

**MULTILATERAL TRADE
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TRADE IN TRANSPORT SERVICES

Note by the Secretariat

This note presents some factual background information which may be relevant for the examination by the Group of Negotiations on Services of the implications and applicability of concepts, principles and rules for the transport services sector. It covers, in particular, the following sub-sectors:

Air transport services	paras. 1 - 48
Maritime transport services	paras. 49 - 94
Multimodal transport services	paras. 95 - 101
Other transport services	paras. 102 - 106

The analysis of the first and second sub-sectors consists of four main parts: first, a description of the activities comprising the sub-sectors; secondly, a description of the ways in which trade in these sub-sectors may occur; thirdly, an overview of the rationales, nature and possible effects of government regulations in these sub-sectors; and finally, some considerations relating to the application of the concepts, principles and rules found in document MTN.TNC/11.

The first four Annexes to the note contain summaries of disciplines and arrangements currently applying in international transport services. Annex V contains statistical information of relevance to the sub-sectors concerned.

I. AIR TRANSPORT SERVICES

A. Introduction

1. Trade in air transport services has expanded rapidly in recent years. Between 1978 and 1988, the volume of traffic on international scheduled airlines (as measured by the number of passenger-kilometres flown¹) nearly doubled, increasing on average by 7.0 per cent per annum. Total scheduled traffic - passengers and freight (cargo and mail) - (as measured in tonne-kilometres²) recorded an average yearly increase of 7.7 per cent. In comparison, real GDP growth during the period averaged 2.6 per cent in the industrial market economies and 3.8 per cent in the developing economies.

2. The faster rise of airline traffic relative to production is due to a number of reasons, including the high income elasticity of demand for travel, progress in aircraft technology affecting the capacity, range and cost efficiency of aircraft, productivity growth in ticketing, flight reservations and cargo handling, as well as a reduction in air fares in real terms. At the same time, the rapid recent increase in world trade has contributed to increasing both the demand for - and the supply of - air cargo services. These services exhibited, at 9.3 per cent, the fastest average annual growth of all categories of air transport services during the last decade.

3. Air transport services are extensively regulated, both nationally and internationally, with important implications for competition in choice, price and quality of service. Since the late 1970's, there have been several attempts in developed and developing countries alike to introduce a greater degree of competition in domestic air transport markets through a lessening of controls on entry, pricing and route selection. The primary motive behind such initiatives has been the body of evidence suggesting that existing regulatory arrangements had in some instances resulted in a costly and often inefficient allocation of scarce resources, with potentially negative consequences for consumers and carriers alike.

4. Airline deregulation and international liberalization have produced substantial changes in civil aviation: airlines have realigned their route structures, introduced highly differentiated pricing strategies, developed more sophisticated yield management systems, entered into new cross-border marketing arrangements, adjusted (in most instances increased) their aircraft fleets, competed in a new range of ancillary services, among which computerized reservation systems, and have made extensive recourse to cross participations as well as to merger and acquisition activities as means of enhancing and developing domestic and international air transport networks.

¹One passenger flown over one kilometre.

²One tonne flown over one kilometre.

5. While public ownership remains widespread in the air transport sector, changes in market conditions have prompted several governments, from both developed and developing countries, to engage in the process of privatization (total or partial) of nationally-owned airlines. A variety of reasons may be seen as underlying this trend. These include the desire of governments to promote efficiency by subjecting publicly-owned carriers to a greater degree of market discipline as well as the need of many governments to reduce public sector borrowing requirements given the typically high costs of maintaining national airlines.

B. Air transport service activities

6. The world market for air transport services consists of two segments: scheduled and non-scheduled (i.e. charter) services, though the distinction has in many countries become increasingly difficult to make. Scheduled services are provided on a specified route, on a regular basis and are sold directly to the general public. Non-scheduled or charter services are usually provided by another party - mainly a tour operator - whose task is to fill a given number of seats on an aircraft.³ While regularly scheduled airlines provide both scheduled and charter air services, non-scheduled carriers usually provide charter services only.

7. Scheduled and non-scheduled airlines provide both passenger and freight services. Some airlines use their fleets of freighter aircraft exclusively for providing air cargo services while other - predominantly passenger - airlines operate both freighter and passenger aircraft. Meanwhile, some airlines offer combination services, carrying cargo in the belly holds of their aircraft, or make use of so-called "combi" aircraft permitting the carriage of cargo on a blocked-off portion of the main-deck.

8. Scheduled traffic accounts for a dominant share of the world market for international air transport services. According to the estimates of the International Civil Aviation Organization (ICAO), the scheduled international traffic performed by the scheduled airlines of the world (including the USSR and the People's Republic of China) amounted to 112.6 billion tonne-kilometres or 85 per cent of total scheduled and non-scheduled international traffic in 1988. Scheduled international passenger traffic totalled 232 million (the figure for international and domestic passengers being 1.072 billion) in 1988, representing 756 billion passenger-kilometres (against a total - i.e. international and domestic - figure of 1.696 billion passenger-kilometres). Scheduled international freight carried in 1988 stood at 7.9 million tonnes (against a world total of 17.4 million tonnes). Passengers and their baggage accounted for

³The provision of non-scheduled services has traditionally been subjected to the conditions that an aircraft operator does not sell tickets individually or directly to the public, that the tickets be part of an overall package (often including accommodation) and that there be a minimum and/or maximum length of stay. There has, however, been a marked recent increase in the number of "seat only" charters.

62.0 per cent of the total tonne-kilometres generated by international scheduled airlines in 1988, with cargo and mail contributing the remainder. Passenger revenues in 1988 represented around 85.0 per cent of total scheduled service revenues.

9. Total international non-scheduled passenger-kilometres performed reached 171.4 billion at the end of 1988, representing 18.5 per cent of international air passenger traffic. Charter operators carried 51.0 per cent of this traffic and scheduled airlines 49.0 per cent (see Table 1 in Annex V). There has in recent years been a marked increase in the share of charter services provided by scheduled airlines, owing in some instances to the liberalization-induced reclassification of charter operators as scheduled airlines. Travel between states forming the 22-country European Civil Aviation Conference (ECAC) constitutes the world's largest international charter market, non-scheduled traffic accounting in 1988 for 44 per cent of the total number of intra-ECAC passengers carried and for 62 per cent of passenger-kilometres flown. Intra-ECAC charter traffic accounted in 1988 for 59 per cent of the world's total. While the amount of non-scheduled traffic is negligible in both the United States and Japan, charter passenger traffic growth has increased in most regions of the developing world owing in large measure to the significant rise in international tourism activity.

10. According to ICAO, the number of scheduled international airlines operating services with large aircraft (i.e. 9,000 kilogrammes and over) stood at 343 in 1988. Despite this relatively large number, the world airline industry exhibits a fairly high degree of concentration, as a small number of large airlines based in North America and Western Europe generate approximately 70 per cent of the world's air traffic (i.e. international and domestic).⁴ However, as the data contained in Table 5 reveals (see Annex V), the last decade has witnessed a marked shift in the regional distribution of scheduled traffic. This shift has been most pronounced in respect of international traffic, as the combined shares of North American and European airlines fell from 62.9 in 1978 to 57.0 per cent in 1988, while that of Asia and the Pacific increased from 21.4 to 28.9 per cent during the same period. The size of international airlines may be seen as a reflection, *inter alia*, of the relative size⁵ and development of domestic markets, the distribution of world traffic flows, the particular characteristics of the airlines themselves, as well as the degree of market access provided by bilateral air service agreements.

⁴As measured in tonne-kilometres. This figure does not include traffic provided by airlines from centrally-planned economies.

⁵While the size of domestic markets has played a prominent role in airline development, particularly in the United States or Europe, it has not been a prime determinant of the growth achieved of late by some of the most dynamic developing country airlines.

C. Trade in air transport services

11. The salient features of regulation in the air transport sector - the extensive recourse to bilateral and reciprocal market sharing arrangements as well as the virtual absence - beyond fifth freedom traffic rights⁶ - of foreign competition in domestic air transport markets - have meant that international trade in air transport services is typically cross-border in nature, produced by the residents of one country and consumed (partly) by the residents of another. Trade in the sector may thus be seen as occurring when an airline from one country sells its services to a resident, corporation or government of another country. An important characteristic of trade in air transport services, whether scheduled or non-scheduled, passenger or freight, is that countries tend to be both importers and exporters. This obtains because airline services are differentiated by a number of characteristics (e.g. nationality of the airline, route networks, flight frequencies, departure times, fares), some of which appeal to some users more than others.

12. The main characteristics of regulation in the air transport sector have also meant that issues relating to the mobility of factors of production (i.e. capital and/or labour) have not on the whole been predominant, trade in air transport usually involving only a limited degree of commercial presence in foreign markets. The need for any such presence in importing countries has been chiefly directed towards facilitating and promoting trade and has typically involved the employment of local sales staff as well as the cross-border movement of a limited number of operational personnel, mostly in technical (i.e. engineering, specialized maintenance, etc.) and managerial positions.

13. Many airlines do not maintain staff in foreign markets, relying instead on travel agencies for flight reservations and hiring the services of resident airlines for airport functions (i.e. check-in procedures, ground handling, cargo handling, security services, etc.).

14. Considerations relating to - and changes in - entry, pricing, route and other factors affecting competition in the world market for air transport services could significantly influence both the ways in which trade in the sector takes place as well as the size and scope for factor movement in the sector. For example, the gradual extension of cabotage rights - the right of a foreign airline to carry traffic between two

⁶The right to take passengers and cargo from a foreign country to a third country or vice-versa (see Section D).

⁷Airline management skills are highly industry-specific and can be a potentially important source of competitiveness for an airline. An offsetting factor is that management is typically internationally mobile, i.e. it can be hired from other countries. Several developing country airlines started their operations with expatriate staff (managers, pilots, engineers, etc.), replacing them as indigenous skill levels rose.

domestic points - would require both a relaxation of ownership restrictions typically applied to foreign airlines and the need on the part of a foreign airline for an enhanced presence (presumably via permanent establishment) in a given domestic market, potentially increasing the cross-border movement of both capital (through foreign direct investment) and labour. Similar considerations could also apply in cases where more liberal fifth freedom rights were granted.

D. The regulation of air transport services

15. International air transport is regulated by a complex web of bilateral and multilateral agreements. Bilateral agreements vary in form but typically specify the services and routes to be operated between two countries, designate the airlines to operate the services and the capacity to be provided by each airline and specify the conditions under which passengers may be taken or picked up in each country and flown to third countries (the fifth freedom rights mentioned earlier). Bilateral agreements encompass a spectrum of policy approaches and a multitude of variations between such approaches, but generally involve the reciprocal exchange of trading rights for market access and a balanced share in the capacity offered.

