

NEGOTIATIONS ON TRANSPORT AND LOGISTICS SERVICES:

ISSUES TO CONSIDER

Executive Summary

The current Doha Round negotiations on the *General Agreement on Trade in Services (GATS)* under the auspices of the World Trade Organization (WTO) cover, among other services, the transport services sector. New ideas seeking to extend negotiations on maritime transport services to reflect the underlying logic of door-to-door transport have emerged during the negotiations. Highlighting the importance of supply chain efficiency for trade, growth and development, several WTO Members have called for an extension of the scope of the negotiations to cover multimodal transport and logistics services. It is argued that emerging market realities and recent trends in the fields of transport and trade should be reflected in the Doha Round of negotiations. Against this background, this paper reviews relevant developments in WTO negotiations on transport and logistics services and examines issues that call for consideration by developing countries when they are devising their negotiating strategies and formulating their GATS market access requests and offers. To conclude, the paper offers suggestions on how developing countries could contribute in a positive manner to the negotiations, while aware of the potential implications of new commitments.

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I. INTRODUCTION

1. The Fourth Ministerial Conference held in November 2001 in Doha, Qatar, launched the current round of multilateral trade negotiations under the World Trade Organization (WTO). The Doha Round seeks *inter alia* to further liberalize services trade under the *General Agreement on Trade in Services* (GATS). The GATS, adopted at the conclusion of the Uruguay Round, came into force in 1995 and covers a wide range of services sectors,¹ including transport and related services. GATS Article XIX provides that "*Members shall enter into successive rounds of negotiations, beginning not later than five years from the date of entry into force of the WTO Agreement and periodically thereafter, with a view to achieving a progressively higher level of liberalisation*". Hence, the Doha Round offers an opportunity to resume negotiations on transport and related services and to secure meaningful commitments in these sectors.

2. As may be recalled, the Uruguay Round and, subsequently, the 1995/1996 extended negotiations of the *Negotiating Group on Maritime Transport Services* (NGMTS) resulted in few meaningful commitments covering the maritime transport sector. The NGMTS negotiations were suspended by the *Decision on Maritime Transport Services* adopted by the Council for Trade in Services on 28 June 1996. The Decision included a standstill clause providing that Members will not apply any measures affecting trade in maritime transport services except in response to measures introduced by other Members. The decision also suspended the Most-favoured Nation (MFN) obligation, allowed Members to revisit their commitments and MFN exemptions at the end of the resumed negotiations, and stipulated that negotiations on maritime transport services were to resume on the basis of Members' best offers.²

3. In addition to resuming negotiations on transport services, the current Doha Round saw the emergence of new ideas seeking to extend negotiations on maritime transport services to reflect the underlying logic of door-to-door transport. Highlighting the importance of supply chain efficiency for trade, growth and development, several WTO Members called for an extension of the scope of the negotiations to cover multimodal transport and logistics services. It is argued that emerging market realities and recent trends in the fields of transport and trade should be reflected in the current round of negotiations.

4. While keeping pace with industry developments is important, GATS' extended coverage of multimodal transport and logistics services raises the question of the potential implications for WTO Members, especially developing countries. This is even more important since multimodal transport proved to be a difficult issue during the previous rounds, while logistics services is a novel concept in the field of services negotiations. Against this background, it might be useful to review recent developments in WTO negotiations on transport and logistics services and ascertain the extent to which developing countries could contribute in a positive manner to advancing these negotiations and benefit from ensuing commitments.

¹ The WTO Secretariat Services Sectoral Classification List contained in document MTN.GNS/W/120 covers the following 12 sectors: Business Services, Communication Services, Construction and Related Engineering Services, Distribution Services, Educational Services, Environmental Services, Financial Services, Health Related and Social Services, Tourism and Travel Related Services, Transport Services, and Other Services Not Included Elsewhere.

² WTO, S/L/24, 1996.

5. With a view to shedding some light on these issues this paper provides:

- An overview of recent trends related to transport and trade that have influenced the course of current WTO negotiations;
- The state of play of WTO negotiations on transport and logistics services;
- A review of issues that are relevant to developing countries;
- Suggestions on how developing countries could contribute in a positive manner to the negotiations and benefit from greater liberalization.

II. OVERVIEW OF EMERGING TRENDS IN TRADE AND TRANSPORT

6. Over the last few decades, the transport industry has been transformed by the demands of an increasingly integrated global economy. Maritime transport services are no longer associated with strictly port-to-port movements, but, rather, are an integral component of comprehensive door-to-door transport services.

7. Several elements have contributed to this evolution, including advances in technology (e.g. containerization and information and communication technologies), infrastructure modernization, and globalization of production and manufacturing processes.

1. Technological advances and infrastructure modernization

8. World trade has seen a constant increase in containerized freight since the introduction of containers in the mid-1960s. While in 1965, world container throughput at ports was practically non-existent, it reached 303.1 million TEUs (twenty-foot equivalent unit) in 2003.³ This figure is expected to reach 500 million TEUs by 2010.⁴

9. Containers are easy to handle and store, offer protection against damage and theft, and allow interchange among various modes of transport. These features have encouraged the wide spread use of containers and facilitated multimodal transport operations. Furthermore, containerization has brought about greater efficiency in cargo handling in ports and inland freight stations through the use of specialized equipment, which has contributed to changing transport patterns and practices.

10. In addition to containerization, the transport industry is being increasingly shaped by developments in the field of information and communication technologies (ICT). Transport and logistics services have been heavily influenced by the widespread use of electronic commerce (E-commerce), which, in turn, has enabled the growth of this particular ICT area. E-commerce allows consumers to place orders on the Internet and enables trade transactions to be rapidly concluded. This results in frequent deliveries of small packages to many different destinations, thus compelling transport and distribution services providers to modify their operations, business strategies and practices.

³ UNCTAD, Review of Maritime Transport, 2005, p. 75.

⁴ CARANA Corporation, "The Role of Transportation & Logistics in International Trade: The Developing Country Context", September 2003, p. 6.

11. Another element to consider is the modernization and the liberalization of ports and international transport services that have taken place in many countries since early 1990s. These developments have resulted in improved port and logistics operations, including speedy turnover of vessels and containers in ports. To ensure that these efficiency gains are not undermined by inefficiencies that may occur in other segments of the transport chain, a comprehensive door-to-door approach to delivering goods is increasingly adopted by traders and transport providers.

2. Global manufacturing and production processes

12. Global manufacturing and distribution processes bring together raw materials, parts and other semi-finished inputs from different parts of the world. Trade in components whose delivery is time-sensitive and which are essential to efficient production operations, accounts for around 30 per cent of global trade in manufactured goods. This trend is reinforced by the growing importance of intra-company trade, which accounts for approximately one third of this trade.

13. The new production processes require the implementation of supply chain management techniques to ensure timely receipt of inputs and delivery of finished products to the marketplace. The just in time (JIT) production processes require that supply and demand be matched in near real-time to reduce inventory and storage costs and free up working capital and equipment. The demands of the marketplace have resulted in manufacturers increasingly entrusting the logistics functions of their supply chain operations to third-party logistics providers (3PLs). Outsourcing logistics has allowed the manufacturers to focus on their core business activities to benefit from the economies of scale of their 3PL partners and the broad range of services offered by specialized logistics services providers. Below is the list of the top 10 logistics services providers ranked on the basis of their revenues in 2004.

TOP 10 LOGISTICS PROVIDERS REVENUES IN 2004 (million US dollars)	
Logistics services provider	Revenue
Nippon Express	14 840.8
Exel Group	11 122.9
Schenker	9 658.4
Deutsche Post Logistics	8 168.2
Kuehne + Nagel	7 036.6
UPS SCS	5 015.0
TNT Logistics	4 912.3
Panalpina	4 721.7
CH Robinson	4 341.5
Geodis	4 057.2

Source: Containerisation International, September 2005.

