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INDIA'S TRADE IN MARITIME TRANSPORT SERVICES UNDER THE GATS FRAMEWORK

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Abbreviations

APEC	Asia-Pacific Economic Co-operation
APL	American President Lines
ASBO	Average Ship Berth Output
ASEAN	Association of South East Asian Nations
ASTA	Average Ship Turn Around
BOT	Build-Operate-Transfer
CFSs	Container Freight Stations
CIF	Cost, Insurance and Freight
CII	Confederation of Indian Industry
CONCOR	Container Corporation of India Limited
DWT	Dead Weight Tonnes
ECEC	Empowered Committee on Environmental Clearances
EDI	Electronic Data Interchange
EDP	Electronic Data Processing
EU	European Union
FOB.	Free on Board
GATS	General Agreement on Trade in Services
GRT	Gross Registered Tonnage
ICDs	Inland Container Depots
IMO	International Maritime Organisation
INSA	Indian National Shipowners' Association
IT	Information Technology
JIT	Just -in-time
JNPT	Jawaharlal Nehru Port Trust
LNG	Liquefied Natural Gas
LPG	Liquefied Petroleum Gas
MFN	Most Favoured Nations
MMTG	Multimodal Transport of Goods Act
MOST	Ministry of Surface Transport
MSA	Merchant Shipping Act
MTO	Multimodal Transport Operators
NAFTA	North American Free Trade Area
NGMTS	Negotiating Group on Maritime Transport Services
NOL	Neptune Oriental Lines
NRIs	Non-resident Indians
NSPC	National Shipping Policy Committee
NVOCCs	Non-vessel-operating Common Carriers
OECD	Organisation for Economic Co-operation and Development
SEZ	Special Economic Zone
TAMP	Tariff Authority of Major Ports
TEU	Twenty-foot Equivalent Unit

UN	United Nations
UNCTAD	United Nations Conference on Trade and Development
USA	United States of America
Wdv	Written Down Value
WTO	World Trade Organisation

Foreword

Maritime transport services is the only services sector in which the multilateral negotiations failed during the Uruguay Round. Since a significant part of world trade volume is moved by sea, it is important that India and other maritime nations should actively participate in the GATS 2000 negotiations. Failure to do so has serious implications on the growth of world trade.

This study examines the possibilities of liberalising trade in maritime transport services within the GATS framework. The study identifies the domestic and external barriers to India's trade in maritime services and recommends a number of regulatory, institutional and other measures that would enhance the productivity and global competitiveness of the sector. India still is a small player in the global market for maritime services, but has the potential of increasing its share in world trade. The study also recommends that it is in India's interest to actively participate in the ongoing GATS negotiations and push for the removal of external barriers to trade.

This sectoral study is a part of the Ministry of Commerce project "Trade in Services: Opportunities and Constraints". I am confident that the study will provide significant input to policy makers, industry associations and academicians working not only towards realising the potential of the maritime services sector but also help build India's infrastructure capability in this respect.

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Introduction*

The maritime sector encompasses a wide range of services, the transportation of goods and passengers being the primary one. Other related services included in this sector are various port services (such as pilotage, towing and tug assistance, emergency repairs, anchorage berth and berthing services, etc.) and auxiliary or supporting services (such as storage and warehousing, maritime cargo handling services, customs clearance services, etc.). The market structure of various segments of these services is different. For example, within the shipping services, tankers and bulk carriers have competitive markets whereas liner services and coastal services are restricted by private agreements[1] and government policies, respectively. While many countries have opened up some auxiliary services, such as storage and warehousing services to foreign service providers, custom clearance services are mostly regulated by government policies.

The maritime service industry's trade linkages are obvious and manifest: low freight rates can boost trade, and greater volume of trade, can in turn, lead to the growth in maritime services. It is now generally agreed that liberalisation in this sector will foster competition, resulting in lower costs of transportation, thereby boosting international trade. However, in spite of the expected benefits of liberalising trade in maritime services, the sector continues to witness significant barriers, such as reservation of cargoes for ships of specific flags, restrictions on foreign maritime service suppliers from having access to and operating in a market, and discriminatory access to port facilities.

The General Agreement on Trade in Services (GATS) creates possibilities for liberalising trade in maritime transport services under a multilateral framework of rules and discipline. In the Uruguay Round negotiations, this sector witnessed relatively limited liberalisation. At the end of the Uruguay Round, negotiations continued in maritime

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[1] Conferences or cartels are commonly found in liner shipping. A conference is a formal or informal agreement between shipping companies that restricts competition and is designed to secure regularity and frequency of services and stability of rates.

transport services along with telecommunication services, movement of natural persons and financial services. While negotiations were successfully completed in other three areas, participants could not reach an agreement on maritime services and, thus, negotiations were suspended.

Although India has the largest merchant shipping fleet among the developing countries and ranks seventeenth in the world in terms of gross registered tonnage (grt) and fifteenth in terms of deadweight tonnes (dwt), the country has not been successful in exporting its maritime services or emerging as a forerunner in the arena of international trade. Given the locational advantage, strong maritime tradition and rich hinterland, India has the potential for expanding trade in this sector. It is therefore important to identify the country's opportunities and constraints to trade in maritime transport services for the current round of GATS 2000 negotiations.

Objectives and Structure

This study will examine the prospects of liberalising trade in maritime services and the costs and benefits of such liberalisation under the GATS framework. Other objectives of this study are: (a) to assess the opportunities available to and constraints faced by the Indian maritime sector; (b) to recommend strategies for the Indian government in its negotiations in this sector at the WTO; and (c) to suggest various domestic reforms and measures that would be required to strengthen this sector.

The study consists of five sections:

- Section 1 provides a broad overview of the maritime industry, globally and within India, emphasising the recent trends and developments in this sector.
- Section 2 discusses the domestic and external constraints to trade in maritime services.
- Section 3 provides an overview of the coverage of this sector and the commitments made by various countries in the previous round of WTO negotiations covering three main areas in this sector: ocean transport, access to and use of port facilities and

auxiliary services. It also notes the implications of these commitments, in general, and particularly for India.

- Section 4 presents India's possible negotiating strategies for liberalising trade in maritime transport services in the current round of service sector negotiations. This section will discuss the nature of commitments that India should demand of other countries as well as what India may be prepared to commit in this sector.
- Section 5 will discuss the infrastructure, regulatory and other reforms required in India to make this sector globally competitive and to meet the challenges and opportunities arising from trade liberalisation under the GATS.

1. An Overview

1.1 Maritime Transport Services in the World Economy

During the second half of the twentieth century, globalisation and improvements in transport facilities[2] led to a significant expansion of international trade. The growth of international trade, in turn, led to the growth in maritime services since more than three-fourths of world trade volume is carried by sea.[3]

World sea-borne trade registered its fourteenth consecutive annual increase in 1999,[4] reaching over 5200 million tonnes in volume. It is predicted that, by the year 2005, sea-borne cargo will total 5350 million tonnes.[5] In 1999, the world merchant fleet expanded to 799 million dwt, representing a 1.3 per cent increase over the previous year. The tonnage ownership of developed countries decreased marginally by 0.3 per cent, while major open-registry countries[6] and developing countries increased their fleet by 0.3 per cent and 0.1 per

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2 Particularly the bulking of goods and introduction of containerisation and intermodalism.

3 Over the period 1990–95, 80 per cent of world trade volume was carried by sea (APEC 1996; Thomas 1996; Drewery 1998).

4 The annual growth rate for 1999, however, was 1.3 per cent, which was the lowest since 1987.

5 Thomas, 1996.

6 The major open-registry countries are Panama, Liberia, Bahamas, Greece, Malta, Denmark, Bermuda and Vanuata.

cent respectively. Although ships registered in major open-registry countries are mainly owned by developed countries, the share of tonnage owned by developing countries have shown an upward trend, reaching nearly one-third of the total tonnage in 1999.[7]

In terms of structure of the traffic, in 1997, tanker traffic (that is, the transport of crude oil and refined products) accounted for 45 per cent of the total volume of sea-borne trade, while dry bulk traffic (that is, the transport of iron ore, grain, coal, bauxite and phosphates) and liner traffic (that is, relatively high-value traffic carried by container ships, roll-on-roll-off vessels, etc.) accounted for 23 per cent and 32 per cent respectively.[8]

World total freight payments, as a proportion of total import value (the freight factor), have shown a downward trend, falling from a high of 6.6 per cent in 1980 to 5.2 per cent in 1990 and further down to 5.1 per cent in 1998.[9] The freight rates are, however higher for developing countries (8.1 per cent in 1998) than for developed countries (4.1 per cent). This difference in freight rates can be explained largely by the fact that the developed countries have more efficient and bigger ships that can carry larger volume of cargoes compared with developing countries and stronger competition from shipping lines serving developed markets.

There has been significant growth in containerisation in the 1990s. Containership tonnage increased by 5 million dwt (9 per cent) in 1997 over the previous year. World container port traffic has increased to 165 million TEUs (twenty-foot equivalent unit)[10] in 1998, which was 6.7 per cent over 1997. Of these, 88.5 million TEUs or 53.6 per cent were handled at the ports of developing countries. In the 1990s developing countries have been able to catch up with ports operated in advanced western maritime countries. Of the top 20 container ports in 1999, eleven are from developing and socialist countries of Asia (Table A1 in Appendix A).

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7 UNCTAD, 2000.

8 WTO, 1998.

9 WTO, 1998; UNCTAD, 2000.

10 By the year 2005 container throughput is likely to be around 271.3 million TEUs (Drewery 1998).

Under this competitive global scenario, all countries face the challenge of continuously having to upgrade and modernise their maritime transport system in order to cope with the rapid increase in volume of cargo throughput. This requires the adaptation of new and improved technology in both the vessels as well as the landside operations of ports and land transport facilities. Economies that are not able to provide such operating environment face the risk of losing their market share. The increasing size and sophistication of ships and port facilities require heavy capital investment, which is often beyond the means of the public sectors of many developing countries. Hence, there has been an increasing shift in this sector towards privatisation, global alliances and international networking.

Although governments of both developed and developing countries have acknowledged that a liberalised maritime transport sector would enable investors to freely operate shipping, port and related services and, thus, facilitate trade, economic and strategic reasons have often interfered in the process of liberalising this sector. Consequently, this sector continues to witness a significant interplay of discriminatory and non-discriminatory regulations.[11]

1.1.a Regulations and Developments in Shipping

The market structures of tanker and dry bulk traffic are widely different from that of liner traffic. Tanker and dry bulk traffic have competitive markets. On the other hand, conferences and cartels are commonly seen in liner shipping. The first conference was formed in August 1875 by the lines trading between the UK and India (Kolkata). At present, there are around 300 conferences in the industry. The main aims of conferences are to restrict competition and ensure stability of rates. The conference members jointly set a

[11] Discriminatory regulations treat foreign maritime service suppliers less favourably than their domestic counterparts. For example, foreign maritime service suppliers are prohibited in many countries from providing services around the coast under the cabotage rules. Non-discriminatory regulations treat domestic and foreign maritime service suppliers equally, but can still restrict trade, for example, by requiring mandatory use of a designated supply of port services by domestic and foreign shipping service suppliers (Chia Lin Sein *et al*.).

schedule of freight rates applicable to all members. They also set the maximum frequency of sailing by each company. To safeguard their interests and enjoy a near-total monopoly, "closed conferences" vigorously deny entry to new members and cargo allocation and freight rates are imposed by the cartels themselves. "Open conferences", on the other hand, do not bar entry and exit. Although closed conferences have been banned in the US, they are still common in the UK and other European countries.

Prior to the 1970s, world liner trade was dominated by conferences controlled by the developed countries and it was very difficult for companies from developing countries to gain entry into them. Since the 1970s, the share of traffic held by conferences has diminished owing to the introduction of containerisation and the emergence of independent shipping lines, including many Asian-owned lines. During this period there was a rapid growth of East Asian economies. Developing countries in Asia more than doubled their share of world ship registration from 7.8 per cent in 1980 to 16.8 per cent in 1997[12], while the figure for industrial countries dropped from more than 50 per cent to 27.4 per cent.[13] These developments encouraged the shipping lines to merge their conference rights into multinational consortia. In the 1990s, competitive pressure from the developing economies and the growing demand for global logistics brought about the disintegration of the consortia and the advent of huge global alliances that united the Asia-Europe, transpacific and transatlantic trades. For example, Neptune Orient Lines (NOL) (Singapore) has taken over American President Lines (APL) (USA) and DSR-Senator Linie (Germany) has been taken over by Han Jin (Korea). These alliances go much further than traditional conference agreements, as alliance partners not only agree on uniform terms of carriage, but also share slots, terminals, container inventories, and intermodal transport depots and services as well costs and revenues. By the end of 1997 the major global and trade related alliances represented nearly 50 per cent of the world fleet.[14] Parallel with these developments there

[12] In 1997, out of the top 20 leading shipping companies in the world, 12 were from Asian countries. These companies accounted for more than 60 per cent of the TEU capacity of the top 20 (for details see Faust, 1998).

[13] UNCTAD, 1998.

[14] Faust, 1998.

has been a move towards privatisation of the state-owned shipping companies (for example, the Australian National Lines).

The first attempt at international regulation of the conference system was the UN Code of Conduct for Liner Conferences, which came into force in 1983 and was intended as a multilateral cargo-sharing scheme. The main aims of the code were: (a) to increase the developing countries' share in world shipping tonnage to a more equitable level; and (b) to increase their share of income generated by world liner shipping. These aims were to be achieved by reserving cargo for national flagships that may be owned by either public and/or private sector and by regulating liner trade by having shippers and/or governments represented in the newly instituted shipping lines.[15]

The attempt of the UN Code of Conduct for Liner Conferences to open the restricted "club" of the conferences to shipping lines of developing countries through cargo-sharing agreement (the 40:40:20 formula) has largely failed because the Code was only implemented, in spite of its wide membership (more than 70 contracting parties), on a marginal part of the world traffic, between Western Europe and West Africa. By volume, this accounted for less than 3 per cent of the world liner trade.

In many countries, the conference system has coexisted within a framework of bilateral intergovernmental cargo-sharing agreements that are either the result of historical and colonial links, or developed to deal with state trading economies, such as China and the USSR. Many others, including many Asian countries have adopted the Code and signed bilateral agreements to reserve cargo for their national flagships on either a 40:40:20 or a 50:50 basis.[16] However, in practice, these are mainly confined to government owned/contracted cargoes and were not applied to private cargoes owing to difficulties in implementation of the scheme.

[15] Trace and Chia, 1988.

[16] For details see Chia Lin Sein *et al.*

Prior to the 1960s, external trade was mainly through ships flagged in the country and manned by nationals. During the 1960s and 1970s many developed countries "deflagged" their fleets, that is, transferred the ships registered in these countries to open registries, so that the shipowners could enjoy the benefits of the low labour costs allowed by these registries. One effect of this process of "deflagging" was to effectively sever the link between flag and ownership and of the development of "third traffic" which means trade between two countries carried in ships belonging to neither. The entire developed countries' bulk fleet has now been "deflagged" as well as an increasing part of the liner fleet.[17] To slow down this process of deflagging, at least for liner fleet, many developed countries have since the early 1980s adopted a series of fiscal measures and created "second registries" to retain the national flag. These measures also allow for more flexible conditions of manning. For instance, countries such as Norway, France, Germany, Spain, South Korea and Australia have instituted "second registries". In Japan, a ministerial authorisation is required to de-flag from the Japanese registry. If the authorisation is refused, the shipowner is entitled to a special tax treatment in compensation. Although many developed countries provide fiscal concessions such as lower rates of taxes, investment allowance, etc., only some, for example the USA,[18] provide direct subsidies for national flagships.

In spite of a move towards liberalisation and emergence of mega-carriers and mega-alliances, the global picture remains very fluid. Alliances are often unstable, their membership varies constantly and the competition authorities monitor their activities closely. For instance, shipping companies who were members of the transatlantic agreement TIACA were heavily fined in the late 1990s for illegal fixing of landleg tariffs by the competition directors of the EU. The multiplication of decisions by competition authorities (such as the grant of anti-trust immunity to tolerated outsider agreements), the individual exemptions given to consortia and the authorisation of mergers often creates a risk of conflict of law.