16. Bilateralism is characteristic of the way in which air transport services are regulated and marketed and may indeed be seen as the distinctive characteristic of the sector's commercial structure. This has prompted some industry observers to suggest that scope for increased competition in the world market for air transport services may lie in more liberal bilateral agreements. During the past decade, a number of new regulatory approaches, particularly with regard to capacity and fares, have been developed on a bilateral basis. In addition, governments involved in bilateral air service negotiations have been paying increasing attention to commercial arrangements and opportunities for the designated airlines by including detailed provisions on issues which bear on the competitive provision of air transport services (i.e. airline representation, currency remittances, access to computer reservation systems, cargo and ground handling operations, etc.).

17. At the multilateral level, the basic instrument governing international civil aviation is the Chicago Convention of 1944 which laid down the principles for the operation of both scheduled and non-scheduled international air traffic (see Annex I). While the Convention established multilateral agreement in some areas (i.e. safety standards), it did not formulate an acceptable set of multilateral rules relating to commercial rights. This was left to bilateral agreements, which currently number in excess of two thousand. The Convention also established the International Civil Aviation Organization as a permanent multilateral forum for discussions relating to technical, economic and legal matters.

⁸ Bilateral agreements rarely grant foreign airlines the right to operate on the home country's domestic routes.

18. The Chicago Convention is adhered to by the 161 Member States of ICAO and is based on the principle that "every state has complete and exclusive sovereignty over the airspace above its territory". Thus, by stipulating that international air transport services require the authorization of governments to be provided, the Convention provided the legal framework whereby scheduled services between countries would be subject to bilateral agreement.

19. The International Air Transport Agreement of 1944 established the rights to be granted to airlines flying scheduled services as five different "freedoms":

- (i) to overfly a country without stopping;
- (ii) to land or take off for technical purposes (i.e. to refuel, change crew, make repairs, etc.);
- (iii) to take passengers and cargo from the home country to the foreign country;
- (iv) to take passengers and cargo from the foreign country to the home country; and
- (v) to take passengers and cargo from the foreign country (often considered as a privilege rather than a freedom) to a third country or vice-versa.

20. To these original five freedoms have been added a sixth, which is usually defined as the carriage of traffic between two foreign countries with a stop in the carrier's home country (a combination therefore of fourth and third freedoms).

21. Bilateral agreements do not in general provide for the determination and enforcement of air fares, these being in most instances negotiated within the framework of the International Air Transport Association (IATA, see Annex II). IATA was established in 1945 as a trade association and is composed of most international scheduled airlines. It provides the machinery for regulating tariffs (i.e. passenger fares and cargo rates) by agreement between the airlines themselves subject to approval by governments.¹⁰ This approval has tended in practice to be virtually

⁹While the necessity to "obtain prior permission" does not apply to non-scheduled airlines, each individual country can impose whatever conditions it deems necessary on such airlines so that, although not generally covered under the bilateral regime, non-scheduled services do in practice require governmental permission and are subject to regulation. It remains true nonetheless that more liberal policies are pursued by most governments with respect to non-scheduled airlines.

¹⁰IATA's other areas of activity relate to airline connection, travel agent accreditation, clearing house procedures for settling ticket revenue balances among member airlines, as well as a host of trade association concerns.

automatic. IATA activities have in recent years been affected by the tendency of many airlines to withdraw from the Association's tariff-fixing procedures in response to government pressures to lower fares and to competition from non-IATA charter airlines.¹¹

22. In addition to bilateral and multilateral arrangements, air transport services are also subject to national regulation in nearly all countries. A significant amount of such regulation is non-economic in nature and is usually concerned with ICAO-based technical, legal and safety standards and practices. The most prevalent form of economic regulation applied at the national level - and that with potentially the largest incidence on competition between airlines - concerns the issuing of operating licences on the part of national aviation or transport authorities. More stringent licensing criteria generally apply to airlines wishing to provide scheduled services, the latter applicants having in most cases to demonstrate a public need for additional air transport services. As mentioned earlier, the economic regulation of non-scheduled services is on the whole considerably less stringent, operating licences being granted in many countries without specifying the routes to be served, the frequency of flights nor the capacity carried.

23. The main rationales for the regulation of air transport services find their origin at both the multilateral and national levels. By establishing the principle of each country's sovereignty over the airspace above its territory, the Chicago Convention pointed to the need for a body of rules to govern the use of that airspace by foreign as well as domestic airlines - hence the patchwork of bilateral and multilateral rules based on reciprocity which have just been described.

24. At the national level, it has been argued that the air transport service industry could be seen as exhibiting either natural monopoly or oligopolistic tendencies, requiring regulation either to minimize the economy-wide welfare losses stemming from competitive entry or to ensure that fares were not set above competitive levels. Another view is that the sector is prone to excessive entry by airlines with little prospect of success or by "cream-skimming" airlines intent on providing services on only the more remunerative routes. Such airlines could thus undermine the integrated air network which a regulated market allowed to maintain through recourse to internal cross-subsidization. Adherents to the so-called "contestable market theory" approach take an opposite view of the industry, arguing that the threat of entry can contribute to the overall competitiveness of air transport markets by keeping air fares down to their competitive level.

25. Regardless of the lack of consensus as to the precise nature of market dynamics in air transport, there would appear to be four main motivations for regulation in the sector. Firstly, the public service nature of air

¹¹At the same time, many countries - particularly developing countries - lack the expertise or resources which are necessary to validate airline tariff submissions.

transport services - ensuring a regular and reliable provision of services to all regions of a country at the lowest cost consistent with a reasonable return to carriers - has been advanced as a primary reason for the national regulation of entry, capacity and fares. A second broad rationale for regulation relates to the relative size of air transport markets, prompting some governments to argue that domestic markets could in some instances prove too small to support free competition in the sector. Smaller markets are thus, on the whole, those in which both the degree of - and the support for - public ownership of national airlines tend to be most pronounced. A related consideration in smaller markets concerns the typically higher degree of intermodal competition facing airlines (i.e. competition provided by rail and/or road transport services). A third and related rationale for regulation stems from the public policy belief that the air transport services industry is a vital national resource that should remain under national control. This latter rationale helps explain the need which many governments from developed and developing countries alike feel for extensive public involvement in the industry, either through direct public ownership or through restrictions placed on foreign investment in domestic airlines. A fourth rationale relates to the perceived economic benefits that may accrue to a country as a result of the operation of national airlines, including employment, tourism and balance of payments benefits. Similar considerations apply to the economy-wide linkages which the development of domestic airline service capabilities is seen to provide. These include, among others, catering, telecommunications, informatics, multimodal transportation, aerospace and national defence. Policies which aim to promote the viability of national air carriers may thus also enhance the development of related goods and service producing activities.

26. The extensive regulation of air transport services may be seen as exerting significant influences on both the pattern of international trade and the degree of competition in the airline industry. For one, the existing regulatory regime is restrictive as concerns the ability of airlines to access particular markets and routes. Airlines are not free to enter international markets at their own choosing but must first be designated by their governments to provide services (scheduled or non-scheduled; passenger or freight) on a particular route. The ability of governments to affect access and competition on international routes by setting bilateral limits on entry thus has implications for the liberalization of air services trade.

27. A second implication of existing regulatory arrangements is that even in instances where an airline is allowed to operate on a given route, it will not typically be able to determine the level of output it wishes to provide, its "production" usually being limited by capacity agreements contained in bilateral arrangements or through inter-airline agreements on revenue sharing (so-called pooling arrangements¹²). Limitations placed on

¹²Pooling refers to arrangements whereby airlines which are allowed to serve a given route agree to share the traffic or revenue generated by it.

capacity may influence two important aspects of airline agreements. On the one hand, capacity restrictions may adversely affect market entry, as there may be little or no scope for new competitors on a given route. Such restrictions may, additionally, influence the level of air fares by lessening the opportunity for new entrants on a route to experiment with different price structures.¹³

28. While the ability of airlines to freely determine the level of fares has in recent years been significantly greater, particularly on North Atlantic and trans-Pacific routes, governments do retain - and in a few instances have exercised - the power to disapprove the introduction of new fares, with potentially important implications for market access. Pricing freedom has also tended in practice to be limited in regional markets where inter-airline pooling arrangements prevail. The absence of effective price competition in many airline markets has had three main effects. For one, by reducing the incentive to control costs, it has resulted in higher industry costs than would have otherwise been the case in a more competitive environment. The resulting inefficiency of some national carriers has in some instances added to domestic budgetary burdens. Secondly, and as is evidenced by the often wide variation in fares on routes which are outwardly similar, it has allowed airlines to engage in a significant amount of cross-subsidization, both between routes and between classes of passengers on a particular route. Higher air fares have, finally, encouraged the growth of non-scheduled traffic which, on some routes, has eroded the market share of scheduled airlines or prompted the latter to engage in the provision of charter services themselves.

E. Considerations relating to the application of concepts and principles

(a) Transparency

29. National laws, regulations and administrative guidelines relating to air transport services are generally available. The need for transparency as regards aeronautical agreements between countries was recognized and provided for in Articles 81 and 83 of the Chicago Convention, which oblige states to register with ICAO their aeronautical agreements and arrangements. In recent years, ICAO has sought to enhance transparency by developing a data bank of codified bilateral agreements and by publishing the information through its Digest of Bilateral Air Transport Agreements. Two important factors detract from full transparency in the area of bilateral agreements: the failure of many Contracting States to register all their bilateral agreements with ICAO, as well as the frequent recourse to confidential side-agreements which may clarify, modify and, in some cases, significantly alter the intentions of the parties to a published bilateral agreement.

¹³ It should be noted that controls over the capacity offered on passenger services may also affect the amount of available cargo capacity by reducing the amount of belly hold capacity on a particular route.

30. Considerations relating to transparency (or lack thereof) can arise with regard to the development and operation of computer reservation systems, particularly as airlines may be unaware of the extent to which such systems may discriminate against them. Similarly, it may be difficult to identify the subsidy element in industries in which the participation of governments is important, as is the case with some national airlines.

(b) Progressive liberalization

31. Air transport is one of service sectors in which market conditions have in recent years been progressively liberalized. This process has been pursued mainly through bilateral agreements, although in the European context it is being attempted on a plurilateral basis with a view to the creation by 1992 of a single internal market.