3. Logistics costs

14. Logistics costs, including transport, packaging, storage, inventories, administration and management, are a key consideration for all players in the international logistics chain. Controlling logistics costs allows companies to maintain a competitive edge and countries to experience trade growth, since lower logistics costs translate into competitive export and import

prices. Within global logistics expenditures, the share of transport is growing while that of inventory holding is decreasing. For example, in 1980, expenditures on inventory holding were estimated to be higher than expenditures on transportation in the United States. In 2002, this trend was reversed since transport-related expenditures were 90 per cent higher than expenditures relating to inventory holding.

15. Although of relevance to all economies, logistics costs are more important for developing countries, where they have been estimated to be the highest in the world.⁵ Several factors contribute to differences in cost levels and structure, including the efficiency of distribution systems, the quality of transportation infrastructure, and the regulatory and institutional frameworks. In 2003, the international freight costs of African countries as a proportion of the value of their imports represented 11.9 per cent — over twice the world total (5.4 per cent) and almost four times the costs for developed market economies (3.9 per cent).⁶ These costs are even higher for landlocked developing countries, given the additional constraints caused by their geographical situation, which lead to higher transport costs and longer delivery times.

III. TRANSPORT AND LOGISTICS SERVICES UNDER THE GENERAL AGREEMENT ON TRADE IN SERVICES (GATS): RECENT DEVELOPMENTS

1. The General Agreement on Trade in Services (GATS)

16. The core set of principles under the GATS includes access to the WTO dispute resolution mechanism, the commitment by Members to inform one another of the conditions for doing business in their respective countries (Transparency) and equal treatment of all services providers at the border (MFN).

17. In addition to these general principles, the GATS provides for negotiated commitments to ensure that Members' services providers have access to each other's domestic markets (Market Access) and are treated no less favourably than nationals (National Treatment). The GATS specifically excludes services supplied under governmental authority and states that liberalization is to take place with due respect for national policy objectives and development levels of individual Members.

18. The structure of the GATS provides flexibility by allowing Members to adjust the conditions of their commitments to reflect sector-specific constraints and to accommodate their national regulatory regimes. This allows Members to determine the degree to which they wish to liberalize their services sectors. For the purposes of structuring their commitments, WTO Members have generally used the *WTO Secretariat Services Sectoral Classification List* contained in document MTN.GNS/W/120 and commonly known as the W/120 classification. Transport Services, including maritime transport services, are covered by this classification and hence fall within the scope of the GATS negotiations. To supplement and bring more precision to the W/120 classification, WTO Members are making use of the statistical classification which

⁵ For instance, in Namibia, the cost of all trade-related transactions for a 20-foot full container load (FCL), including inland transport from the port to the factory gate, is slightly over \$3,000, while, in Germany and Sweden, these costs amount to only \$813 and a little more than \$500 respectively.

⁶ UNCTAD, op. cit., p.71.

was developed by the United Nations and covers all products, both goods and services, the so-called Central Product Classification (CPC).

19. Commitments are entered into with respect to each of the four modes of supply defined as the manner in which services are traded:

- Cross-border supply (Mode 1) refers to the possibility for foreign services providers to supply services across the border in another Member's territory (e.g. delivering a course through Internet).
- Consumption abroad (Mode 2) refers to the ability of a Member's residents to consume services in the territory of another Member (e.g. tourism).
- Commercial presence (Mode 3) means the ability of foreign services providers to establish, operate or expand a commercial presence in another Member's territory (e.g. a branch, agency or wholly-owned subsidiary).
- Movement of natural persons (Mode 4) refers to the entry and temporary stay of foreign individuals in another Member's territory to supply a service (e.g. intra-corporate transferees).

20. Market access negotiations are conducted on a request-and-offer basis. In the request phase, each WTO Member requests other Members to make commitments in sectors of commercial interest to its services providers. In the offer phase, each Member's offer takes into account the basic negotiating parameters that it has set for itself, as well as the various requests that it has received from other Members. At the end of the negotiating process, the results of the bilateral request-and-offer negotiations will be made available on a most-favoured-nation basis, that is, to all other Members. This will ensure that all Members benefit from the bilateral negotiations, regardless of whether they were involved in the process. That being said, complementary approaches to the bilateral process, including a plurilateral approach, can also be used to the extent that they remain within the parameters of the GATS.

21. In addition to market access, WTO Members are negotiating possible rules related to services trade in a number of areas, including emergency safeguard measures, subsidies and domestic regulation.

2. GATS Negotiations on Transport and Logistics Services

22. The W/120 classification divides transport services into the following modes of transport: Maritime, Air, Land (Rail and Road Transport Services) and Other Modes (Internal Waterways, Space Transport, Pipeline Transport, Services Auxiliary to All Modes of Transport and Other Transport Services). While proposals put forward in the current round of negotiations cover individual modes of transport, certain WTO Members have adopted an all-encompassing vision whereby negotiations on transport services are addressed in the broader context of door-to-door transport and from a logistics chain perspective. Accordingly, proposals on maritime transport services table in the current round are not limited to "blue water" transport and port services. An important development has been to revisit the concept of multimodal transport and to extend negotiations to include logistics services. While multimodal transport is not new to the negotiations, logistics services have emerged as an important new area of negotiations.

(A) ***Logistics Services: Doha Round***

23. Many definitions have attempted to capture the essence of logistics services. A commonly used definition describes logistics as "having the right thing, at the right place, at the right time". The Council of Logistics Management defines logistics as "... *the process of planning, implementing, and controlling the efficient, effective flow and storage of goods, services, and related information from point of origin to point of consumption for the purpose of conforming to customer requirements*".

24. Under the GATS, Hong Kong (China) and Switzerland were first to express their interest in extending services negotiations to include logistics services⁷. In June 2004, Australia, Hong Kong (China), Liechtenstein, Mauritius, New Zealand, Nicaragua, Switzerland and the separate customs territory of Taiwan, Penghu, Kinmen and Matsu tabled a joint proposal to encourage Members to consider liberalizing logistics services and offered a checklist of services sectors, commitments in which would facilitate effective provision of logistics services (the Logistics Services Checklist).⁸ In February 2005, the Friends of Logistics Group⁹ tabled a joint statement, endorsed by a mix of developed and developing countries, urging Members to actively engage in negotiations with a view to undertaking commitments on logistics services.¹⁰

25. The Logistics Services Checklist, reproduced below, distinguishes among the following elements:

- Core Freight Logistics Services;
- Related Freight Logistics Services; and
- Non-Core Freight Logistics Services.

⁷ WTO, S/CSS/W/68 and S/CSS/W/78, 2001.

⁸ WTO, TN/S/W/20, 2004.

⁹ The Friends of Logistics Group brings together WTO Members interested in securing commitments on services required in order to provide an integrated door-to-door cargo movement.

¹⁰ WTO, TN/S/W/34, 2005.

FREIGHT LOGISTICS CHECKLIST (TN/S/W/20)	
I. Core Freight Logistics Services	
11. H. Services auxiliary to all Modes	<ul style="list-style-type: none"> a. Cargo handling services, including container handling services (CPC 7411) and other cargo handling (CPC 7419). b. Storage and warehousing services (CPC 742) (Including* distribution centre services and material handling and equipment services such as container station depot). c. Transport agency services (CPC 748) (Including* customs agency services and load scheduling). d. Other auxiliary services (CPC 749) (including* through-chain logistic services, reverse logistics, container leasing and rental services).
II. Related Freight Logistics Services	
(1) Freight Transport Services	<ul style="list-style-type: none"> 11.A. Maritime transport services (Identified under maritime transport negotiations). 11.B. Internal waterways transport services (Identified under maritime transport negotiations). 11.C. Air transport services. 11.C.b. Air freight transport (CPC 732) (Currently excluded from GATS, subject to Annex on Air Transport Services). 11.C.c. Rental of aircraft with crew (CPC 734) (Currently excluded from GATS, subject to Annex on Air Transport Services). 11.E. Rail transport services. 11.E.b. Freight transport (CPC 7112). 11.F. Road transport services. 11.F.b. Freight transport (CPC7123). 11.F.c. Rental of commercial vehicles with operator (CPC 7124), and without operator (CPC 83102).
(2) Other Related Logistics Services	<ul style="list-style-type: none"> 1.F.e. Technical testing and analysis services (CPC 8676). 2.B. Courier services (CPC 7512). 4.A. Commission agents' services (CPC 621). 4.B. Wholesale trade services (CPC 622). 4.C. Retailing services (CPC 631, 632, 6111, 6113, 6121) (Including* inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services). - Other supporting services not covered by 11. H: CPC 743, 7113, 744 (excluding 7441) and 746.
III. Non-Core Freight Logistics Services	
Additional Commitments	<ul style="list-style-type: none"> 1. The [Member] will accept electronic versions of trade administration documents. 2. Service suppliers are entitled to supply listed freight logistics services (from services auxiliary to all modes of transport, freight transport, courier services and distribution services) in combination, subject to measures necessary to prevent anti-competitive behaviour. 3. The [Member] will ensure that various procedures and formalities such as documentary requirements, customs clearance, customs inspection, and electronic processing, would not be unnecessarily burdensome.