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17 WTO, 1998.

18 The US Maritime Security Act (October 1996) created a ten-year US$1billion programme providing payments to owners and operators of US vessels in return for a commitment to provide sealift support in time of war or national emergency.

1.1.b Developments in Ports and Allied Services

The growth of international trade and increase in shipping activities have led to considerable pressure on the operating environment of major seaports and allied services. As a consequence, ports across the world are adopting new and improved technology in order to handle the increasing volume of cargo. Also, with increasing size and sophistication of ships, container ships now make only a few calls in three or four harbours at each end of the trade while the rest of the traffic is served by smaller feeder ships. This has enhanced competition among the harbours to develop as "hub" ports catering for large container ships. Since development of ports require heavy capital investment, which is often beyond the means of the public sector, many developing countries have opened up their port sector for private and foreign investment. For instance, long-term leases, joint ventures and build-operate-transfer options are being explored and exploited in various ports, such as Jawaharlal Nehru Port Trust (JNPT), Pipavav, etc. (India); Colombo (Sri Lanka) and Karachi (Pakistan).

With these developments in shipping and port services there has been a shift towards multimodalism and increasing use of information technology. It is essential for international trade to be supported by an efficient transport system capable of carrying goods reliably, safely and without damage or loss, providing just-in-time (JIT) door-to-door delivery of goods, and point-to-point information to all interested parties. The high volume and speed of container movement requires comprehensive and reliable control systems. The introduction of computerisation and electronic data interchange (EDI) systems have greatly improved communications in this industry. Several major ports around the world such as Rotterdam, Hong Kong and New York are in the process of developing "electronic port communities" that use electronic commerce to connect various agencies involved in the movement of containers through the port including shippers, forwarders, banks, insurers, customs, terminal operators and land and ocean carriers. Increasingly, shippers are demanding full interactivity with these agencies right from the stage of handing over the cargo till it reaches the consignee at the final destination. Improvements in the capacity and

reliability of inland transport systems has diverted traffic to a few large and efficient sea ports and heightened the competition between neighbouring ports.

Liberalisation in Maritime Transport Services

The above discussion highlights that there has been progress towards liberalising trade in maritime transport services and various countries have unilaterally opened up this sector to facilitate trade. This move towards globalisation stems not only from market forces, including those brought about by mergers and global alliances among major shipping lines, but also from technological developments and organisational changes affecting the industry.

Regional organisations have also taken initiative to liberalise the maritime sector. For example, in 1993 the OECD countries signed an "understanding on common shipping policy principles" with the newly independent states and central and east European countries.[19] The OECD countries have also initiated dialogues with non-OECD countries to discuss strategies and targets for the GATS 2000 negotiations.

However, there are various restrictions on free and open access to maritime transport services in both developed and developing countries which limit maritime service suppliers from having access to and entering or operating in a foreign market. The European Communities of Shipowners' Association has identified some of these restrictions in their 1997–98 report. These are restricted/regulated access to port and port services, preferential cargo allocation, restrictions on establishment of owned branch offices, discriminatory measures favouring the use of national carriers, cumbersome procedure and/or personal harassment during port calls, abusive tariffs for services (often not rendered), unrealistic and unjustifiable liability claims by customs. These restrictions are primarily imposed through domestic legislation and regulation. The current round of GATS negotiations, which began in January 2000, is expected to play an important role in reducing these barriers while

[19] Bulgaria, Estonia, Latvia, Lithuania, Romania, Russian Federation and Ukraine.

recognising the freedom of member countries to regulate their maritime industry for national security and other strategic reasons.

1.2 Maritime Transport Services in the Indian Economy

Maritime transport services have played a crucial role in the development of India's economy since over 90 per cent of the country's trade volume (77 per cent in terms of value) is moved by sea. The Indian peninsula is strategically located between the Atlantic ocean in the west and Pacific ocean in the east, with a 6,000 km long coastline, and 12 major[20] and 139 operable minor and intermediate ports. At present, India has the largest merchant shipping fleet among the developing countries and ranks seventeenth in the world in shipping tonnage (Table A2 in Appendix A). Indian maritime services sector not only facilitates the transportation of national and international cargoes but also provides a variety of other services, such as cargo handling services, ship repairing, freight forwarding, lighthouse facilities and training of maritime personnel.

1.2.a Shipping

The salient features of India's shipping policy are the promotion of national shipping to increase self-reliance in the carriage of country's overseas trade and protection of the interest of exporters and importers.[21] India's national flagships provide an essential means of transport for the import of crude oil, petroleum products, coal and fertilisers, export of iron ore and exports and imports of various general (liner) cargoes. National shipping also provides for a second line of defence in times of emergency – merchant ships help in transporting supplies, men and material for the navy. Indian shipping makes significant contributions to the foreign exchange earnings of the country. The foreign exchange earnings/savings of Indian shipping companies increased by over 50 per cent in the 1990s.

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[20] The 11 major ports are: Calcutta (including Haldia), Paradip, Vishakapatnam, Chennai, and Tuticorin on the east coast and Cochin, New Mangalore, Mormugao, Jawaharlal Nehru, Mumbai and Kandla on the west coast. A new major port, Ennore near Chennai was sanctioned in 1993 and has been operational since January 2001.

[21] MOST, Annual Report 1999–2000.

The gross foreign exchange earnings/savings increased from around Rs 2,698 crores in 1991–92 to Rs 5,490 crores in 1998–099. The net foreign exchange earnings/savings increased from around Rs 1,558 crores to Rs 3,307 crores during the same period (the foreign exchange earnings/savings of Indian shipping companies between 1991–92 to 1998–99 are presented in Table A3 in Appendix A).

There are a few large and medium sized national shipping companies and a host of smaller companies that together carried around 30 per cent of India's overseas trade in 1999. While the share of Indian vessels in the transportation of POL products and other liquid cargo is around 55 per cent, their share in bulk and liner cargoes is 15 per cent and 11.4 per cent respectively. Shipping Corporation of India Ltd. (SCI) is the largest shipping company in India and is publicly owned. In June 2000, SCI owned 115 ships (99 overseas vessels and 16 coastal vessels) and accounted for around 45 per cent of the total Indian tonnage.[22] The Great Eastern Shipping Co. Ltd. (owning 34 overseas vessels and 21 coastal vessels in June 2000); Essar Shipping Co. Ltd. (owning 10 overseas and 9 coastal vessels) and Varun Shipping Co. Ltd (owning 10 overseas vessels) are some of the large companies in the private sector.

On the eve of independence, India had only 60 vessels and the Indian shipping tonnage was 1.92 lakhs grt. In July 2000, Indian fleet comprised of 517 vessels and the shipping tonnage is 7.02 million grt (Table A4 in Appendix A.) The Ninth five-year plan has proposed a growth target of 2 million grt over the Eighth five-year plan taking the total shipping tonnage to 9 million grt.

The average age of the Indian fleet is lower than that of the world fleet (16 years compared to 19 years of the world fleet). An analysis of the age profile of Indian fleet shows that in July 2000, around half of Indian ships were in the age group 10 to 19 years, around 22 per cent were in the age group below 10 years and the remaining were in the age group of 20 years and above.[23]

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[22] This information is provided by the office of the Director General of Shipping.

[23] INSA, Indian Shipping Journal, Vol. 52. June–July 2000.

The Indian shipping industry is governed by the Merchant Shipping Act (MSA), 1958, and the Director General of Shipping is the regulatory authority for all activities of shipping, such as shipping administration, maritime safety, maritime training, examination and certification, shipping development, etc. The Director also ensures implementation of various international conventions relating to safety requirements, prevention of oil pollution and other mandatory requirements of the International Maritime Organisation (IMO).[24]

Recognising the role of the shipping industry in the context of overall growth strategy, in general, and the promotion of trade and foreign exchange earnings, in particular, the Indian government has made several amendments to the MSA to encourage the modernisation and diversification of this industry. Since the 1990s, the government has simplified the regulatory procedures for raising resources from commercial markets and external borrowing in order to facilitate the acquisition of new and second hand vessels at competitive prices. The shipping companies are now allowed to retain sales proceeds of their ships abroad and utilise them for fresh acquisition. Government approval is no longer required for raising foreign exchange loans from abroad by mortgaging the vessels with the lender. The government has also granted automatic approval for foreign direct investment up to a limit of 74 per cent and non-resident Indians (NRIs) are permitted to invest up to 100 per cent with full repatriation benefits.

Apart from cabotage, the government also provides cargo support for Indian lines by implementing the policy of buying (importing) on FOB basis and selling (exporting) on CIF basis. The government owned/controlled cargo is channelled by the chartering wing of the Ministry of Surface Transport, "Transchart". As per this policy, the first right of refusal for carriage of such cargoes is given to Indian vessels. However, in case of non-availability of suitable Indian vessels, foreign flag vessels can be used for transportation of these cargoes.

[24] The International Maritime Organisation has developed 40 instruments (22 Conventions, 17 Protocols and one Operating Agreement). Out of these, 20 Conventions and 10 Protocols are in force internationally. India has ratified 15 Conventions, 8 Protocols and one Operating Agreement (for details see MOST, Annual Reports).

In the past, Indian ships had to be repaired at Indian yards, which were not competitive either in terms of costs or time. This restriction has been removed and shipping companies can now get their ships repaired in any shipyard without seeking prior approval of the government. The Reserve Bank of India authorises foreign exchange for imported capital goods for ship repair/dry docking and spares without any value limits.

Previously, shipping companies required a license from the Director General of Shipping to operate a liner service. The government has now delicensed many liner routes. Moreover, foreign ships calling at Indian ports do not require a license for overseas trade. For coastal trade, licenses are given to foreign flag vessels on a case-by-case basis as per the cabotage regulations. The government has also set up the National Shipping Policy Committee (NSPC) under the Chairmanship of Director General of Shipping to provide fiscal, financial, administrative and legislative measures for growth and development of shipping in India. The Committee submitted its report in July 1997. Following the recommendation of the NSPC, the government has made changes in the procedure of employment of Indian seafarers and has redefined the functions of the existing Seamen's Employment Offices. Indian shipping companies have now been given freedom to select persons of their choice by having their own roster rather than going through Seamen's Employment Offices.[25]

Taking into account the stringent standards of training and certification of merchant marine personnel introduced by the IMO, the government has taken a positive initiative to upgrade the training institutions. In 1997, government issued the guidelines for setting up training institutes in the private sector and subsequently, many private training institutes have been set up conforming to the standards of Director General of Shipping. In order to enhance training facilities in the existing government institutes, a sum of Rs 338 crores has been proposed in the Ninth five-year plan for acquiring simulators and other advanced equipment.

[25] There is an agreement under the aegis of the concerned authorities in this regard but, at present, there is no legislation which gives freedom to the Indian companies to have their own roster.

Despite positive steps taken by the government and large size of its commercial fleet, India is a small player in the international shipping market and its export possibilities in this sector are, at present, quite limited. This is because India does not have adequate numbers of large modern tankers and high-speed containership. As a consequence, Indian fleet has been slow to enter the emerging shipping sector, particularly the high value, high volume container trade. This is evident from the fact that in July 2000, India had only 10 cellular container vessels which accounted for around 0.14 grt (0.18 million dwt) of Indian tonnage.[26]

Liberalisation and reforms of the 1990s have made the environment of shipping more competitive both in terms of cargo and resource mobilisation markets. In this environment, only those industries that have developed a comparative advantage can thrive. Indian shipping lags far behind its international competitors with respect to resource mobilisation, technological modernisation and expansion. As a consequence, although the volume of India's overseas trade has more than doubled in the 1990s, the share of Indian ships in the trade has declined. In the post-independence period the share of Indian ships in the overseas trade increased steadily to over 40 per cent in 1987–88 but thereafter declined to around 30.8 per cent in 1998–99 and their share in liner cargo is only around 14 per cent. Currently, the Indian economy is paying around Rs 15,000–18,000 crores per annum to foreign flagships which carries as much as 69 per cent of our overseas trade.[27] The amount of outgo will increase progressively with the growth of Indian trade if the share of Indian shipping does not improve.

India is a signatory to the UN Code of Conduct for Liner Conferences, which provides for a reservation of 40 per cent of tonnage in the liner trade for domestic flagships. The Indian government has ratified the Code but has not enforced it by requisite legislation in order to allow the Indian shippers to take advantage of the low level of liner freight rates to increase exports. Also, the government feels that under the present regime of liberalisation, shippers should be given the freedom to hire vessels at competitive prices. A

[26] INSA, Indian Shipping Journal, Vol. 52. June–July 2000.

[27] INSA, Annual Report, 1998–99.

modified cargo support scheme was approved by the Ministry of Surface Transport in March 1994 to provide support to Indian flag vessels on three routes: India-UK-Continent (30 per cent), India-Japan/Far East (20 per cent), India-US-Atlantic/EC/Canada (25 per cent). This scheme seeks voluntary compliance of shippers and has not taken off owing to their strong opposition. The shipping industry has repeatedly pointed out that without a strong cargo support scheme, the share of Indian ships in India's overseas trade is likely to decline in the future.

Indian shipping industry is highly susceptible to recessions in the world trade and global shipping industry. For instance, in the second half of 1990s the slow growth of the Far-Eastern economies led to an over-tonnage situation and this put pressure on the freight rates.[28] Many global shipping giants were able to sustain the falling freight rates but this adversely affected Indian shipping companies, especially the smaller ones.

In the past, manning costs were much lower in Indian ships as compared to foreign ships. However increases in salaries and overstaffing has considerably reduced this cost advantage. Even so, the retention of trained manpower for Indian ships, especially at the level of officers[29] is becoming increasingly difficult because net take-home salary differentials between Indian and foreign shipping companies are widening. Presently, Indian floating staff working on board foreign ships do not have to pay taxes on their income as long as they are on board a vessel for over 183 days during a financial year. This is as per Section 6 of the Income Tax Act which lays down qualifications for non-resident status for Income Tax purposes. Also, floating staff working on Indian ships in the overseas circuit can obtain NRI status if they are in international waters for more than 183 days in a financial year and, hence, can save around 40 per cent of their salary. Since Indian ships visit Indian ports where long stay is a norm, it often becomes difficult to ensure 183 days in international waters. As a result, the Indian shipping companies find it difficult to retain their staff. This problem is even worse for the coastal shipping sector. The increase in pay

[28] INSA, Annual Report, 1998–99.

[29] At present, around 6,000 Indian officers and 12,400 Indian seamen are employed in Indian ships and around 14,000 Indian officers and 9000 seamen (on board plus 13,000 ashore) are employed in foreign vessels.

packages of the personnel has not helped in any way to check their continuing drift to foreign flag employment where they earn their salaries in foreign currencies without any tax liabilities. On the other hand, higher salaries have affected the profitability and global competitiveness of Indian shipping companies.

Indian shipping industry has pointed out that despite its vital role in the growth and development of the country's economy and trade, shipping is not recognised as an infrastructure industry and, therefore, does not enjoy the developmental benefits that are available to other infrastructure sectors. Nor is shipping recognised as an export industry in spite of its substantial foreign exchange earnings.[30] At present, Indian shipping is being taxed at the highest level in the world. In the 1990s the government withdrew the exemptions that were available under Section 33AC and 80I of the Income Tax Act and introduced a Minimum Alternative Tax. This has resulted in an effective tax rate of 22 per cent[31] which may seem low compared to other domestic industries and services, but is higher than what is paid by any of India's international competitors.[32]

Thus, the major challenges before the Indian shipping industry today are the steep competition from large and sophisticated international shipping lines, constraints on fiscal and financial front and the declining share of national shipping in the carriage of the country's overseas trade.

1.2.b Ports and Allied Services

Ports have a vital role in the development of the Indian economy since they are the traditional gateway to international trade. India has 12 major ports: six on the west coast and six (including Ennore) on the east coast and 139 operable minor and intermediate ports. The

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30 See National Shipping Policy Committee Report for details.

31 In 1998–99, Indian shipping industry paid a tax of approximately Rs 110 crores on an income of approximately Rs 500 crores.

