to cargoes. This made their offers more substantial, and distinct from that of the third group.

In contrast to the large number of MINCOMAR members, only four countries' final schedules (Benin, Ghana, Nigeria, and Senegal) included the maritime transport services sector. Similar to Africa, Peru and Venezuela are the only countries from South America which made commitments on this sector. These six countries, plus certain other participants from various regions, can be classified as the third group, in which markets were relatively highly regulated. The restrictive measures reflected in their schedules were centred on cargo sharing and cargo reservation schemes. The coverage of their commitments was very limited as well. Only Ghana committed to ensure access to and use of port services by foreigners on a reasonable and non-discriminatory basis.

The offers on liberalisation should be read in connection with the MFN exemptions requested by the participants in order to correctly view the outcome of the negotiations in the Uruguay Round. The MFN treatment is a fundamental principle of GATS. However, GATS also allows for national derogation. This became one of the major concerns in the negotiations on maritime transport services, taking into account that abuse of the application of MFN exemptions to this sector would distort the achievement in liberalisation and make the commitments meaningless. Although great efforts had been made during the negotiations in order to obviate the need for MFN exemptions, at the end of the Uruguay Round there were still 26 parties that included MFN exemptions for maritime transport services in their final country lists. Some countries, for the same reason as mentioned before, withdrew their conditional MFN exemptions together with their conditional offers. It needs to
be mentioned that some countries, which did not even make any commitments in this sector, also included maritime transport services in their final MFN exemptions list.

The MFN exemptions requested by the participants centred on the following items. First, existing cargo sharing arrangements, through bilateral agreements, or by means of the UN Liner Code, were the measures most commonly requested for exemption from the principle of MFN treatment. About two-thirds of the draft and final lists contained these requests. Second, favourable treatment to the parties of regional co-operation agreements was another measure frequently found in the lists, such as preferential treatment for operators of Andean Group countries. Third, some countries maintained a reciprocal principle in dealing with maritime transport activities, especially in the field of cabotage. And last, several countries maintained their rights to take unilateral measures against foreign carriers whose practices are thought to have adverse effects on their national carriers.

These offers and MFN exemption requests are indicative of the existing level of liberalisation in the world maritime transport services, and the positions of different country groups. Little progress has been found in eliminating restrictions within this sector. However, it should be realised that the significance of this outcome lies in the apparent political willingness to secure the existing level of liberalisation, with a view to achieving a higher level in future. At least 32 countries have made legally binding commitments as a result of the Uruguay Round.

4.3 Non-conclusion of the negotiations

The maritime transport services sector was a key element in the negotiations on trade in services. The negotiation was largely affected by political problems. It was one of the issues under intense bilateral negotiations between the US and EC in the final days of the round, and the negotiations on this sector resulted in a stalemate and
breakdown. It is understandable that each participant may hold that access to a national market should not be granted without first obtaining liberalisation commitments from trading partners. As a result, most OECD countries either withdrew or scaled down their conditional offers. Only 32 countries made liberalisation commitments in their final country schedules despite their dissatisfaction with the positions of the US and EC.

It was known from the beginning that liberalisation in the maritime transport sector would present political problems: it is no secret that the US would have difficulty in liberalising its cargo reservation measures or other protection programmes afforded to its domestic industry. The US also objected to the closed conference system existing in the EC, arguing that this increased the difficulty of liberalisation on their part.

The US was reluctant to make offers on the maritime transport sector in the Uruguay Round. Prior to the end of the negotiations, the US produced its conditional offer on this sector. Liberalisation committed in its conditional offer was obviously far from the required level by its counterparts. This was particularly reflected in the main pillar of international transport. In this sub-sector, the US not only did not make any binding commitments on the modes of commercial presence, consumption abroad and presence of natural person but also emphasised that it will maintain existing cargo preferential measures under the mode of cross-border supply. Furthermore, there was a long list of measures affecting maritime transport services in its conditional lists of MFN exemptions.

The United States position resulted from its existing maritime policies, which can be summarised as protection, subsidy, and economic regulation. The protection measures are reflected in that all goods transported on domestic routes and part on overseas routes are reserved to US flag carriers. Subsidies include programmes of
explicit cash subsidies, special tax treatment, and loan guarantees. The US shipping industry has benefited greatly from these subsidies measures. In the liner shipping market, the US law, the Shipping Act of 1984, prohibits closed conferences but grants the activities of liner companies immunity from the antitrust laws at the same time.

The US is the biggest trading country and a major maritime nation as well. Its position on maritime transport liberalisation has an important influence on others. In Chapter II, it has been suggested that the US was the major force to launch the multilateral negotiations on trade in services, aimed at opening the world market in this field. Ironically, such advocacy was not reflected in its attitude to its own maritime transport services. The importance of this sector is widely recognised by the participants. Without a substantive commitment by the major maritime nations, it is doubtless that other countries will be reluctant to make their own commitments. This point was evidenced by the result of the negotiations on maritime transport services in the Uruguay Round.

4.4 The continued negotiations and forecast

4.4.1 The continued negotiations

As a result of the negotiations, the NGS agreed to extend negotiations on maritime transport services and included the Decision on Negotiations on Maritime Transport Services and the Annex on Negotiations on Maritime Transport Services in the final Act. The Decision established the NGMTS to carry out the mandate and set June 1996 as the date by which the negotiations should be completed and a final report made.

Since the first meeting in May 1994, 5 meetings have been held by the NGMTS and participated in by more than 50 countries, including all important
maritime nations. The discussions mainly focused on the Questionnaire on Maritime Transport Services prepared by the NGMTS Secretariat. The questionnaire was designed to facilitate an exchange of information on participants' market and regulatory structures applying to the maritime transport services. It contains questions which are based on two elements: the GATS approach to liberalisation which centres on the principles of market access, national treatment and MFN treatment; and issues which are not necessarily covered by GATS disciplines but which have a special relevance to the maritime transport services sector. By early April 1995, 25 sets of questionnaire replies had been submitted to the NGMTS. During the meetings the questionnaire replies of the US, EU, Japan, Canada, Norway, Korea and other countries were examined one by one. This activity functions to exchange relevant information. It can help participants to recognise the existing legal framework of other countries in this sector, thereby facilitating further commitment negotiations.

During the meetings, the Secretariat circulated a Draft Schedule on Maritime Transport Services, which corresponded fully to the EC Draft. There has been a general consensus that the Draft should be a useful point of departure for the commitment negotiations. However, there were also some different opinions which pointed out an insufficiency of the Draft in reflecting the market structure and regulatory framework of the sector, especially considering multimodal transport services. It was also mentioned that there is a need to more precisely define some specific auxiliary services. Notwithstanding, there was considerable support for the view that amendments to the Draft should be minimal.

The issue of private practices was also addressed in the meetings. Nonetheless, many delegations reckoned that GATS did not address non-governmental measures, maintaining that the negotiations should be focused on measures covered by GATS disciplines. Accordingly, it was suggested that the issue of competition law should be kept out of the negotiations.
Several delegations referred to the strategic importance of the maritime transport sector and the relevance of the work which had been undertaken in the Uruguay Round. They proposed that the further negotiations should proceed on the basis of the highest level of liberalisation offered during the Uruguay Round, and that commitment negotiations should begin as soon as possible.

4.4.2 The forecasts

So far, a political willingness to successfully conclude the continued negotiations has been seen. It seems that the negotiations might have optimistic prospects. However, the critical question is, what level of liberalisation should be achieved? The Decision stipulates that the negotiations "shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale". This aim actually corresponds to the objectives proposed by both Nordic countries and the EC.

From the experiences gained in the Uruguay Round, the lack of a maritime annex in the GATS to lay down general obligations to all countries resulted in difficulties in reaching a required level of liberalisation at a global level. It is difficult to say whether the continued negotiations will produce a new annex to write down certain general rules. In the absence of a set of specific obligations applicable to all parties, the Draft will probably function in such a role. It will not only provide technical assistance to participants to make commitments but also can be considered as a set of criteria of the required level of liberalisation.

In the author's opinion, to achieve such a goal will, to a large extent, depend on a time table acceptable to OECD countries for the transit time of a number of
developing countries with important maritime interests, mainly countries in the Far East, South East Asia and Latin America. Because most OECD countries' shipping policies have already reached this level of liberalisation. It will not be difficult for them to make such commitments. On the contrary, with respect to those developing countries, although there has already been a general trend towards a more liberalised maritime market, they still have some difficulties in committing a high level liberalisation due to political, economic, and legal reasons. However, it would be possible for them to widen the coverage of their commitments to include all three pillars. Meanwhile, a transit time to effectively roll back existing restrictive measures will be needed. Therefore, the time table for a required level of liberalisation seems to be a key element for a successful conclusion of the continued negotiations.

The US position will be another important factor. Now the US government is reconsidering its overall maritime policies. The recent development in American shipping policy implies a possible change of attitude to the negotiations. In July 1995, the US shipping industry and the US Congress agreed on measures to deregulate ocean shipping. This agreement would be translated as quickly as possible into formal legislation to create the Ocean Shipping Reform Act of 1995. While the agreement guarantees a mandatory right of independent action on service contracts for all operators within a shipping conference, it also emphasises to further strengthen its existing right to punish unfair trade practices by foreign-flag ship operators and overseas governments. The agreement is considered to have the potential to make significant changes to the current US regulatory scheme for ocean shipping, and make the system more open and competitive. In the meantime, there has also been a requirement to wind down the Maritime Administration's Title XI loan guarantee, cargo preference, and ship subsidy schemes. The current Operating Differential Subsidy (ODS) programme will expire at the end of 1998 (earlier for some ships) and an attempt to introduce a new subsidy programme during 1994 was killed off by Congress. If the US changes its existing preferential measures with respect to the
domestic industry, it might request other governments to make certain adjustments accordingly. GATS can therefore be used as an international forum to pursue its goals.