32. While the progressive liberalization of trade in air transport services could be promoted in a number of ways, it should be noted that many governmental measures relating to air safety standards, the financial viability of airlines, scarcity of airport facilities, etc. have important implications in this respect. Ways of promoting progressive liberalization could include, inter alia, the gradual elimination of restrictions on entry, capacity and pricing on particular routes; a commitment to reduce and/or phase out discrimination which is ancillary in nature (i.e. relating to airport access and use, computer reservation systems, taxation, etc.); the greater extension of fifth freedom rights to foreign carriers, particularly those with limited domestic markets that depend heavily on international air transport; the lessening of ownership restrictions applied to domestic airlines; as well as the gradual introduction of foreign competition in domestic point to point traffic (i.e. the granting of cabotage rights).

(c) National treatment

33. Applying the concept of national treatment to the air transport sector would imply that foreign airlines and the services they provide receive no less favourable treatment than domestic airlines and services in respect of all laws, regulations and administrative practices. That is, once granted market access, foreign airlines receiving national treatment would be entitled to establish a commercial presence, advertise, market, provide ground and cargo handling for themselves (and/or others) and generally compete for domestic and/or international traffic on the same terms as domestic airlines.

34. Given that foreign-owned or controlled airlines are normally precluded by law (beyond fifth freedom traffic rights) from providing domestic air transport services in virtually all countries, the application of national treatment to domestic markets could have far-reaching legislative and policy implications. Moreover, even when applied solely to the provision of international (i.e. cross-border) air transport services, national treatment may pose some difficulties in view of differences both in the size of national markets and in national regulatory regimes.

(d) Most-favoured-nation treatment/non-discrimination

35. The inability of governments to agree to a multilateral set of rules and economic rights governing civil aviation has meant that the m.f.n. concept has not been used in the civil aviation field. Accordingly, the benefits, privileges and concessions relating to the provision of air transport services - whether in terms of market access (traffic rights and routes) or in terms of operating conditions (right of commercial presence, remittance of airline funds, etc.) - have been dealt with bilaterally and exchanged on reciprocal basis. Bilateral reciprocity and the balancing of benefits and/or opportunities between pairs of countries stand at the very core of the international air transport system.

36. One consequence of the bilateral approach is that there are different benefits which accrue to individual countries in bilateral agreements, reflecting differences in the relative size of airline markets and/or the degree of market access provided by domestic regulatory regimes. The application of unconditional most-favoured-nation treatment as a means of progressively reducing the various market access barriers contained in existing bilateral agreements could therefore have fundamental implications for the existing regulatory system.

37. The great majority of impediments to trade in air transport services stem from regulatory practices which are essentially discriminatory in nature. The recourse to bilateral reciprocity may, for instance, be highly discriminatory vis-à-vis third country airlines. In addition, most of the ancillary obstacles to market access (see below) impose discriminatory burdens on foreign as opposed to national carriers, with potentially significant implications for the overall efficiency and competitiveness of foreign airlines.

(e) Market access

38. Market access in air transport services is both defined and limited through bilateral arrangements. Limitations on entry - i.e. on the routes to be served - as well as on the type and quantity of traffic that may be carried may represent important obstacles in the way of trade expansion in the sector. Accordingly, the greatest scope for enhancing competitive conditions in air transport services has been argued to lie in more flexible and liberal bilateral agreements.

39. As in other service industries, ancillary factors in air transport services can affect in important ways the ability of an airline to access a foreign market. Such factors include, among others, forms of payment, local currency conversions, profit repatriation, access to local distribution channels (travel agents, tour operators, advertising, etc.), ground-handling facilities (for both passenger and freight), airport and airway user charges (i.e. landing fees, hangar charges, etc.), and a host of what are often referred to as "doing business issues" in the context of

bilateral arrangements, such as the mutual recognition of licenses, the granting of operating permits and safety and security standards and practices.

40. Computer reservation and ticketing systems have become a central element in the marketing of air transport services. The development and use of such systems, given that they are jointly owned by competing airlines, may represent - through information control - a potential impediment to market access in the sector, particularly (albeit far from exclusively) for smaller airlines and/or airlines from smaller countries.

41. An important consideration relating to market access - one which may be expected to gain in importance given the forecasts of continued growth in demand for air transport services - is that, unlike the numerous restrictions (i.e. those governing entry and operating conditions) which are regulatory in nature, a major impediment to market access and to trade expansion in air transport services stems from the scarcity of airport facilities at certain major airports. Indeed, faced by a finite stock of airport slots and gates, and given the perpetual rights which incumbent airlines enjoy in both respects (so-called "grandfather rights"), new airlines may be physically unable to access what tend in practice to be the most attractive foreign markets (and the key airports within them).

42. The only negotiated effort to multilaterally exchange market access in international air transport was the International Air Transport Agreement, negotiated at the Chicago Conference in 1944 and which granted the five freedoms of the air. It has never received widespread support and currently has only eleven signatories.

(f) Increasing participation of developing countries

43. The participation of developing countries in international air transport activities has not been dealt with by means of preferential market access, though it has in some instances been facilitated by the arrangements governing the sector. For example, bilateralism has allowed some developing countries to negotiate access to developed country airline markets on a reciprocal basis. In addition, extensive technical and other forms of assistance through ICAO as well as other assistance programmes have helped developing countries to achieve and up-grade technical and safety standards and the development of their airport and airspace for international operations, as well as to minimize their disadvantages in both human and financial resources in the air transport sector.

44. The involvement of developing country airlines in the world market for air transport services is highly varied. As a group, developing countries saw their share of international scheduled traffic increase over the last decade, from 25.2 per cent in 1978 to 29.5 per cent at the end of 1988. Although significant, this result owes in large measure to the strong performance of airlines from a small group of (mainly newly

industrializing) countries: Brazil, India, Indonesia, Korea, Malaysia, Pakistan, the Philippines, Saudi Arabia, Singapore and Thailand. At the end of 1988, airlines from these ten countries accounted for 15.8 per cent of international scheduled tonne-kilometres performed (up from 11.9 per cent in 1978), representing 53.0 per cent of developing country traffic in this category (up from 47.0 per cent a decade earlier). Meanwhile, airlines in most other parts of Asia, Latin America, the Middle East and Africa registered a slight increase in their share of world traffic, from 13.5 per cent in 1978 to 13.7 per cent at the end of 1988. Airlines from these regions have been affected by high operating costs, small fleets, less dense route networks, poor aircraft utilization, shortage of marketing and commercial expertise, as well as adverse macro-economic developments, both internal and external.

45. Because developing countries are for the most part destination points rather than sources of international airline traffic, they may on average stand to gain significantly from the progressive liberalization of fifth freedom rights in developed country markets, as well as from an enhanced access to the computer reservation systems which the world's major airlines own and operate.

46. Faced by severe and often persistent budgetary problems, and by the lesser bargaining strength which small markets bring to bilateral negotiations, it has on occasions been suggested that developing country airlines could attempt - and be encouraged through various logistical and financial support mechanisms - to pool their resources on a regional basis. The development of regional trunk operators and sub-regional feeder groupings, while increasing the bargaining leverage of participating airlines, would also enable them to reap the economies of scale and scope that will be necessary preconditions for their increased participation in the world market for air transport services.

(g) Safeguards and Exceptions

47. The main type of safeguard action allowed for in the body of rules governing international civil aviation is contained in Article 89 of the Chicago Convention which stipulates that, in cases of war or of national emergencies that are notified to ICAO's Council, the provisions of the Convention "shall not affect the freedom of action of the Contracting States involved". Exception clauses in the Convention relate to prohibited areas (Article 9), recognition of certificates of competency and licenses (Article 32) and departures from international standards and recommended practices or procedures in ICAO Annexes, subject to the requirement to file notices of differences (Article 38). Safeguard and exception provisions are usually contained in bilateral agreements, safety and national security considerations being the main rationales of national air transport measures which might constitute departures from agreed commitments.

(h) Regulatory situation

48. Notwithstanding the trend towards deregulation, privatization and the general lessening of controls on entry which has been observed of late in many countries' airline markets, air transport services remain on the whole highly regulated. As described earlier, the rationales for regulation are numerous, starting with the host of technical and safety standards and considerations which arise in the sector. In a context where physical limitations on airport access and use have - in the face of steadily rising air traffic - become increasingly acute, regulations relating to air safety may be expected to gain in significance. Moreover, the overcrowding of both airways and airport facilities raises important regulatory considerations given that airlines possessing a significant percentage of slots and gates at a capacity-constrained airport may enjoy a competitive advantage over other airlines (domestic and foreign). The development and use of computer reservation systems may also be an area of regulatory concern. As well, the application to air transport services of national competition laws may be seen as a necessary concomitant to the liberalization process.

II. MARITIME TRANSPORT SERVICES

A. Introduction

49. International maritime transport services are very closely linked to international trade, deriving from it their growth while contributing to its performance and expansion. Infrastructure, equipment (shipbuilding) and many auxiliary services such as insurance, telecommunications, management, brokerage, and handling/storage are important elements in the sector. Both infrastructure and equipment require very large investments which may have significant social and economic implications for the investing country. Auxiliary services are increasingly determining the competitiveness of shipping firms, especially as related technology evolves and new needs arise.

50. Since World War II, the productivity in the sector has improved remarkably as relative costs of the major economic inputs - the ship, the fuel and the crew - have changed. The size and speed of ships have increased, fuel prices have risen and crews have become generally smaller. The major technological developments in the sector have been in related construction, including: large ships, high horse-power engines and propellers, diesel engines and controls, navigation and communication networks, cargo-handling and safety. In liner markets - markets where services are provided on a regular basis - conventional tonnage has been replaced by container ships. Currently, a typical liner ship is a fully cellular container ship with a carrying capacity that may surpass 50,000 tons. Given the size and the increased productivity, such a vessel may replace about seven traditional general cargo vessels built some 25 years ago. In bulk trades - trades served by a vessel carrying loose cargo of a homogeneous nature in bulk, including iron ore, coal, grain, etc. - there has been a shift towards very large vessels, including "combination carriers" (i.e. ships designed to carry either oil or dry cargo but not concurrently, including, inter alia, ore/oilers, ore/bulk/oilers, oil products/bulk/crude oil carriers and tankers which can also load a limited number of containers).