32 For example, seven important maritime nations of the world (Panama, Liberia, Bahamas, Singapore, Malta, Cyprus and Greece) have a tonnage tax system whereby an annual lump sum fee is levied on the tonnage registered under the country's flag. Other important maritime nations, such as the USA, Japan and China provide subsidies to their shipping industry.

major ports are under the purview of the Ministry of Shipping (previously they were under the Ministry of Surface Transport – MOST) and are governed by the Major Port Trusts Act, 1963 which enables them to conduct regulatory and commercial functions. The intermediate and minor ports are administratively under the state governments and are governed by the Indian Ports Act 1908, which delineates the regulatory power of the Port Authority. Other acts applicable to the port sector includes The Dock Workers (Regulation and Employment) Act 1948 and Dock Workers (Safety, Health and Welfare) Act of 1986 which regulates the conditions of employment, service and other matters relating to dock workers.

The traffic through Indian ports increased from 20 million tonnes in 1952 to around 80 million tonnes in 1980–81 to 287.36 million tonnes in 1998–99 (the growth in traffic between 1951 and 1996 is presented in Table A7 in Appendix A). In 1999–2000, major ports handled around 271.9 million tonnes while the traffic through minor ports was around 62 million tonnes. The Ninth five-year plan (1997–2002) stipulates a growth in traffic of 424 million tonnes through major ports in the year 2001–2002. Increase in traffic in the 1990s was primarily due to the adoption of the policy of liberalisation and export led growth, which boosted international trade. India's exports and imports grew from US$18.1 billion and US$24.1 billion, respectively in 1990–91 to about US$31.8 billion and US$36.7 billion, respectively in 1995–96 at a cumulative growth rate of around 10 per cent per year (see Table A8 in Appendix A).

In 1999–2000, the bulk of traffic through major ports (116.7 million tonnes or 43 per cent) constituted of petroleum crude and liquid cargo while containerised cargo was only around 27.6 million tonnes (10 per cent).[33] In the 1990s major ports handle around 90 per cent of the total volume of traffic and almost all of the containerised cargo calling at Indian ports. Out of the 11 major ports (excluding Ennore), six are 70 to 130 years old while four were established between 1952 and 1979. Over the years, the growth in port capacities have been inadequate to support the growing volume of cargo throughput. In the 15 year period between 1980–81 to 1994–95 the port capacity has grown only by 9.4 per cent while the growth in traffic has been 146 per cent (Table A9 in Appendix A). In spite of several port

[33] Indian Ports Association, Major Ports of India: A Profile, 1999–2000.

development projects initiated by the government the capacity of major ports was 258 million tonnes in 1999–00 which was much less than the 271.9 million tonnes of traffic handled by these ports.

In the 1990s minor/intermediate ports, though numerous, handle only around 10 per cent of the total traffic. However, towards the end of 1990s there has been a noticeable increase in the traffic flow through minor ports (62 million tonnes in 1999–2000 as compared to 38 million tonnes in 1998–99). The traffic through minor ports is mainly concentrated in the states of Gujarat, Maharashtra and Andhra Pradesh. These three states accounted for 48.8 million tonnes (78 per cent), 5.9 million tonnes and 3.8 million tonnes, respectively of the total traffic (which was 62 million tonnes in 1999–00), through minor/intermediate ports during the year 1999–00.[34]

The productivity and efficiency of Indian ports, are significantly lower than that of other ports in the region (Colombo, Singapore, Hong Kong, etc.). While the Average Ship Turn Around (ASTA) time has declined from 11.9 days in 1984–85 to 4.17 days in 1999–00 and the Average Ship Berth Output (ASBO) improved from 2,314 tonnes per day to about 6,321 tonnes per day during the same period, these improvements in performances of Indian ports do not compare favourably with that of efficient Asian ports. For example, the ASTA time at Singapore port, particularly for the container ships, is only 6–8 hours.[35] The performances of major ports during 1999–00 is presented in Table A10 in Appendix A. One of the major constraints on the growth of India's international trade has been the low productivity and inefficiency of ports which is reflected in frequent build-up of port congestion resulting in not only loss of valuable foreign exchange paid as demurrage charges to foreign shipping companies but it also adversely affects the growth of national output.[36]

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[34] Indian Ports Association, 1999–2000.

[35] Indian Ports Association, 1999–2000.

[36] The delay in clearance of essential imports, such as machinery and raw materials required for industrial development has slowed down the implementation of many projects (Rakesh Mohan Committee Report, 1996; CII, 2000).

In order to decongest the major ports, the Ninth five-year plan allocated an outlay of Rs 9,428 crores for funding various projects undertaken by the Port Trusts. Additionally, in consonance with the general policy of liberalisation and globalisation, private participation has been encouraged in both major and minor ports. By November 2000, 15 private sector projects involving an investment of about Rs 4,376 crores and capacity addition of 57.30 million tonnes have been approved by the government and are currently under different stages of implementation.[37] It is believed that private participation would mobilise the necessary resources and improve efficiency, productivity and quality of port services and hence make them competitive in the world economy. Following areas have been identified for private sector participation in the port sector:

- Leasing out the existing assets of the ports;
- Construction and operation of container terminals, multipurpose cargo berths, and specialised cargo berths, warehousing and storage facilities, tank farms, container freight stations, and setting up captive power plants, etc.;
- Leasing of equipment for cargo handling and leasing of floating rafts from the private sector;
- Pilotage; and
- Captive facilities for port based industries.

To increase the productivity and efficiency of the ports, the government has announced the following measures:

- The power of the Port Trust Boards to sanction projects have been increased to Rs 50 crores in case of additional/new investments and to Rs 100 crores in case of replacement/renewal of assets.
- The Major Port Trust Act, 1963 was amended by Port Laws (Amendment) Act, 1997 to provide an independent Tariff Authority for Major Ports (TAMP) for fixing and revising the port tariff.
- To provide greater freedom and flexibility to the major ports, the government in the Union Budget 2000–2001 has recommended corporatisation of major ports.

[37] Business Standard, November 25, 2000; Economic Times, November 25, 2000.

- In May 2000 the Major Port Trusts Act 1963 has been amended to enable the major ports to enter into joint ventures with minor ports. The joint venture between major and minor ports can enhance the traffic handling capacity by diverting the traffic to the minor ports since the major ports have already reached a saturation level.
- The major ports are allowed to enter into joint ventures with foreign ports and foreign companies. Foreign direct investment in port projects is now allowed up to 100 per cent equity.
- An Empowered Committee on Environment Clearances (ECEC) has been constituted in the MOST to provide simplified and transparent guidelines for environment clearance for the expansion of existing port limits.

Many new port development projects have been sanctioned in the 1990s. For example, a new major port Ennore near Madras was sanctioned in April 1993. This project is financed by the Asian Development Bank, which sanctioned US$150.15 million for the project. The Chennai Port Trust is developing the Ennore Port under the "landlord" concept, that is the common infrastructure will be developed by the port, while the berths and equipment therein will be financed by private developers on a "build-operate-transfer" basis. The Ennore port has started functioning from January 2001. P&O Australia has been awarded the contract for operating container terminals in JNPT, while the Port of Singapore Authority is participating in the development of container handling facilities in Tuticorin.

In addition to initiatives taken by the central government[38], the governments of coastal states have also taken initiatives to develop the minor ports within their jurisdiction. Various port development programmes through private participation have been sanctioned in Gujarat, Maharashtra and Andhra Pradesh. The Pipavav and Mundra ports in Gujarat

[38] Another initiative taken by the Ministry of Commerce and Industry is the establishment of Special Economic Zones. With private initiatives, the first Special Economic Zone (SEZ) of India is under construction around the Positra port of Gujarat. The government has also given approval for setting up SEZs at Nanguneri (Tamil Nadu), Kulpi (West Bengal), Paradeep (Orissa) and Kakinada (Andra Pradesh). Recently, private sector SEZ in an area of 3,500 hectares has also been sanctioned at Pipavav (Gujarat). The units established within these zones will not be subject to the rules and regulations governing export and import and will have the full flexibility of operations. The government has also started the port connectivity project of Rs 4000 crores whereby all major ports would be connected to the nearest national highway. This would facilitate the flow of cargo.

have been developed as joint ventures between the Gujarat Maritime Board (which has 26 per cent share), private sector (25 per cent) and the public (49 per cent). P&O Australia has been awarded the contract for operating container terminals in Vadhawan (Maharastra). With these efforts by different state governments and participation of private sector in port development projects, share of traffic through minor ports is likely to increase in the future.

In spite of various initiatives taken by the central and state governments, privatisation of port projects in India has been rather slow and hesitant. For instance, it has taken three years to finalise procedures and invite tenders for privatisation of JNPT container terminal. Case studies of some of the BOT port projects in India[39] shows that private investors have not responded as affirmatively as expected owing to the tendency of the Port Trusts to demand an unreasonable share of anticipated earnings, especially during the early stages of operations. Port projects have long gestation periods and require substantial investments. Therefore, a project is commercially viable only when it generates adequate revenue to meet the operation and maintenance costs. The revenue realisation is delayed until the completion of the projects, and for non-captive facilities it is uncertain. Moreover, private investors in major ports do not have the autonomy to fix their own tariff subject to market conditions since tariffs in these ports are regulated by the TAMP. This acts as a constraint on efficiency of the operation of the projects. Also, private investors at major ports cannot implement their own employment policies as the labour hired by the privatised firms in privatised berths are subject to labour laws as defined by the Ministry of Labour. The complexity of rules, lack of a clearly defined action plan, and the long and unpredictable approval process have often made the projects commercially non-viable. A major constraint in the process of privatisation of minor ports has been the lack of adequate infrastructure facilities linking the ports and the hinterland. For instance, although Pipavav is one of the fastest growing state port in India, it is not well connected by railways. In fact, the port authorities not only offered traffic guarantee for a rail link but also agreed to partly finance the Surendranagar-Bhavnagar-Pipavav line.

[39] See Bennett and Eswaran (1996) for details.

India has been slow in adapting its port facilities to exploit the opportunities offered by containerisation in shipping. Indian ports started handling container traffic in 1973. Since then, there has been a significant increase in containerisation at international ports to 75–80 per cent of the trade in general cargo while in India it is around 40 per cent. With liberalisation of the economy in the 1990s and growth in international trade, the share of containerised traffic in the total general cargo is steadily increasing (Table A11 in Appendix A). The throughput of container cargo in India was 0.68 million TEUs (7.63 million tonnes) in 1991-92 and this increased to 1.9 million TEUs (24 million tonnes which is around 10 per cent of the whole traffic) in 1998–99. Nevertheless, in 1998–99 container traffic in India was only 1.2 per cent of the total world's container traffic of 164 million TEUs.

Only around 15 per cent of the total container traffic for India is shipped directly to Indian ports. For the rest, Indian ports are largely served by feeder vessels from transhipment hubs of Colombo, Singapore and Dubai. Of late, Salalah in Oman is also emerging as a transhipment port for India bound traffic. India faces stiff competition from these Asian hub ports. In 1998–99 a single port of Singapore or Hong Kong individually handled more than 10 million TEUs, while all Indian ports together handled around 1.9 million TEUs.

The main reason for the slow growth of container traffic through Indian ports is the inefficiency and lower productivity of the ports resulting in longer pre-berthing and berthing time. For instance, the number of containers handled at Indian ports per ship per hour ranges between 7 to 15 compared to 30 in Singapore and 25 in Colombo.[40] A World Bank study in 1995 found that the throughput costs, that is, the total cost of delivery of a containerised or break bulk consignment, including stevedoring, shore handling, storage, customclearance etc., in four major ports of India (Mumbai, Calcutta, JNPT and Chennai) was 45–50 per cent higher for containerised cargo than other ports of the region (namely, Bangkok, Colombo and Singapore). The study concluded that even a moderate reduction of ship time at berth, in line with international output standards, would allow a potential savings to ships of Rs 300 crores (US$100 million) per year based on 1990–91 traffic volumes. Since the 1970s

[40] The Economic Times, January 19, 2001.

other Asian countries have invested heavily on port and port-related intermodal infrastructure capable of accommodating the latest transport and cargo transfer technology as well as the largest vessel size for their trade. For instance, between 1980 and 1995 China invested over US$18.2 billion in port and allied transport infrastructure. This has increased the efficiency and performance of the neighbouring ports, which has resulted in Indian ports being served mainly by relatively small vessels rather than by larger and more cost-efficient vessels. The feedering of the country's export and import traffic through transhipment ports not only results in a delay of at least three days but involves an additional shipping cost of US$175 to US$200 per TEU.[41] The ultimate burden of these costs is borne by the Indian consumers and exporters.

Multimodalism is still at its nascent stage in India. Many ports in India are serving a close hinterland and operate essentially as a collection and distribution centre for their trading areas. In line with global developments, the Government of India passed the Multimodal Transport of Goods Act in 1993 which provides the legal framework for promoting intermodal transportation in this country. Foreign multimodal operators are allowed to operate under this Act. Currently, there are around 160 multimodal operators in India but none of them is for door-to-door shipment. In order to transport containers multimodally in a smooth and efficient manner, the Railways CONCOR (Container Corporation of India Ltd.) was set up in 1988 and the Central Warehousing Corporation set up a network of Inland Container Depots (ICDs) and Container Freight Stations (CFSs). In India, most of the long distance movement of containers is through the railways since the land transport does not have adequate capacity. The internal road transport systems between the ports and the hinterland were not designed for the current type and volume of traffic and without an expressway system allowing for the efficient operation of multiple axle vehicles it is difficult for road haulers to offer good container services at a reasonable price over the present heavily congested routes. Indian railways primarily concentrate on the transport of bulk cargo and do not have the necessary equipment and systems for a steady flow of container traffic. There is also a lack of periodicity and hence predictability in transportation. For instance, the railways have no fixed timetable for container trains.

[41] RITES, 2000.

Owing to this, advance planning becomes difficult. Moreover, the tariffs are not cost based and international container movement through the railways often act as cross subsidies for its passenger operations leading to high freight values.[42] A World Bank study found that the lack of efficient door-to-door sea container operation in India has led to the shift of some sea container traffic to more costly international air cargo operations.[43]

Inland waterways have an important role in multimodal transport in countries, such as India and Brazil, where there are several river systems interlinking ports and hinterland. The government set up the Inland Waterways Authority of India in October 1986 under the Inland Waterways Authority of India Act (1985) to regulate and develop the inland waterways transport. However, the use of this mode has been very limited owing to various problems, such as narrowing of channels and drafts as a result of heavy siltation and drying of waterways in summer, bank erosion, absence of infrastructural facilities like terminals, and inadequacy of navigational aids. Out of the total length of waterways of about 14,605 km, the length actually utilised for transportation is around 2,300 km. The share of inland waterways in the total freight traffic is less than 5 per cent.

The rapid growth of electronic commerce in recent years has brought about significant changes in the way goods are procured and transported to/from overseas destinations. In India, all major ports are now using electronic data processing (EDP) system in their internal working which includes budgeting, financial accounting, cargo accounting, billing, etc. Computer based cargo containers have been introduced in Mumbai, JNPT, Chennai and Tuticorin ports. Almost all container handling ports have on-line tracking facilities for management and control of cargo/container related operations. Despite the fact that individual ports have followed different systems for the implementation of EDI, these are largely in accordance with the global EDI standards.[44]

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42 World Bank, 1995.

43 Exporters use more expensive airfreight owing to unacceptable shipping and land transport delays (The World Bank, 1989).

44 The IT Act 2000 has come into force with respect to the use of EDI.

Nevertheless, at present there is very little exchange of computer to computer data/ information amongst the major trading/operational partners, such as customs, ports, inland terminals and shippers involved in container trade transactions. Thus, an exporter has to deal with different agencies for processing of documents and obtaining clearances.

The carrier and logistic service providers have been able to extend only a limited inter-connectivity to the shippers. Currently there are more than 80 container handling facilities in India but only a small number of large ICDs/CFSs are using computers for processing of documents and management of terminal operations. As customMIS systems are not based on EDIFACT standards, computer interface between the ports and customs is not possible. A shipper or his representative, therefore, has to use a different format for dealing with customs and the ports. Also, the customrules are complex and subject to various interpretations. The frequent and comprehensive inspection of cargoes (as discussed in section 2) often leads to significant delays.