Although the prospect of the continued negotiations seems to be optimistic, the likely result may not satisfy everybody. It is predictable that the negotiations will be limited to those items covered in the Draft. In the author's opinion, this does not necessarily mean a higher level of liberalisation. Because it keeps some more important factors out of the negotiations such as subsidies, governmental procurement, and most importantly the business practices of the private sectors, which are the crucial aspects affecting fair competition. An efficient market depends on not only free competition but also fair competition. Without a fair competition environment, the market will not be really liberalised. Nevertheless, it is understandable that a high level of liberalisation will be difficult to achieve within a short time. The existing tariff level on merchandise imports is the result of GATT's 40 years of endeavour. A liberalised maritime transport market still has a long way to go.
Chapter 5
China’s Strategies for The Negotiations

Maritime transport services has been playing an important role in the economic developments of China. After more than three decades of efforts, it can be said that China has truly become a maritime nation of significance. Since the country began carrying out its “open door” policy in 1978, its maritime transport policy has experienced significant changes. Now, the maritime transport services in China is directed towards a more liberalised market.

China has participated in the negotiations on maritime transport services in the Uruguay Round, and made final commitments on this sector. China is a major maritime transport service supplier, as well as a major user. The changes within the international maritime transport environment will no doubt have significant impact on China’s foreign trade and the maritime transport services itself. What China can actually gain from the continued negotiations at the present stage of negotiations and in the future to a large extent depends on the preparedness of the government. Therefore, China should carefully develop its strategies for the negotiations.

This chapter focuses on China’s strategies for the negotiations on maritime transport services under GATS. Section 1 takes an overview at the recent changes in China’s maritime transport policy. Section 2 reviews China’s participation in the negotiations on the maritime transport services in the Uruguay Round. Section 3 analyses three elements on which China’s strategies for the negotiations should be based. Section 4 proposes continuing strategies for China in the negotiations.
5.1 China’s currently operating maritime transport policy

Charzwanowski (1985, page 112) defines shipping policy as “a totality of economic, legal and administrative measures of which the state influences the position of its national fleet in the national economy and in the international freight market”. Policy making is usually a continuous round of identifying problems, determining objectives, and evaluating the existing policy. Over the years China has adjusted its maritime transport policy from time to time based on the political, economic, and social changes in both internal and external environments. The historical development of China’s maritime transport policy has been reviewed often in the literature, and these reviews normally focus on the effects of the policy on the expansion of the national merchant fleet, and summarise the main feature of China’s maritime transport policy as self-reliance. The self-reliance policy pursued by the Chinese decision-makers is the major force that has driven the country to become a major maritime nation in the world. However, this Section will discuss China’s maritime transport policy from another point of view, which is expected to be more closely related to the context of the negotiations within the framework of GATS.

China’s currently operating maritime transport policy cannot be easily summarised because, on the one hand, in China the policy is usually made in a flexible form rather than in the form of legislation; and on the other, paralleling the economic reform in China, maritime transport services is still in a course of transition. Therefore, one cannot give a clear picture of the country’s maritime transport policy from a limited source of legal instruments. Notwithstanding, it may be acceptable to say that China’s currently operating maritime transport policy has been in a process of reform, aimed at formulating a more liberalised market.
Transport reform in China stemmed from the overall economic reforms, which started in 1978. From the mid 1980s, reform measures began to take place in the maritime transport services sector. In 1984, a decision was made by the State Council, requiring a reform of the existing administrative mechanism in the maritime transport field. The measures focused on the relaxation of the rigid administrative methods in freight transportation, and the introduction of competition to the sector. The idea behind it was to correspond to the country's general economic reform policy, and lead the maritime transport services to better serve the nation's economic development. Since then, significant changes have taken place in China's maritime transport policy.

The first big policy change was related to the issue of the arrangement of the carriage of foreign trade goods. In 1988, an important reform measure was adopted, which completely opened up China's freight transport market to the outside world. According to this, the government would no longer assign the carried amounts of foreign trade cargo to any domestic or foreign carriers. Neither would it impose any cargo share on the national vessels through administrative measures. Carriers and cargo owners were encouraged to have direct talks in respect to the carriage of cargo based on normal commercial practices. As a result, China phased out all cargo reservation practices. This measure marked the emergence of China's maritime transport services, to a large extent, from governmental intervention.

Another milestone in the process of liberalising China's maritime transport market was the Memorandum of Understanding in the field of maritime transport services agreed between China and the US in 1991. In this agreement, China pledged that the US carriers may establish entities in China either as joint ventures or wholly owned subsidiaries for ships owned or operated by them or for cargoes moving under their bills of lading or tariffs. These entities may engage in direct business activities, including cargo soliciting and booking, issuing bills of lading, publishing tariffs,
collecting freight, and contracting for ancillary services (OECD, 1991, Page 33). This was the first time China allowed the commercial presence of foreign carriers in China’s maritime transport market. Although this measure largely resulted from the US carriers’ requests, it also reflected the change in attitude of the Chinese decision-makers’ to market openness. While the Memorandum has had remarkable significance in liberalising China’s maritime transport market, it has also brought certain problems to the country in dealing with its relationships with other countries in this field due to the bilateral nature of the measures (to be discussed latter).

The third big step in reforming China’s maritime transport was the decision adopted by the Ministry of Communications in July 1992. In addition to reconfirming its policy on opening up its international transport sector to the outside, the decision furthermore extended this open policy to certain maritime auxiliary activities, i.e. foreign suppliers are allowed to operate cargo handling, storage, warehousing, packing and unpacking services, in the form of joint ventures with China’s domestic partners. This policy applied to the internal waterways and road transport as well. At an earlier time of that same year, shipping agency service was also opened to foreign operators, under the condition of joint ventures with Chinese partners.

Under the maritime transport services reform, the treatment of foreign flag vessels in China has also improved. This is particularly reflected in port services. Foreign flag vessels used to have to pay higher port disbursement than Chinese flag vessels when calling at China’s ports. Foreign carriers complained that this practice placed them at a disadvantage in competition with the Chinese counterparts. In 1992, the government changed this practice and began to charge the Chinese flag vessels the same as foreign flag vessels beginning on 1 April 1992. Since then, there has been no any kind of discriminatory treatment of foreign flag vessels in China.
With respect to access to China's maritime transport market, the open policy is not limited in the field of international transport, but also applies to the domestic market. As mentioned above, the Decision adopted in 1992 extended the open policy to inland waterways transport. The issue of cabotage is addressed by two other legal instruments. Article 4 of the Maritime Code of the People's Republic of China, which entered into force on 1 July 1993, states that "maritime transport and towage services between the ports of the People's Republic of China shall be undertaken by ships flying the national flag of the People's Republic of China, except as otherwise provided for by laws or administrative rules and regulations". However, the law does not interpret the question of ownership of the vessels. On 1 January 1995, the Regulations of the People's Republic of China Governing the Registration of Ships entered into force. In accordance with its provisions, ships owned by Chinese-foreign joint ventures whose principal places of business are located within China, and whose investment proportion of registered capital contributed by Chinese investors is not less than 50 per cent, are entitled to register in China and thereby fly the Chinese flag. Therefore, according to these provisions, foreign suppliers can have access to China's cabotage through the form of joint ventures.

In addition to these opening-up measures, China's maritime transport liberalisation is also reflected in its non-subsidy policy. From the time that China established its national merchant fleet on a certain scale, China's maritime transport services has not enjoyed any kind of governmental subsidy measures. The reasons are quite simple. Because maritime transport services is a relatively successful service sector in China, there seems to be no reason for the government to use a limited financial resource to give it financial support. In China, there are some subsidy measures for the shipbuilding industry, but the Chinese shipowners cannot benefit from them. In the course of maritime transport development, the shipbuilding industry was given the same priority as shipping. To encourage shipbuilding exports, the policy was designed to subsidise the shipyards, provided they obtained orders from foreign
shipowners. In other words, the condition to get a subsidy is to build ships for export, but not for domestic use. As a result, the domestic shipowners can not benefit from the subsidy to the shipbuilding industry. Moreover, to encourage using domestic building capacity, a heavy import tax, about 12 per cent, is imposed on the import of second hand vessels. This measure actually increases the domestic shipowners’ financial burden. With respect to taxation, maritime transport services has always been treated equally with respect to other industries. The new China taxation law, which entered into force on 1 July 1993, does not change this practice. In addition, the concept of governmental cargo is not clearly defined in China. Nevertheless, under the present administrative scheme, the carriage of governmental cargo must be based on the price fixed by the government, which is normally lower than the market level.

Although China’s maritime transport policy has experienced remarkable changes during recent years, certain traditional practices still remain. Among them, reciprocity and administrative intervention need to be addressed. Traditionally, like many other countries, bilateral co-operation is an important channel for China to develop its foreign relationships in the field of maritime transport services. In doing so, reciprocity is accepted as a fundamental principle. So far, China has signed 46 bilateral agreements on maritime transport services with foreign partners. Although these agreements may have different provisions on one or more issues, they are all based on the reciprocity principle. In the recent documents produced by the government, reciprocity seems still to be the main principle. For example, while the decision adopted by the Ministry of Communications in 1992 provides to further open China’s maritime transport market, it states that those measures should be based on the reciprocity principle. In the draft China Maritime Transport Act, the reciprocity principle is also mentioned.