Note: The (*) symbol was included by the authors of the Checklist to recognize the fact that the relevant services are not explicitly listed in the official CPC explanatory note and that they should be explicitly listed in schedules for clarity.

26. *Core Freight Logistics Services* are deemed essential in that they represent a significant part of total logistics costs and are crucial to commercially viable logistics operations (e.g. Services Auxiliary to All Modes of Transport). *Related Freight Logistics Services* are considered to be necessary for a broad and effective liberalization of logistics services (e.g. Freight Transport Services). *Non-Core Freight Logistics Services* refer to subsectors in which liberalization is desirable for freight logistics supply chains to operate effectively. These include computer and related services, packaging, and management consulting and related services. Additional commitments entered into pursuant to Article XVIII of the GATS and applied horizontally are also sought under *Non-Core Freight Logistics Services*. Such commitments would ensure that electronic versions of trade administration documents are accepted, logistics services can be supplied in combination, and that customs and clearance procedures and documentary requirements are facilitated.

27. In February 2006 and in accordance with paragraphs 25 to 27 of the Hong Kong Ministerial Declaration¹¹ and paragraphs 7 and 11 (b) of Annex C of that declaration, Australia, Chile, Hong Kong (China), Japan, New Zealand, Switzerland and Chinese Taipei presented a collective request¹² covering logistics services. The targeted group comprised 33 WTO Members, 26 of which were developing countries. A checklist clarifying the scope of the commitments sought was appended to the request.

28. The content of the collective request was drawn from the Logistics Services Checklist contained in document TN/S/W/20. Some amendments were made to clarify the concepts of "Through-chain logistics services" and "Reverse logistics", and "Postal services" was added to the list. The checklist appended to the collective request remains identical in substance to the Logistics Services Checklist. Therefore, despite the introductory remarks qualifying the collective request and acknowledging the limitations of the appended checklist on logistics services, concerns raised in connection with current WTO negotiations on logistics services remain.

29. Proponents of logistics services liberalization, whether through individual or collective requests, seek the removal of measures identified by the logistics services industry as impediments to the efficient provision of logistics services. Overall, logistics services providers seek the removal of market access and national treatment restrictions on local presence and investment as well as non-tariff barriers arising from burdensome and non-transparent regulatory regimes. Measures and practices identified include restrictions on the form of establishment and foreign equity capital (e.g. only in the form of joint venture with a 49 per cent capital cap on foreign participation); cumbersome, discriminatory and non-transparent customs regulations; lengthy inspection procedures; non transparent, costly and time-consuming licensing practices; and abuse of monopoly power.

30. According to industry stakeholders,¹³ border clearance procedures, including customs and inspection, constitute the greatest impediment to the supply of global logistics services. They maintain that, on balance, logistics services firms are more concerned with limited transparency

¹¹ WTO, WT/MIN (05)/DEC, 18 December 2005.

¹² Paragraph 7 of Annex C to the Hong Kong Ministerial Declaration provides that in addition to bilateral request-offer process, negotiations should also be pursued on a plurilateral basis in accordance with the principles of the GATS and the Guidelines and Procedures for the Negotiations on Trade in Services.

¹³ See the results of the survey questionnaire contained in the May 2005 United States International Trade Commission's report entitled *Logistics Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*.

and discriminatory practices than establishment restrictions. It is argued that limited transparency and inequitable access to information result in a slight to significant adverse impact on operations, while little or no adverse impact or costs result from establishment restrictions such as joint venture requirements, ownership/equity restrictions or investment limitations.

(B) *Maritime and multimodal transport services*

31. The Logistics Services Checklist reinforces the argument favouring greater liberalization in the transport services sector. To better understand the nexus between transport and logistics services, this section reviews issues that are relevant to maritime and multimodal transport services negotiations.

(1) Maritime transport services: Uruguay Round and NGMTS

32. The Uruguay Round had limited implications for maritime transport services since a critical mass of commitments was not achieved and some major participants withdrew their offers. Negotiations on maritime transport services (NGMTS) proved to be difficult, given, among other things, the diverse nature of the maritime sector, which involves international transport services, port services and domestic maritime transport services, each organized in a completely different manner. In this regard, the W/120 classification identifies 12 services sectors and divides each sector into subsectors. The Maritime transport services subsector is broken down into a number of categories, namely Passenger, Freight, Rental of vessels with crew, Maintenance and repair of vessels, Pushing and towing services, and Supporting services for maritime transport.

33. To better reflect the structure of the maritime transport sector, WTO Members favoured a "pillar approach" which resulted in the adoption of the *Maritime Model Schedule*, which rests on three pillars:

- International maritime transport (pillar 1);
- Maritime auxiliary services (pillar 2);
- Access to and use of port services (pillar 3).

34. This division allowed for a distinction between "pure" maritime transport services and related services necessary for performing an international maritime transport movement. While commitments on pillars 1 and 2 are scheduled under Article XVI (Market Access) and Article XVII (National Treatment), commitments on pillar 3 are scheduled under Article XVIII (Additional Commitments). While "International maritime transport" was recognized as being relatively open, WTO Members agreed that "Maritime auxiliary services" and "Access to, and use of, port services" remained subject to many restrictions and, hence, required further attention. As regards domestic maritime transport (cabotage), Members agreed that this area of maritime transport would not be covered during the Uruguay Round negotiations.

35. Article XVIII of the GATS provides that "*Members may negotiate commitments with respect to measures affecting trade in services not subject to scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licensing matters. Such commitments shall be inscribed in a Member's Schedule*". Pillar 3 commitments under the Additional Commitments column of the *Maritime Model Schedule* provide that Members should allow international maritime transport services suppliers to have access to, and use of, port services on reasonable and non-discriminatory terms and conditions.

36. There are two versions of the *Maritime Model Schedule*: the 1993 *Maritime Model Schedule*, developed during the Uruguay Round; and the 1996 *Maritime Model Schedule*, which resulted from the extended negotiations under the NGMTS. The difference between the two versions relates to the coverage of multimodal transport activities. While the 1996 version defines the concepts of a "multimodal transport operator" and "multimodal transport services", the 1993 *Maritime Model Schedule* does not define the concept of "multimodal transport services". In addition, in the 1996 version of the *Maritime Model Schedule*, the specific wording on multimodal transport is entered under the Additional Commitments column, while in the 1993 version the relevant wording appears in the Note to the Schedule. Neither the 1993 nor the 1996 *Maritime Model Schedule* is an "established version" since it is up to Members to decide on the model schedule they may wish to use.

37. Most WTO Members are of the view that the *Maritime Model Schedule* (1993 and 1996) was not intended as an ideal set or a minimum level of commitments. Instead, it is considered a user-friendly scheduling format seeking to ensure consistency in the preparation of schedules of specific commitments. Attached to the *Maritime Model Schedule* is a set of definitions of the various components of the maritime transport services sector that both overlaps and creates gaps with W/120 classification and the Central Product Classification.

38. Most commitments made under the NGMTS extended negotiations have generally followed one version or another of the *Maritime Model Schedule*, while others reflect either the W/120 classification or a combination of both approaches. Although the W/120 classification and the *Maritime Model Schedule* (1993 and 1996) are not necessarily contradictory, differences in scope of coverage remain. In this regard, Members are being encouraged to adopt the *Maritime Model Schedule* approach to ensure comparability of commitments and consistency in scope of coverage.