In order to make Indian ports more attractive and cost effective to shippers and shipping companies, India will not only have to develop very large container terminals and improve the productivity and capacity of her ports, but also improve port service quality and intermodal infrastructure which can efficiently serve the containerised foreign trade from door to door.

Although India has taken positive steps towards liberalising trade in maritime transport services, it is a marginal player in the world market and its export possibilities in this sector, as of now, are quite limited owing to infrastructural constraints, low productivity and efficiency and lack of sufficient funds for modernisation and expansion. On the whole, India does not have comparative advantage in maritime transport services and given the uncertain growth prospect and increasing competition from strong maritime nations, it is difficult for India to gain greater access in foreign markets.

In the past, India had bilateral shipping agreements with countries, such as Bulgaria, Poland and erstwhile Soviet Union. These agreements provided for the sharing of cargo with partner countries on the principles of parity and equality and supported the growth of Indian shipping companies. For example, as per the bilateral agreement between India and the Soviet Union, Indian and Soviet vessels served the trade between India and the Black Sea. This trade contributed towards substantial earnings of Indian shipping companies. With the break up of the Soviet Union, the bilateral agreements are no longer valid. Currently, India does not have any bilateral agreements but the government is considering proposals for bilateral agreements with Ukraine, South Africa, European Union, Latvia, Romania, Morocco, Vietnam, Lithuania, Egypt, South Korea and France.

India has agreements to avoid double taxation with more than 40 countries. These agreements, *inter-alia*, cover taxes payable on profits earned by the shipping enterprises of the contracting parties from international traffic and provide for full or partial exemption of such profits from double taxation. These agreements are oriented to encourage free flow of trade between contracting parties by providing such exemptions.

2. Domestic and External Constraints

As noted in the preceding section, India plays a marginal role in the export of maritime transport services and the maritime sector is plagued by low productivity and inefficiency. This section outlines the main domestic and external constraints contributing to the weak performance of this sector. These include structural, regulatory and financial constraints.

2.1 Domestic Constraints

Shipping is a capital-intensive industry and lack of adequate finance has led to stagnation in this sector. After crossing the Eighth five-year plan target of 7 million grt, the

strength of Indian fleet has stagnated. The Ninth five-year plan proposed a net growth of 2 million grt taking the total to 9 million grt. During the first three years of the Ninth five-year plan there has been no signs of growth of the Indian fleet and it is doubtful whether this modest target could be achieved by the end of the plan. Lack of funds have also slowed down the process of replacement of old and obsolete ships. A large proportion of Indian fleet (27 per cent totalling 3.04 million dwt) is over 20 years old while another 28 per cent (2.91 million dwt) is between 15 to 19 years.[45] A large number of these ships would need replacement in the next few years and this would require substantial investment.

The need for prior approval for external commercial borrowing for ship purchases and the restrictive norms of five year average minimum maturity for borrowing over US$20 million also act as major hurdles for shipping companies contributing towards stunted growth.[46]

Indian shipping is not recognised as an export or an infrastructure industry and, therefore, cannot enjoy the tax benefits applicable to such industries. The current rate of taxation paid by the shipping industry is much higher than what is paid by the shipping companies of developed and open registry countries.[47] Also, the current depreciation norms for ships are 20 per cent as per written down value (wdv) method. On the other hand, aircraft and road vehicles used for commercial purposes are permitted a depreciation of 40 per cent wdv.

The government policy of cargo support to Indian lines has not been strictly enforced. Although the existing policy states that government agencies and public sector undertakings must import on FOB basis and export on CIF basis, many government agencies violate this directive under the cover of liberalisation. This is especially true for the

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45 INSA, June–July 2000.

46 INSA, Annual Report, 1998–99.

47 See section 1.2 and notes 32 for details.

oil industry. In 1998–99, around 60 per cent of oil products were imported on CIF basis and carried mostly by foreign flagships even when Indian vessels were available.[48]

Indian shipping companies find it difficult to retain trained manpower owing to various anomalies regarding taxation of seafarers. As discussed in the previous section, Indian crew employed on foreign flagships for over 183 days are treated as NRIs even if the vessel is in India's territorial water and are therefore eligible for income tax concessions. Their counterparts on Indian ships are treated as NRIs only if the ship is outside India's territorial water for the same number of days. This discriminatory income tax policy has made employment on Indian flag vessels, both foreign-going as well as coastal, quite unattractive and Indian companies are facing an acute shortage of floating staff personnel despite continuing with their training programmes. Enhancement of emoluments of the personnel has not helped to check their drift for foreign flag employment, where they earn their salaries in foreign currencies that are non-taxable. Moreover, the Merchant Shipping Act (1958) states that Indian ships can only be manned by Indian nationals and this restricts the Indian shipowners from employing non-Indian crew even if it ensures cost-effective manning.

The fundamental problem faced by Indian ports is the lack of capacity and low productivity. In the past, port development projects have not taken into consideration the growth in traffic and, as a consequence, the growth in traffic far exceeded the growth in capacity leading to congestion and low productivity.

Indian ports suffer from operational constraints, such as frequent breakdown of cargo handling equipment owing to obsolescence or wrong specification of equipment, poor maintenance, etc. A report by Confederation of Indian Industry (CII) National Committee on Surface Transport (1996) stated that 88 per cent wharf cranes, 66 per cent of mobile cranes and 31 per cent of forklift trucks have crossed their projected economic life. This seriously affects the productivity of the ports. Moreover, the present equipment mix and equipment specification are not always capable of handling unitised and containerised

[48] INSA, Annual Report, 1998–99.

cargo. For example, The World Bank study in 1995 found that 85 per cent of electrical wharf cranes at Bombay's Indira Dock dated back to 1955–65 and only 4 per cent of them had a capacity of over 6 tonnes. The study also found that Indian ports have limited maintenance capability, either in terms of facilities, equipment or technical staff. Labour intensive methods of bulk handling of sensitive commodities, such as thermal coal also lowers the performances of Indian ports.

In India, cargo handling at both conventional and unitised berths is fragmented, that is, cargo is handled by several organisations with different objectives, management structure and working practices. The planning and co-ordination of cargo handling activities is weakened by multiple management control, inadequate communication and duplication of operational and administrative activities. There is currently a lack of co-ordination between the staff in the traffic department of the port trusts, stevedoring companies, customauthorities and transport operators. In many ports the working hours of different organisations, and even different departments within the Port Trusts, are not synchronised and valuable operational time is lost.

Labour productivity is significantly lower at Indian ports owing to outmoded datum lines, excessive manpower and compartmentalisation of cargo handling between dock and shore labour.[49] While ports around the world have reduced their manpower drastically, the total manpower at major ports in India increased from 1,07,319 in 1971 to 1,19,588 in 1985. Indian ports employ 4 to 5 times the number of workers employed in other countries. The Rakesh Mohan Committee (1996) found that in the New Mangalore port cargo handling workers had only 13 days of work but were paid for approximately 27.5 days, constituting a 100 per cent surplus labour. The outmoded manning scales are still being used due to surplus manpower.

Indian port and dock workers are represented by powerful federations and unions. Their manning scales, piece rates/incentive schemes and other service conditions are regulated by the existing agreements, settlements, tribunal awards and past practices. For

[49] Planning Commission of India, 1988.

instance, in the 1950s incentive schemes were introduced wherein the worker whose output exceeded the prescribed datum line was paid at a higher rate for the extra output. Over the years, many ports have modernised and adopted sophisticated cargo handling equipment but these datum lines have not been revised upwards owing to trade union pressures. In some major ports, such as Cochin and Calcutta, container operations are inefficient and cost ineffective owing to excessive manning scales as unions insist on the application of break-bulk based manning scale on container traffic.

The Dock Workers Act provides a significant amount of protection to the dock workers and in some ports there is little control of the labour force by either the stevedoring company or the port authority. This has resulted in various malpractices, such as demanding "speed money" at the commencement of each shift prior to starting work (this is in addition to the agreed daily rate and the commodity piecework bonus), overmanning of all cargo handling operations, disregard for safety rules, etc.

Port productivity also depends on other factors such as quality of road railway linkages, adequate warehousing facilities, etc. In India, inadequate physical capacities of the major road and rail links have slowed down the smooth transfer of cargo between the ports and the hinterland. Inadequate storage and warehousing facilities at the ports causes delay in unloading the cargoes and increases the vessel turn around time. The EDI system has not been fully implemented in India. Although all major shipping lines have their own internal on-line system linking branches/offices located at ports and inland points, very few provide similar interactivity to the shippers and other users. This is especially true for the foreign lines whose information available on websites is generally restricted to shipping line profile, limited sailing schedules and container tracking. A study conducted by CII estimated that if computer to computer communications between vessels operators, ports, shipping agencies, customauthorities, custombrokers, freight forwards, consignee is established through EDI, the efficiency of Indian ports would increase by 20 per cent.[50]

[50] See CII, 2000.

customs rules inspection procedures are complex and subjective and this causes delay and increases the cost of transportation. For instance, multimodal transport operators are not allowed by the customs to containerise cargo at their own premises even though it is more cost efficient. customs also refuse to accept terminals as extension of ports and do not provide free service. customagents fix arbitrary costs that add to overheads for the exporters. As a consequence, the cost of moving containers through Indian ports is much higher than other regional ports (Bangkok, Singapore, etc.). A World Bank study in 1993 found that the cash outlay of moving an import container through any major Indian port is around US$500–520 per box compared to US$330–350 in foreign ports of the region. For export containers, the Indian cash outlay is US$420 compared to US$340 at comparable foreign ports. An Indian exporter bears a cost disadvantage of US$80 per container as compared to his/her competitors. The two major reasons cited by the study for the excessive cash outlays are the payments of "speed money" and custom agent charges for custom administration procedures. The study estimated that "speed money" payments are around US$50–US$100 per container in Indian ports as compared to US$0–US$30 in other ports. custom agents charges amount to US$120–US$200 per container in Indian ports compared to US$50–US$100 at other ports. The study concluded that both payments arise from the need to process 23 separate documents to clear imports and 118 separate documents to clear exports through Indian ports, requiring an estimated 22 hours of preparation time.

With technological modernisation in transport as well as cargo handling techniques, customs administrations all over the world have adopted a highly selective procedure for examination of containers and about 95 per cent of containers are allowed clearance without any physical examination. However, the appraisement procedure followed by Indian customs has not changed. custom regulations impose a physical check of 10 per cent of each consignment; in containers, 10 per cent of the contents of each box. This process of comprehensive inspection consumes a significant amount of time. Additionally, when a container consists of consignments of different importers, the customs examination requires destuffing in the port area or at the ICD, which leads to delays, and increasing risk of pilferage. If the initial packing of containerised cargo is of inferior quality, repacking after customs examination also becomes problematic and time consuming.

Since acquisition of ships require huge capital investments, it is crucial that they spend more time at sea earning revenues for their owners and less time at the ports. Ports around the world have developed various techniques to minimise delays to make their ports more attractive to the shipowners. The inadequate port capacities and poor productivity of the Indian ports have resulted in longer ship turn about time and pre-berthing and berthing delays. During 1994–95, out of 12,169 port calls by vessels at the major ports, nearly 29,000 ship days were accounted for by pre-berthing delays, 24,000 ship days owing to non-working time at berth and 37,000 ship days as working time at the berth.[51] By adding up the standing charges payable on various accounts, keeping in view the profile of the ships, it is estimated that nearly Rs 1,600 crores were paid as standing charges for the unproductive time consisting of pre-berthing delays and non-working time at berth.[52] This amount by itself would wipe out a significant portion of the foreign exchange earnings/savings of the shipping sector.

Delays at Indian ports also influence the daily charter rate of vessels dispatched to these ports. As a consequence, sea freight costs are higher at Indian ports. In addition there is likely to be a higher daily demurrage cost reflecting the greater propensity for delay sustained by the vessel.

The port sector around the world is becoming less and less regulated. In India, there is significant centralised control over the operation and management of the ports and this is partly constraining their ability to turn into effective and efficient operations. The bureaucratic procedure of controls and approvals within the Port Trust and their repetitive management structure causes delays in maintenance and project execution, thus increasing cost and hampering development. At lower management levels, minor decisions are frequently referred to the top hence removing individual responsibility of the junior management. Without the freedom to operate as a commercial business, Indian ports cannot seize the business opportunities as and when they arise.

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[51] See Raghuram, G. (1998) for details.

[52] Raghuram, G., 1998.

2.2 External Constraints

One of the major constraints faced by Indian shipping companies in the past was the existence of conferences and cartels. However, the conference system has now become much weaker with the introduction of containerisation and emergence of many Asian owned shipping lines.

World trade is now dominated by major trading blocks. For example, in 1996 the EU, NAFTA and ASEAN countries have accounted for 62 per cent of the world trade. These regional organisations shoulder the task of pushing for the member countries and their harmonised voice provides a better framework to strengthen the group's bargaining position in the global competitive environment. Obviously, such regionalisation of world trade makes trading difficult even for large, independently trading developing countries such as India. At present, India does not have adequate ties with regional blocks.

Indian shipping is highly susceptible to recessions in the world trade and global shipping industry. In the late 1990s, the Asian financial crisis led to a decline in trade from these countries. This, in turn, led to an over tonnage situation which depressed the charter rates. The falling freight rates have severely affected many Indian shipping companies.

Indian ships face discrimination and are subject to non-tariff barriers in some countries. For example, the Ukrainian ports charge 70 per cent higher non-preferential tonnage dues and 6 per cent freight tax on vessels from countries that do not have MFN status with the country. Indian ships are subject to these discriminatory levies in the absence of bilateral agreements with Ukraine. Similarly, in the absence of bilateral agreements, Georgian Maritime Administration also levies tonnage dues on differential tariff basis. Turkey levies a 7.26 per cent freight tax on shipment at Turkish ports by foreign flag vessels. Malaysia, by law, does not permit exports on a FOB basis and thus reserves the cargo including LNG for Malaysian vessels. In France, export cargo financed by French banks and insured by French underwriters is required by law to be carried by French

vessels. If French vessels are not available, the next preference is allowed to third party carriers and not to the vessels of the recipient countries.[53]

India faces stiff competition from different ports in the region (for example, Singapore, Colombo and Dubai) for attaining hub status. In the past, these South Asian ports have invested heavily in ports and allied infrastructure and are now capable of attracting big shipping companies who prefer to concentrate their services in a few hub ports.

Overall, the constraints faced by the Indian maritime transport sector is primarily on the domestic front and, therefore, any steps taken to address the problem of low productivity and inefficiencies is likely to make this sector more competitive in the world market.

3. GATS and Maritime Transport Services

Section 1 noted that there has been progress towards liberalising trade in maritime transport services. The primary concern of the multilateral negotiations for a more liberalised maritime transport is the wider role of this sector in facilitating the globalisation trend enveloping the entire economic structure and the integration of shipping services to meet real-time delivery requirement of shippers. Liberalisation will reduce the cost of transportation and enable investors to freely operate shipping, port and related services, thereby facilitating trade.

The General Agreement on Trade in Services (GATS) established in the Uruguay Round is the multilateral framework for liberalisation of trade in services, including maritime services.

[53] The Indian National Shipowners' Association have provided the information.

Under GATS, services are traded in four different modes:

(a) Cross-border supply or Mode 1 refers to delivery of services across countries through a transportable media such as paper documents, computer diskettes or Internet.
(b) Consumption abroad or Mode 2 refers to the physical movement of the consumer of the service to the location where the service is provided and consumed.
(c) Commercial presence or Mode 3 refers to the establishment of foreign affiliates and subsidiaries of foreign service companies. It is analogous to foreign direct investment in services.
(d) Presence of natural persons or Mode 4 refers to the temporary movement of service providers to provide services to clients in overseas markets.

The GATS Agreement enforces two types of general obligation on the part of the signatories.

- Most Favoured Nation Treatment: Under the MFN treatment a country is obliged to provide a treatment to a country, which is no less favourable than the treatment it provides to any other country (that is if a GATS member country offers certain privilege to any other country, whether it be a member or not, it has to extend the same treatment to all GATS member countries). However, GATS allows Member countries to undertake exemptions to this clause, in initial commitments, subject to review.