51. The technological evolution which has taken place in the sector has made it possible for larger ships to operate with smaller crews causing the sector to become even more capital-intensive as a reflection of a higher capital/labour ratio. Larger ships also produce more output per unit of capital. Parallel to the evolution in shipbuilding have been the improvements in ocean terminals which continue to attract a great deal of investment despite the high costs of capital in the international markets. Finger piers of a few decades ago have been replaced by open berths measuring up to 200 acres, built to handle, store, stuff and strip containers and equipped with multi-million-dollar cranes and terminal handling equipment. Most of the improvements have been with dry bulk handling facilities, oil terminals having changed relatively little in the

last several decades. Eighty per cent of the physical costs of ships and terminal systems are now fixed, indicating a reversal in the trend which prevailed prior to World War II.

52. The high costs involved in the development of national capacities in the sector have made it difficult for non-traditional maritime nations, especially the low income ones, to increase their participation in the international market for maritime transport services. This fact, along with the perception that the prevailing conference system had favoured traditional maritime nations operating liner services, have prompted developing countries to support the idea of a U.N. Code of Conduct for Liner Conferences with a view to ensuring market access for their national fleets. It should be noted, however, that shipping conferences - the sole subject of the Code - have had a declining participation in several trades, their average share of total liner cargo having decreased from over 90 per cent in the early seventies to under 80 per cent on the average, and 50 per cent in some cases, today (see paragraph 55 below).

B. Activities comprising maritime transport services

53. Maritime transport services involve the movement of merchandise by vessels between the port of embarkation where the merchandise is received from the exporter and the port of destination where the merchandise is claimed by the importer. Generally, but not necessarily, importers and exporters are different parties. Maritime transport services may be purchased as packages which include ancillary services such as inland pick-up and delivery, customs clearance and loading/discharging. These packages may also include overland transport ("multimodal" service) particularly in the case of containerized shipments. Since access to national routes and facilities increasingly influences the form and extent of international shipping services, the traditional distinction between national and international transport is becoming blurred.

54. Services providers are usually classified in accordance to the frequency and the regularity of the services they provide. Liners are carriers which provide services regularly on a particular route, thus fulfilling the needs of traders whose businesses require regular and small-lot shipments that normally do not suffice to make use of a vessel's full capacity. A liner has to provide suitable space to carry a varied assortment of cargoes. Liners generally offer traders modes of maritime transport adequately fitting their requirements and the requirements of the products to be moved on a given route - thus, the need at times for ships of specialized design. Liner-operating shipping companies may group themselves in conferences. In broad terms, a liner conference denotes a set of common tariffs for services (and obligations) which are provided in a regular manner by lines serving a particular route (see paragraphs 55 and 61 below).

55. Lines which are not members of conferences are usually referred to as non-conference operators. Normally, in an effort to compete more effectively with conference lines, non-conference operators offer their services at a relatively lower price. For purposes of tariffication, commodities are generally classified and attributed corresponding freight charges, and eventually surcharges, according to the routes in question. Non-liners, or tramps, are carriers which ply variable routes according to the local demand in a particular port. Tramps still fulfil a significant function in bulk shipping despite having for some time declined in importance. Whereas a considerable share of liner shipping has been governed by shipping conferences, shipping services, other than liner shipping services, have traditionally operated without an organizational structure similar to the conference system and currently represent around 80 per cent of world shipping services in terms of quantity.

56. There are three main categories of cargoes in maritime transport: general cargoes, dry bulk cargoes, and liquid bulk cargoes. General cargoes are a mixture of heterogeneous cargoes, normally packed and transported on vessels that ply regular trade routes in accordance with fixed, pre-announced schedules (i.e. liners). Dry bulk cargoes are unpacked cargoes transported in full ship loads in vessels that are either owned or chartered by the trader (industrial carriage) or an independent shipping company (contractual carriage). Major dry bulk cargoes include grain, coal, fertilizer, and mineral ores. Steel, paper, wood products, and automobiles which have traditionally been transported in the liner trade are starting to be moved increasingly by bulk or semi-bulk vessels. Liquid bulk cargoes (also, tanker cargoes) are ship-load cargoes of crude petroleum and petroleum products. As with dry bulk cargoes, the vessels are either owned or chartered by the trader or an independent broker.

57. A very important aspect of maritime transport transactions is the trading terms agreed upon in individual sales contracts. These terms stipulate the division of responsibilities of the exporter and the importer, with respect to each stage of the transportation process. Expenditures relating to loading and discharging, custom duties, storage and freight charges, for example, can be allocated to the exporter or importer depending on the contents of the purchase/sale contract. It follows therefore that the choice of the terms of trading that appear in a purchase/sale contract may determine the extent to which a particular country participates in the shipping of its own imports and exports. The two most traditional terms of contract, as defined by the International Chamber of Commerce (Incoterms), are "free on board" (f.o.b.) and "cost and freight" (c and f) or "cost, insurance, freight (c.i.f.).

58. An f.o.b. clause sets forth that the buyer (importer) undertakes to arrange for the shipment, including its payment and the pre-announcement of the port of destination, name of the ship, and date of the shipment. The designation "free on board" refers to the fact that the seller (exporter) is only responsible for the expenses incurred with activities performed

prior to when the merchandise is on board. A contract drafted on a "c and f" basis stipulates that the seller (exporter) is to be responsible for arranging the shipment and the payment of all charges incurred up to the ship's rail at the importing port. While these clauses define the sharing of transport costs, they do not define the allocation of transport risks. These traditional trade terms, however, have proven to be inadequate to meet the requirements of modern transport processes, such as containerized and multimodal transport. Consequently, new terms were defined by the ICC in 1980 which have been up for revision. The 1980 rules include such adopted terms as "Free carrier (named point)" (FRC), "Ex works" or "Delivered Duty Paid" (DDP).

59. There are three characteristics of the market for maritime transport services which are important for present purposes. First is the principle of vessel nationality whereby vessels are required to have a home country of registry - or "flag". The home country may or may not be the same one as the nationality of the owners, the nationality of the crew, and/or the country where the construction of the ship took place. Whereas in some cases nationality requirements can be very strict, "open registry" countries generally place minimal restrictions on the nationalities of the owners, operators and crews.

60. The second aspect is the legal characteristic of joint sovereignty evident in maritime transport transactions. To the extent that ships need to enter the ports of at least two countries for the provision of a complete service, two sovereign regulatory systems are involved whenever a maritime transport service is rendered. This is rarely the case with other services sectors where only one set of national norms and regulations apply to a service or service transaction at a time.

61. The third aspect relates to the organization of part of the general cargo trade into liner conferences. These conferences are multinational or national cartel type organizations of ship owners which engage in the regulation of rates, charges and conditions for the maritime transportation by member carriers of goods on a specific trade route. They can range from a very informal association to a well developed arrangement serviced by a permanent secretariat. Conferences of different memberships may be present on both directions of a given route. Liner conferences have been in operation for more than a century, their appearance largely coinciding with the replacement of sailing vessels by steamships which better withstood weather conditions and could therefore provide services on a regular basis. The Code of Conduct for Liner Conferences was drafted in the United Nations in 1974 in an attempt to regulate conference activities in a way acceptable to the international community at large (see Annex IV).

C. Forms of trade

62. International maritime transport services are often, but not necessarily, provided by the residents of one country to the residents of

another. They involve cross-border trade in a traditional sense since to be provided they usually must move across national frontiers (i.e. territorial seas). Generally, there is no need for permanent establishment of shipping companies in importing/exporting markets, even though this need may arise as a result of policies which reserve the national market for ships with the national flag: through certain forms of establishment, foreign providers might ultimately qualify to operate ships under the importing country's flag. The following elements might be relevant in the delivery of maritime transport services: cross-border trade, commercial presence (office, agent), establishment (including subsidiaries), direct investment in the context of multimodal transport, direct investment to operate as national carrier or as a means of access to the flag. In all of these elements, different degrees of labour mobility might be involved.

63. Maritime transport services are very closely linked to international trade through a mutual relationship: whereas the provision of services follows the existing demand for the movement of cargoes, this movement could not occur at all in the absence of shipping services. In other words, maritime transport services are both a result of, and a pre-condition for, the expansion of trade. The three main economic inputs to maritime transport (ships, fuel, crews) are traded internationally to varying degrees. Crews are often made up of nationals of the country of the company providing the services, in which case they are non-traded. Very frequently, however, ships may be manned with a wide diversity of nationalities among the officers and the crew.

D. Motivations for regulations

64. Traditionally, the regulation of maritime transport has been motivated by the desire on the part of states to promote national shipping capabilities. In spite of major changes in market structure and technology in recent decades, the promotion of national shipping continues to underpin much of the regulation in the sector. Other motivations have also become relevant, however, particularly as countries which had been users of shipping services have themselves become providers of these services.

65. The rationale for the protection of a fleet may relate to specific policy objectives such as employment creation, the development of a national shipbuilding capability, and the fostering of a stable and predictable context within which international trade can occur. The protection of a national fleet may also be viewed to serve national security interests since national flag ships are usually perceived to be more reliable in times of sustained military conflict than their foreign counterparts (especially in the absence of effective control agreements).

66. The maintenance of standards and safety is another prominent motivation for regulatory practices in the sector. Standards are usually put in place as a means of ensuring the protection of persons - shipper, receiver, owner, operator and seafarer - as well as of the environment.

Often regulations must comply with international norms and standards but local requirements may also be relevant. Even though the motivation of ensuring the health and safety of persons is generally accepted as a valid social aim, the enforcement of related norms and standards may discriminate against foreign shipping services providers.

67. The preservation of competition reflects the belief that through competition, lower prices and better quality should result for maritime transport services. Competition may be perceived therefore to have a favourable effect on a country's external trade since cheaper and more efficient shipping can contribute considerably to the penetration of national goods into foreign markets. Countries tend to pursue competition policies which differ significantly even when common agreement exists on the merits of competition. For example, offsetting foreign subsidies might be a motivation underlying competition regulation in some countries whereas in others the protection against abusive liner conference practices might be on the basis of the national competition policy.

68. While controlling the abuse of dominant positions by liner conferences is generally considered desirable, it is widely recognized that the conference system plays a vital role in shipping transactions (e.g. regular services at relatively stable freight rates). In some cases, there is an attempt to limit legislative interference to a minimum (legal supervision only) while tolerating self-regulation by market operators through mutual agreements on the different aspects of the transport undertaken within a certain route.

69. As with many other services sectors, nations might undertake to regulate certain transactions in the maritime transport sector, motivated by an interest in protecting/improving their balance of payments.