In the time of planned economy in China, administrative intervention was one of the main measures used to regulate the market. With the economic reforms,
administrative intervention has been largely scaled down in many industries including maritime transport services. However, a number of measures of an administrative nature still exist. For example, in the liner shipping market, the Regulation Governing International Liner Shipping, which entered into force on 1 July 1990, required that each shipping company intending to undertake international liner shipping services calling at China’s ports shall submit an application to the competent authority. The competent authority will decide whether or not to ratify the application based on the economic needs test, including the considerations of the capacity of the ports concerned, cargo sources, as well as the actual need for the route.

In conclusion, China’s currently operating maritime transport policy presents a complicated picture. It contains both a new philosophy and old practices. It does not seem wise to render a clear definition of China’s maritime transport policy at this stage since everything is changing quickly in China. Nevertheless, the recent changes in China’s maritime transport policy have shown a trend that maritime transport services in China is being directed towards a more liberalised market.

5.2 Review of China’s participation in the negotiations on maritime transport services in the Uruguay Round

In comparison with the primary and secondary industries, service sector in China is generally lagging behind. From 1978 to 1993, the share of the service sector in GNP lingered in the 23 to 27 per cent range (People’s Daily, 12 May 1994). In 1988, the share of employment in this sector accounted for only 17.9 per cent of the total employment (Li, Z. 1991, Page 239). These figures are much lower than the average world level. The weakness of services in China is also reflected in the related trade field. According to GATT statistics (1994, Page 8-9), while in 1993 China ranked 11th in the list of leading exporters of world merchandise, the value of its trade in services was only US$10 billion and ranked 22nd among of the world’s
largest services exporters. In addition, the development of services in China is uneven. Only a few sectors are thought to have comparative advantages, such as maritime transport, satellite launching and construction services.

At the beginning of the Uruguay Round negotiations most services markets in China were in a closed state, and their contacts with the outside were very limited. Maritime transport services was one of the six services sectors which China first selected for participating in the negotiations on trade in services in the Uruguay Round. The open door policy and China's application for resuming its status in GATT are the two major forces which drive China to participate in the negotiations on maritime transport services. On the one hand, a full participation by industry sectors in the Uruguay Round would have positive effects on helping China to resume its status as a contracting party of GATT. On the other hand, the international feature of maritime transport services requires China to closely co-operate with the international community. In addition, it is obvious that the inclusion of a sector with certain competitiveness in the negotiations on trade in services would improve the country's overall negotiating strength.

Although China's request to resume its status as a contracting party of GATT had not been approved by GATT members, at the end of the Uruguay Round China submitted its final country commitment schedule on trade in services (GATS/SC/19), which included the maritime transport services sector. In its schedule, China committed no limitations on market access and national treatment under the modes of cross-border supply and consumption abroad in the sub-sector of international transport. This means that foreign carriers can freely access to the carriage of China's seaborne trade cargoes and the transportation of passengers. Meanwhile, they are assured to be treated the same as the Chinese carriers. With respect to commercial presence and presence of natural persons in the same sub-sector, the schedule does not make any binding commitments. The schedule also makes an across-the-board
commitment on maritime auxiliary services. The only limitation is that, under the mode of commercial presence, it requires foreign suppliers to obtain access to the market in the form of joint ventures. With respect to port services, China did not make any additional commitments.

In addition to the commitments, China also submitted a final country list of the MFN treatment exemption (GATS/EL/19). In the maritime transport services sector, it lists two measures for which China requested an exemption from MFN treatment. The first one is described as: “the parties concerned may, through bilateral agreement, establish entities to engage in usual business in China either as joint ventures or wholly-owned subsidiaries subject to the Chinese laws on joint ventures and on foreign capital enterprises for ships owned or operated by carriers of the parties concerned”. A careful study of this wording finds that it actually corresponds to the measures addressed in the above-mentioned Sino-US Memorandum of Understanding. However, the list does not mention the specific countries. On the contrary, the word “may” and the phrase “through bilateral agreement” imply that the measure may apply to all countries if they grant the same treatment to the Chinese carriers. This suggests that China intends to adopt the reciprocity principle in dealing with the market access issue in the maritime transport field.

Another measure concerns cargo sharing arrangements. Among 46 maritime agreements signed by China, seven contained cargo sharing arrangements and were still in effect at the time of the submission of the MFN exemption list. It seems that China did not intend to maintain cargo sharing practice because under the column of “intended duration” for the MFN exemption it says that the duration is “subject to the effective duration of the agreements concerned”. This means that these cargo sharing arrangements will be phased out after the expiration of those agreements.
China’s commitments plus the MFN exemption requests basically reflect the actual liberalisation level of its maritime transport services. However, it seems that China could have an ability to offer more commitments. For example, with respect to port services, China should have no difficulties in committing access to and use of port services by foreign suppliers on a reasonable and non-discriminatory basis. However, it should be realised that the negotiations on maritime transport services have always presented political problems. The positions of the participants were largely affected by a few maritime powers. On the other hand, under this multilateral negotiation forum, the contribution of one country to global liberalisation is subject to the general trend generated by all participants. Therefore, China’s position would have probably been influenced by the circumstances at that time. Furthermore, maritime transport services is only one sector of the entire negotiations on trade in services. It is also quite possible for the participants to make trade-offs between different service sectors, and even between trade in merchandise goods and trade in services.

The rapid growth of China’s foreign merchandise trade has made China a major shipping market for the world. Therefore, it would not be surprising if foreign countries require China to open its own maritime transport market. This has been seen in the Uruguay Round negotiations. China’s allowance of the US carriers to establish a commercial presence has drawn the attention of a number of other foreign countries. The MFN treatment principle of GATS provided those countries with opportunities to require China to extend the same treatment to their shipping companies in order to have access to China’s maritime transport market. During the negotiations, a number of countries strongly requested China to open its market based on the principle of the MFN treatment. This was one of the major problems encountered by China in the Uruguay Round negotiations on this sector.

5.3 Considerations of the basis of China’s strategies for the negotiations
5.3.1 The national economic development strategy

Maritime transport services in China is an integral part of the nation's economic activities. Its policy should be designed based on the country's overall economic development strategy. Since China began to carry out economic reforms, foreign trade has been given more and more emphasis in the economic development strategy. This reflects the recognition by the government of the importance of fully utilising the resources from both the domestic and international markets and exploiting both markets for the growth of the national economy. On the one hand, to develop its national economy, China needs to introduce adequate technology and products from foreign countries. However, the scale of imports is determined by the hard currency earning capacity of its exports. Therefore, export becomes vital to the aggregate social demand. On the other hand, China has abundant labour resources at low cost and of good quality. The rapid industrial adjustment in the world provides China with opportunities to host some labour- and capital-intensive industries relocated from the developed and newly industrialised countries. This in turn will also result in the increase of export opportunities for China.

With the rapid change of China's economy from a closed and semi-closed economy to an open economy, foreign trade has been expanding rapidly and its contribution to economic growth has been constantly increasing. In the period 1978-1994, the annual total value of China's imports and exports increased from US$20.64 billion to US$236.7 billion, and the average annual growth rate of foreign trade was 16 per cent, which is 7 percent higher than the growth of GNP. In 1994, the share of the total value of foreign trade in the GNP reached 45 per cent (People's Daily, January 14, 1995). It is estimated that this growing trend will maintain for a long period of time. It becomes obvious that foreign trade is a key element in the national economic development in China. Therefore, as an important means of China's foreign
trade transportation, the maritime transport services should be aimed at facilitating foreign trade.

The importance of maritime transport services to foreign trade and national economic development has long been recognised in the world. In addressing its importance, Faust (1990, Page 114) reminds us that past experience has shown that countries failing to be provided with adequate maritime transport services have faced considerable setbacks in their foreign trade, thereby interrupting the process of national economic development. In China, transportation services are considered to constitute a major bottleneck constraining the growth of aggregate social supply. The transportation capacity lags far behind the need of national economic development. Fortunately, maritime transport services is not the sector contributing to this situation. Thanks to the self-reliance policy taken in the past, a strong merchant fleet has already been established in China. According to ISL (1995, Page 21), at the beginning of 1995, China’s merchant fleet comprised 1655 vessels, of various types, with a deadweight tonnage (dwt) of 33.7 million tons. In addition, the open policy and reform measures have attracted foreign maritime transport suppliers to participate in China’s maritime market, which further improves the capacity of China’s maritime transport services.

However, this does not mean that the present maritime transport services fully meets the requirements for national foreign trade. To facilitate its foreign trade, more reliable, convenient and cost-effective maritime transport services is required. Maritime transport services has significant effects on creating trading opportunities and improving the competitiveness of export. A trading opportunity between a seller and a buyer emerges from having the right product, at the right place, at the right time and at a competitive price. To create a trading opportunity, four basic functions must be adequately performed: the provision, or access to, the goods; the storage of the goods; the transport of the goods; and their marketing. The elements affecting
competitiveness of internationally traded products have been identified as: a) cost associated with transport operations; b) overall transit time required for moving goods from origin to destination; c) time reliability in delivering goods; d) safety of goods; and e) uncertainties about overall transport costs (UNCTAD/SDD/MT/5, 1994, Page 8). Accordingly, transport plays an important role in the product-consumption cycle. To cope with the new production patterns based on globalisation and on the integration of transport in the production-consumption cycle, manufacturing industries have started introducing new manufacturing and inventory techniques under the concept of logistics. Under this concept, transport has no longer been an isolated activity of moving goods from one place to another, but has become an integral part of the production and consumption cycle. For international trade, maritime transport services is an important link in this chain.