- Transparency: This clause requires every country to publish all measures of general applications that affect the operation of the Agreement. This clause is extremely important for traders doing business in a foreign country, as they are often not aware of the laws and regulations of the other country.

Under GATS, for each of the above-mentioned modes of supply of services, a country can negotiate and make commitments to liberalise market access and national treatment for specific sectors in the sectoral schedules of commitments and across sectors in the horizontal schedule of commitments. The former is applicable to the particular sector

while the latter relates to all sectors and could override, compliment or qualify the sectoral commitments. Although the basic aim of GATS is to reduce restrictions, it recognises the freedom of member countries to maintain regulations for their maritime industry to ensure safe shipping and port operations. In its schedule of commitments a country can impose restrictions on market access and/or national treatment. A country is said to have imposed a market access restriction if it does not allow (or partially allow with some restrictions) foreign service providers to enter and operate in its market. Market access covers both discriminatory and non-discriminatory government regulations (that is, the regulations that limit the entry of specific service suppliers, as well as measures that limit the entry of all service suppliers).[54] The GATS defines national treatment as a member providing "treatment no less favourable than it accords to its own like services and service suppliers."[55] In services, it means that once a foreign company has been allowed to supply a service in one's country there should be no discrimination between foreign and local companies. GATS also allow a country to impose additional restrictions. A country is said to have made a "full" commitment in a particular mode of supply of services if there are no restrictions on market access or national treatment. A country is said to have made "partial" commitments if the commitments are subject to some restrictions on market access or national treatment. If the country does not make any commitment to liberalise the sector and retains the right to impose restrictions in the future then it is said to have made an "unbound" commitment.

Table 1 presents the new shipping regime under the GATS general principles.

[54] For details see Chai Lin Sein *et al*.

[55] WTO, 1998.

Table 1: New Shipping Regime under the GATS General Principles

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

Source: Kang and Findley (1998)

The GATS negotiations on maritime transport services concentrated on the three "pillars": (i) *international shipping services,* which included the transportation of passenger and freight but excluded cabotage; (ii) *auxiliary services*, which included cargo handling services; storage and warehousing services; customs clearance services; container station and depot services; maritime agency services; and freight forwarding services; and (iii) services related to *access to and use of port facilities* which included pilotage; towing and tug assistance; provisioning, fuelling and watering; garbage collection and ballast waste disposal; port captain services; navigation aids; shore-based operational services essential to ship operations, including communications, water and electrical supplies; emergency repair facilities; and anchorage, berth and berthing services.

At the end of the Uruguay Round in 1994, member countries failed to reach a consensus on liberalising trade in maritime transport services. During the meeting at a Ministerial level in Marrakesh (12–15 April 1994), a decision was taken to establish a Negotiating Group on Maritime Transport Services (NGMTS) to continue with the negotiations. The NGMTS was given until June 1996 to conclude negotiations and submit its final report.

Since its inception, the NGMTS met for over 17 times until the June 1996 deadline. However, the Negotiating Group did not reach any agreements and thus negotiations were suspended until the next round of service negotiations, which began in January 2000. The decision to suspend negotiations also provided for a continued suspension of the provision on MFN (Article II) in this sector until the conclusion of the resumed negotiations. Member governments which have made commitments, have also agreed not to apply any measures affecting trade in maritime transport services in such a manner so as to improve their negotiation position and leverage except in response to measures applied by other countries. Members can however, apply measures, which maintain or improve the liberalisation of maritime transport services.

The negotiations on maritime transport were the only post-Uruguay Round services negotiations that completely failed.[56] One reason for the failure to complete negotiation in maritime services was the reluctance on the part of the United States to give up its unilateral measures to counter its perception on protectionism, and inadequate commitment to liberalise by large countries in the negotiations, for instance, Brazil and India.[57] Additionally, private interests affected by the new system, national perception of carrier interests, the extent to which gains are likely under bilateralism, constraints imposed by accepting the roles of existing institutional structures, and unwillingness to permit foreign establishments or firms in the domestic market or routes are some of the other reasons for

[56] Negotiations have been successfully completed in other services, such as financial services and telecommunication services.

[57] Brownrigg, 1999.

the failure of the negotiations.[58] The United States wanted to add multimodal services in the negotiating agenda. On the other hand, developing countries were reluctant to liberalise multimodal services owing to the fear of encroachment into their protected economic interests.

This failure of multilateral talks could be viewed as an unfortunate loss of political momentum for reforms of domestic policies, and, less obviously, a lost opportunity to develop pro-competitive rules. The next section will analyse the commitments made by the member countries in the three sub-sectors covered by GATS.

3.1 Discussion of Commitments

The following sub-sections will discuss the nature and significance of the commitments made by the member countries in so-called three pillars of maritime transport services: international shipping, auxiliary services and access to the use of port facilities. Emphasis is placed on the restrictions imposed by the different countries on market access and national treatment in the four modes of supply of services, namely cross-border supply, consumption abroad, commercial presence and the movement of natural persons. A detailed country wise break-up of the commitments is presented in Table B1 in Appendix B.

3.1.a International Shipping Services

Twenty-nine WTO members have made some commitments in international shipping services. Of these, a majority (21 members) have made commitments on both passenger and freight services. There are a few exceptions.[59] For instance, Hong Kong and Singapore had specifically excluded passenger transport from their offers. Almost all countries have prohibited foreign maritime service suppliers from providing services around their coast.

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[58] Chio, Kim and Findlay, 1997.

[59] Five members have made commitments only on freight services and three only on passenger services.

Even among the countries that have scheduled liberalising commitments in international shipping services, there are some restrictions on market access and national treatment. Out of the four different modes of supply of services – cross-border supply (Mode 1), consumption abroad (Mode 2), commercial presence (Mode 3) and the movement of natural persons (Mode 4) – most countries did not put any limitations on market access under cross-border supply. Australia and Korea have, however, filed their commitments with limitations on market access. For example, in Australia for cross-border supply in liner shipping, an ocean carrier providing liner cargo shipping services to or from Australia has to be represented by a person who is an individual resident in Australia under the Part X of the Trade Practices Act 1974. The person has to be appointed by the ocean carrier as the ocean carrier's agent for the purposes of the Act and is specified in the register of ocean carrier agents as the ocean carrier's agent. Australia also filed restrictions on national treatment under Mode 1.[60] In Indonesia, for cross-border supply, the foreign shipping company is obliged to appoint Indonesian Shipping Company as its General Agent[61]. This is an example of limitations on national treatment. Few countries, such as Canada, Egypt, Japan and Venezuela, did not make any commitments under this mode of supply of services.

Most member countries have made full commitments in consumption abroad. Among the important countries, Canada and Japan did not make any commitments in this mode.

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[60] Part X of the Trade Practices Act 1974 allows Australian flag operators to appeal to the Trade Practices Commission to examine whether conference members and non-conference operators with substantial market power are hindering Australian flag shipping operators from engaging efficiently in the provision of outward liner cargo services to an extent which is reasonable.

[61] The tasks of General Agent in Indonesia *inter alia* are as follows:

a) to make arrangement in order to get all necessary port services as required by the foreign vessel concerned during their stay in Indonesia ports;

b) to appoint stevedoring company for cargo loading and unloading on behalf of its principal;

c) to arrange cargo booking and canvassing;

d) to collect freight on behalf of the principal;

e) to issue Bill of Lading on behalf of the principal;

f) to settle the disbursement and claim (if any);

g) to give information as required by its principal.

In the case of commercial presence, many countries have resorted to partial commitments with some restrictions on market access. These limitations include: nationality requirement for ownership and registration of vessels under the national flag (Australia), requirement to appoint a local agent, and commercial presence only allowed through joint ventures (Egypt), etc. Likewise, there are some limitations on national treatment. For example, in Hong Kong the income derived from international operations of ships registered in the Hong Kong Shipping Register is exempted from Hong Kong's profit tax.

For market access and national treatment relating to the movement of natural persons, many countries (for example, Australia, Singapore and New Zealand) have left this mode unbound except as indicated in their horizontal commitments.

3.1.b Auxiliary Services

Twenty-six member countries have made commitments in auxiliary services. As in the case of international shipping, there are observable restrictions on market access and national treatment. With respect to cross-border supply, some countries have not bound this sector for reasons of technical infeasibility. For instance, Australia, New Zealand and Korea have not bound storage and warehousing services under Mode 1, since it will not be technically feasible to do so.

For Mode 2 and Mode 3, that is, consumption abroad and commercial presence, several countries (for example, Hong Kong, Japan, Singapore, Australia and New Zealand) have filed commitments without any limitations on market access. In the case of national treatment for commercial presence, Japan does not have any restrictions except those indicated in its horizontal commitments.

In case of market access and national treatment relating to the movement of natural persons, several important countries such as Japan, Singapore, Australia, New Zealand and Korea have left this mode unbound except as indicated in their horizontal commitments.

3.1.c Access to and Use of Port Facilities

Only six members have undertaken commitments on the access to and use of port facilities while 11 members (including, Hong Kong, Japan, Thailand, Singapore, Korea and the EU group of countries) made additional commitments to open up these services to international maritime transport suppliers on "reasonable and non-discriminatory" terms and conditions.

Apart from these three main categories of maritime services, there is a residual category called other services. Other services cover rental of vessels with crews, maintenance and repair of vessels, multimodal transport, etc. Ten members have scheduled commitments on maintenance and repair of vessels (for example, Hong Kong, Hungary, Korea and Philippines) and six members on rental of vessels with crew (for example, Hong Kong, Australia). Iceland and Norway have made additional commitments on multimodal transport.

Twenty-six members have MFN exemption lists in maritime transport services. As discussed earlier, the suspension of the negotiations led to the suspension of these exemptions until the conclusion of the next round of service negotiation which began in January 2000.

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

3.2 India and GATS

India did not make any commitments in maritime services but submitted a draft conditional offer to the Negotiating Group on Maritime Transport Services on 27 June 1996, just before the suspension of the post-Uruguay Round of negotiations.

India started participating in the Maritime Transport Services negotiation from July 1995 onwards (almost a year after the formation of the NGMTS) after a decision was taken by the MOST that joining NGMTS will help India to gain greater market access in this sector, and also possibly, help in trade offers during negotiations in other sectors. Since the negotiations were suspended in June 1996, the conditional offer made by India has no legal bindings.

The conditional offer submitted by India (presented in Table B2 in Appendix B) is, in certain respects, even more conservative and restrictive than India's existing policies in the maritime sector. For example, with respect to cross-border supply in liner shipping the offer shows that at least 40 per cent of cargo carried by liner shipping companies must be reserved for Indian flag ships. This is a limitation on market access but India, at present, does not have any regulation supporting such reservation. Moreover, under limitation on national treatment the offer stated that selected liner routes have been reserved for three national lines. In practice, this is not a restriction on national treatment because this restriction is only applicable to other Indian lines and foreign lines do not face any barriers in operating in the selected routes.[62]

India did not make any commitment for commercial presence under auxiliary services although foreign companies are allowed to operate in this country subject to the existing laws of foreign investments and privatisation[63] (for instance, foreign companies are

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[62] This policy of reserving selected liner routes is a historical development and has evolved in the context of avoiding unhealthy competition among the Indian shipping lines, which would have resulted in the decline in low share/profitability of the lines, besides under utilisation of assets (liner ships) at national level.

[63] These are discussed in section 1.2.

allowed to set up container freight stations and inland container depots, but India did not offer to bind this sub-sector. In the conditional offer, India also asked for certain MFN exemptions related to cargo sharing, cargo reservations (for all countries which are contracting parties to the UNCTAD Code of Conduct for Liner Conferences) and avoidance of double taxation. Cargo sharing implies equality in freight lifting originating in the ports of the partners in agreement and equality in freight earnings. India stated that bilateral agreements with Bulgaria, Poland, United Arab Republic, Russian Federation and any other countries with which a similar agreement is entered into in future will continue to be in force. India has agreements to avoid double taxation with more than 40 countries.

With respect to the third pillar that is, access to and use of port facilities, India made additional commitments to provide these facilities to international maritime transport suppliers on "reasonable and non-discriminatory" terms and conditions. Overall, the conditional offer was very restrictive and India did not even offer to bind the *status quo*.

4. Strategies for Current Negotiations

Negotiations on maritime transport services have proved to be difficult because of the complex and diverse nature of this sector, which involves several kinds of services, from shipping to port facilities, each organised in a completely different way. Thus, this services sector is a challenge for the liberalisation process.

4.1 Issues Related to Negotiations on Maritime Transport Services

One of the reasons for the failure of the previous round of negotiations was the inadequate commitment to liberalise by large countries. During the negotiations some countries found it difficult to overcome domestic resistance to open up their maritime sector in the absence of offers from major players. Hence, the success of the GATS 2000 negotiations in this sector depends on the strong willingness of both developed and developing economies to achieve free international trade in maritime services. If the negotiations are successful it will enhance the overall efficiency of the transportation

process and reduce the operating costs and freight rates. Shippers will be the immediate beneficiaries, but the reduction in protection through reduced transport costs will also facilitate trade in other sectors.

The isolation of individual service sectors in the negotiating process has been cited as another reason for the failure of previous negotiations in this sector.[64] If all modes of transport are placed on the table at the same time it would help to liberalise this sector where otherwise there is a resistance to change when dealing with one sector at a time. The USA is keen on inclusion of multimodal transportation in the proposed maritime agreement. During the previous round of talks, Australia suggested that "multimodal services" should be added as a shadow fourth pillar to the maritime schedule. Since door-to-door services are playing an increasingly important role in international shipping, multimodalism is likely to be a key issue at the current round of negotiations.

Many countries have expressed concern that since multimodal transport involves road, rail and air transport, the extension of maritime transport services to cover multimodal transport will be a "back-door" way of extending the negotiations to unrelated domestic activities. Therefore, for the success of the negotiations it is essential to clearly define the multimodal activities that should be included under maritime transport services. OECD suggested that only those *multimodal transport operations that include a maritime leg* should be considered for the WTO maritime services negotiations.[65]

In the previous round of negotiations, almost all the WTO member countries had excluded cabotage from their shipping commitments.[66] As most of the important maritime nations (Japan, United States, Norway, China, UK, Hong Kong, etc.) continue to reserve cabotage for national flag vessels, this sector is likely to be excluded from the current round of talks.

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64 See Chia Lin Sein *et al*. for details.

65 OECD website.

66 The commitments of Egypt, Cuba, Philippines, Venezuela, etc. included cabotage.

Although there has been considerable unilateral liberalisation in maritime auxiliary services (since more and more countries have moved to corporatise and privatise a range of these services), there is a significant scope for further liberalisation in this sector. It is likely that considerable attention will be given to this sector in the current round of negotiations since carriers have begun to integrate their services to a much greater degree, and are actively participating in the provision of services such as cargo handling and storage services, and providing services to ships while in their berths.

Even though there has been a significant improvement in technology, there has not been a commensurate decline in maritime transport costs. Some studies[67] have pointed out that the anti-competitive practices of conferences and cartels are responsible for keeping the prices high. These conferences and cartels enjoy an exemption from competition rules in major maritime nations such as the USA and EU. In the Uruguay Round some countries had expressed their reluctance to strengthen Article IX of GATS which deals with anti-competitive practices. In the current round of negotiations Article IX of GATS needs to be strengthened which can be achieved through creation of two obligations. The first would require an end to the exemption of collusive agreements in the maritime sector from national competitive law. The second would create a right for foreign consumers to challenge anti-competitive practices by shipping lines in the national courts of countries whose citizens' own/control these shipping lines. In the GATS 2000 negotiations coalition of developing countries can put forward an offer to substantial liberalisation conditional on the strengthening of Article IX.

Regional associations are playing an important role in the world trade. It is likely that in the current round of negotiations these regional bodies will become the driving force in pushing for liberalisation of maritime services. After the suspensions of the previous negotiations, the OECD countries have initiated dialogues with non-OECD countries to discuss strategies and targets for the GATS 2000 negotiations and to strengthen the group's bargaining position. If the current round of negotiations fails, regional bodies, such as the OECD and EC may pick and choose countries or other regional bodies and negotiate

[67] For example, see Carsten F. *et. al.*

separate agreements covering maritime transport between the region's countries and the countries concerned.[68] This will lead to a proliferation of agreements in the sector that may not really serve the cause of liberalisation especially in a global industry such as maritime transport.