E. Regulations and relevant commercial practices

70. Many measures which apply to maritime transport services transactions are not part of a formal regulatory framework but constitute commercial practices of market operators. At times the distinction between formal regulatory measures and commercial measures and practices is difficult to draw. Both formal regulations and commercial practices have existed in the maritime transport services sector since the last century, reflecting the desire of the major maritime powers to preserve existing commercial and military relationships. Regulations and practices have both had a considerable impact on the development of national fleets, but commercial practices have been especially instrumental in the maintenance of the market position of established fleets.

(a) Regulations and practices relating to market access

71. A prominent form of regulation having implications for market access in the maritime transport services sector involves controls on the cargoes that vessels carry. Nations at times may favour, if not mandate, cargo

reservation for national carriers involving, for example, goods purchased by the government, government financed goods (aid), and military supplies. Cargo reservation regulations may be broad, involving, for example, the reservation of all imported goods for national vessels. Goods covered by cargo reservation laws often comprise "government-related cargoes" - i.e. those in which the government has a particular financial interest.

72. Cargo reservation regulations often reflect the belief by governments that the seaborne carriage of a certain share of their imports and exports should be undertaken by national flag carriers. This belief is usually based on the concept of "cargo generators' right", a concept which recognizes that both the importing and exporting countries are entitled, ipso facto, to an equal share in their shipping. Cargo generators' rights therefore imply a maximum 50/50 split between carriers involved in a particular trade, making a 100 per cent reservation very rare in practice. Provisions for "waivers" to allow other carriers to serve the shipper may be included in national cargo reservation laws where national capacity is perceived to be below that which has been reserved for the national fleet. The trend towards cargo reservation based on "cargo generators' right" first found its expression in the liner conference trade but governments have increasingly been implementing controls over both dry and liquid bulk shipments as well.

73. Cargo reservation policies are usually initiated unilaterally but their implementation is generally bilateral in nature: the two countries affected by the policies agree between themselves on the division of most of the cargo moving in their bilateral trade. In many cases, bilateral agreements represent a reaction to unilateral actions that are perceived to restrict trade in the sector. Reasons for undertaking reservation policies vary widely including broad considerations regarding the relations with the initiating government, a country's overall politico-economic policy, and the capacity of the national carriers. Cargo reservation laws and decrees, like other laws and decrees, usually require official interpretation.

74. Cargo sharing refers to the institutional arrangements, including the negotiation of shares and the allocation of corresponding services, put in place by carriers involved in a particular trade. Cargo sharing may be the result of explicit cargo reservation policies of governments, in which case carriers negotiate on the shares reserved by law to national providers. It may also result from government requirements that all vessels must be conference members and that the conference must include the national carriers with veto power. Governments may also retain the right to disapprove of agreements reached among conference members. Cargo sharing may also be practised commercially, without any active government intervention. A case in point is the closed conference system where the participation in the carriage of cargo is governed by agreement between the lines already within a particular conference. Entry is possible, but may be difficult to achieve. However, under commercial arrangements, the shipper has always the choice to ship, either conference or non-conference. This choice is extinguished by government cargo reservation.

75. As mentioned before, some governments have considered that de facto cargo sharing by commercial parties in closed conferences should be replaced by de jure cargo sharing in the so-called 40/40/20 basis (i.e. each of the two trading partners has access to 40 per cent of their total trade while 20 per cent remains open for cross-traders). These considerations were behind the promulgation of the United Nations Code of Conduct on Liner Conferences which relates only to liner cargoes (i.e. cargo that is already partially removed from the competitive environment) and aims at increasing the developing country shares of the world shipping market. There has been some discussion of the extension of cargo sharing to all liner trading and to bulk shipping, the operations of which are normally carried out on non-scheduled routes with the shipper providing full cargo loads. Compared to liner shipping, bulk shipping responds more to the law of supply and demand with freight rates varying accordingly. Conference lines may, however, respond to competition from non-conference lines by granting rebates to traders in order not to loose competitiveness in world markets.

76. Cabotage regulations govern the participation in maritime transport between sea ports of the same country - namely, national coastal trade. Such regulations usually involve restrictions on access to cargoes according to the vessel's flag, and may involve the reservation, through legislation or other restrictive measures, of coastal trade to national flag carriers. Some countries relax such restrictions through reciprocal bilateral agreements or waivers for certain cases. Others may extend the cabotage restrictions to include trips involving foreign ports. Cabotage laws are very common and may differ from country to country, with each country having a different definition of "cabotage". Cabotage requirements are widely regarded as a national right in accordance with customary maritime law entitling nations, through their sovereignty, to regulate transport along their coast. Cabotage is, in a number of countries, considered very important for the maintenance of traffic between national ports and involves considerations of a political, economic, social and national security nature.

77. Anti-trust legislation may be relevant to maritime transport services even though it may vary considerably from country to country. Since there is a fine line between the guarantee or the provision of regular, frequent and efficient services and the maintenance of competition in the sector, antitrust laws may have an impact on shipping activities. These laws may affect directly the activities of liner conferences even though derogations from these laws are very common. A source of conflict in the application of antitrust legislation to maritime transport arises when the legislation includes extra-territorial factors. For some countries, jurisdiction over acts in the sector extends to agreements signed abroad, the parties of which may be all foreign, as long as these acts were performed in a national port or coastal area, or have a considerable effect on the national trade.

78. Regulations relating to foreign investment may be relevant in cases where access to certain activities hinges upon the possibility by foreign providers of flying the national flag. At times, only through establishment in the local market or association with a national carrier might foreign providers gain the right to fly the national flag. However, foreign providers established locally may not be permitted to fly the flag of the host country in cases where regulations reserve the flag for vessels that are wholly or almost wholly-owned by nationals. Also, operators may find that investment in facilities in the local market is necessary (or at least, preferred) in cases where public authorities refuse to provide such facilities. High-technology systems usually require special facilities and governments may favour traditional cargo systems adopted by national carriers. Containerization or coordinated inland-ocean barge movements are forms of shipping technology the deployment of which may be hampered by government measures which favour other technologies. Also, shoreside investments in port areas may be affected by government regulations prohibiting land acquisitions.

79. Finally, a type of regulation which may indirectly affect market access is the requirement that exports be sold on a "c and f" basis and that imports be purchased on a f.o.b. basis by national traders. In both cases, it is the national trader who is entitled to select the carrier, the preference usually falling upon national shipping firms given comparable freight and transport conditions. Also, in some countries there may be the requirement that arrangements for the transport to be made through national shipping boards or freight-booking systems, and booking agents may tend to favour national carriers as well.

(b) Regulations relating to public assistance and taxation

80. Direct and indirect public financial assistance as well as fiscal benefits are common, and may affect both the demand and the supply for maritime transport services. On the demand-side, financial incentives to ship with national carriers constitute a widespread practice and may include: rebates or tax credits for the totality or a part of the transport package, lower rates of interest on government-financed loans, waivers of import duties on goods or export subsidies. In some cases, a tax is levied on national shippers whenever they select foreign carriers. Both financial incentives and disincentives have the effect of either making the cost of using national carriers lower, or of bringing such a cost to a comparable level to those of foreign competitors - in both cases encouraging traders to favour national over foreign providers.

81. On the supply-side, subsidies to national carriers are perhaps the most prominent form of government assistance, along with favourable tax rates. Some subsidies may be intended to compensate for cost differentials between domestic and foreign ship-builders. Others may be intended to encourage national shipowners to make use of locally-supplied inputs (e.g. ships and crews). Those subsidies, which are intended to reduce the

operating costs of national vessels, may have the farthest reaching effects on the competitive structure existing in the sector. An important effect of direct and indirect operating subsidies is the aggravation of structural disequilibria in the world market by maintaining the supply of maritime transport services at an artificially high level.

82. Subsidization of state-owned fleets is also very common, especially in centrally-planned countries. The involvement of these fleets in the world market has been relatively recent in bilateral trades, as cross-traders, and as member of conferences, usually plying "outsider" routes and offering very low rates.

(c) Regulations relating to administrative measures and standards

83. Administrative considerations may include port entry procedures and controls as well as practices such as long delays in obtaining relevant documentation or licensing. An important administrative practice is the exemption granted to national carriers from various port charges such as dockage, wharfage, demurrage and pilotage. Also, countries may grant preferential foreign-exchange rates to national carriers in their currency conversions and/or require that freight be paid in local currency.

84. Regulations relating to standards may be relevant since they not only deal with safety and quality control but they also may have an impact on technological developments in maritime transport services, in effect creating the conditions for adapting and absorbing technical progress or, conversely, retarding its introduction into the mainstream activities of the sector. The pace of technical change may pose a problem of equipment compatibility which standards can attenuate by facilitating the incorporation of such a change into national structures. In some cases, however, standards remain antiquated, unnecessarily preventing the use of more up-to-date equipment by foreign competing firms. A considerable amount of effort has been put into the harmonization of international maritime transport standards by various international bodies which include: International Standards Organization (ISO), International Maritime Organization (IMO), International Labour Organization (ILO).

F. Considerations relating to the application of certain concepts and principles

(a) Transparency

85. Transparency in the case of maritime transport services may be relevant as concerns government practices favouring the use of national-flag carriers and private agreements and measures among operators. Areas where there could perhaps be greater transparency include cargo reservation regulations and measures dealing with aids and subsidies. A further consideration is the changing nature of provisions and the unpredictability of their implementation. Technical standards may also

lack transparency, complicating the task of foreign providers in meeting local requirements (e.g. safety standards, mode of technology such as containerization).

(b) Progressive liberalization

86. As set out in MTN.TNC/11, progressive liberalization should be pursued through rules, modalities and procedures in the multilateral framework agreement with due respect for national policy objectives and taking due account of the level of development of individual signatories (see "Increasing participation of developing countries"). For the maritime transport services sector, progressive liberalization could relate, for example, to the phasing out of cargo sharing arrangements or the gradual relaxation of regulations relating to local establishment.

(c) National treatment

87. The concept of national treatment for maritime transport services is closely linked to the concept of market access. For example, if market access in the sector is construed as the possibility for foreign providers to ship national cargoes, national treatment could relate to those activities, transactions and conditions that are relevant after such access has been granted (i.e. health and technical regulations, loading and unloading facilities, taxation provisions). The application of national treatment would thus follow the granting of market access and could mean treatment of a foreign carrier no less favourable than that granted to the national-flag carriers in the ports and all other areas that are relevant for the provision of services. On the other hand, if market access is construed as the possibility for foreign providers to opt for their preferred mode of delivery of shipping services in national markets, national treatment could in turn relate to investment/establishment regulations since shipping firms sometimes choose to have a commercial presence in a particular market as a means of gaining access to it. Thus, national treatment would apply to those regulations setting operational conditions of foreign firms once these had established in a foreign market.