(2) Maritime transport services: Doha Round

39. In the current round, negotiations have resumed in accordance with the *Guidelines and Procedures for the Negotiations on Trade in Services* (S/L/93). Paragraph 5 of the Guidelines provides that "*there shall be no a priori exclusion of any service sector or mode of supply and that special attention should be given to sectors and modes of supply of export interest to developing countries*". In addition to these general guiding principles, the 1996 Decision on Maritime Transport Services provided that negotiations under this services subsector were to be resumed on the basis of best offers tabled up to 1996. This ensured that negotiating positions did not regress and that progress achieved in previous rounds was retained.

40. The strategic role of maritime transport services has been stressed in joint statements and negotiating proposals tabled by a number of WTO Members at the Council for Trade in Services in Special Session. WTO Members with a strong interest in securing meaningful liberalization in this sector have concentrated their efforts to achieve such an outcome within a dedicated informal working group, the "Friends of Maritime Transport Group".

41. In a 2003 joint statement,¹⁴ a considerable number of WTO Members, both developed and developing, called for "the active participation of all Members in the on-going negotiations with a view to achieving meaningful liberalisation of the maritime transport services sector, consistent

¹⁴ WTO, TN/S/W/11, 2003.

with sustainable development, security and safety, and thereby securing broad coverage of this sector in the multilateral trading system and the GATS framework".

42. In 2005, proponents of maritime transport liberalization reiterated the importance of the following elements:

- Maritime transport services as a facilitator of world trade and an enabler of countries' economic growth and competitiveness;
- Binding substantive liberalization of maritime transport services for the overall success of the Doha Round;
- Use of the *Maritime Model Schedule* as a tool for negotiations.

43. Specific requests in the maritime transport sector included the need to make commitments on international freight transport Mode 1, Mode 2 and Mode 3 by *inter alia* eliminating:

- Limitations such as cargo reservation under Mode 1;
- Restrictions on foreign equity participation under Mode 3;
- Nationality requirements of board members under Mode 3;
- Preferential treatment under the National Treatment column;
- Restrictions on the right to establish a commercial presence under Market Access column, Mode 3.

44. In addition, a number of WTO Members consider it important to trigger the entry into force of Article II (MFN) and the Annex on Article II Exemptions, while others stressed the negative effect of common market access barriers such as restrictions on the use of shipping agents, discriminatory taxation measures and port dues, discrimination against foreign carriers in the use of port services, anti-competitive business practices, and burdensome ship and cargo examination procedures. One Member argued that competition policy issues should also be addressed under the GATS.

45. Developing countries are particularly seeking the removal of limitations on the movement of natural persons since, in their view, previous negotiations did not result in any meaningful commitments with respect to this mode of supply. This perceived lack of commitments is regarded as unfair to developing countries, which are the major source of labour for the world merchant fleet. Specific expectations identified in this regard include an extension of coverage to lower-skilled categories and the adoption of rules on transparency and administrative procedures.

(3) Multimodal transport services: Uruguay Round and NGMTS

46. During the Uruguay Round and the 1995/1996 extended negotiations on maritime transport services, it was suggested that elements of multimodal transport services be included in the negotiations. Both versions of the *Maritime Model Schedule* recognized that international maritime transport services suppliers should be able to use and have access to services necessary for providing door-to-door transport services on reasonable and non-discriminatory terms and conditions. At the conclusion of the Uruguay Round, some WTO Members entered commitments under the Additional Commitments column to provide international maritime transport suppliers with the ability to use and have access to services necessary for the conduct of multimodal transport operations on reasonable and non-discriminatory terms and conditions.

47. During the 1995/1996 negotiations, a number of WTO Members wanted to include commitments on multimodal transport to ensure that international transport services providers are also able to supply multimodal transport services on a market access and national treatment basis. Discussions at the time reached a stalemate as some Members were concerned that multimodal transport commitments could impact on regulatory regimes governing the various of modes of transport, while others argued that multimodal transport extends beyond the scope of maritime transport and hence should not be dealt with in the context of maritime transport services negotiations. The concern of some Members over a potential infringement of multimodal transport liberalization on national cabotage laws contributed to making the negotiations even more difficult.

48. Elements of the wording on multimodal transport under both versions of the *Maritime Model Schedule* remain bracketed, a fact which suggests that no clear decision has been taken with respect to the exact scope and content of commitments on multimodal transport services.

(4) Multimodal transport services: Doha Round

49. In the current Doha Round of negotiations, a number of WTO Members continued to stress the importance of multimodal transport and tabled proposals to that effect. In the light of recent trends in the field of trade and transports, many WTO Members consider commitments on multimodal transport services to be a necessity. Some of the proposals noted that when international transport services involve a sea leg, international services suppliers should be able to supply multimodal door-to-door transport services across the logistics chain. It is argued that consideration should be given to the possibility of allowing such activities without implying complete liberalization of road, rail and inland waterways.¹⁵

50. To clarify the scope of current negotiations, one proposal argued that they should be limited to multimodal transport with a "blue-water" leg, to the exclusion of maritime transport cabotage combined with land transport. In another proposal, multimodal transport was defined as "*the carriage of goods by at least two different modes of transport, by the multimodal transport operator on the basis of a single 'through' multimodal transport contact, from a point of loading in one country to a point of delivery in another country*".¹⁶

51. To supplement individual proposals by WTO Members, the Friends of Maritime Transport Group also considered various scheduling options of multimodal transport elements. These included a checklist, a revised model schedule and a fourth pillar. The revised model schedule approach incorporates multimodal transport into the existing pillars, while under the fourth pillar method, multimodal transport is incorporated as a separate pillar and is given the same status as the existing three pillars.

52. The favoured approach seems to be the Multimodal Transport Checklist,¹⁷ which provides an indicative list of services areas in which Members may wish to consider making commitments to ensure efficient door-to-door transport. In addition to multimodal transport services, some Members of the Friends of Maritime Transport Group proposed that commitments on feeder

¹⁵ WTO, S/CSS/W/41, 2000.

¹⁶ WTO, S/CSS/W/111, 2001.

¹⁷ The checklist approach was introduced by Norway as a supplement to the commitments in other transport services sectors (Document S/CSS/W/59, 2001). While not always in agreement with respect to Checklist's scope of coverage, several Members of the Friends of Maritime Transport Group, including Canada, the EC and Hong Kong (China) supported the checklist format serving as a negotiating tool and as a supplement to the Maritime Model Schedule.

services related to international cargo, movement of empty containers for international trade, and transport servicing offshore petroleum exploration and production should also be encouraged.

53. Since the Multimodal Transport Checklist is neither intended as a mandatory instrument nor contains a set of model commitments, it offers flexibility allowing Members to determine the degree to which they may wish to liberalize a given services sector. Nevertheless, it is unclear how new commitments made in accordance with this checklist will be incorporated into Members' schedules of commitments. Therefore, while it is a useful negotiating tool that itemizes elements of multimodal transport, the Multimodal Transport Checklist does not address the issues pertaining to the scope, content and the scheduling of commitments on multimodal transport services.

3. Status of the GATS Negotiations¹⁸

54. A large number of WTO Members submitted initial GATS requests in 2002 and tabled initial offers in March 2003. In accordance with the decision adopted by the General Council on 1 August 2004,¹⁹ several revised offers were submitted in May 2005.

55. As of September 2005, the total number of initial offers presented was 68, representing 92 Members. A total of 55 initial offers remained outstanding, including least-developed country Members.

56. Twenty-four (24) developing country Members have not submitted an initial offer: Antigua and Barbuda, Armenia, Belize, Botswana, Cameroon, Congo, Côte d'Ivoire, Ecuador, Former Yugoslav Republic of Macedonia, Georgia, Ghana, Kuwait, Kyrgyz Republic, Moldova, Mongolia, Namibia, Nigeria, Oman, Papua New Guinea, Romania, South Africa, Swaziland, Venezuela and Zimbabwe.