Some countries have gained a strong position in the efficient supply of international maritime transport services, while others have yet to begin to build a credible capability and are encountering difficulties in doing so. To ask all countries to fully liberalise will mean that some countries will have a head start over others, as they will not all be in the same position to compete. This explains the reluctance on the part of weaker nations to liberalise. However, the WTO recognises the need to allow some flexibility by considering a progressive liberalisation of the three pillars. This will allow weaker nations more time to enable them to set in motion policies that will help them to compete effectively in the supply of these services. The weaker nations should realise the overall benefits of liberalisation and gradually change their domestic regulations to facilitate the liberalisation process. If the GATS 2000 negotiations fail, some powerful maritime nations may continue to unilaterally liberalise this sector. Also, countries which are very restrictive may be isolated from future negotiations.[69] These developments will not serve the cause of the international maritime community for a truly liberalised sector.

4.2 India's Strategy for GATS 2000 Negotiations

India's strategy on liberalising trade in maritime transport services has to be viewed from the perspective of the global competitiveness of her maritime sector, the likely gains to the economy from the liberalisation process and the extent to which major trading partners are willing to liberalise. At present, India does not have comparative advantage (except in the case of supply of seafarers) in maritime transport services and her export possibilities in this sector are quite limited.

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[68] Chia Lin Sein *et al*.

[69] See Chia Lin Sein *et al*. for details.

The following three sub-sections will discuss India's possible negotiating strategies on the three pillars: international shipping services, auxiliary services and access to and use of port facilities.

4.2.a International Shipping Services

India has already opened up her shipping sector and foreign flag vessels are allowed to operate in this country on a competitive basis. In the GATS 2000 negotiations, India can make commitments in this sector with some limitations on market access and national treatment. One of the most visible limitations on market access under cross-border supply is the policy of providing cargo support for import of crude oil and dry bulk cargo belonging to public sector units through importing on FOB basis and exporting on CIF basis. In India, cargo support operates through "Transchart" which acts as a broker for the public sector cargo and provides the first right of refusal to Indian shipping companies. This policy of FOB imports and CIF exports enables India to have a greater control on transportation and thus reduces foreign exchange outflows. The main hitch with this policy is that India is not the only country to implement it. Thus finally, the policy of FOB or CIF would depend on the relative bargaining power of the two trading nations. In the event of negotiation for removal of such cargo support, India should only do so when there is a commitment from other nations for doing the same.

The most noticeable limitation on national treatment is the policy of giving preference to Indian flag vessels for the transportation of crude oil and petroleum products. Foreign flag ships can participate in the import of crude oil subject to non-availability of suitable Indian vessels and in accordance with relevant regulations/procedures.

The Indian Merchant Shipping Act (1958) imposes restrictions on market access and national treatment under Mode 3 (commercial presence). The Act states that for operating a ship or a fleet under the Indian flag, it is necessary to establish a registered company, or a cooperative society under any Central Act or State Act having its principal place of business in India.

In the last round of negotiations, the USA did not make any commitments on maritime transport services while others such as Japan, Canada and EC did not make any commitments on international shipping services. These countries are our major trading partners and in the absence of any commitments from them it would be extremely difficult for India to commit further liberalisation. In the current round of talks, India should urge these countries to make some commitments in this sector.

Many strong maritime nations reserve a part of the international cargo for their national shipping lines. For example, the US aid and defence cargo is reserved for the US flag vessels and, therefore, Indian vessels cannot participate in the carriage of the cargo. These are restrictions on market access under Mode 1. Since India has not implemented cargo reservation, it should push for the removal of such restrictions. In France, export cargo financed by French banks and insured by French underwriters is required to be carried by French vessels or under French B/L. If French vessels are not available, the next preference is allowed to third party carriers and not to vessels of recipient countries.[70] This is a limitation on national treatment and India should push for the removal of such restrictions.

Many developed countries such as the USA, Japan, China and Russia provide direct and indirect subsidies to their national shipping lines.[71] While such policy options can be justified on the ground of maintaining a minimum national fleet, widespread subsidisation has considerable negative effects on the international shipping market. These policies adopted by the developed countries keep the supply of shipping services at an artificially high level and prohibit capital movement to other countries that have comparative advantage in shipping. Owing to this, a substantial portion of world's shipping tonnage is now in the hand of shipowners belonging to developed countries and it is extremely difficult for developing countries, such as India to compete with these subsidised shipping services.

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[70] This information is provided by the Indian National Shipowners' Association.

[71] As mentioned earlier the USA provides direct subsidies. Japan on the other hand provides indirect subsidies through low interest loans, investment allowance, depreciation allowance, etc.

Furthermore, such policies can trigger off a subsidy race leaving behind those countries, particularly developing ones that are neither able nor willing to participate in them. In the current round of WTO negotiations, India should bargain for the removal of these restrictions on national treatment since it will enable the developing countries to increase their share of international ship owning and ship building.

India has a comparative advantage in manpower exports. This is evident from the fact that out of a total stock of around 20,000 Indian officers approximately 14,000 are serving on foreign ships world-wide. Indian officers are widely sought because of their technical skills and command of English language. India has the potential to export manpower and should proactively pursue liberalisation in this area. As discussed in section 1.2, the government has already taken steps to expand and upgrade the training facilities. Foreigners are allowed to train in Indian national institutes. India can also take initiative in exporting training services.

In the previous round of negotiations, major ship owning nations have shown reluctance to liberalise Mode 4 that is, movement of natural persons. Most countries did not bind this mode in their draft country schedules. Developing countries are the main supplier of labour for the world merchant fleet. It is estimated that about 50 per cent of crews on vessels flying flags of the OECD member countries are national of non-OECD countries.[72] India ranks twelfth in the world in the global supply of officers and fourth in the supply of seamen.[73] In the GATS 2000 negotiations, India can commit to open up Mode 3 that is, liberalise access to foreign investors in maritime transport services sector and in return ask for liberal access to Indian officers and seafarers in the labour markets of developed countries.

India has the potential of exporting consultancy services. The Indian maritime sector is staffed with experienced and highly skilled personnel and thus can assist Third World countries, in particular African countries, in developing their shipping, ports and related

[72] Faust, P., 1998; BIMCO/ISF 2000 Manpower Update.

[73] This information is provided by the office of Director General of Shipping.

services. India has already taken steps in this direction and there are on-going talks with Mauritius, Angola and Tanzania regarding this issue.

Since most important maritime nations prohibit foreign maritime service suppliers from providing services around their coast, it is likely that cabotage will be excluded from the current round of talks. However, if there is any demand for opening up the coastal trade, India should continue to reserve cabotage for domestic flag vessels for national security and strategic reasons.

4.2.b Auxiliary Services

In the case of auxiliary services, such as storage and warehousing services, container station and depot services, India has already opened up these sectors subject to the existing laws on foreign investments and privatisation. The decision regarding maintenance and repair of vessels are solely dependent on operational requirements, cost, efficiency and time parameters. The identification of suppliers is carried out based on demand and supply and quality of services rendered by them and Indian suppliers do not have any preference *vis-a-vis* foreign suppliers. In India, the custom clearance system is through a statutory act and all the duties levied, whether on a foreign or a national supplier, are as per the schedule of tariffs contained in the custom Act. Thus, in the current round of negotiations India can offer to bind these sectors under Mode 3 (commercial presence). The existing laws of foreign investment and privatisation would govern any commitments in this sector. Some auxiliary services (for example, storage and warehousing services) cannot be bound under Mode 1 (cross-border supply) since it is not technically feasible to do so. India does not have any restrictions on market access and national treatment under Mode 2 (consumption abroad).

With respect to Mode 4, that is, movement of natural persons, there are restrictions on employment of foreign nationals in India and foreign nationals are only given permission for employment as part of large turnkey projects, such as offshore platform operations, oil exploration, etc. In the GATS 2000 negotiations, India may consider some liberalisation in

these restrictions provided its major trading partners among the developed countries undertake significant liberalisation in movement of natural persons, much beyond the present horizontal commitments and on sectoral basis.

4.2.c Access to and use of Port Facilities

It is likely that in the current round of negotiations the OECD countries will make additional commitments to open up this sub-sector to international suppliers on non-discriminatory terms and conditions.[74] Since India does not have any limitations on market access and national treatment (there are no discriminatory port charges or non-tariff barriers) with respect to access to and use of port facilities, this sector can be covered under additional commitments.

Foreign companies are allowed to operate in India for the provision of shore- based operational services, such as construction, operation and maintenance of container terminals. Foreign companies are also allowed to provide anchorage berth and berthing services. However, at present, India does not have the potential of exporting these services owing to various domestic and external constraints, which are discussed in section 2.

In many countries there are discriminatory port tariffs. For example, Turkey levies a 7.26 per cent freight tax on shipment at Turkish ports by foreign flag vessels. Ukrainian ports charge discriminatory 70 per cent higher non-preferential tonnage dues and 6 per cent freight tax on vessels from countries that do not have MFN status with the country. In the current round of negotiations, India should push for the removal of these restrictions on national treatment.

As discussed earlier, many developed countries are interested in including various aspects of multimodal transportation within maritime transport services agreement since the responsibilities of the concerned parties involved in the maritime transportation now extend far beyond the scope of shipping transport. If multimodal transportation is raised as a part of

[74] See OECD website for details.

the discussion, India could consider making commitments in this sector subject to restrictions on market access and national treatment as defined in the Multimodal Transport of Goods Act (1993).[75]

5. Domestic Reforms in Maritime Services

The Indian economy is expected to grow at a rate of about 7 per cent in the next 10–15 years. This would result in substantial increase in international trade and consequently faster growth of the seaborne traffic. In order to sustain this growth and expand its capability of providing tradable services under GATS, India would urgently need to address the domestic and external constraints discussed earlier in this report. This section discusses the infrastructural, regulatory and other reforms required in India to meet the challenges and opportunities arising from liberalising trade in maritime transport services.

5.1 Reforms in Shipping

At present, the growth potential of Indian shipping is uncertain and their share in India's international trade is declining. If the domestic shipping sector does not recover, India will have to pay a large amount of foreign exchange as freight bills to foreign vessels in the carriage of overseas trade. In order to strengthen the shipping industry the National

[75] The Government of India has taken a decision that if multimodal transportation is included in the maritime transport services agreement, it would be subject to the following:

(i) Multimodal transport activity will be governed by the MMTG Act, 1993.

(ii) For export consignments from India involving multimodal transportation, only the prescribed multimodal transport document will be acceptable.

(iii) Foreign shipping companies can be allowed to operate as multimodal transport operators (MTOs) provided they are registered after fulfilling eligibility criteria laid down in the MMTG Act.

(iv) Foreign NVOCCs can carry out multimodal transport activities only provided they have a place of business in India and fulfil other requisite conditions laid down in the MMTG Act and are registered as MTOs.

(v) Investment and commercial presence in the field of multimodal transport services, such as trucking facilities, road haulage, inland water transport, railways, etc. will be governed by overall policy of the government and within the regulatory structure including cabotage. International maritime transport service suppliers of other member countries will be allowed to undertake locally all activities which are necessary for the supply to their customer on a non-discriminatory basis subject to the above conditions. Permission for setting up a place of business in India will be governed by existing laws and regulations.

Shipping Policy Committee (NSPC) was constituted under the Chairmanship of the Director General of Shipping. The NSPC submitted its report in July 1997. Many important recommendations of the NSPC on fiscal and funding measures were accepted by the Empowered Committee under the Chairmanship of the then Secretary, MOST, but have not been implemented so far. Some of the recommendations discussed below needs to be implemented immediately in order to ensure a level playing field for national shipping to meet the competition from foreign flagships.

- Indian shipping industry is not subsidised and is currently facing a much higher rate of taxation than its international competitors. The fiscal regime needs to be reviewed, and if required, replaced. With respect to this issue, the NSPC has recommended that the government should recognise overseas shipping as an export industry to make it eligible for deduction from the income of profit earned from overseas operations for tax purposes as under Section 80 HHC of the Income Tax Act and exemption from Minimum Alternate Tax under Section 115JA. Alternatively, the government can give infrastructure status to this industry so that it can enjoy the benefits applicable to other infrastructure sectors[76], such as ports. The current depreciation norms for ships are 20 per cent as per the wdv method. This is much lower than that in the case of other modes of transport vehicles in commercial use, such as aircraft, buses and lorries. As a consequence, some shipping companies are registering new tonnage in foreign countries where rates of depreciation are in consonance with the internationally accepted rate of

[76] The following benefits would accrue to Indian Shipping if it is granted infrastructure industry status:

(i) Tax holiday benefit under S80-1A of the Income Tax Act in respect of profits from operation of newly acquired ships for the first five years and thereafter 30 per cent deduction from profit for subsequent five years.

(ii) Exemption from minimum alternate tax provisions of S115 JA of the Income Tax Act.

(iii) Tax exemptions on dividends, interest or long-term capital gains of an infrastructure capital fund or an infrastructure capital company from investments made by the way of equity or long-term finance in an approved enterprise wholly engaged in developing, maintaining and operating infrastructure facilities. This is under Sec. 10 (23G) of Income tax Act.

(iv) If shipping industry is granted infrastructure status it would become eligible for obtaining quasi equity support from government and other financial institutions like IDFC for growth and expansion programmes and also for foreign currency/rupee loans at concessional interest from SBI's resurgent bonds.

(v) Recognition as infrastructure industry would improve the perception of investors and encourage them to invest in this industry.

40 per cent, leading to a loss of domestic tonnage. The NSPC has recommended that the depreciation rates should be raised from the current 20 per cent to 40 per cent on a wdv basis. Given the importance of shipping and the need to promote acquisition, the government must review the depreciation rates. Higher depreciation rates would help to soften the impact of the cyclical nature of the freight markets and provide for the high level of wear and tear as well as technological obsolescence.

- The NSPC recommended that the government should remove the prevailing discriminatory income tax rules extended to Indian crew when employed on Indian flag or foreign flagships (this is discussed in section 1 and 2). The Committee suggested that all Indian seafarers employed on Indian ships should be exempted from income tax irrespective of the period and area of operation of the ships. This will reduce the drift of Indian seafarers to foreign flag employment and help Indian shipowners to retain their trained crews.

Although the Merchant Shipping Act (1958) has been modified several times, it needs to be reviewed to make suitable modifications in the context of the recommendations of the National Shipping Policy Committee.

The Indian shipping industry has been urging the government to introduce tonnage tax (based on vessel size) as an alternative to the existing corporate tax (based on profits). This scheme has been introduced in many European countries, such as Netherlands, Germany, Greece and Norway. The government of UK is also considering the implementation of a tonnage tax system. In Netherlands, in the first three years of the tonnage tax regime (which was introduced in early 1996), the number of ships and their total tonnage increased by nearly 40 per cent.[77] Tonnage tax system provides certainty, flexibility and clarity for companies and their investors and also ensures greater compatibility and competitiveness with regimes of other countries. Hence, the introduction of a tonnage tax regime as an alternative to corporate tax will strengthen Indian shipping industry.

[77] BI, 2000.

Cabotage law has been strictly enforced worldwide in almost all countries and it is essential to do so for strategic and security reasons. India should also strictly implement the law and any dispensations permitting foreign flagships to coastal trade should be given on voyage by voyage basis only when Indian tonnage is not available and not for long-term charters. At present, there is a growing tendency to bring in foreign flag vessels on long-term charter at dumping prices to operate in the coastal trade even when Indian flagships are available.[78] This tendency needs to be curbed.

There is an urgent need for a well-thoughtout plan for manpower training and deployment. The manning scales on Indian ships are very high. This has to be progressively reduced so that the number of employees is closer to the international levels. It may be difficult for individual shipping companies to do so owing to strong pressures from the trade unions. Hence, the government has to take a positive initiative in this direction.