Tougher international competition and expansion of geographic markets have forced manufacturers to focus on an integrated production and transport logistics strategy in order to reduce costs. At present, the competitiveness of China’s exports to a large extent relies on its comparative advantage in labour costs. Nevertheless, it should be noted that this advantage may be undermined by an inadequate maritime transport system, which may result in the increase of total costs of the product. In the past, studies on trade barriers largely concentrated on government control measures such as tariffs and quotas. The recent studies have demonstrated that maritime transport charges frequently pose a more important obstacle to both developed and developing countries. Under the current market practice, the freight and hire in tramp shipping is normally negotiated by carriers and shippers, however, the tariffs of liner shipping are usually fixed by the shipping lines. The structural changes of China’s exports have shown a stable growth in manufacturing goods, especially containerised goods, in total seaborne trade. In 1993, clothing & accessories, textile yarns and textile products, shoes, and toys were the first 4 leading exports. Together with travel goods & luggage, cassettes, radio cassettes, recorders, and hi-fis in the top ten list,
these manufacturing items accounted for more than 40 per cent of China's total export in terms of value. This trend has been increasing the importance of containerised transport to the country's foreign trade. This has also been evidenced by the growth of container turnover in China's ports. According to ISL (1995, Page 62), from 1989 to 1993, the annual growth rate of containers handled at Chinese ports was 30 per cent. Therefore, how to foster a cost-effective container transport service should be one of the major concerns of China's maritime transport policy.

In addition to the cost, the quality of maritime transport services is another important factor affecting foreign trade. As mentioned above, container transport is becoming an important means of China's maritime transport; therefore, the quality of liner shipping services such as the capacity of vessels, frequency of sailing, calling ports, transit time, geographic coverage of the routes, and door to door services will have significant influence on the performance of China's foreign trade. On the other hand, in the light of China's geographic feature, intermodal transport systems must become an important tool in facilitating China's foreign trade. Traditionally, China's leading export regions are centred on coastal areas in the eastern part of the country. Now, the government is placing more emphasis on promoting the economy of the central and western parts. Their geographic disadvantage should be compensated by an adequate and efficient intermodal transport system. However, to develop intermodal transport requires vast investment in infrastructure construction and provision of facilities such as warehouses, container stations and depots, trailers and others. In addition to government investment, it is also necessary to attract private financial sources, both domestic and foreign.

In the transportation chain, ports play the important role in improving total transport efficiency. During recent years, the capacity of Chinese ports has been expanding increasingly. However, the weakness of port services can be found in many areas, especially in the facility updating and management aspects. Consequently, low
efficiency in port services has resulted. Now, to improve competitiveness shipping lines are paying more and more attention to the services in ports. Some big shipping lines have extended their business to invest in port construction and facility provisions. The entry of these suppliers should also result in improving port services in China.

In conclusion, in order to facilitate foreign trade, low cost and high quality should be the main objectives for maritime transport services in China. Under the present conditions, to further liberalise the domestic maritime transport market would be an effective way to achieve this goal. Liberalisation is a means of increasing economic efficiency. It means removing barriers to the entry of new, qualified providers. The resulting increase in competition limits the ability of any one firm to offer a relatively low-quality, high-cost service. In other words, liberalisation provides an incentive for those who are capable of offering a better service to do so, while forcing those who are unable to do so to exit the market. The point is that free competition has a clear role in ensuring that users of a service are offered the best available price and quality combination. Thus, participation in the maritime transport market in China by foreign suppliers should be encouraged in order to better serve the country’s foreign trade through establishing a competitive environment.

5.3.2 Competitiveness of China’s maritime transport services

The need to open China’s maritime transport market has been illustrated in the previous part of this section. The rationale behind it is that maritime transport services should be treated in their proper context as a service to foreign trade and not taken out of context as an industry in its own right. This, however, does not conflict with the objective of developing national maritime transport services. The opening of the market for international maritime transport service suppliers could lead the domestic
companies to seek the improvement of their competitiveness, which is the key element to develop the domestic industry and increase the service level.

The experiences gained from the last decade have shown that under an open policy China’s maritime transport services has experienced healthy development. From 1978 to 1994, China has almost tripled its merchant fleet in terms of both numbers of vessels and tonnage. The status of China’s merchant fleet can be seen in Table 1. Before reform, there were few shipping companies in China, and their operations were under the government control. From the start of shipping decentralisation in 1984, China’s maritime transport services have developed far from the planned shipping economy that had hitherto hindered its growth. As a result, a great number of maritime transport services operators have sprung up in China’s maritime transport market. At present, there are about 1,500 shipping companies (excluding those that only undertake inland waterways transport), and thousands of freight forwarding and shipping agency companies registered in China serving the country’s maritime transport market. Decentralisation and open policy have also introduced a competitive mechanism within the sector. In the coastal transport field,

<table>
<thead>
<tr>
<th>types of vessel</th>
<th>National flags</th>
<th>Foreign flags</th>
<th>Total fleet controlled</th>
<th>Foreign flag</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>No 1000 1000 av. Age</td>
<td>No 1000 1000 av. Age</td>
<td>No 1000 1000 av. Age</td>
<td>dwt %</td>
</tr>
<tr>
<td>tankers</td>
<td>dwt TEU (years)</td>
<td>dwt TEU (years)</td>
<td>dwt TEU (years)</td>
<td>share</td>
</tr>
<tr>
<td>195</td>
<td>3654 - 16.7 22 3262 - 7.8 217 6915 - 15.8 47.2</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>bulk carriers</td>
<td>302 9629 0 17.4 151 7286 11 12.3 453 16915 11 15.7 43.1</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>container</td>
<td>82 1629 93 11.9 33 570 34 10.4 115 2200 128 11.5 25.9</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>general cargo</td>
<td>717 6502 49 19.8 89 1034 20 16.8 806 7536 69 19.5 13.7</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>passenger</td>
<td>63 149 1 21.0 1 15 0 23.0 64 165 1 21.0 9.3</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>total</td>
<td>1359 21563 143 18.4 296 12168 66 13.2 1655 33731 209 17.5 36.1</td>
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</tbody>
</table>

competition between large state owned, smaller state owned and private shipping companies is becoming tough. Following the open door policy, foreign shipping lines can have free access to the carriage of China’s seaborne trade. However, the fact is that the entry of foreign competitors has had little adverse effect on most domestic companies. On the contrary, the open policy has improved the development of the domestic industry. This gives further evidence of the merits of the open policy.

The development of domestic maritime transport services is also affected by the external environment. A liberalised international maritime transport market will have effects on increasing the opportunities of participation by all countries. However, this opportunity will largely depend on the competitiveness of their domestic suppliers. Therefore, to assess the effects of the international maritime transport environment on China’s maritime transport services, it is necessary to evaluate the competitiveness of its domestic suppliers. In China, although the private sector has been encouraged to participate in maritime transport services, state owned companies of all kinds, national, provincial, municipal or local, are still the major players in the market. Among them, China Ocean Shipping Company Group (COSCO), China Foreign Trade Transportation Corporation Group (SINOTRANS), and several other state-owned companies are China’s major competition forces in the international maritime transport market. To make it simple, it would be helpful to focus on COSCO to evaluate the competitiveness of China’s maritime transport suppliers.

Brooks (1993, Page 281) suggests 5 sources of competitive advantage by ocean container carriers. They are: a) cost containment and asset utilisation; b) services; c) agency networks; d) access to capital; and e) vertical integration into input supply. Considering the importance of container liner shipping in both international and China’s domestic market, it would be useful to adopt Brooks’ method to evaluate the competitiveness of China’s suppliers.
With respect to cost, it is difficult to compare the competitive advantage of shipping companies due to the lack of related information. In the shipping circles people always think that COSCO enjoys the comparative advantage in low labour cost. However, this may not be true. Because in China, the social welfare system requires COSCO to provide its employees with various services such as housing, medicine and health fees, not only salary itself. In practice, facilities, ships, equipment, labour, flag of registration are the most important factors affecting a shipping company's commercial performance. Among them the cost for building the fleet seems to be the most important one. In this respect, COSCO seems to have a certain competitive advantages. From its establishment in 1961, COSCO's great tonnage gains occurred in the 1970s and 1980s. The international shipping market has been devastated by a decline in world seaborne trade since 1980. It continues to be affected by large surpluses of various kinds of vessels. Falling freight rates over a period of years in all trades, plus hard competition for available cargoes world-wide, affected earnings and the viability of many of the maritime nation's shipping companies. As a result, a number of foreign shipping companies were forced to sell off their vessels at low prices. COSCO, whose fleet was not keeping pace with the rapid growth of the country's foreign trade, caught this opportunity and purchased a large number of vessels at low prices. In addition, the favourable terms offered by shipyards in Japan, Germany and other countries, as well as foreign governments and commercial banks, is another important element to keep COSCO's cost at a relatively low level. Furthermore, COSCO has also emphasised the rationalisation of ports of call and paid sufficient attention to asset utilisation in terms of vessel and container deployment. This has also resulted in its cost-efficiency. It may be concluded that the existing cost advantage of COSCO is the result of its long-term wise commercial decisions and foreign governments and entities' favourable loan terms in loans for new buildings.
Service is another important factor affecting a shipping company's competitiveness. In container liner shipping, the quality of service is determined by various factors. One of COSCO chief executives stated that on pure service criteria, such as on-time performance, service reliability, equipment availability and transit time, COSCO matches up with the premier league of container shipping lines well. During recent years, the container fleet of COSCO has experienced rapid growth. By some calculations, COSCO is the largest container operator in the world. According to COSCO's source, it now has 155 container ships with a total capacity of 170,000 TEU. According to others, it falls within the top three or five, accompanied by Maersk, Sea-land, NYK and Evergreen. Recently, COSCO ordered six 5,250 container vessels from a Japanese shipyard. They will be delivered in 1996/1997. In addition, COSCO has established its global container service network, which provides prompt, safe and reliable service for cargo owners all over the world. It now provides more than 300 outbound sailings each month from different Chinese ports, and is increasing its liner service coverage in terms of geography and the frequency of sailing, for example in the Europe/Far East service, one sailing every 5 days with 20 days of transit time. Meanwhile, COSCO is also interested in EDI and other value-added services, such as warehousing, customs clearance, and logistical support activities.