57. Thirty-one (31) LDC Members have not submitted an initial offer: Angola, Bangladesh, Benin, Burkina Faso, Burundi, Cambodia, Central African Republic, Chad, Democratic Republic of the Congo, Djibouti, The Gambia, Guinea, Guinea Bissau, Haiti, Lesotho, Madagascar, Malawi, Maldives, Mali, Mauritania, Mozambique, Myanmar, Nepal, Niger, Rwanda, Sierra Leone, Solomon Islands, United Republic of Tanzania, Togo, Uganda and Zambia.

58. Twenty-four (24) Members have submitted a revised offer: Australia, Bahrain, Brazil, Canada, Chile, China, Colombia, European Communities, Egypt, Hong Kong (China), Iceland, Japan, Republic of Korea, Liechtenstein, Mexico, New Zealand, Norway, Peru, Singapore, Suriname, Switzerland, Chinese Taipei, United States and Uruguay.

(A) *Transport and logistics services*

59. On the basis of the initial and revised offers available as of September 2005, an assessment by a group of WTO Members concluded that only a limited number of quality offers had been submitted. Of the 68 offers available at the time, 28 had maintained existing commitments on maritime transport services, 14 had entered new commitments and 26 still offered no commitments in this services sector. As to multimodal transport, 4 offers had maintained existing commitments, while new commitments have been made in 4 offers.

¹⁸ See the detailed report on the status of the services negotiations provided by the Chairman of the Special Session of the Council for Trade in Services in document TN/S/20, 2005.

¹⁹ WTO, WT/L/579, 2004.

60. Similarly, in June 2005, an assessment of the offers in logistics services indicated that of the 61 offers which had been tabled, 41 maintained existing commitments on logistics services and that, of the 20 offers from Members which did not have existing commitments on logistics services, 5 entered new commitments.

61. With respect to specific transport subsectors included in the Logistics Services Checklist, 14 offers were made in air transport services, including in those sectors explicitly listed in the Annex on Air Transport Services, 13 in road transport services, 9 in rail transport services and 13 in services auxiliary to all modes of transport (not including maritime auxiliary services).

(B) *Movement of natural persons (Mode 4)*

62. A sector of particular interest to most developing countries is the temporary movement of natural persons. This mode of supply is considered one of their main export interests in services. Further liberalization in Mode 4 is viewed as fundamental in ensuring a balance in terms of comparative advantage among developed and developing countries in these negotiations. Many WTO Members feel that more work is still needed including commitments on entry of lower-skilled labour.

63. Overall, while the number of offers in transport and logistics services has increased, ultimately, the quality and the actual economic value of liberalization contained in these offers can be assessed only by WTO Members and weighed against the objectives and the commercial interests of their services providers. It is important to note that the bulk of revised offers were made by developed country Members, while a significant number of developing countries have submitted no initial services offer. It is hoped that proposals that clarify negotiating areas, including sector-specific issues such as transport and logistics, will assist developing countries in tabling their offers.

IV. TRANSPORT AND LOGISTICS SERVICES: ISSUES TO CONSIDER

64. It is generally accepted that, driven by recent industry trends and developments, proposals in the WTO on transport and logistics services are aimed at addressing new market realities and business practices. While keeping pace with industry developments is important, new commitments on these services will not be without consequences for developing countries. Indeed, a review of negotiations on transport and logistics services raises the question as to the benefits of such liberalization.

65. To put things in perspective, the following provides a summary of issues which are relevant to developing countries. While the implications of each will vary according to the specific circumstances of countries and their individual policy objectives, in general, they could have a greater impact on developing countries than on developed economies.

1. Logistics services: some considerations

66. The global market for third-party logistics services (3PLs), excluding transportation companies that provide separate services throughout the supply chain, was valued at approximately \$130 billion in 2002.²⁰ Data on the share of developing countries in this market are not available. That being said, the important trade transaction costs faced by developing countries indicate that transport and logistics services in developing countries are not at a stage where they could compete on a level playing field with global logistics services suppliers that offer state-of-the-art services. Unlike in the case of global players, developing countries' logistics services providers face a wide range of challenges, including uncertain legal status of transport intermediaries, cost and availability of banking and other financial services, and limited and insufficient access to know-how, modern commercial practices and ICT. As a result, the logistics services sector is still at an initial stage of development in most developing countries.

67. The large gap between the requirements for modern logistics services and the capacity of developing countries' suppliers to meet market demand requires an intervention at all levels, national, as well as internationally through trade agreements such as the GATS. Nevertheless, liberalization of logistics services does not mean making commitments in all sectors listed in the Logistics Services Checklist to provide full access to the domestic market to the detriment of local services suppliers. Trade liberalization should be a careful balancing act between gains that could be secured from relaxing certain access rules, changing ways of doing business and seeking opportunities that could be realized by penetrating markets opened by trading partners.

68. It is worth noting that the logistics industry could be asset-based and non-asset-based and, as such, heavy capital investments are not always required to supply logistics services. Not all suppliers of logistics services need to be multinational giants. Operators in developing countries can differentiate themselves by establishing their own niche market and providing individualized services. Addressing drivers of cost levels, focusing on logistics services areas with low capital investment requirements, specializing in areas with a clear competitive advantage and tailoring commitments to reflect real commercial interests and national regulatory frameworks are many elements that could contribute to developing countries' active participation in the logistics services market. Therefore, under the right conditions, logistics services suppliers from

²⁰ United States International Trade Commission, *Logistics Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*, May 2005, p. 2-1.

developing countries could tap into global logistics markets where they could learn from their interaction with other business partners and exposure to the ways of modern logistics networks.

69. In this regard, proponents of greater liberalization have claimed repeatedly that making commitments on transport and logistics services will bring about benefits to all parties involved. Global welfare effects from services liberalization have been estimated to be on par with those from a complete elimination of trade barriers in manufactured and agricultural goods. For developing countries, welfare gains have been estimated to be two to three times larger in proportion to national incomes than in industrialized countries.²¹ Some studies indicated that developing countries could see welfare gains of more than \$500 billion resulting from duty-free trade, including services trade. That being said, a thorough assessment of the cost and benefits of greater liberalization in transport and logistics services that is substantiated by concrete examples is still needed.

(A) *Scope of coverage, classification and scheduling issues*

70. Logistics services are a novel concept in trade negotiations and give rise to some uncertainties in view of the absence of a logistics services heading under the classification systems used in Members' schedules of commitments. Although important for modern economies, the concept of logistics services has yet to be clearly defined. Usually referred to as a single set of services, in reality, logistics services involve a myriad of activities, which sometimes overlap with other GATS services sectors or blur the boundaries separating various sectors and subsectors.

71. Many of the services included in the Logistics Services Checklist are grouped under broad headings which, together with the proliferation of logistics-related terminology, create some ambiguity. Elements of this generic terminology have been incorporated into the Logistics Services Checklist with no clear definition or corresponding W/120 classification or CPC code. As a result, some Members may feel that further clarification is needed before they consider making commitments on logistics services, and can be expected to be hesitant to accept commitments in subsectors and specific areas where no CPC exists and no formal definition has been provided. Others may even be reluctant to make commitments in areas covered by the CPC, arguing that the current CPC does not reflect existing economic and technological realities.

72. The proposed Logistics Services Checklist includes activities that fall outside the scope of the GATS. For example, services directly related to air traffic rights have been explicitly excluded from the Agreement by way of the Annex on Air Transport Services, yet the proposed Logistics Services Checklist includes Air Transport Services. Although not mandatory and intended as an indicative list only to provide a framework for logistics services liberalization, the inclusion of sectors that are outside the scope of the GATS may diminish the impact of the Checklist as an effective negotiating tool.

73. It would appear that the debate on multimodal transport services has been overtaken by negotiations on logistics services. However, the Logistics Services Checklist makes no reference to the concept of multimodal transport per se. Additionally, it does not specify whether, for the purpose of multimodal transport, Members are expected to make (a) market access and national treatment commitments under individual transport services subsectors; (b) market access and national treatment commitments on multimodal transport services as defined in either version of

²¹ Alexander Lehman, Natalia T. Tmirisa, and Jaroslaw Wiecezorek, "International Trade in Services: Implications for the IMF", Policy Discussion Paper, IMF, December 2003.

the *Maritime Model Schedule* or in any other definition that may result from the current round of negotiations; and, (c) additional commitments to provide access to and use of services necessary for supplying a multimodal transport service on reasonable and non-discriminatory terms and conditions.