5.2 Reforms in Port and Allied Sectors

Indian ports have the potential of emerging as Asian hubs. However, currently, India is losing valuable foreign exchange in transhipments to other Asian ports, such as Singapore and Colombo. In order to directly ship the Indian container cargoes through Indian ports, the ports will require large container terminals with adequate Quay Cranes, Gantry Cranes, Tractor-Trailer, trained and efficient operators, paved area, good rail/road link, container trains, ICD facilities, automation and well knit co-operation of various agencies involved in the exercise. Such developments require massive investment and substantial planning. Hence, it may not be possible to develop all the ports simultaneously. In order to progress in this direction, India needs to initially develop two major ports: one, on the east coast (for example, Chennai) and another on the west coast (for example, JNPT), into transhipment hubs so that more Indian cargoes can be shipped from and received at these ports, thereby eliminating delays and costs. The hub port in the west coast will cater to west bound cargo covering the Atlantic region and that in the east coast will cover the Pacific region. These

[78] INSA, Annual Report, 1998–99.

two hubs can then be interlinked through a "land bridge" and this will make the whole operation cost effective since the shipping lines can avoid going round the Indian peninsula.

Privatisation of Indian ports has been slow and hesitant. One of the main reasons for this is that India does not have any sectoral master plan outlining the short, medium and long-term development opportunities in the port sector, based on national economic trends and tentative forecasts of related traffic patterns. While the Ministry of Shipping is responsible for projects being taken up by the major ports, the respective state governments and their agencies are responsible for minor port projects. The projects for development of the minor ports can be vulnerable to significant traffic risks since these ports are in close proximity to each other and also to some major ports. This has slowed down the private investments in projects initiated by the eight coastal states.

To facilitate speedier investment in the port sector and catalyse investment intentions into actual capital investment, there is a need for a long-term sectoral master plan to ensure that the projects undertaken by state and central agencies do not compete with each other and lead to subsequent non viability. The master plan should also consider factors, such as hinterland development and connectivity to various ports in order to attract investments and reduce the uncertainties.

The distinction between major ports, managed by a Port Trust under direct Ministry of Shipping supervision, and the minor ports, under direct state control, introduces a somewhat artificial differentiation in the way development projects are processed, in particular when it comes to attracting private financing for long-term investment. For instance, private developers at major ports are denied the flexibility to charge tariffs as determined by market forces since TAMP regulates tariff in these ports. On the other hand, minor ports allow private sectors to fix tariff subject to market conditions. In future, these distinctions have to be abolished to make port projects attractive and financially viable. One way to do so is to decentralise port management to regional and local levels and empower the state governments to manage development plans within their administrative area.

Example of such evolution can be found in federal states such as Brazil, Russia, Argentina, US and in European countries such as Germany and Netherlands.

The regulations of tariff by TAMP acts as a constraint on the efficiency of the operation and affect the viability of projects at major ports. Market dynamics should be the final determinant of tariffs for transportation services. The ability to maintain a balance of revenues and cargo freight volumes coupled with efficiency in operation would make the projects more attractive to private participants. When in force, tariff regulation should be based more on ceiling rates, leaving to the operators the freedom to apply or negotiate tariff below the maximum allowed limit, rather than on fixed rates allowing for no departure.

Private and foreign investors have been rather slow in responding to incentives offered by the government owing to the complexities of bureaucratic procedures leading to uncertainty and delays in the approval process. In order to encourage private participation, the License Agreement needs to be more transparent and it should clearly address various risks involved in pre-construction, construction and operation phases. Port and other infrastructure projects are generally large and often face more clearances than other projects. Right from their inception these projects require approvals from central government, various state government agencies and local bodies. This process of multiple clearance causes enormous delays in project implementation. The government should try to reduce such delays by implementing a single window clearance scheme.

In many countries privatised ports or terminals are wholly independent from government in pricing, investment, employment and service decisions, and are only regulated in terms of safety, security and environmental protection. This trend has revolutionised port development worldwide and led to large inflows of private capital, technology, and management talent. As a result, port performances have improved significantly. In India, there is centralised control over the operation and management of ports and this limits their ability to perform effectively and efficiently. Indian ports are not allowed to directly mobilise resources from the financial markets. Although the government has now relaxed the investment norms and allows Major Port Trusts to take decisions up to

Rs 50 crores in case of new investment, Rs 50 crores is not often adequate for creation of new capital assets in the port sector which requires substantial investment.

To help the Major Port Trusts to develop, compete and build as global giants, there is an urgent need to delegate adequate powers to the Port Trusts to facilitate the creation of assets and to empower them to manage these assets to their full potential. There is a need for strong, independent, transparent and reliable regulatory authority, which would balance the interest of public and private sectors, domestic and foreign businesses, buyers and sellers. An autonomous port authority operating on commercial lines can raise the required resources from the primary market through equity and debt. The first step in this direction can be corporatisation of major ports. Corporatisation will allow ports to directly mobilise resources from the financial markets and enable the completion of targeted projects within the stipulated timeframe. Corporatisation will also give the management more freedom on decision making and make them accountable for the performance of the port.

As far as ownership of assets are concerned, depreciation rates are not defined for "port projects" under Schedule XIV of the Companies Act, 1956 or under the Income Tax Act, 1961. Therefore, when capital expenditures are incurred on a project, related depreciation cost and amortisation issues are unclear. To reduce the uncertainties it is necessary to determine the specific applicable depreciation rates according to Schedule XIV (Companies Act) and Income Tax Act for these assets. Moreover, Section 80IA of the Income Tax Act states that only those assets which would revert to the government authority at the end of the concession period, would be eligible for tax benefits. There are various on-shore facilities, such as tankages and pipelines for storage, despatch, etc. which are integral part of the port operations but are not eligible for tax holiday as these are not transferred to the government at the end of the concession period. There is a need to amend the provisions of Section 80IA so that the entire port operations, including on-shore activities, are eligible for tax benefits under the section.

Indian maritime transport sector is governed by a plethora of complex laws and regulations. The Indian Ports Act (1908) and the Major Port Trusts Act (1963) have several

provisions and clauses, which are no longer valid owing to changes in port activities as well as technological developments. For instance, the Major Port Trusts Act 1963 does not recognise containers. This had led to a situation in which neither the shipping line nor the port take responsibility for resolving the issues related to containers and thus high demurrage are incurred. Although the Union Budget 2000–2001 has suggested the corporatisation of major ports, there has not been much progress in this direction since the Major Port Trusts Act does not have any provision for corporatisation. The process of amending these Acts is slow and hence investors are frustrated and reluctant. There is an urgent need for a comprehensive "Ports Act" which can be applicable to both major and minor ports. In the Multimodal Transport of Goods Act (1993) there are certain unresolved issues such as conflicts between Hamburg rules and Hague rules. Similarly, there are conflicts between Multimodal Transport of Goods Act and the Carriage of Goods by Sea Act (1925). These Acts needs to be reviewed and if necessary changed especially in the context of the changing environment.

For the efficient performance of Indian ports, it is necessary to reduce staff strength to a level which is closer to international standards and improve the handling rates of each type of cargo. The staff remaining should be compensated with substantial salary increases to bring them to a level comparable with other commercial ventures. Promotions should be on merit and not solely on the traditional seniority method, which is currently in use. The port sector needs to change their management strategy and employ professionals in top management positions. The management should be made accountable for the achievement of set targets. The private operators will also be more willing to invest in the port sector if they are allowed to employ labour on less restrictive terms. By making these necessary changes, the port sector will be able to offer an exciting and rewarding career to many highly competent individuals who do not regard the present state of the industry sufficiently attractive to entice them away from the more lucrative opportunities in private industry and commerce.

Since ports are an essential part of the transport chain, development of supplementary infrastructural facilities, such as roads, railways, telecommunication and

inland waterways are crucial for its efficient operation. The partial development of the ports without improvements in intermodal infrastructure will do little to make the Indian ports responsive to the needs of international trade. In India, inadequate physical capacity of the inland transport system causes delays and increases the cost of transportation of cargoes between the ports and the hinterland. There is an urgent need to develop the inland transport chain so that ports are well connected to the hinterland. For efficient intermodal transportation, EDI systems have to be fully implemented and all major players involved in trade, such as shipping lines, ports, terminal operators, customs and other regulatory agencies should be linked on the EDI network. A complete EDI system with adequate cargo information service will significantly eliminate delays. All ICDs and CFSs in the country should computerise their operations. The customs needs to replace the present system of discretionary selection of containers for physical verification by a more objective and computerised random selection process. In order to reduce congestion at ports/ICDs, the customs should lay down separate procedures for speedy disposal of abandoned and confiscated goods so that the containers are not held up at the entry/exit points of custom .

If the above mentioned reforms and measures are timely implemented, India's maritime transport services sector would gain the requisite strength needed to compete internationally and support the country's growing volume of seaborne trade.

Conclusion

Although most WTO member countries have unilaterally liberalised maritime transport services, this was the only services sector in which multilateral negotiations failed in the Uruguay Round. Given that a substantial part of world trade volume is carried by sea, the failure to liberalise this sector has serious implications on the growth of international trade**.** The on-going round of GATS negotiation is likely to play an important role in reducing trade barriers in maritime transport services. The success of the current round of talks would depend on the willingness of the member countries to open up their maritime sector and their ability to overcome domestic resistance.

India is a small player in the global market for maritime services. The Indian maritime industry suffers from lack of funds for modernisation and expansion, low productivity, inefficiency and regulatory constraints which have made it difficult for the sector to compete in international market. As of now, the Indian industry does not have the sufficient capacity to meet the growing domestic demand. However, India has the potential of exporting manpower and consultancy services. Given the significant infrastructural needs and the existing financial constraints, India needs to import FDI for development of port and allied sectors. Thus, India has a potential of expanding trade (both exports and imports) in maritime transport services.

This paper recommends various regulatory, institutional and other reforms, which if implemented, would enhance the efficiency, productivity and global competitiveness of Indian maritime transport services. Since India has already opened up the maritime sector to foreign service providers, it is recommended that India should actively participate in the GATS 2000 negotiations and offer to bind the existing regime. An offer consistent with its existing policies will improve India's bargaining position during the negotiation. India should also put pressure on important maritime nations to undertake commitments in these services and push for the removal of external barriers to trade, particularly those related to the movement of natural persons.

Appendix A

Table A1: Top 20 Container Terminals and their Throughput, 1999

(In 000 TEUs)

Ranking	Port	TEU
1	Hong Kong, China	16,100
2	Singapore	15,900
3	Kaohsiung	6,985
4	Busan	6,439
5	Rotterdam	6,400
6	Long Beach	4,408
7	Shanghai	4,210
8	Los Angeles	3,829
9	Hamburg	3,750
10	Antwerp	3,614
11	New York/New Jersey	2,863
12	Dubai	2,845
13	Felixstowe	2,700
13	Tokyo	2,700
14	Port Klang	2,550
15	Tanjung Priok	2,273
16	Gioia Tauro	2,253
17	Kobe	2,200
17	Yokohama	2,200
18	Bermen/Bremerhaven	2,181
19	Manila	2,104
20	San Jaun	2,085
Total : Top 20		109,221 (54.34%*)

Source: Extracted from *Major Ports of India: A Profile, 1999–2000.*

Notes: * Denotes the per centage share of top 20 container ports.

Table A2: Top 20 National Registered Shipping Fleets, 1997

Country	Rank	Number	Gross Tonnage *(dwt)*	Average Age *(years)*
Panama	1	5,403	90,035,081	16
Liberia	2	1,601	58,993,189	12
Bahamas	3	1,105	25,218,960	16
Greece	4	1,381	25,205,001	24
Cyprus	5	1,549	23,367,716	16
Malta	6	1,344	22,927,782	19
Norway (NIS)	7	683	19,632,477	15
Singapore	8	1,043	18,681,396	13
Japan	9	5,509	17,251,328	9
China	10	2,247	15,493,221	19
USA	11	461	10,250,001	28
Philippines	12	1,165	8,706,791	19
St Vincent	13	964	6,770,192	16
Russia	14	1,807	7,487,256	18
Korea South	15	882	6,770,192	16
Germany	16	753	6,757,666	14
India	17	432	6,566,605	15
Turkey	18	1,002	6,519,886	24
Marshall Islands	19	129	6,280,475	12
Italy	20	757	5,965,990	22

Source: Drewery (1998).

Table A3: Foreign Exchange Earnings/Savings of Indian Shipping Companies, 1991–92 to 1998–99

(In Rupees Crores)

	1991–92	1992–93	1993–94	1994–95	1995–96	1996–97	1997–98	1998–99
1. GrossEarnings/Receipts:								
Freight and Charter Hire Earnings	2646.25	3080.52	3476.13	3785.21	4114.10	4814.17	5014.54	5398.92
Sale Proceeds of Ships	51.84	95.55	808.87	420.85	791.98	193.47	310.48	91.13
Total Revenue (1)	2698.09	3176.07	4285.00	4206.06	4906.08	5007.64	5325.02	5490.05
2. Gross Disbursements/ Payments:								
Direct and Indirect Expenses	940.50	1166.57	1203.59	1276.96	1286.74	1691.36	1653.82	1693.64
Charter Hire Payments	104.96	71.32	93.01	46.36	130.00	124.99	144.73	193.51
Total Expenditure (2)	1045.46	1237.89	1296.60	1323.32	1416.74	1816.35	1798.55	1887.15
3. Net Operating Surplus (1–2)	1652.63	1938.18	2988.40	2882.74	3489.34	3191.29	3526.47	3602.90
4. Financial Costs	95.05	129.61	139.79	229.66	277.80	334.78	310.36	295.93
5. Net Inflows after Financial Costs (3–4)	1557.58	1808.57	2848.61	2653.08	3211.54	2856.51	3216.11	3306.97

Source: Indian National Shipowners' Association, *Annual Review*, 1998–99.

Notes:

Figures for 1991–92 are based on statistics received from 13 Member Companies of INSA representing 84.2 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1992–93 are based on statistics received from 14 Member Companies of INSA representing 78 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1993–94 are based on statistics received from 18 Member Companies of INSA representing 83.8 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1994–95 are based on statistics received from 13 Member Companies of INSA representing 83 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1995–96 are based on statistics received from 16 Member Companies of INSA representing 89.2 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1996–97 are based on statistics received from 15 Member Companies of INSA representing 82.1 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1997–98 are based on statistics received from 14 Member Companies of INSA representing 80.9 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Figures for 1998–99 are based on statistics received from 12 Member Companies of INSA representing 83.3 per cent of Indian Tonnage with total prorated to represent 100 per cent of the fleet.

Table A4: Summary of Indian Tonnage, July 2000

Indian vessels engaged in :	Number of ships	GRT *(in millions)*	DWT *(in millions)*
Overseas Trade	240	6.331	10.662
Coastal Trade	181	0.537	0.651
Offshore Supply	96	0.154	0.142
Total	517	7.023	11.456

Source: Indian National Shipowners' Association, *Indian Shipping Journal*, *Vol. 52*, June–July, 2000.
Notes: There are 22 ships (0.145 grt and 0.255 dwt) under bare boat cum demise.

Table A5: Share of Indian and Foreign Lines in India's Overseas Trade, 1997–98

(In million tonnes)

Trade	Indian Lines	Foreign Lines	Total
General Cargo			
Export	3.33 (12.7%)	22.96 (87.3%)	26.29
Import	3.19 (12.1%)	23.11 (87.9%)	26.30
Total	6.52 (12.4%)	46.07 (87.6%)	52.59
Dry Bulk Cargo			
Export	2.51 (6.1%)	38.75 (93.9%)	41.26
Import	8.47 (24.4%)	26.28 (75.6%)	34.75
Total	10.98 (14.4%)	65.03 (85.6%)	76.01
POL/Products and Other Liquids			
Export	2.42 (48.8%)	2.54 (51.2%)	4.96
Import	43.61 (63.3%)	25.27 (36.7%)	68.88
Total	46.03 (62.3%)	27.81 (37.7%)	73.84
Grand Total			
Export	8.26 (11.4%)	64.25 (88.6%)	72.51
Import	55.27 (42.5%)	74.66 (57.5%)	129.93
Total	63.53 (31.4%)	138.91 (68.6%)	202.44

Source: Indian Shipping Statistics 1998, Transport Research Wing, MOST.