(d) Most-favoured-nation treatment/non-discrimination

88. Discriminatory practices are common in the sector and relate to access to cargoes, port regulations, taxation and advantages for locally established providers. In these cases, there might be formal or informal government-induced preferences which place foreign providers at a disadvantage (e.g. governments may choose to purchase only maritime transport services provided by national-flag carriers). Cargo-sharing arrangements which are by nature discriminatory may be put in place in order to attenuate the discrimination occurring elsewhere. These arrangements attempt to ensure a balance of advantages among signatory carriers, but their effect may be to exclude, or limit, the participation of third parties in certain routes. Policies which may be discriminatory in both intention and effect include the maintenance of standards that favour

antiquated local technological modes to the detriment of more technologically-advanced carriers. The degree of discrimination in such cases may, however, have less to do with the technology employed than with whether the standards are equally applied to both national and foreign operators.

(e) Market access

89. Regulations relating to competition as well as practices that restrict the delivery of international maritime transport services to and within foreign markets may be relevant for market access considerations. In broad terms, they could relate to access to cargoes and the opportunity for providers to choose their preferred mode of delivery (including the employment of preferred technology).

90. In relation to access to cargoes, market access provisions could cover cargo reservation and cargo sharing policies and practices. In that respect it could relate to the directives of closed conferences which limit the access to cargoes by non-conference members. Investment regulations could also be affected: in some cases, only through local establishment do foreign carriers obtain the right to fly the national flag which in turn entitles them to have access to certain national cargoes. Investment regulations may also be relevant in cases where foreign providers need to invest in infrastructures and port machinery to secure access to a particular market. A related aspect to the choice of mode of delivery is the choice of the technological mode best serving the capabilities and needs of carriers and shippers. Market access in such a case could imply not only the possibility of local establishment whenever essential to the delivery of a service, but also the possibility for foreign operators to apply their desired technology when delivering a service.

(f) Increasing participation of developing countries

91. The importance of maritime transport services to economic development derives from the various downstream activities of the related labour-intensive shipbuilding and ship-repairing industries as well as from the positive effects on a country's export cost structure for goods that may result from the provision of low-priced and efficient services. Policy options in the sector have evolved in parallel with technological and organizational developments, such as containerization and multimodal transport, for which many developing countries lack the capital or know-how necessary to become internationally competitive. Generally, the concern reflected in MTN.TNC/11 for the strengthening of developing countries' domestic capacity is embodied in policies intended to ensure the provision of shipping services which fulfil the requirements of national trade. To facilitate market access for maritime services of developing countries, the following considerations could be relevant: barriers to cargo access in other markets, technological absorption and adaptation, training of shipboard and land-based personnel, and ship financing.

(g) Safeguards and exceptions

92. Safeguard measures as concerns maritime transport may be based on serious economic disturbances or balance of payments difficulties. Exceptions could be claimed because of existing multilateral or regional arrangements as a means to avoid conflicts of obligation between these arrangements and the results averaging from the GNS negotiations. National security and defence considerations as well as national cabotage laws could also lead to a claim for exceptions (especially those where national defence considerations directly apply such as in the case the transport of sensitive military equipment).

(h) Regulatory situation

93. National regulations in the maritime transport services sector range from the formal recognition of shipping and conference activities and behaviour to comprehensive legislative regulation on the different aspects of transactions in the sector. In some cases, governments support policies which are aimed at tolerating and perhaps stimulating the private establishment of shipping conferences as a means towards regularity, frequency and efficiency in the provision of shipping services. Restrictive regulations in the sector usually comprise measures and practices such as restrictions on access to cargoes, government procurement, subsidies and dumping, or they may relate to the operation of firms. However, domestic regulations may be of considerably less relevance to maritime transport than international rules.

94. In some cases, regulatory systems may comprise many laws and regulations, the combined effect of which may be to restrict trade. In other cases, standards are elaborate but lack consistent implementation, especially across countries (e.g. container sizes, safety specifications). Regulations relating to safety, health and social security of crew-members are in most cases justified but may have an effect on competition. The competitive condition in the sector may be influenced by inadequate anti-trust laws. An important aspect of regulatory practices is the lack of a single sovereignty and jurisdiction in maritime transport, a situation which raises the issue of extra-territoriality and may be at the root of disagreements involving different national regulatory systems.

III. MULTIMODAL TRANSPORT SERVICES

95. Multimodal transport is broadly defined as the movement of goods by at least two different modes of transport (e.g. sea, land, air) performed under a single contract. Multimodal transport has evolved considerably since the introduction of containerization in the late sixties. It has also been known in the past as "combined transport" or "intermodal transport".

96. As with many other types of transport, the principal aim of multimodal transport is to move merchandise to its destination on time, in good condition, and at as low a price as possible. One of its distinguishing aspects is that, to facilitate the movement of goods, it provides for the continuous supervision and responsibility of a single operator for all phases of the transport process. Considerations of a commercial, organizational or physical nature, ultimately relate to the fact that multimodal transport primarily aims at fulfilling individual cargo requirements regardless of the mode of transport employed. This fact may be considered its most important and overriding aspect, underpinning considerations relating to, for example, carriers and points of transfer.

97. With few exceptions, cargo types have not strictly corresponded to specific transport modes, especially since containerization enables cargo carrying requirements to be fulfilled independently of the transport mode employed. Through containerization, intermodality - i.e. the ability of all modes of transport to move cargoes linked with relatively simple transfer operations - has evolved considerably, contributing to the objective of optimum modal splits according to the specific requirements of each cargo.

98. Relevant operations are carried out by a multimodal transport operator (MTO) who acts as a principal and assumes responsibility for the contract. MTOs therefore conclude - as principals and not as agents or on behalf of the consignor or of the carriers' participation in the transport - contracts covering more than one mode of transport, irrespective of who actually performs the transport.

99. Multimodal transport affects the transport sector as a whole and has corresponding transport policy implications. The Convention on International Multimodal Transport of Goods was adopted in 1980 by the United Nations Conference on a Convention on International Multimodal Transport convened under the auspices of UNCTAD. The convention requires 30 countries to sign for its entry to come into force. Until now four countries have become contracting parties.

100. The stated objective of the Convention is to stimulate the development of smooth, economic and efficient multimodal transport services. International multimodal transport is described in the

Convention as the carriage of goods by at least two different modes of transport on the basis of a single contract to transport goods from one country to another country by a multimodal transport operator. The Convention establishes rules relating to the carriage of goods by international multimodal transport contracts, including provisions concerning the liability of multimodal transport operators, which is based on the principle of presumed fault or neglect which is the same as the United Nations Convention on the Carriage of Goods by Sea, 1978 (Hamburg Rules). The Convention establishes conditions on the nature of multimodal transport documentation and contains procedures and conditions relating to claims and actions (e.g. notice of loss, damage and delay, arbitration proceedings).

101. There is a specific recognition that the Convention should not affect the application of any international convention or national law relating to the regulation and control of transport operations, and that each state retains the right to regulate and control at the national level multimodal transport operators and operations.

IV. OTHER TRANSPORT SERVICES

102. While ocean and air transport are the most important modes in terms of moving merchandise and people internationally, for certain countries other transport modes may be of particular significance. Alternative modes include road, rail, inland waterway and pipeline transport. In most countries, however, these modes of transport are used predominantly for domestic transportation. In practice, surface transport and inland waterways tend to complement international transport via sea and air in that they are used for the domestic (inland) stages of an international transport chain.

103. Road transport has the characteristics of being very flexible, allowing door-to-door transport and being applicable to virtually any kind of product. However, the transport of heavy and bulk products over long distances tends in practice to be done either via rail or via inland waterways. Road transport tends to be the most important mode as regards carriage of inland freight. This is demonstrated in Table 11 (see Annex V), which reports data on the mode used for domestic transport of freight for selected European countries for the mid-1980s.¹ As to the relative importance of various modes in the international shipment of goods, Table 12 (see Annex V) reveals that maritime transport tends to be the most important mode in volume terms, followed by rail and road transport. This reflects the fact that rail transport tends to be used especially for heavy and bulk products.

104. The viability of road transport depends in large measure on the existence of densely populated areas with the appropriate road network. The road transport industry tends to be relatively small in scale and to operate in a competitive market setting. Rail transport, in contrast, is usually highly concentrated, with most railways being either state-owned and operated or state-sanctioned monopolies. Thus, entry into the industry is usually restricted. In most countries both sectors tend to be subject to extensive regulation. In road transport, regulations apply to allowable loads, length of driving time allowed, maximum size and weight of trucks and containers, cabotage, etc. Regulations in the rail transport sector may pertain to pricing, frequency of services, cross-border traffic may be inhibited due to a need to reload railcars and/or containers.

105. With the possible exception of certain European countries, inland waterways are predominantly used for domestic transport. As can be seen from Table 13 (see Annex V), international transport via inland waterways is of great importance for Germany, France and the Netherlands, reflecting both the existence of the Rhine and Rhone rivers, as well as an extensive network of canals in these countries.

¹However, the relative importance of inland waterways for the Netherlands is noteworthy, as in the importance of pipeline transport for Norway.

106. As is the case for air and maritime transport, international trade in road, rail and inland waterway transport tends to be predominantly cross-border in nature. Motivations for regulations vary depending on the mode of transport, although regulatory rationales are broadly similar to those invoked for maritime and air transport services. However, the influence of technical standards may be particularly important, and may at times inhibit cross-border trade. Examples include limits placed on the size of containers allowed on roads, the weight and length of trucks, the size of ships, etc. Often such regulations are not intended to affect trade, but reflect safety, ecological or technical considerations. In some cases, however, regulations may be designed and implemented in a discriminatory fashion (i.e. prohibition for non-resident firms to engage in road transport services domestically).

ANNEX IDisciplines and Arrangements of the
International Civil Aviation Organization (ICAO)

1. The basic legal instrument for the provision of services in international civil aviation is the Convention on International Civil Aviation, also known as the Chicago Convention. The Convention, which came into force on 4 April 1947, establishes the International Civil Aviation Organization (ICAO). The Convention is adhered to by 161 Member States.

A. Objectives

2. In the Preamble, governments express their general aim of developing international civil aviation in a safe and orderly manner and establishing international air transport services on the basis of equality of opportunity and sound and economical operations. As the "basic charter" of international air transport the Convention establishes principles, procedures, rights and obligations for the conduct of this activity and lays down the objectives, administrative arrangements and functions for the Organization that is charged with implementing its provisions.