74. The following provides a description of some issues that arise specifically in connection with the Logistics Services Checklist contained in document TN/S/W/20, including the checklist appended to the collective request made in February 2006. In our view, further consideration of these issues will facilitate the use of the Logistics Services Checklist as a negotiating tool and help developing countries to better understand the implications of the commitments sought or made.

(B) *Logistics Services Checklist*

a. Cargo handling services, including container handling (CPC 7411) and other cargo handling (CPC 7419)

These services are defined in the CPC and the W/120 classification, and several WTO Members have already made entries pertaining to these services in their schedules and/or offers. It should be noted that both versions of the *Maritime Model Schedule* (1993 and 1996) contain a definition of "Cargo handling services". To ensure consistency of commitments, it might be worthwhile to consider distinguishing between "Cargo handling services" as defined under the *Maritime Model Schedule* and these same services as defined under Services Auxiliary to All Modes, 11.H of the W/120 classification and the corresponding CPC cross-reference.

CPC 7419 includes "Cargo handling services incidental to freight transport "not elsewhere classified". This open-ended classification creates an uncertainty as to the type of services covered. Therefore, Members may wish to clarify the scope of this entry and ascertain whether commitments under CPC 7419, which includes "Baggage handling services at airports", are consistent with the position taken in the context of current WTO discussions seeking to extend the scope of the GATS coverage to include "Ground handling services" under Air transport services.

b. Storage and warehousing services (CPC 742) (including distribution centre services and material handling and equipment services such as container station depot)

"Storage and warehousing services" are covered by the CPC and the W/120 classification and several Members have already entered commitments relevant to these services. To ensure consistency of commitments, Members may wish to consider distinguishing between Maritime Auxiliary Services as defined under the *Maritime Model Schedule* (1993 and 1996) and these services as defined under Services Auxiliary to All Modes, 11.H of the W/120 classification and the corresponding CPC cross-reference.

As regards "Distribution centre services" and "Material handling and equipment such as Container station and depot", no corresponding CPC or other definition exists except for "Container station and depot" under Maritime Auxiliary Services of the *Maritime Model Schedule* (1993 and 1996). In this context, Members may wish to include specific definitions to delineate the scope of coverage. Finally, a broad definition of "Handling equipment including containers" may involve moving containers, and this could conflict with national cabotage laws that reserve the ability to move containers, whether empty or loaded, to national carriers.

c. *Transport agency services (CPC 748) (including customs agency services and load scheduling)*

Not all services falling under this heading are identified by a corresponding CPC or a W/120 classification. Since both CPC 748 and the *Maritime Model Schedule* (1993 and 1996) contain a definition of "Freight forwarding services", it might be useful to consider distinguishing between Maritime Auxiliary Services as defined under the *Maritime Model Schedule* (1993 and 1996) and Services Auxiliary to All Modes under 11.H. of the W/120 classification and the corresponding CPC cross-reference.

"Customs clearance services" are not covered by the CPC, while the *Maritime Model Schedule* (1993 and 1996) offers a definition of "Customs clearance" under Maritime Auxiliary Services. It might be useful to consider including a specific definition to clarify the scope of commitments and to distinguish between Maritime Auxiliary Services under the *Maritime Model Schedule* and Services Auxiliary to All Modes under 11.H. of the W/120 classification and the corresponding CPC cross-reference.

The definition of "Maritime agency services" in the *Maritime Model Schedule* differs from that of "Transport agency" under Services Auxiliary to all Modes 11. H. It may be worthwhile to clarify the difference and assess its implications.

d. *Other auxiliary services (CPC 749) (including through-chain logistics services, reverse logistics, container leasing and rental services)*

Not all services falling under this heading are identified by the CPC or the W/120 classification. Some of the services listed in CPC 749 could overlap with Maritime Auxiliary Services as defined under the *Maritime Model Schedule* (1993 and 1996). For example, "transport document preparation" under CPC 749 could overlap with "preparation of documents" under "Maritime agency services" defined under the *Maritime Model Schedule*. To ensure consistency of commitments, it might be useful to consider distinguishing between Maritime Auxiliary Services as defined under the *Maritime Model Schedule* and Services Auxiliary to All Modes as defined under 11.H of the W/120 and the corresponding CPC cross-reference.

"Through-chain logistics", "Reverse logistics" are not covered by the CPC or the W/120 classification. Despite attempts to define these concepts, these services need to be clearly identified using a terminology that is not generic and does not in itself require to be circumscribed by the CPC or a dedicated definition. Examples of such a generic wording include "Inventory management" and "Information management".

As regards "Container leasing and rental services", it should be noted that a specific code (CPC 7311) has been included in CPC ver.1.0 to capture this particular activity.

11.A. *Maritime transport services (identified under maritime transport negotiations) and*
11.B. *Internal waterways transport services (identified under maritime transport negotiations)*

The Logistics Services Checklist does not refer to the concept of "Multimodal transport operator" or "Multimodal transport services" defined in relevant versions of the *Maritime Model Schedule*. It might be useful to ascertain whether commitments on multimodal transport are to be pursued in the context of negotiations on individual transport subsectors (Rail, Road, Maritime, Internal

waterways) and to clarify the internal linkages between ensuing commitments under these services subsectors and multimodal transport services.

The *Maritime Model Schedule* (1993 and 1996) provides for commitments on access to and use of services necessary to the provision of multimodal transport services (Article XVIII). It remains unclear whether, in the current negotiations, commitments on multimodal transport are to be undertaken pursuant to Articles XVI, XVII or XVIII of the GATS.

11.C. Air transport services

According to the Air Annex on Transport Services, these services fall outside the scope of the GATS. Therefore, Members may wish to reflect on the merit of including this transport subsector in the Logistics Services Checklist.

11.E.b and F.b. Rail and Road transport

Although identified by the CPC and the W/120 classification, the internal linkages between commitments on these subsectors and multimodal transport need to be clarified.

2.B. Courier services (CPC 7512)

These services are covered by the CPC and the W/120 classification. However, it includes "Multimodal courier services" and "Other courier services for goods not elsewhere classified". It may be useful to consider clarifying the relationship between multimodal transport under courier services and other multimodal transport services. It may also be useful to specify the scope of "Other courier services not classified elsewhere".

It would be difficult to enter commitments on "Multimodal courier services" when no agreement appears to have been reached with respect to the scope and the scheduling methodology of "Multimodal transport services".

4.B. and C Wholesale trade and retailing services

Section 6 of the CPC on trade services; hotel and restaurant services specifies that "*the principal services rendered by wholesalers and retailers may be characterized as "...maintaining inventories of goods; physically assembling, sorting and grading goods in large lots; breaking bulk and redistribution in smaller lots; delivery services; refrigeration services; sales promotion services rendered by wholesalers; and services associated with retailers' business, e.g. processing subordinated to selling, warehousing and garage services. Also included in this section are, among others, repair services of personal and household goods (group 633) and meal preparing and serving services by restaurants (division 64)".*

Wholesale trade and retailing services are covered by the CPC and the W/120 classification. The above underlined services included in the definition of "Wholesale and retail services" overlap with the definition of "Transport agency services", "Freight forwarding services", "Storage and warehousing services" and "Maritime agency services". Moreover, "Meal preparing services" defined by the CPC as services that can be rendered in transport facilities are covered under this heading. In this regard, the current debate on the potential expansion of the scope of the GATS to cover services auxiliary to Air transport, including catering services, should be taken into account.

Inventory management of goods, assembling, sorting and grading of goods, breaking bulk, re-distribution and delivery services

These services are not captured by the CPC or the W/120 classification and would need to be clearly defined. It remains unclear how services such as “Breaking bulk” and “Re-distribution” differ from similar services identified under “Transport agency”, “Wholesale and retail services” under CPC 631, 632, 6111, 6113, 6121. Further clarification is therefore required.