Agency networks can provide the carriers with a major competitive advantage by means of a personal touch with customers. Although this is largely a telephone and facsimile business, the customers' loyalties are channelled to some degree by personal relationships, the depth of knowledge of the sales personnel and their efforts to solve the customers' logistic problems. Thus, it is very important to choose high quality agencies. In this respect, COSCO has an excellent agency network that provides high quality services given by experienced personnel and advanced facilities. There are over 300 subsidiaries in the homeland and abroad, including 100 overseas offices. COSCO has a special advantage in the homeland. Within COSCO Group, China
Ocean Shipping Agency (Penavico), which acts as an agent for COSCO shipping lines, has business offices in all Chinese ports, and holds a market share of 75 per cent of the total shipping agency business in China.

Access to capital is a critical factor allowing a shipping company to expand its services. China’s satisfactory economic performance and COSCO’s good reputation benefits significantly from access to capital. Recent experience shows that it is not difficult for COSCO to get loans from foreign governments and commercial banks. Moreover, COSCO has recognised that since transport is not a high return business, it will be difficult to secure sufficient funding for expansion of business and improvement of service quality solely by relying on pure transport activity. To survive competition, it must develop business diversification. Following the decentralisation, COSCO’s activities have diversified into a wide range of business areas such as finance, tourism, air transport, real estate, freight forwarding, warehousing, port management, industry, trade, insurance, investment, marine electronic engineering and advertising. This business diversification has equipped COSCO with various channels of access to capital. In addition, COSCO has entered into the international financial market. In March 1995, COSCO successfully issued commercial paper, US$100 million, in the United States. This will serve as a good beginning for COSCO to go further into the international financial market.

Control of the inland connection is becoming a more and more important source of competitive advantage for carriers. A greater involvement in land-side transport services is also planned as COSCO evolves from a purveyor of pure ocean transport services to a multimodal operator. In the United States, COSCO has a long-term plan to run its own stack trains. Currently, it uses the generic intermodal train services of several US leading railroads, including Southern Pacific Transportation and Burlington Northern Railroad. In Europe, COSCO has established a network of container depots under its own control. In China, COSCO has foreseen the prospects
of intermodal transport, and has built a network of container depots across the mainland. In addition, the China Road Transportation Co. of COSCO group, which operates container freight stations, warehousing, container stuffing and stripping and other businesses, has become the largest road transportation enterprise in China. The land-side expansion has provided COSCO with a capability to offer a door-to-door service, hence increasing its competitiveness.

The analyses of COSCO’s competitiveness from these 5 viewpoints indicates that COSCO has no obvious disadvantages in these fields. The competitiveness of China’s maritime transport suppliers has enabled them to extend their business to cross trading. It is said that during recent years, approximate one third of COSCO’s revenue from ocean freight comes from the cross trade. However, it should be realised that the level of management is the basic element to determine a company’s performance. In this regard, the gap between COSCO and other world leading lines still exists. Nevertheless, it can be concluded that China’s shipping companies have the ability to face the tough competition in the international maritime transport market. However, it should be noted that the competitiveness of China’s maritime transport suppliers will become meaningless if they cannot freely access foreign markets as a result of restrictions imposed by both foreign governments and private sector. Therefore, to sustain development it is necessary to have a liberalised international maritime market.

5.3.3 Conditions unfavourable to the Chinese maritime transport services suppliers in the international market

Liberalisation implies both free entry and fair competition. A legally guaranteed free entry can be largely undermined by unfair competition conditions. The present international maritime transport market is far from a fair competition environment. Various unfair practices exist as a result of both governmental measures
and private practices. China's maritime transport suppliers must operate successfully in an international environment. To help ensure healthy development and avoid unfavourable treatment from foreign countries, it is useful to identify those unfavourable measures which have or may have adverse effects on China's maritime transport suppliers.

Among unfair competition measures, subsidies should be one of China's major concerns. Subsidies are a common practice in world maritime transport services. Among major maritime countries, subsidies exist in both the United States and among EU members. In the United States there are three types of subsidies that are related to the United States maritime transport services: explicit cash subsidies, special tax treatment, and loan guarantees. These subsidy measures are intended to decrease the costs and improve the competitiveness of the United States ocean shipping industry. Among them, the operating differential subsidy (ODS) programme established by the Merchant Marine Act of 1936, is designed to bridge the gap between the operating costs of the US and foreign flag ships. The current ODS programme expires at the end of 1998 (earlier for some ships). The recent proposal introduced by the US Department of Transportation could start in 1996 and would create a 10-year subsidy plan for up to 50 liner ships, at a maximum cost of US$2.5 million per year per ship during the first three years of the programme and up to US$2 million thereafter. The total cost over 10 years, if the programme is implemented fully, would be around $1 billion (Containerisation International, May 1995, Page 12). US carriers have benefited significantly from these subsidy measures. They enable them to operate their ships at a commercial advantage, thus obtaining a large share of seaborne trade. In the EU, some member states grant directly or indirectly public aid to shipping companies established in their territories, and to the operation of vessels registered in and flying the flag of these member states. In France the 1990 package of government support involved the provision of FF2 billion of state aid over a five year period, providing the
vessels remain under the French flag. CGM was the biggest recipient, which received $17 million in 1991 (Hart, P, 1993, Page 55).

Subsidies are considered to distort the competitive structure of shipping and increase the cost of world shipping services. For China, shipping companies do not enjoy any forms of subsidy from the government. The present conditions place them at a disadvantage. To restore fair competition environment in the world maritime market, maritime subsidies should be phased out at the international level.

Unilateral countervailing measures authorised by the laws in a number of countries may also constitute a threat to China’s shipping companies. This is particularly reflected in the rules regarding pricing and market access. So far, there are no internationally agreed rules as to what constitutes an unfair price in the maritime transport field. A number of countries have introduced laws to deal with this issue. Article 3(b) of EU Regulation 4057/86 defines “unfair pricing practices”, as the “continuous charging on a particular shipping route to, from or within the Community of freight rates for selected or all commodities which are lower than the normal freight rates charged during a period of at least six months, when such lower rates are made possible by the fact that the shipowner concerned enjoys non-commercial advantages which are granted by a State which is not a member of the Community.” According to this provision, lower freight rates may only be challenged where they result from “non-commercial advantages”. However, the regulation does not define or give examples of “non-commercial advantages”. Power (1992, Page 347) explains non-commercial advantage as “In broad terms, subsidies, grants, aids, soft loans, moratoria on debts, and unfair breaks as well as cargo reservation schemes could potentially constitute non-commercial advantages. Similarly, the non-adherence or non-deforelement by a non-EC State of basic international standards on such matters as safety, crewing and so on may constitute an unfair advantage for that State’s shipping companies”. This broad interpretation would bring the possibility of an
authority seeking provisions against foreign carriers in certain circumstances which should not be regarded as unfair pricing practices.

With respect to market access, EU Regulation 4058/86 authorises its competent authority to take actions against non-EU members in the case when action by third countries or by their agents restricts or threatens to restrict free access by shipping companies of the EU member states or by ships registered in those members. The counter-measures include the imposition of an obligation to obtain a permit to load, carry or discharge cargoes; the imposition of a quota, and the imposition of taxes or duties. In the United States, the Foreign Shipping Practices Act of 1988 and Merchant Marine Act of 1920 empowers the FMC to act unilaterally to address restrictive foreign shipping practices. The FMC is authorised to make rules and regulations governing shipping in the foreign trade to address adverse conditions that affect US flag carriers; to take action to remedy conditions unfavourable to shipping in the US foreign trade, when such conditions arise out of, or result from, foreign laws, rules, and regulations, or the practice of foreign carriers; to take action upon finding that a carrier or a foreign government has unduly impaired access of a US flag vessel to ocean trade between foreign ports. These provisions actually address the question of the MFN treatment. Only those countries and their shipping companies which comply with the EU and the US criteria, or have the same liberalisation level as theirs, would not be affected by their laws.

It should be recognised in the world today that economic development among countries is uneven. The level of liberalisation should in general correspond to the economic development level of each individual country. Developed countries should contribute more to reduce the gap of economic development between them and the developing countries by means of co-operation, not simply by requiring the developing countries to follow their rules without consideration of their actual capability. At present China’s economic development level is behind that of developed
countries. It is reasonable that China makes its own rules on market access and competition issues based on its existing economic conditions. It would be unfair for the Chinese shipping companies to be adversely affected by foreign laws just because of the country's lower development level.

5.4 Proposals for China's strategies for the negotiations

China's open economy strategy requires it to integrate its domestic economy with the international community. This will allow China to participate more effectively in the international market and international division of labour. Accordingly, the country should pay more attention to its external environment. With the conclusion of the Uruguay Round trade negotiations, WTO has become the most important international organisation in the field of international trade. Its establishment will have significant influence to the international trade relationships. The benefits to China from joining WTO have been recognised. While exercising the relevant obligations, more importantly China could obtain a legal secure of fully enjoying international trade rights. As an integral part of China's economic activities, maritime transport services is playing an important role in the nation's economic development.