3. The specific aims of the ICAO are to develop the principles and techniques of international air navigation and to foster the planning and development of international air transport so as to (a) insure the safe and orderly growth of international civil aviation throughout the world; (b) encourage the arts of aircraft design and operation for peaceful purposes; (c) encourage the development of airways, airports, and air navigation facilities for international civil aviation; (d) meet the needs of the peoples of the world for safe, regular, efficient and economical air transport; (e) prevent economic waste caused by unreasonable competition; (f) insure that the rights of contracting States are fully respected and that every contracting State has a fair opportunity to operate international airlines; (g) avoid discrimination between contracting States; (h) promote safety of flight in international air navigation; and (i) promote generally the development of all aspects of international civil aeronautics.

B. Features and coverage

4. ICAO is made up of (a) an Assembly which reviews in detail the complete work of the Organization in the technical, economic, legal and technical assistance fields, examines and takes appropriate action on the reports of the Council and decides on any matter referred to it by the Council; (b) a Council which discharges certain duties and obligations set out in the Convention, such as adapting and amending International Standards and Recommended Practices and incorporates these as Annexes to the Convention, and carries out the directives of the Assembly; and

(c) other subsidiary bodies including an Air Navigation Commission (on technical matters), an Air Transport Committee (economic/policy matters) and a Legal Committee.

5. In Article 1 of the Convention, the contracting parties recognize that every State has complete and exclusive sovereignty over the airspace above its territory. The Convention addresses fundamental issues concerning the exchange of rights between States. With regard to non-scheduled flights, all aircrafts of other contracting parties have the right to make flights into the territory of a signatory contracting party and to make stops for non-traffic purposes without obtaining prior permission, but the privilege of carrying traffic on such flights is subject to the right of each State to impose such regulations conditions or limitations as it may consider desirable. Regarding scheduled air services, air services may be operated into the territory of a contracting State only with the special permission or authorization of that State. Regarding airport and similar charges, the Convention provides that any charges for the use of airports and air navigation facilities by the aircraft of other contracting States shall not be higher than those that would be paid by its national aircraft engaged in similar operations.

6. The Convention deals with dispute settlement. If any disagreement between contracting States relating to the interpretation or application of the Convention and its Annexes cannot be settled by negotiation, it shall be decided by the Council. Any contracting State may appeal from the decision of the Council to an ad-hoc arbitral tribunal or to the Permanent Court of International Justice. Decisions are by majority vote. Decisions of the Permanent Court or an arbitral tribunal are final and binding. Penalties are provided for non-conformity of airlines and States, e.g. suspension of voting rights in the Assembly or the Council or of the rights of operating in the airspace of an airline of another contracting party.

7. Eighteen annexes to the Convention provide for detailed regulation of a variety of matters involving air navigation as well as environmental protection, security, the safe transport of dangerous goods, and the facilitation of air traffic through customs, immigration and similar entry processes. By conforming their national regulations to the multilaterally agreed standards found in these Annexes, thus accepting uniform practices, States in effect yield some of their sovereign right to create regulatory requirements.

8. In addition to the Convention, the International Air Services Transit Agreement deals with non-traffic rights for scheduled services which are exchanged multilaterally. Each of the 99 States having signed and ratified this Agreement grants all other signatory States in respect of schedule international air services (1) the privilege to fly across its territory without landing and (2) the privilege to land for non-traffic purposes.

9. When the Chicago Convention was drawn up in 1944, there were unsuccessful attempts to exchange multilaterally the rights to transport passengers, cargo and mail internationally. As a consequence of the sovereignty principle and the requirement for permission or authorization to operate into or out of another contracting state and because of the failure to establish a multilateral régime, the vast majority of regulatory matters affecting the economics of international air transport are covered today by over 2,000 bilateral air services agreements between States.

ANNEX II

Disciplines and Arrangements of the International Air Transport Association (IATA)

A. IATA objectives and structure

1. The Rules and Regulations Handbook, which includes the "Act of Incorporation", the "Articles of Association", and the "Provisions for the Conduct of Traffic Conferences" describe the aims and structure of IATA. IATA is an association of airlines, incorporated as a non-profit body by a Special Act of the Canadian Parliament in 1945. The aims of IATA as contained in the Act of Incorporation are to:

"Promote safe, regular and economical air transport for the benefit of the peoples of the world, to foster air commerce and to study the problems connected therewith;

Provide means for collaboration among the air transport enterprises engaged directly or indirectly in international air transport service;

Cooperation with the International Civil Aviation Organization and other international organizations."

2. The above aims are pursued through a wide range of programmes, services and facilities, a number of which are highlighted hereunder. Many of the IATA programmes are undertaken on an industry-wide basis and are made available to both Members and non-Member airlines. The work of IATA is carried out through a structure of Committees and Traffic Conferences comprised of airline representatives assisted by the Secretariat.

3. The structure and procedures of the various IATA activities have been revised on a number of occasions to reflect changing market, regulatory and regional requirements. The most significant adaptations have involved the Traffic Conference procedures for the coordination of fares and rates. Here the objective has been to provide participating carriers with greater flexibility to introduce innovative tariffs and to respond quickly to changing market conditions. Moreover, greater emphasis has been given to supplying information to governments and facilitating participation by representatives of government bodies at Traffic Conference meetings.

4. Membership in IATA is open to any airline registered in a state eligible for membership in ICAO and operating scheduled services. At 1 June 1989, IATA had 186 member airlines, of which 153 operate international scheduled services.

B. IATA features and coverage**Activities which facilitate the marketing and sale of international air transport services**

5. A basic objective of IATA is the creation and maintenance of a global air transportation network where all airlines are able to participate to the fullest extent. Given the underlying framework of bilateral air service agreements where governments control market access and capacity, this objective is pursued by IATA through a series of multilateral airline arrangements and mechanisms designed to facilitate and encourage the inter-connection of airline services.

6. Among these arrangements are Multilateral Interline Traffic Agreements. These passenger and cargo agreements form the framework for the exchange of traffic among the 250 participating airlines. Membership in these agreements eliminates the need to negotiate bilateral inter-carrier arrangements by providing standard documents such as passenger tickets and cargo waybills and procedures for interline sales, reservations, transfers and billings. These agreements ensure that carriers can accept each others' documentation and that passengers or shippers can adapt or change their routing or schedules with the minimum of difficulty.

7. The Passenger and Cargo Agency Programme is the industry's shared distribution system. It offers airlines a sales network of qualified passenger and cargo agents in 165 countries. The Programme facilitates airline access to foreign markets and ensures that agency outlets used by IATA Members are competent business organizations able to provide accurate and reliable service to the public. Recently this Programme has undergone considerable evolution, enabling it to adapt to changing regulatory and market conditions at the national and regional levels.

8. As regards tariff coordination - provided for in Section F of IATA's Rules and Regulations - it is noted that most bilateral air service agreements call for the development of tariffs by the carriers prior to submission to governments for approval. Many agreements further specify the IATA mechanism as the means for this tariff negotiation. IATA thus provides a forum where carriers can multilaterally coordinate a coherent tariff structure between adjacent and competitively-related points and countries, not only on the routes directly operated by carriers, but also between any two pairs of points in the world which might be served by air and which are not covered by bilateral agreements. An important product of this coordination is a centralized source of tariff information for use by airlines, agents, passengers/shippers. The tariff structures resulting from this coordination process are today not subject to enforcement. The negotiating procedures also allow for carriers independently to adjust their tariffs to market requirements.

9. IATA has developed a worldwide clearing mechanism enabling member carriers to settle their interline accounts (including leases or service contracts) vis-à-vis other airlines in a single monthly settlement and in one currency. In addition, 25 Agency Settlement Plans operating in 36 countries function as a clearing mechanism for the reporting and remitting of passenger and cargo sales by agents to airlines.

10. Lastly, given the complexity and volume of interline transactions, revenue accounting standards have been established by IATA to process the large number of passenger and cargo traffic documents exchanged between carriers. A separate industry programme establishes procedures for the equitable division of revenue between carriers.

Activities which encourage fair and equitable trading conditions

11. IATA activities concerning airport and navigation charges are designed to ensure that airport and en-route charges are moderate, cost-justified and equitably applied in accordance with policies developed by governments in ICAO. A key objective is to consult with airport and other authorities, particularly on construction or expansion projects to ensure that international airline users only pay for services which they actually require.

12. As regards aviation fuel, the prime objectives are to identify problem areas and institute action to reduce or contain the costs of aviation fuel. Of particular concern is the effect on fuel prices of government fuel supply monopolies and the need to counter the imposition of taxation on aviation fuel and "no-value" fuel throughput charges. As regards currency remittances, member airlines are working to contain the problems of delays or stoppages through negotiations with government authorities aimed at establishing priority remittance schedules. Furthermore, through IATA's taxation sub-committee, member airlines work to limit the incidence of multiple taxation of international air transport by way of representations to local authorities.

Activities to improve the efficiency of international air transport operations

13. An extensive IATA programme is directed towards improving the safety of airline flight operations, increasing the efficiency of engineering and other technical procedures as well as coordinating the facilities provided by governments with airline requirements. In addition, a series of IATA activities is devoted to improving the cost-effectiveness of airport facilities, developing ground handling standards for procedures and equipment, improving customs and immigration procedures and advising on airport security measures. Lastly, given the extensive operational and commercial inter-relationships within the industry, a major IATA priority is to ensure that the benefits of automation are maximised through a coordinated approach to automation projects.

ANNEX III**CONVENTION OF THE INTERNATIONAL MARITIME ORGANIZATION (IMO)
ON FACILITATION OF INTERNATIONAL MARITIME TRAFFIC****A. Introduction**

1. The Convention on Facilitation of International Maritime Traffic, as amended, represented the culmination of an effort dating back to 1959 when a report published in the United States - "Merchant Shipping on a Sea of Red Tape" - brought attention to the growing burden of administrative procedures and documentary requirements on shipping. The publication of this report coincided with increasing concern on the upward trend in terminal handling costs of maritime transport and served to galvanize support among member-states of the Intergovernmental Maritime Consultative Organization (IMCO)¹ toward the drafting of a convention to facilitate international maritime traffic. The Convention would be formally adopted by a Diplomatic Conference in 1965, having been based on similar agreements reached in the International Civil Aviation Organization (ICAO).

B. Objectives

2. The purpose of the Convention is to facilitate maritime transport by simplifying and minimizing the formalities, documentary requirements and procedures associated with the arrival, stay and departure of ships engaged on international voyages. This includes all documents required by customs, immigration, health and other public authorities pertaining to the ship, its crew and passengers, baggage, cargo and mail.