Other supporting services not covered by 11. H: CPC 743, 7113, 744 (excluding 7441) and 746

It may be worthwhile to clarify whether these services, such as those captured by CPC 744 and relating to "Supporting services for road transport, including highway, bridge and tunnel operation and parking services", effectively contribute to an efficient delivery of logistics services. Furthermore, CPC 743 includes “Other supporting services for railway transport, not elsewhere classified”, and this renders the scope of the commitment rather open-ended. There also remains the need to agree on whether or not the scope of the GATS extends beyond Computer reservation systems, Selling and marketing, and Repair and maintenance services, especially in the light of CPC 746, which refers to "Supporting services for air transport".

Additional Commitments

Two of the services listed are consistent with the WTO trade facilitation agenda, mainly "Acceptance of electronic trade documents" and "Non-burdensome customs and inspection procedures and requirements". Such commitments are subject to countries' ICT infrastructure and the existence of an adequate supporting and enabling legal and regulatory framework. Therefore, it should be made clear that, for some developing countries, special and differential treatment or requisite technical assistance and capacity building are a precondition with respect to these additional commitments. In this regard, it might be worthwhile to explore synergies that may prevail between the services negotiations on transport and logistics services on the one hand, and negotiations on trade facilitation on the other.²² Indeed, a growth in the logistics services sector could contribute to advancing other objectives such as customs modernization, single-window initiatives and electronic data interchange — some of the main deliverables on the current WTO trade facilitation agenda.

Finally, the meaning of the “right to supply freight logistics services in combination” needs to be further clarified.

75. In the light of these various considerations, an attempt to circumscribe the domain of logistics and related services is difficult given the various linkages that prevail as well as the complex web of activities and multiplicity of parties involved. The Logistics Services Checklist contained in document TN/S/W/20 is useful in that it itemizes the major activities, but lacks the precision that Members would require before considering accepting commitments covering these activities.

²² Extensive work on clarifying Articles V (Freedom of Transit), VIII (Fees and Formalities connected with Importations and Exportations) and X (Publication and Administration of Trade Regulations) of the *General Agreement on Tariffs and Trade (GATT)* is being undertaken in the WTO Negotiating Group on Trade Facilitation (NGTF).

76. This is crucial since an activity could be regulated by various regimes or instruments, which could entail various and contradictory implications for the WTO Member undertaking the commitments. It is important to reach a common basic understanding of the exact scope of commitments that are being sought in order to avoid interpretations by the WTO dispute settlement body, which may not always reflect the initial intent of the commitment.

77. This is important for developing countries as they often lack resources and capacity necessary to thoroughly investigate all potential implications of new commitments. One option to consider in order to bring more precision would be to fine-tune the Logistics Services Checklist. A necessary step in this direction would be to delineate the logistics services sector from its constituent sub-activities and to adopt a common understanding or an agreed definition of all activities that constitute logistics services. Another necessary action would be to clarify the linkages between the CPC, the W/120 and the *Maritime Model Schedule*. Such refinements would ensure that the legal certainty of existing commitments is not jeopardized and that Members are fully aware of the implications of offers that cover services that appear in the proposed Logistics Services Checklist.

2. Maritime transport services: some considerations

78. Developing countries' involvement in maritime transport is growing. In 2005, UNCTAD estimated that developing countries' share of world seaborne trade by volume reached 49 per cent and 31 per cent of goods loaded and unloaded respectively. Developing countries have also a marked and increasing presence in terms of registered world tonnage (deadweight). In the same year, developing countries' share was estimated to be 22.6 per cent, excluding open registry territories Panama, Liberia, the Bahamas, Malta, Cyprus and Bermuda whose share reached 45.1 per cent.²³

79. Developing countries are also a major source of labour in maritime transport. The worldwide supply of seafarers in 2005 was estimated to be 466,000 officers and 721,000 ratings. While developed countries remain an important source of officers, developing countries, especially those in the Far East, in South-East Asia and the Indian sub-continent, remain the largest sources of supply for ratings and are increasingly becoming a source of officers.²⁴ The Philippines alone provides almost 20 per cent of the global maritime force, while China and India are also significant maritime labour supply nations.

80. Despite the importance of maritime transport services for all countries, proponents of maritime transport liberalization consider the quality of offers tabled to be unsatisfactory. From a statistical point of view, however, WTO Members seem to be progressively moving towards greater liberalization in maritime transport services. As noted before, it would be difficult to assess the real economic value of the liberalization contained in these offers, especially when they have not all been released to the public. Such an assessment is even more difficult as the absence of commitments does not necessarily mean an absence of commercial opportunities. Indeed, in many cases, WTO Members have chosen not to bind their actual regimes governing market access which, in practice, may be more liberal. Inscribing commitments would, however, lock in the existing level of liberalization and provide the requisite legal predictability and certainty.

²³ UNCTAD, *op. cit.*, p. 27.

²⁴ BIMCO/ISF Manpower 2005 Update, December 2005.

(A) Classification and scheduling issues

81. It is worth noting that the two systems of classification used to schedule maritime transport commitments — the W/120 and the cross-reference to CPC on the one hand, and the *Maritime Model Schedule* (1993 and 1996) on the other — result in overlaps and gaps.

82. Unlike the W/120/CPC classification, both versions of the *Maritime Model Schedule* do not allow for commitments on "Rental and leasing with crew services", "Maintenance and repair", "Pushing and towing", "Other supporting services for maritime transport" and "Freight brokerage bill auditing". Similarly, the W/120/CPC classification does not cover "Access to and use of port services and services necessary to the conduct of a multimodal transport operation". Furthermore, while the *Maritime Model Schedule* (1993 and 1996) covers "Containers station and depot services", "Customs clearance services" and "Maritime agency services", the W/120 classification and the CPC do not explicitly cover these services. In terms of overlap, both classifications cover "International maritime transport", "Cargo handling services", "Storage and warehousing services" and "Freight forwarding services".

83. WTO Members may wish to ensure consistency in commitments undertaken by scheduling Maritime Auxiliary Services according to either version of the *Maritime Model Schedule* and exclude these services from the scope of Services Auxiliary to All Modes of Transport under 11. H of the W/120 classification and the corresponding CPC cross-reference.

(B) Cabotage

84. An issue that might warrant clarification is whether domestic shipping (cabotage) is formally covered in the current round of negotiations. While paragraph 5 of the *Guidelines and Procedures for the Negotiations on Trade in Services* (S/L/93) provides that there shall be no *a priori* exclusion of any service sector or mode of supply, the 1996 Council Decision contained in S/L/24 referred only to "International maritime transport" and both versions of the *Maritime Model Schedule* explicitly exclude cabotage. Some clarity is required in order to ensure that lack of commitments in this area of maritime transport does not stem from the ambiguity surrounding the scope of coverage of the negotiations.

85. New proposals have been put forward covering offshore activities, feeding and repositioning of empty containers. When considering these proposals, WTO Members may wish to take into account the potential implications of commitments in these areas for their national regulatory framework, especially national cabotage laws.

(C) Port services

86. In many countries, privatization and deregulation have allowed private port operators to supply many port services. Therefore, Members may wish to consider whether commitments on services that could be supplied on a commercial basis, such as pushing, towing and salvage, could be scheduled under the subsector column.

87. Given the important role of ports as a gateway to countries' markets and as a key factor in attracting shipping lines, developing countries would benefit from making commitments under the Additional Commitments column to provide access to and use of port services on reasonable and non-discriminatory terms and conditions. Reasonable and non-discriminatory access to and use of port services would ensure that shipping lines are not limited to alternative ports in

neighbouring countries. Such commitments would reduce transport costs, attract more users and larger volumes of trade, increase the frequency and range of services, and improve countries' connectivity to international markets.

(D) Movement of natural persons (Mode 4)

88. Members' commitments on Mode 4 are governed by horizontal commitments which are, in turn, subject to a number of limitations and cover a limited number of categories (e.g. professionals, specialists, managers). For the most part, such commitments are linked to commercial presence, that is to personnel employed by a company that has a commercial presence in the Member's territory. Such commitments do not cover personnel categories of interest to developing countries, including independent professionals, self-employed persons and low-skilled labour. The WTO secretariat has estimated that close to 60 per cent of commitments on Mode 4 are linked to commercial presence; 13 per cent cover contractual services suppliers; and less than 6 per cent cover independent suppliers. This shows that commitments sought by developing countries and in the sectors where they possess a comparative advantage are minimal.