The overall open economy strategy also requires integration of domestic maritime transport services with the world market in order to facilitate its foreign trade and hence support the economic development. At the international level, China has actively participated in the activities of relevant international organisations such as UNCTAD and IMO. However, due to their limited concerns with commercial maritime policy issues, China emphasises the establishment of bilateral relationships to develop its foreign relationships in the field of maritime transport services. Now, international relationships in maritime transport services have been entering a new era. The inclusion of trade in services in the WTO system has drawn the attention of governments to this multilateral forum. The analyses in Chapter IV suggest that
GATS will become the most important regulatory framework governing international maritime transport policy. The future international discussion of the maritime transport policy issue will be centred in this forum. Therefore, it is necessary for China to rethink its policy and change its traditional practice of dealing with maritime transport issues strictly in a bilateral form. China must embrace the multilateral form under the principle of GATS.

Progressive liberalisation through consecutive negotiations is a specific feature of GATS. This offers opportunities to the parties to carefully consider their positions to the negotiations. For China, the first thing to define its strategy should be to examine the compatibility of the objectives of the negotiations with China’s maritime transport policy. Chapter IV identifies that the objectives of the negotiations on maritime transport services is to, at first stage, legally secure the existing level of liberalisation with a significant step along the way to complete liberalisation, and secondarily to eliminate all restrictive measures frozen by a standstill commitment for the long term. Section 5.3.1 concludes that an opened maritime transport market would facilitate China’s foreign trade, thereby benefiting the country’s economic development. Accordingly, the objectives of the negotiation should not be considered to conflict with China’s policy. Therefore, China should, in general, support the objectives of the negotiations on maritime transport services under GATS.

From the logic of Section 5.3.1, an opened maritime transport market would benefit China’s foreign trade, hence support the country’s economic development. However, this policy can be pursued by China itself without negotiations with other countries. Nevertheless it should be realised that this policy will assist China in opening up other countries’ markets, since it is quite usual that a country will normally hold the position to not first make commitments without other countries’ offers. While foreign countries could benefit from China’s open policy, they would probably be willing to offer concessions to open their own markets. Therefore, an
open policy would not only benefit China’s national economic development, but also help China’s maritime transport services access foreign markets.

GATS does not merely require the parties to follow a set of disciplines, but also provides them with opportunities to pursue their requests. However, the benefits to a country from this arrangement largely depend on how the parties deal with the negotiations. The experiences gained from the negotiations in the Uruguay Round have indicated that developed countries, particularly the EU and certain other OECD countries are the major force leading the directions of the negotiations. Their purpose is to open up developing countries and certain other developed countries’ markets. However, they frequently met opposition from their counterparts. As a developing country, it does not necessarily mean that China must always be in keeping with other developing countries. If it has the same objectives as those of OECD countries, China should change its position, particularly in the negotiation on maritime transport services. This point will have particular significance in helping China pursue its requests. According to the current situation, the liberalisation level to be achieved will largely depend on the degree of support for the EU’s proposal. A strengthened voice to achieve a higher level of liberalisation will help in pursuit of this goal. Therefore, China should support the EU and other OECD members in order to achieve a high level of maritime transport liberalisation at the international level.

As mentioned in Section 5.3.2, a liberalised international maritime transport environment would benefit China’s maritime transport suppliers because of their competitiveness. This is particularly important for China’s major trade partners. In 1993, China’s leading export markets were Hong Kong, the United States, Japan, the European Union, the Republic of Korea, the Russian Federation, Singapore, Taiwan Province, Canada, and Australia. These 10 leading markets accounted for 78 per cent of China’s total exports in terms of value. With respect to imports, in the same year, Japan, the European Union, Taiwan Province, the United states, Hong Kong, the
Republic of Korea, the Russian Federation, Singapore, Australia, and Indonesia were
the 10 major countries or regions of origin of imports for China, and represented 88
per cent of the country's total imports in terms of value. In addition, it should be
noted that newly industrialised Asian States are becoming daily more dynamic in
China's import and export trade and that trade is swiftly increasing in value, causing
China's foreign trade market to show a certain tendency towards diversification.
Accordingly, maritime transport markets in these regions seem extremely important to
China's maritime transport suppliers. However, at present not all of them offer a free
maritime transport market; various restrictions exist. To benefit China's maritime
transport suppliers, more open foreign maritime markets are needed. Therefore,
particular attention should be paid to these regions.

In addition to a free international maritime transport market, a fair competition
condition seems to have special significance for China's carriers. As mentioned
before, China's major shipping companies are all state-owned. From the foreign
partners' point of views, there must be various subsidy measures or preferential
treatments to these entities from the government. However, the fact is that the
government neither provides any kind of subsidies or preferential treatments for the
domestic industry, nor special treatment for the state-owned companies. Actually, this
is not difficult to understand. Because, although in China economic transition and
reform of state-owned entities has been taking place, state-owned enterprise is still
dominant. Like many developing countries, the Chinese government can not offer
financial support to all industries due to its financial condition. On the contrary, it is
quite possible for those developed countries which have better financial conditions to
provide financial support to their maritime operators. This is particularly reflected in
maritime subsidies. Subsidies to maritime transport services are quite common in
developed countries such as the United States and some EU members. These subsidy
measures provide the carriers from those countries with advantages in competition,
and place China's carriers in an unfavourable condition. Government subsidies can
result in unfair competition and have distorting effects on maritime transport services. To pursue a fair competition condition, China should require the inclusion of a subsidy issue in the negotiations in an effort to eliminate subsidies over their entire range, especially in developed countries.

In connection with fair competition, the anti-dumping issue also needs to be particularly noted. In the absence of multilateral rules regarding dumping in maritime transport services, certain countries have introduced laws relating to anti-unfair pricing practices in maritime transport. In the EC, the Regulation 4057/86 authorises the competent body to take measures against the low prices of non-EU shipping companies which enjoy non-commercial advantage granted by their government. However, the question is what freight level should be considered as the criteria to judge whether a price is an unfair price, and who should decide this. It is quite possible that the low prices offered by some carriers from developing countries are the result of high efficiency. On the other hand, that some shipping companies from developed countries cannot offer relatively lower freight rate does not necessarily mean that these companies are not protected by their governments by various means. Actually, pricing in maritime transport service is just like the hotel service. Five star hotels charge five star prices; three star hotels offer three star prices. The price mainly depends on the level of services. China’s carriers normally charge a relatively low price. However, this low price is the result of various elements such as wise commercial decisions, favourable terms granted by foreigners in building ships, and service quality. Under non-government subsidy conditions, the company can not survive without earning profits. Nevertheless, to protect the interests of the domestic carriers, China should require the drawing up of unified multilateral anti-dumping rules for the maritime transport services.

Currently, the world maritime transport services is experiencing a process of concentration. This phenomena is particularly reflected in the liner shipping market.
The global alliance formed by a number of leading lines implies that these super-groups will dominate the liner market in the near future. This will create great barriers for the participation of developing countries in the international shipping market. For China, perhaps only COSCO is capable of competing with these mega carriers. Other domestic companies will find it difficult to enter the international market. This is a result of private business practices that conflict with the principle of increasing the participation of developing countries, as established by GATS. Therefore, China should, together with other developing countries, require a set of multilateral rules regarding the competition issue in maritime transport in order to avoid the monopolising of the market by a few players based in the developed countries.

The issue of seafarer movement should have a particular significance in China’s strategies for the negotiations. China is a big seafarer labour supplying country. The export of seafarer labour not only brings the benefit of foreign currency earnings to the country, but also helps the county to improve its shipping management level through the experience gained from working on board foreign vessels. On the other hand, it should be noted that at present most developed countries have difficulties in opening up their labour markets. This is one of the major weaknesses in their negotiations; and, it in turn increases the negotiating strength of developing countries. Therefore, China should emphasise its request on seafarer labour free movement in order to strengthen its negotiating power and increase the participation of Chinese seafarers in the international maritime labour market. To do so, China should rethink its existing policy on labour movement. According to the Regulations of the People’s Republic of China Governing the Registration of Ships, Chinese flag vessels are required to be manned by Chinese citizens. This requirement seems to be less meaningful because the present capacity of the supply of Chinese seafarers and the level of wages constitute a natural barrier to the entry of foreign seafarers to China’s market. Therefore, the existing regulation helps little to protect the interest of
the Chinese seafarers; and, on the contrary it restrains the country from requesting developed countries to open their markets.

The rapid growth of China’s foreign trade provides a huge trading opportunity in maritime transport services for the world. It is predictable that foreign countries may request China to further open their maritime transport market. According to China’s current regulatory state, the requests will probably centred on maritime auxiliary services, especially related to container depots, and trucking services in the field of road transport, because these services are critical for shipping lines to extend their services to the inland areas, and they offer the potential for intermodal transport services. These requests should be acceptable for China since, as discussed above, the introduction of foreign suppliers would improve intermodal transport services in China.