Table A6: Share of Indian Flag Vessels in the Overseas Cargo Traffic Handled at Ports

(In lakh tonnes)

Year	Total sea borne imports and exports	Exports and imports carried by		Per centage of cargo carried by Indian Vessels to total cargo
		Indian flag Vessels	Foreign flag vessels	
1990–91	1103.5	393.9	710.6	35.60
1991–92	1101.5	395.8	705.7	35.93
1992–93	1223.0	426.6	796.4	34.88
1993–94	1369.7	460.7	909.0	33.63
1994–95	1465.5	420.2	1045.3	28.67
1995–96	1639.1	447.5	1191.6	27.30
1996–97	1721.8	512.8	1209.0	29.79

Source: Statistical Abstract, 1998.

Table A7: The Growth in Traffic through Indian Ports between 1951 and 1996

Year	Per centage growth per annum
1951–61	5.2
1961–71	6.8
1971–81	4.4
1981–91	8.9
1991–96	8

Source: Extracted from *Rakesh Mohan Committee Report*, 1996.

Table A8: India's Foreign Trade in US $Million

Year	Exports	% Growth	Imports	% Growth	Total	% Growth
1990–91	18143	-	24075	-	42218	-
1992–93	18537	+1.1	21882	-4.7	40419	-2.2
1993–94	22238	+20.0	23306	6.5	45544	+12.7
1994–95	26330	+18.4	28654	22.9	54984	+20.7
1995–96	31797	+20.8	36678	28	68475	+24.5
Cumulative Growth		***11.9***		***8.8***		***+10.2***

Source: Economic Survey (1996-97), Ministry of Finance.

Notes: The slumps around 1990–91 and 1992–93 are probably due to the downturn of the USSR economy and the effect of Gulf war.

Table A9: Growth in the Capacity and Traffic of Major Ports

Year	Ports Capacity *(in million tonnes)*	Traffic *(in million tonnes)*
1980–81	159	80.61
1994–95	174	197.26
1996–97	215	227.13
1999–00	258	271.92

Source: Extracted from RITES, 2000.

Table A10: Port Performance Indicators for Major Ports in 1999–00

Ports	Average turn around time *(in days)*	Average pre-berthing time *(in days)*	Percentage of non-working time to total stay at berth	Average output per berthday *(in tonnes)*
Calcutta	6.59	1.03	44.18	2157
Haldia	5.21	1.61	42.44	5599
Paradip	3.89	1.14	28.97	7106
Visakhapatnam	4.75	1.37	30.15	7579
Chennai	6.80	2.80	40.00	5886
Tuticorin	6.39	2.98	38.65	2861
Cochin	3.23	0.87	35.47	5952
New Mangalore	3.80	1.07	40.00	9000
Mormugao	4.30	1.09	19.46	11162
Mumbai	5.60	1.37	30.78	3876
JNPT	1.72	1.39	7.84	5905
Kandla	6.15	3.04	18.00	8740

Source: Major Ports of India: A Profile, 1999-2000, Indian Ports Association.

Table A11: Share of Containerised Traffic in Total General Cargo Handled by Major Ports

Period	Total General Cargo *(in million tonnes)*	Containerised Cargo *(in million tonnes)*	Per centage of Containerised
1991–92	26.64	7.63	28.64
1992–93	31.74	9.01	28.39
1993–94	34.18	12.25	35.04
1994–95	41.39	15.36	37.15
1995–96	46.06	17.61	38.23

Source: RITES, 2000.

Appendix B

Table B1: Specific Commitments in Maritime Transport Services

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

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Egypt*	None except (1) unbound, and (3) only through joint ventures with max. equity of 49 per cent	No commitments	Commitments only on port dredging but (1) unbound and (3) through joint ventures with max. equity of 75 per cent	
European Community	No commitments	Storage and warehouse services (other than in ports); freight transport agency/freight forwarding services; pre-shipment inspection	No commitments	Rental of vessels with crew (F: prior notification requirement; D: unbound)
Finland	No commitments	Storage and warehousing services; freight transport agency; other supporting and auxiliary transport services	No commitments	Charter services: leasing of vessels with crew; sea and road
Gambia*	None No commitments on freight	No commitments	Commitments on towing and pushing and supporting services for maritime transport	Maintenance and repair of vessels
Ghana	None except (1) access to only 20 % of bulk and liner cargo, and (3a) unbound	Commitments on cargo handling, storage and warehousing, container station and depot, with a limitation on (3) state monopoly – privatisation envisaged in 5-7 years	Made available on reasonable and non-discriminatory terms	
Hong Kong	Freight none except (1-2) NT: unbound, and (3) NT: income tax exemption for operation of national flag ships No commitments on passenger	None except (1) unbound, and (2) NT: unbound. No commitments on freight forwarding	Made available on reasonable and non-discriminatory terms	Maintenance and repair of vessels; rental of vessels with crew
Hungary	No commitments	Commitments on storage and warehousing	Commitments not technically feasible	Maintenance and repair of vessels

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Iceland*	None except (3a) MA&NT: Unbound for establishment of companies operating a fleet under Icelandic flag	None	Made available on reasonable and non-discriminatory terms	Additional commitments on multimodal
Indonesia	None except (1) NT: requirement to appoint local agent, (1b) "Government's cargo" and (3) MA: "may establish owner's representative" and NT: horizontal	No commitments	Access to and use of facilities	
Jamaica*	Freight: none except (3) MA: registration and licensing requirement No commitments on passenger	No commitments	No commitments	
Japan	Unbound	Commitments on storage and warehousing (excluding petroleum products), and customs clearance.	Made available on reasonable and non-discriminatory terms. Commitments on Pushing and towing services; salvaging services; watering services; fuelling services; garbage collecting services.	
Korea RP	None except (1b) MA: Cargo preference for coal, iron ore and liquefied gas (3a) Unbound for establishment of companies operating a fleet under Korean flag	None except Storage and warehousing excludes agriculture, fish and livestock products. Agency, freight forwarding, and brokerage require incorporation as a joint stock company (Includes commitments on shipping brokerage)	Made available on reasonable and non-discriminatory terms	Maintenance and repair of vessels

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Malaysia	None except (3) MA: only through rep. Office, or joint venture with max. equity of 30%, and (3a) nationality and ownership requirements for vessels registration in Malaysia	Commitments on agency services with (3) MA: only through rep. Office, or joint venture with max. equity of 30%	Made available on reasonable and non-discriminatory terms	Vessel salvage and refloating services with (3) MA: only through rep. office, or joint venture with max. equity of 30%
Malta	None except (3) MA: horizontal	No commitments	No commitments	
Myanmar	No commitments	No commitments	No commitments	Tourist transport operation: operating a tourist business by water craft: (3) NT: unbound
Netherlands Antilles*	None except (3) NT: vessels registered in N.A. must fly Netherlands flag, must be owned by an N.A. company and captain must be Dutch national	Commitments on cargo handling, storage and warehousing, freight agency and freight forwarding	No commitments	
New Zealand	None except (3a) MA&NT: unbound for establishment of companies operating a fleet under New Zealand flag	Storage and warehousing services; and maritime freight forwarding services	No commitments	
Nigeria	None except (1) unbound with cargo reservations (40% of liner cargo, 50% of bulk trade, 100% of government cargo, 50% of aid generated cargo)	No commitments	No commitments	Maintenance and repair of vessels, (2) NT: authorization required; rental of vessels with crew (1,3,4) unbound, (2) none
Norway	None except (3a) MA&NT: ownership requirements for nationally registered ships	None	Made available on reasonable and non-discriminatory terms	Additional commitments on multimodal
Papua New* Guinea	None	No commitments	No commitments	

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Peru*	Commitments on passenger transportation by ferries exclusively for internal tourist services and (1,3) MA: authorisation required, (1) NT: unbound, (2) MA&NT: unbound	No commitments	No commitments	
Philippines*	None except government owned cargoes to be shipped on board Philippines flag vessels. No limitation on (4) except time-limit for specialised vessels	None, but no commitments on customs clearance and maritime agency services	No commitments	Maintenance and repair of vessels but (2) MA: requirement to use domestic ship repair yards
St. Kitts and Nevis	Commitments on ship registration	No commitments	No commitments	
St. Lucia	None	Commitments only on trans-shipment services and free zone operations	No commitments	
St. Vincent and the Grenadines	None except (3) MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax	Commitments only on trans-shipment services and free zone operations with (3) MA: subject to Exchange Control Act, Commercial Code and NT: withholding tax	No commitments	
Senegal	No commitments	Commitments on consignment, handling, forwarding and shiphandling with (1) MA: unbound	No commitments	
Sierra Leone*	None except (3) MA: compliance required with national laws for establishing business	Full commitments on MTN.GNS/W/120 list with (3) MA: joint venture requirement	Full commitments on supporting services for maritime transport	
Singapore	Freight: None No commitments on passenger	Commitments on shipping agency and brokerage	Made available on reasonable and non-discriminatory terms	

MEMBER	INTERNATIONAL SHIPPING	AUXILIARY SERVICES	PORT SERVICES	OTHER
Slovenia	No commitments	Commitments on storage and warehousing, customs clearance, freight forwarding and pre-shipment inspection	No commitments	Maintenance and repair of vessels
Thailand	None except freight: (1) restrictions on traffic with China and Vietnam, (3a) unbound, (3b) MA: horizontal, NT: income tax exemptions for national flag vessel operators	Commitments on storage and warehousing, freight forwarding (and maritime surveys and classification services) with (1) unbound, (3) MA: horizontal, NT: no limitations as long as foreign equity not more than 49%	Made available on reasonable and non-discriminatory terms Commitments on international towing, shore reception facilities (collection of waste), and port captain's services	
Trinidad and Tobago	No commitments	No commitments	Commitments on navigation aids, and communication /meteorological services	Commitments on ship surveys and repairs/building with (1,2) unbound
Turkey	None except (1) NT: discriminatory port charges; (1b) 10% preference margins for public cargoes; (3a) MA: ownership requirements	No commitments	No commitments	Maintenance and repair of vessels; rental of vessels with crew: (1-2) NT limitations
Venezuela*	Freight: none, except (1) unbound. No commitments on passenger	Commitments on cargo handling and storage and warehousing	No commitments	

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

Notes: *Shipping commitments include cabotage.
As in the Schedules none stands for "no" limitations to the commitments undertaken in the sector.
MA: Market Access
NT: National Treatment

Table B2: India's Draft Conditional Offer on Maritime Transport Services

Modes of supply:

1.Cross-border supply | **2. Consumption abroad** | **3. Commercial presence** | **4. Presence of natural person**

Sector or sub-sector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
International transport (freight and passengers excluding cabotage and offshore transport)	1a) Liner Shipping: • At least 40 per cent of cargo carried by liner shipping companies must be reserved for Indian flagships. • Preference will be given to Indian flag vessels for government cargoes, export from India on CIF/C&F and import into India on FOB/FAS basis. Indian flag vessels will have the first right of refusal for carrying such cargo and only thereafter can foreign flag ships be allowed to be inchartered/taken on international rental basis. Shipping arrangements for government owned and controlled cargo will be made by Transchart division of Ministry of Surface Transport. • Foreign shipping companies are obliged to appoint Indian companies as general agents or have joint venture shipping companies with Indian companies to supply maritime agency services. Non-shipping companies can do so only by opening a regional office in India. b) Bulk and other international shipping: • The transportation of crude oil and of basic oil product is to be carried out by Indian flag vessels. • Preference will be given to Indian flag vessels for government cargoes, export from India on CIF/C&F and import into India on FOB/FAS basis. Indian flag vessels will have the first	1a) In liner trade (not restricted to liner conference trades) between India and such countries which are contracting partners to the UN Convention on a Code of Conduct for Liner Conferences, Indian shipping lines (not necessarily national shipping lines) have a preferential right over cargo Select liner routes have been reserved for 3 national lines. b) None, except that preference will be given to public sector undertakings for shipment of crude oil, petroleum products and by-products.	***Access to and use of port facilities*** No measures shall be applied to the following services which deny reasonable and non-discriminatory access to international maritime transport suppliers. 1. Pilotage. 2. Towing, tug assistance and pushing. 3. Provisioning, fuelling and watering. 4. Garbage collection and ballast waste disposal. 5. Port captain services. 6. Navigation aids. 7. Shore-based operational services essential to ship operations, including communications, water and electrical supplies. 8. Emergency repair facilities. 9. Anchorage, berth and berthing services.

Sector or sub-sector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
	vessels will have the first right of refusal for carrying such cargo and only thereafter can foreign flag ships be allowed to be inchartered/taken on international rental basis. Shipping arrangements for government owned and controlled cargo will be made by Transchart division of Ministry of Surface Transport. • Foreign shipping companies are obliged to appoint Indian companies as general agents or have joint venture shipping companies with Indian companies to supply maritime agency services. Non-shipping companies can do so only by opening a regional office in India. c) Passenger: None 2. None 3 a) For operating a ship or fleet under Indian flag , it is necessary to establish a registered company, or a cooperative society under any Central Act or State Act having its principle place of business in India. This is in accordance with the Merchant Shipping Act (MSA), 1958. An Indian registered vessel can ply only if it has a license issued under the MSA. b) Other form of commercial presence for the supply of international maritime transport services (as per definition): Unbound 4 a) Ships crews: Unbound b) Key shore personnel: Unbound	c) None 2. None 3a) None, except for registration of ship and issue of license under the Merchant Shipping Act. b) None 4a) Unbound b) Unbound	

Sector or sub-sector	Limitation on Market Access	Limitation on National Treatment	Additional Commitments
Maritime Auxiliary Services			
Maritime cargo handling services	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
Storage and warehousing services in ports	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
customs clearance services	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
Container station and depot services	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
Maritime agency services	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
Maritime freight forwarding services	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	
International rental / charter of vessels with crew or on bare-boat basis (excluding cabotage and offshore transport)	1. Unbound 2. None, except obtaining permission from Director General (Shipping) for chartering a foreign flag vessel in the absence of the availability of a suitable Indian vessel. 3. Unbound 4. Unbound	1. Unbound 2. None, except vessels rented by Indian nationals are considered as foreign vessels. 3. Unbound 4. Unbound	
Maintenance and repair of sea-going vessels	1. Unbound 2. None 3. Unbound 4. Unbound	1. Unbound 2. None 3. Unbound 4. Unbound	

List of Article – II (MFN) Exemptions of India in Maritime Transport Services

Sector / Sub Sector	Description of Measure indicating its inconsistency with Article-II	Countries to which the measures apply	Intended duration	Conditions creating the need for exemption
Shipping:				
a. Cargo sharing between bilateral partners	Equality in freight liftings originating in the ports of partners to the agreement and equality in freight earnings	Bulgaria, United Arab Republic, Poland, Russian Federation, any other countries with which a bilateral shipping agreement is entered into in future.	Indefinite	In the context of overall trade relations.
b. Cargo reservation	Cargo reservation under the UN Code of Conduct for Liner Conferences. Sharing of cargo between the shipping lines of contracting states and third-country lines in the ratio of 40:40:20 as provided in the liner code.	All countries which are contracting parties to the UN Convention.	Indefinite	To fulfil obligations under the convention.
c. Avoidance of double taxation	On income and capital of a non-resident person earned in India from the operation of a ship engaged in international maritime transport on the basis of reciprocity with the country in which the person resides.	All countries with which Double Taxation Avoidance Agreements are signed.	Indefinite	Maintenance of reciprocity as the basis of tax exemption.

Appendix C

List of Acts Governing Maritime Transport Services in India

• The Merchant Shipping Act (1958)	The Indian shipping industry is governed by this Act.
• The Major Port Trust Act (1963)	This Act governs the major ports, which are under the purview of the Ministry of Surface Transport.
• The India Ports Act (1908)	This Act governs the minor and intermediate ports.
• The Dock Workers (Regulation and Employment Act (1948) and The Dock Workers (Safety, Health and Welfare) Act (1986)	These two Acts regulate the conditions of employment, service and other matters relating to dock workers.
• Port Laws (Amendment) Act (1997)	This is an amendment to the Major Port Trust Act (1963) and provides for an independent Tariff Authority for Major Ports.
• Multimodal Transport of Goods Act (1993)	This Act provides the legal framework for multimodal transportation in India.

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