89. In maritime transport services, most Members have not committed Mode 4, given the perception that opening the domestic labour market will displace local workers and interfere with immigration laws. In addition, cabotage and labour laws restrict labour on board national flag vessels to nationals or residents of that country. Since the GATS does not deal with immigration and permanent movement of natural persons, WTO Members may wish to address the concerns surrounding this issue by *inter alia* clarifying the distinction between permanent and temporary movement of natural persons. In addition, as both versions of the *Maritime Model Schedule* distinguish between commitments on crew on board ships and key personnel engaged in relation to Mode 3, WTO Members will be in a position to better tailor their commitments and ensure that a clear distinction is made between crewing positions and other employment on shore. This, in turn, may address concerns regarding overstays and permanent migration.

90. Mode 4 commitments in maritime transport services provide an opportunity for developing countries to supply a labour force to absorb the current shortfall in terms of officers and to continue to be a major source of ratings supply. According to the BIMCO/ISF 2005 report on the worldwide supply of and demand for seafarers, there is a shortfall of 10,000 officers. Therefore, commitments on Mode 4 in maritime transport services will benefit developed and developing countries alike. For developing countries, Mode 4 commitments in maritime transport would result in know-how and technology transfers as well as remittances.

91. In parallel, developing countries may wish to pursue negotiations under the Working Party on Domestic Regulation (WPDR), which, in addition to encouraging greater transparency, seeks to ensure that Mode 4-related procedures, especially with respect to visas and work permits, are less burdensome.

92. Finally, when making Mode 4 commitments linked to Mode 3 (commercial presence), developing countries may wish to consider inscribing in their schedules requisite limitations including, for example, that a certain percentage of employees be recruited locally. This will ensure that the local workforce is not displaced and that the receiving country benefits from the expertise and technology transfer that may be associated with the establishment of international maritime transport services suppliers.

3. **Multimodal transport services: some considerations**

(A) *Progressive liberalization*

93. Liberalization of multimodal transport services should be paced to address fundamental issues such as the manner in which a domestic inland regime could coexist with an international inland regime linked to multimodal transport operations. Furthermore, to avoid displacing local inland transport suppliers, Members may envisage commitments limited exclusively to ship operators, that is excluding inland carriers.

94. Services providers that are specialized in a niche local market and have a clear advantage over foreign companies could benefit from a partial liberalization of the domestic market. Such liberalization could include joint ventures with foreign services suppliers subject to national majority ownership. The progressive approach to liberalization aims to allow for the necessary market adjustments to take place with no major costs to domestic services providers.

(B) *Definitional issues*

95. An issue that arises in connection with multimodal transport is whether an agreement has been reached with respect to the definition of the concept of "multimodal transport". While the *Maritime Model Schedule* (1993 and 1996) includes specific wording on multimodal transport, elements of the relevant text contained in both versions remain bracketed. Meanwhile, the Logistics Services Checklist has dropped the concept of multimodal transport altogether. Thus, WTO Members may wish to clarify or specify the scope of the potential commitments on multimodal transport.

96. To facilitate commitments on multimodal transport services, WTO Members may wish to maintain the reference to an international maritime leg of the movement of freight from origin to destination. This will ensure that the only multimodal elements that would be covered in the negotiations are those activities in a transport chain that include an international maritime segment. Further, this will address concerns over multimodal transport negotiations being used as a backdoor to liberalizing domestic inland transport sectors.

(C) *Scheduling issues*

97. To date, no WTO Member has scheduled market access or national treatment commitments on multimodal transport to allow international maritime transport services suppliers or multimodal transport operators to supply multimodal transport services. Existing commitments are limited to the Additional Commitments column allowing access to and use of services necessary for the provision of multimodal transport services on reasonable and non-discriminatory terms and conditions.

98. Should Members decide to make commitments on multimodal transport, due consideration should be given to the issue of how such commitments will be entered in their schedules. In this regard, Members may wish to consider the implications of scheduling commitments on road or rail transport linked to a multimodal operation under the maritime transport services subsector as compared with scheduling these services under rail and road transport services subsectors.

V. A WAY FORWARD FOR DEVELOPING COUNTRIES

99. It is expected that door-to-door transport performed by multimodal transport and logistics services providers will continue to grow with extensive use of ICT, changes in business practices and growth in international trade. In this context, commercially meaningful liberalization through binding commitments can be expected to benefit developed and developing countries alike. Although large logistics services providers are based in developed economies,²⁵ new commitments on transport and logistics services have the potential to provide business opportunities in developing countries as well.

100. For developing countries to positively contribute to current WTO negotiations and to capitalize on related business opportunities that may emerge, a number of conditions, including the following, need to be met:

- An effective market access request and offer process;
- A clear and common understanding of the scope of coverage;
- Tailored technical assistance and capacity building, as well as special and differential treatment recognizing specific challenges faced by developing countries;
- Building on synergies resulting from progress achieved in other negotiating areas such as trade facilitation;
- A set of complementary measures to mitigate the potential negative effects of adjustment costs associated with trade liberalization.

103. For an effective request and offer process, WTO Members should refrain from making blanket requests and focus on concrete commercial interests. This will bring more precision to the scope of commitments sought and facilitate a thorough assessment of the potential implications of such commitments. More specifically, developing countries should adopt a strategic vision that considers *inter alia* immediate as well as future commercial opportunities, and focus not only on their defensive interests, but also on their offensive priorities. Moreover, when addressing their commercial interests, Members may wish to keep in mind the linkage between liberalization of trade in services via commercial presence (Mode 3) and foreign direct investment.

104. Additionally, effective liberalization requires clear and concise definitions to delineate the exact scope of commitments. Hence, WTO Members stand to gain from further refinements of the multimodal transport and logistics services checklists and related definitions and concepts. Indeed, clarifying the scope of commitments sought might bring to light areas in which developing countries could identify new market opportunities, especially areas not requiring significant capital investments.

105. From the perspective of developed countries, negotiations would be more effective if, in addition to making market access and national treatment commitments of interest to developing countries, concrete action is taken to acknowledge the specific challenging circumstances of these countries. Such undertakings could include allowing longer periods for implementation; specifying that commensurate technical assistance and capacity-building are prerequisites for

²⁵ According to the listing provided in the 2005 United States International Trade Commission report entitled "*Logistic Services: An Overview of the Global Market and Potential Effects of Removing Trade Impediments*", the 25 top logistics companies ranked according to their annual revenues were located in Denmark, Germany, Japan, the Netherlands, Switzerland, Sweden, Singapore, the United Kingdom and the United States.

effective liberalization of a given services sector; and according special and differential treatment to least developed countries. Although the GATS does not exempt developing countries from any obligations of the Agreement, several of its provisions provide some legal basis on which more flexibility could be granted. That being said, in the current round of negotiations, least-developed countries have been recognized as requiring particular attention, including the need for financed technical assistance and capacity-building programmes.

106. Just as liberalization of logistics services aims at facilitating the efficient and seamless movement of trade, so does trade facilitation. WTO Members would benefit from addressing transport and logistics services liberalization within a broader context, preferably in concert with trade facilitation negotiations. They may wish to consider exploring the linkages that prevail between these two areas of negotiations. Clearly, developing countries would particularly benefit from building on these linkages since some elements highlighted in the Logistic Services Checklist coincide with some trade facilitation objectives. Moreover, technical assistance, capacity-building activities and special and differential measures that could be secured in the context of trade facilitation negotiations could contribute to achieving a more balanced and development-oriented set of commitments on transport and logistics services.

107. Finally, to offset adjustment costs resulting from liberalization, complementary measures are required in order to enable the mitigation of these costs and to ensure maximization of trade liberalization gains. Elements of a successful response to adjustment costs include facilitating the movement of labour from declining to expanding areas of activity; careful pacing and sequencing of reforms resulting from commitments; and the design of appropriate support strategies and safety nets. Thus, it is important that developing country Members implement appropriate domestic policy framework in support of trade liberalization, including strong macroeconomic disciplines and social safety nets.

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