The MFN treatment is the fundamental principle of GATS. In this regard, it is necessary for China to change its existing position. As mentioned before, reciprocity is an important principle for China to use to deal market access issues in maritime transport services. This has been particularly reflected in its MFN treatment exemption list. However, in the present circumstances, this principle seems to be less meaningful. Since China agreed with the United States on certain issues regarding access to China’s maritime transport market in 1991, China has granted the same treatment to the EU, Japan, and Korea respectively in the following years. As a result, now most major maritime nations in the world can freely access China’s maritime transport market. The countries China has not automatically granted free access to are those with a relatively low competitiveness in supplying maritime transport services. As discussed in Chapter II, unconditional application of the MFN treatment principle by all parties would have a significant effect on liberalising world maritime transport services. China should make use of this multilateral forum to open foreign markets by
means of the MFN treatment principle. To do so, it is necessary for China to also follow this principle.
Chapter 6
Conclusions

GATS has extended multilateral trade rights and obligations to cover maritime transport services. This is expected to bring a new international order to this field. Although the outcome of the continued negotiations on this sector is still unknown, the progressive liberalisation scheme of GATS provides the parties with opportunities to pursue their requests in future negotiations. However, what a party can actually gain in the negotiations will be a function of the preparedness of the government. In accordance with the relevant provisions of GATS, the next round of multilateral negotiations on trade in services will begin around the year 2000. This time-limit allows the parties to evaluate the effects of GATS and the negotiation results on their own interests and to further develop their strategies for the negotiations.

China has participated in the negotiations on maritime transport services in the Uruguay Round, and made final commitments in this field. However, its participation does not seem to have been so effective. It can be understood that at the time of the negotiations, China’s policy was in the process of reform; therefore, the policy itself appeared unclear. As a major maritime transport services user and supplier, the result of the negotiations will have a significant effect on China. It is now necessary for China to carefully reconsider its maritime transport policy with respect to improving its position in the subsequent negotiations. This position can only be strengthened by a more forward-looking maritime transport policy and by a greater degree of international co-operation.
Over the past decade, dramatic changes have taken place in China's maritime transport policy. It is becoming more compatible with the new trade and transportation environment. Nevertheless, there is still lacking a clear objective for China's maritime transport policy. It needs to be further refined. To develop a forward-looking maritime transport policy in China, the following points should be taken into consideration:

First, free entry should be further encouraged. China's maritime transport services should be aimed at facilitating its foreign trade. The present trend shows that trade success or failure can no longer be attributed exclusively to export pricing but is more and more dependent on the ability of suppliers from developing countries to adapt to the business and trading practices of developed countries, including transport requirements and practices such as just-in-time deliveries or zero-fault supplies. To facilitate China's foreign trade, its maritime transport services should not only be adequate for the internal users, but also fit international requirements. Freedom of entry has a clear role to play in ensuring that users of a service are offered the best available price and quality combinations. In China the major gaps between domestic suppliers and the ones from the developed world are reflected in the technical and management aspects. In a free entry environment, suppliers will tend to employ productive resources in those activities where they can be more efficiently utilised and consumers will benefit from access to cheaper products. The entry of advanced foreign maritime transport suppliers can have positive effects on improving the service efficiency.

Second, the future policy should focus on fair competition issues. After a series of reform measures, a free competition maritime transport market is being established in China. However, so far, fair competition rules have not been addressed. On a global scale, liner transport has been in a process of concentration. This process has already led to the development of a number of mega carriers. By the very nature
of the size of the companies and the sophistication of the services rendered, there will be a limit on the number of such mega carriers in the market. They have their main trades on all the important routes. Recently, there has been a general decline in the importance of conferences. However, this does not necessarily imply a demise of cooperative arrangements among shipping lines. New types of agreements have emerged with similar features. The recent global alliances of a number of the world’s leading shipping lines has initiated their establishment of dominant positions in the world liner market. The rapid growth of China’s foreign trade, particularly in containerised goods, will attract the further participation of these mega carriers in China’s seaborne trade. Their existence presents a threat of reducing competition and thereby increasing prices. This would certainly have an adverse impact on China’s foreign trade. On the other hand, their dominant position could also bring unfair competition conditions to China’s competitors. To cope with this possible future situation, rules for competition must be established in China.

Third, the challenges of environmental issues must be addressed. Environmental issues will no doubt be a major concern for the international community in the future and decisions taken in this respect may have long-term and far-reaching consequences for international trade and maritime transport services. Today, more and more stringent environmental standards are being enforced in developed countries. Developing countries are also undertaking important initiatives to move towards higher levels of environmental protection. The trade liberalisation achieved in the Uruguay Round provides more trade opportunities for all parties. However, it has been thought that trade liberalisation may present a threat of greater damage to the environment, thus conflicting with the global goal of sustainable development.

The requirement to link trade and environment has resulted in the establishment of the Committee on Trade and Environment by WTO. The Decision on
Trade in Services and the Environment, made at the Marrakesh meeting, acknowledges that measures necessary to protect the environment may conflict with the provisions of GATS, and recommends a further examination of this issue. Environmental protection is a major concern in the world of maritime transport services. A large number of stringent environment protection regulations and standards have been implemented at both the international level and country level.

While these regulations and standards have an important role in protecting the environment, they have also certain effects on limiting the supply of maritime transport services if suppliers are not able to meet these standards. This will constitute a natural barrier to trade in maritime transport services. In the future, competitiveness in the export of maritime transport services will, to a large extent, depend on how friendly they are to the environment. Therefore, China’s maritime transport policy should address this issue and promote more environmentally friendly maritime transport services.

Beyond establishing a forward-looking maritime transport policy, China should also strengthen its international co-operation on policy issues. Maritime transport services inherently has an international character. In the present globlised world economy, this feature has become more important. China’s open economic development strategy requires the integration of its domestic maritime transport services with those of the international community. This co-operation should not only be limited to commercial activities, but should also be extended to regulatory and policy issues. Past experience has established that international co-operation is an important factor to achieve goals at the international level. In the negotiations on maritime transport services under the framework of GATS, China has the potential to strengthen its activities in international co-operation in the pursuit of its maritime policy objectives.
Appendix 1 The structure of the General Agreement on Trade in Services

GENERAL AGREEMENT ON TRADE IN SERVICES

PREAMBLE

PART I SCOPE AND DEFINITION
Article I Scope and Definition

PART II GENERAL OBLIGATIONS AND DISCIPLINES
Article II Most-Favoured-Nation Treatment
Article III Transparency
Article III bis Disclosure of Confidential Information
Article IV Increasing Participation of Developing Countries
Article V Economic Integration
Article V bis Labour Markets Integration Agreements
Article VI Domestic Regulation
Article VII Recognition
Article VIII Monopolies and Exclusive Services Suppliers
Article IX Business Practices
Article X Emergency Safeguard Measures
Article XI Payments and Transfers
Article XII Restrictions to Safeguard the Balance of Payments
Article XIII Government Procurement
Article XIV General Exceptions
Article XIV bis Security Exceptions
Article XV Subsidies

PART III SPECIFIC COMMITMENTS
Article XVI Market Access
Article XVII National Treatment
Article XVIII Additional Commitments

PART IV PROGRESSIVE LIBERALISATION
Article XIX Negotiation of Specific Commitments
Article XX Schedules of Specific Commitments
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PART V  INSTITUTIONAL PROVISIONS
Article XXII  Consultation
Article XXIII Dispute Settlement and Enforcement
Article XXIV  Council for Trade in Services
Article XXV  Technical Co-operation
Article XXVI  Relationship with Other International Organisations

PART VI  FINAL PROVISIONS
Article XXVII Denial of Benefits
Article XXVIII  Definitions
Article XXIX  Annexes

ANNEXES
Annex on Article II Exemption
Annex on Movement of Natural Persons Supplying Services under the agreement
Annex on Air Transport Services
Annex on Financial Services
Annex on Negotiations on Maritime Transport services
Annex on Telecommunications
Annex on Negotiations on Basic Telecommunications

APPENDIX
List of Schedules of Specific Commitments as of 15 December 1993
List of Most-Nation Exemptions as of 15 December 1993
Decision on Negotiations on Maritime Transport Services

Ministers,

Noting that commitments scheduled by participants on maritime transport services at the conclusion of the Uruguay Round shall enter into force on an MFN basis at the time as the Agreement Establishing the World Trade Organisation (hereinafter referred to as the "WTO Agreement").

Decide as follows:

1. Negotiations shall be entered into on a voluntary basis in the sector of maritime transport services within the framework of the General Agreement on Trade in Services. The negotiations shall be comprehensive in scope, aiming at commitments in international shipping, auxiliary services and access to and use of port facilities, leading to the elimination of restrictions within a fixed time scale.

2. A Negotiating Group on Maritime Transport Services (hereinafter referred to as the "NGMTS") is established to carry out this mandate. The NGMTS shall report periodically on the progress of these negotiations.

3. The negotiations in the NGMTS shall be open to all governments and the European Communities within announce their intention to participate. To date, the following have announced their intention to take part in the negotiations:

   Argentina, Canada, European Communities and their member States, Finland, Hong Kong, Iceland, Indonesia, Korea, Malaysia, Mexico, New Zealand, Norway, Philippines, Poland, Romania, Singapore, Sweden, Switzerland, Turkey, United States.

Further notifications of intention to participate shall be addressed to the Depository of the WTO Agreement.

4. The NGMTS shall hold its first negotiating session no later than 16 May 1994. It shall conclude these negotiations and make a final report no later than June 1996. The final report of the NGMTS shall include a date for the implementation of results of these negotiations.
5. Until the conclusion of the negotiations Article II and paragraphs 1 and 2 of the Annex on Article II Exemptions are suspended in their application to this sector, and it is not necessary to list MFN exemptions. At the conclusion of the negotiations, Members shall be free improve, modify or withdraw any commitments made in this sector during the Uruguay Round without offering compensation, notwithstanding the provisions of Article XXI of the Agreement. At the same time Members shall finalise their positions relating to MFN exemptions in this sector, notwithstanding the provisions of the Annex on Article II Exemptions. Should negotiations not succeed, the Council for Trade in Services shall decide whether to continue the negotiations in accordance with this mandate.

6. Any commitments resulting from the negotiations, including the date of their entry into force, shall be inscribed in the Schedule annexed to the General Agreement on Trade in Services and be subject to all the provisions of the Agreement.

7. Commencing immediately and continuing until the implementation date to be determined under paragraph 4, it is understood that participants shall not apply any measure affecting trade in maritime transport services except in response to measures applied by other countries and with a view to maintaining or improving the freedom of provision of maritime transport services, nor in such a manner as would improve their negotiating position and leverage.

8. The implementation of paragraph 7 shall be subject to surveillance in the NGMTS. Any participants may bring to the NGMTS any action or omission which it believes to be relevant to the fulfilment of paragraph 7. Such notifications shall be deemed to have been submitted to the NGMTS upon their receipt by the Secretariat.
Annex on Negotiations on Maritime Transport Services

1. Article II and the Annex on Article II Exemption, including the requirement to list in the Annex any measure inconsistent with most-favoured-nation treatment that a Member will maintain, shall enter into force for international shipping, auxiliary services and access to and use of port facilities only on:

   (a) the implementation date to be determined under paragraph 4 of the Ministerial Decision on Negotiations on Maritime Transport services; or,

   (b) should the negotiations not succeed, the date of the final report of the Negotiating Group on Maritime Transport Services provided for in that Decision.

2. Paragraph 1 shall not apply to any specific commitment on maritime transport services which is inscribed in a Member’s Schedule.

3. From the conclusion of the negotiations referred to in paragraph a, and before the implementation date, a Member may improve, modify or withdraw all or part of its specific commitments in this sector without offering compensation, notwithstanding the provisions of Article XXI.
<table>
<thead>
<tr>
<th>TRANSPORT SERVICES</th>
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<tbody>
<tr>
<td>MARITIME TRANSPORT SERVICES</td>
</tr>
<tr>
<td>International Transport (freight and passengers) CPC 7211 and 7212 &lt;les cabotage transport</td>
</tr>
<tr>
<td>1) (a) Liner Shipping: none</td>
</tr>
<tr>
<td>(b) Bulk, tramp, and other international shipping, including passenger transportation: none</td>
</tr>
<tr>
<td>1) (a) None</td>
</tr>
<tr>
<td>(b) None</td>
</tr>
</tbody>
</table>

<p>| The following services at the port are made available to international maritime transport suppliers on reasonable and no discriminatory terms and conditions |
| 1. Pilotage |
| 2. Towing and tug assistance |
| 3. Provisioning, fuelling and watering |
| 4. Garbage collecting and ballast waste disposal |
| 5. Port Captain's services |
| 6. Navigation aids |
| 7. Shore-based operational services essential to ship operation, water and electrical supplies |
| 8. Emergency repair facilities |
| [9. Anchorage, berth and berthing services] |
| 1) See Note |</p>
<table>
<thead>
<tr>
<th>Sector or Sub-Sector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
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<tr>
<td>TRANSPORT SERVICES</td>
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<tr>
<td>MARITIME TRANSPORT SERVICES</td>
<td></td>
<td></td>
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</tr>
<tr>
<td>International Transport (freight and passengers) CPC 7211 and 7212 less cabotage transport (cont.)</td>
<td>2) [None]</td>
<td>2) [None]</td>
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</tr>
<tr>
<td></td>
<td>3) [(a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound]</td>
<td>3) [(a) Unbound]</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(b) Other forms of commercial presence for the supply of international maritime transport services (as defined below - 2): none</td>
<td>(b) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>4) [(a) Ships' crew: unbound]</td>
<td>4) [(a) None]</td>
<td></td>
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<tr>
<td></td>
<td>(b) Key personnel employed in relation to a commercial presence as defined under mode 3b) above</td>
<td>(b) None</td>
<td></td>
</tr>
</tbody>
</table>

3) b) See Note
<table>
<thead>
<tr>
<th>Sector or Sub-Sector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
</tr>
</thead>
<tbody>
<tr>
<td>MARITIME AUXILIARY SERVICES</td>
<td>1) Unbound* except for - no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment</td>
<td>1) Unbound* except for - no limitation on transshipment (board to board or via the quay) and/or on the use of on-board cargo handling equipment</td>
<td></td>
</tr>
<tr>
<td>Maritime Cargo Handling Services (as defined below - 4)</td>
<td>2) None</td>
<td>2) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) None**</td>
<td>3) None**</td>
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<td></td>
<td>4) None</td>
<td>4) None</td>
<td></td>
</tr>
<tr>
<td>Storage and Warehousing Services CPC 742 [as amended]</td>
<td>1) Unbound*</td>
<td>1) Unbound*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) None**</td>
<td>3) None**</td>
<td></td>
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<tr>
<td></td>
<td>4) None</td>
<td>4) None</td>
<td></td>
</tr>
<tr>
<td>Customs Clearance Services (as defined below - 5)</td>
<td>1) Unbound*</td>
<td>1) Unbound*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) None**</td>
<td>3) None**</td>
<td></td>
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<tr>
<td></td>
<td>4) None</td>
<td>4) None</td>
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* A commitment on this mode of delivery is not feasible
** Public utility concession or licensing procedures may apply in case of occupation of the public domain
<table>
<thead>
<tr>
<th>Sector or Sub-Sector</th>
<th>Limitations on Market Access</th>
<th>Limitations on National Treatment</th>
<th>Additional Commitments</th>
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<tr>
<td>MARITIME AUXILIARY SERVICES (cont.)</td>
<td></td>
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<tr>
<td>Container Station and Depot Services (as defined below - 6)</td>
<td>1) Unbound*</td>
<td>1) Unbound*</td>
<td></td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
<td></td>
</tr>
<tr>
<td></td>
<td>3) None**</td>
<td>3) None**</td>
<td></td>
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<tr>
<td></td>
<td>4) None</td>
<td>4) None</td>
<td></td>
</tr>
<tr>
<td>Maritime Agency Services (as defined below - 7)</td>
<td>1) None</td>
<td>1) None</td>
<td>See Note</td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
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<td></td>
<td>3) None</td>
<td>3) None</td>
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<tr>
<td></td>
<td>4) None</td>
<td>4) None</td>
<td></td>
</tr>
<tr>
<td>[Maritime] Freight Forwarding Services (as defined below - 8)</td>
<td>1) None</td>
<td>1) None</td>
<td>See Note</td>
</tr>
<tr>
<td></td>
<td>2) None</td>
<td>2) None</td>
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<td>3) None</td>
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<td></td>
<td>4) None</td>
<td>4) None</td>
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</tbody>
</table>

* A commitment on this mode of delivery is not feasible
** Public utility concession or licensing procedures may apply in case of occupation of the public domain
shall have the ability to rent or lease trucks, railway carriages or barges, and related equipment, for the purpose of inland forwarding of cargoes, or have access to, and use of, these forms of multimodal activities on reasonable and non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations. [Reasonable and non-discriminatory terms and conditions* means, for the purpose of [multimodal transport operations], [this additional commitment], the ability of the multimodal transport operator to arrange for the conveyance of its merchandise on a timely basis, including priority over other merchandise which has entered the port at a later date].

DEFINITIONS

[1. Without prejudice to the scope of activities which may be considered as “cabotage” under the relevant national legislation, this schedule does not include “maritime cabotage services”, which are assumed to cover transportation of passengers or goods between a port located in ... (name of country or, for EEC, a Member State”) and another port located in ... (name of the country or, for EEC, the Member State”) and traffic originating and terminating in ... the same port located in (name of country or, for EEC, a Member State”) provided that this traffic remains within ... (name of country or “this Member State”)’s territorial waters.]

2. “Other forms of commercial presence for the supply of international maritime transport services” means the ability for international maritime transport service suppliers of other Members to undertake locally all activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element. (This commitment shall however not be construed as limiting in any manner the commitments undertaken under the cross-border mode of delivery).

These activities include, but are not limited to:

(a) marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;

(b) the acquisition, on their own account or on behalf of their customers (and the resale to their customers) of any transport and related services, including inward transport services by any mode, particularly inland waterways, road and rail, necessary for the supply of the integrated service;

(c) the preparation of documentation concerning transport documents, customs documents, or other documents related to the origin and character of the goods transported;
(Appendix 4, cont'd)

(d) the provision of business information by any means, including computerised information systems and electronic data interchange (subject to the provisions of the annex on telecommunications);

(e) the setting up of any business arrangements (including participation in the stock of a company) and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to the horizontal commitment on movement of personnel) with any locally established shipping agency;

(f) acting on behalf of the companies, organising the call of the ship or taking over cargoes when required.

3. “Maritime transport operator” means the person on whose behalf the bill of lading/multimodal transport document, or any other document evidencing a contract of multimodal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage.

4. “Maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organising independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:

- the loading/discharging of cargo to/from a ship;
- the lashing/unlashing of cargo;
- the reception/delivery and safekeeping of cargoes before shipment or after discharge.

5. “Customs clearance services” (alternatively “customs house brokers’ services”) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity.

6. “Container station and depot services” means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments.

7. “Maritime agency services” means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;

(Appendix 4, cont'd)

- acting on behalf of the companies organising the call of the ship or taking over cargoes when required.

8. "Freight forwarding services" means [the activities consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information].
BIBLIOGRAPHY


*General Agreement on Trade in Services* 1994