C. Features and Coverage

3. The Convention is a "co-operative" treaty among 54 Contracting Parties to bring about uniformity and simplicity and thereby facilitate international maritime traffic. The Convention which applies to all ships, except ships of war and pleasure yachts, encourages the adoption of the standardized documentation system developed by IMO and recommended by its Assembly for world-wide use. Governments are invited to adjust their national legislation when practicable, and to this effect, to draft international standards to facilitate their incorporation into national legislation.

4. Contracting governments to the Convention have agreed to adopt appropriate measures to facilitate international maritime traffic, to prevent unnecessary delays to ships, their crews, passengers and cargoes,

¹The International Maritime Organization (IMO) was established by the Convention of the IMCO signed in 1948 and entered into force in 1958.

to secure the highest practicable degree of uniformity in formalities, documentary requirements and procedures, and to keep to a minimum any alterations needed to meet special national requirements. Such measures should be practical and no less favourable than those applied to other means of international transport.

5. IMO has been assigned the tasks of simplifying (elimination of superfluous data and unnecessary documents), unifying (the combining of several similar documents wherever possible), and standardizing throughout the industry the relevant documentation.

6. In its Annex the Convention contains standards and recommended practices on formalities, documentary requirements and procedures which should be applied on arrival, stay and departure to the ship itself, and to its crew, passengers, baggage and cargo. The Convention defines standards as internationally agreed measures which are necessary and practicable in order to facilitate international maritime traffic and recommended practices as measures, the application of which is "desirable".

7. The Convention provides that any contracting government which finds it impracticable to comply with an international standard or deems it necessary to adopt differing regulations must inform the Secretary-General of IMO of the differences between its own practices and the standards in question. The same procedure applies to new or amended standards. In the case of recommended practices, contracting governments are urged to adjust their laws accordingly but are only required to notify the Secretary-General when they have brought their own formalities, documentary requirements and procedures into full accord with the recommended practices. The Convention does not provide for any other enforcement provisions.

8. Pursuant to a resolution adopted by the 1965 Conference, IMO has developed Model Forms for six documents. The model general declaration, cargo declaration, crew list and passenger list incorporate the information detailed in recommended practices as constituting the maximum information necessary. The model ship's stores declaration and crew's effects declaration incorporate the agreed essential minimum information requirements. Twenty-two Governments have informed IMO of their national use of the six Model Forms.

ANNEX IV

UNITED NATIONS CODE OF CONDUCT FOR LINER CONFERENCES

A. Introduction

1. The first formal proposal for a Code of Conduct on Liner Conferences was elaborated at UNCTAD III in Santiago in Chile in 1972. Later that year, the General Assembly of the United Nations requested the Secretary General of the United Nations to convene, under the auspices of UNCTAD, a conference of plenipotentiaries to consider and adopt a convention or any legally binding instrument on a code of conduct for Liner Conferences. The Code was adopted in 1974 by vote and opened for signature.

2. The Convention was to enter into force six months after the date on which not less than 24 states with a combined tonnage of at least 25 per cent of the world general cargo fleet had become contracting parties. These criteria were met in April 1983 after 58 countries had become contracting parties to the convention. As of June 1989, 74 countries had become contracting parties to the Convention by definitive signature, approval, acceptance, ratification or accession.

B. Objectives

3. The underlying purpose of the Code is to improve the Liner Conference system taking into account the special needs and problems of developing countries. The following specific objectives are sought to be realized: (a) to facilitate the orderly expansion of world sea-borne trade; (b) to stimulate the development of regular and efficient liner services adequate to the requirement of the trade concerned; (c) to ensure a balance of interests between suppliers and users of liner services.

C. Features and Coverage

4. The Code establishes rules for the participation by member lines in the trade carried by the conference. Unless otherwise agreed, when determining a share of trade within a pool operated under a conference, the group of national shipping lines of each of two countries shall have equal rights to participate in the freight and volume of traffic generated by their mutual foreign trade and carried by the conference. Third-country shipping lines, or cross-traders, if any, shall have the right to acquire a significant part, such as 20 per cent, in the freight and volume of traffic generated by that trade and carried by the conference. The same principles would guide other types of trade-sharing arrangements in the absence of a pool.

5. The Code also sets forth rules for other internal conference activities such as self-policing. The Code regulates the relationship between shippers and liner conferences by establishing principles for the use of loyalty arrangements, as well as through the provision that conferences are required to hold consultations with shippers or representative organizations of shippers on matters of concern to shippers, such as changes in freight rates, loyalty arrangements, imposition of surcharges, etc. It also sets forth rules regulating freight rate increases, promotional freight rates, surcharges and currency adjustment factors.

6. A further operational consideration is that the Code establishes the machinery for a system of mandatory dispute settlement based on conciliation. To this end, it contains detailed rules governing its functioning, including in an annex to the Convention a set of model rules of procedure for international mandatory conciliation.

7. There exist considerable differences of opinion among countries, be they Contracting Parties or not, on what may be considered as the scope of application of the Convention with regard to the carriage of cargo. The Convention itself does not contain any provisions which would clearly determine its scope and, with regard to its application, general consensus appears to exist that it would be applicable only in trades between Contracting Parties.

8. A number of ad hoc agreements exclude some of the provisions of the Code from application. The Brussels' Package, for example, excludes from application the Code's provisions mandating cargo sharing, limiting freight rate increases and governing conference decision-making procedures in the trade between EC Member States and, on a reciprocal basis, between EC Member States and other OECD Member States which have accepted the Code.

ANNEX V

BACKGROUND STATISTICAL INFORMATION

TABLE 1

Estimated international airline traffic, 1984-88

(Millions of passenger-kilometres performed)

Category of traffic	1984	1985	1986	1987	1988 ¹
Non-scheduled traffic ²	115800	121700	133500	161700	171400
of which:					
Scheduled carriers	40600	49000	69600	80000	83700
Percentage	35.0	40.0	52.0	49.0	49.0
Non-scheduled carriers	75200	72700	63900	81700	87700
Percentage	65.0	60.0	48.0	51.0	51.0
Scheduled traffic	555300	589300	602400	686100	755900
Total traffic	67100	711000	735900	847800	927300
Memorandum item					
Non-scheduled traffic as a percentage of total traffic	17.3	17.1	18.1	19.1	18.5

¹ Preliminary estimates.

² Includes USSR from 1985.

Source: ICAO. Annual Report of the Council - 1988.

TABLE 2

Tonne-kilometre ranking of the world's top 20 scheduled airlines in 1988¹

(Passengers, freight and mail, in millions)

Country or group of countries	Total operations ²		International operations	
	Rank	Amount	Rank	Amount
United States	1	77650	1	21345
USSR	2	22419	15	1687
Japan	3	12080	3	8485
United Kingdom	4	11215	2	10810
France	5	8080	5	6448
Germany, Fed. Rep. of	6	6900	4	6595
Canada	7	5255	9	2880
Australia	8	4870	8	3382
Netherlands	9	4195	6	4190
Singapore	10	4100	7	4100
Republic of Korea	11	3100	10	2870
Brazil	12	3070	16	1585
Italy	13	2781	12	2273
China, P. R. of	14	2650	27	885
Spain	15	2624	14	1871
Switzerland	16	2270	11	2239
India	17	2250	18	1385
Thailand	18	2090	13	2002
Scandinavia ³	19	2030	17	1415
Indonesia	20	1885	19	1370

¹ Preliminary estimates.

² International and domestic traffic.

³ Three states, Denmark, Norway and Sweden, are partners in the consortium airline Scandinavian Airline System (SAS).

TABLE 3Passenger-kilometre ranking of the world's top 20 scheduled airlines in 1988¹

(millions)

Country or group of countries	Total operations ²		International operations	
	Rank	Amount	Rank	Amount
United States	1	674300	1	152900
USSR	2	213169	12	14481
Japan	3	84900	3	45200
United Kingdom	4	83970	2	79200
France	5	47600	4	32000
Canada	6	44500	9	22500
Australia	7	40300	7	26208
Germany, Fed. Rep. of	8	34000	5	31180
Singapore	9	28000	6	28000
China, P. R. of	10	24430	30	5670
Netherlands	11	24130	8	24074
Brazil	12	23500	19	9670
Spain	13	22272	11	14842
Italy	14	19168	14	13874
India	15	18100	20	9270
Scandinavia ³	16	17510	16	10880
Thailand	17	16300	10	15530
Indonesia	18	15450	17	10000
Republic of Korea	19	15200	15	13000
Saudi Arabia	20	15000	18	9900

¹ Preliminary estimates.² International and domestic traffic.³ Three states, Denmark, Norway and Sweden, are partners in the consortium airline Scandinavian Airline System (SAS).Source: ICAO. Annual Report of the Council - 1988.

TABLE 4Freight tonne-kilometre ranking of the world's top 20 scheduled airlines in 1988¹

(millions)

Country or group of countries	Total operations ²		International operations	
	Rank	Amount	Rank	Amount
United States	1	13890	1	6820
Japan	2	4710	2	4150
France	3	3680	3	3485
Germany, Fed. Rep. of	4	3473	4	3447
United Kingdom	5	3225	5	3215
USSR	6	2721	25	345
Republic of Korea	7	1955	6	1915
Netherlands	8	1880	7	1880
Singapore	9	1380	8	1380
Canada	10	1063	12	790
Australia	11	1035	10	885
Italy	12	1029	9	1000
Brazil	13	965	15	635
China, P. R. of	14	870	19	460
Switzerland	15	814	11	806
Israel	16	735	13	735
Belgium	17	651	14	651
India	18	648	17	522
Spain	19	598	18	513
Thailand	20	588	16	582

¹ Preliminary estimates.² International and domestic traffic.Source: ICAO. Annual Report of the Council - 1988.

TABLE 5**Regional distribution of scheduled traffic, 1978 and 1988¹**

(Percentage of total tonne-kilometres performed)

Region	All services		International		Domestic	
	1978	1988	1978	1988	1978	1988
North America ²	41.0	39.3	20.5	21.5	59.2	59.5
Europe	35.0	31.0	42.4	35.5	28.4	25.8
Asia and Pacific	13.5	19.9	20.6	28.9	7.2	9.6
Latin America and Carribean	4.9	4.6	6.6	5.7	3.5	3.4
Middle East	3.1	3.0	5.6	5.0	0.8	0.9
Africa	2.5	2.2	4.3	3.4	0.9	0.8
ICAO World	100	100	100	100	100	100

¹Figures for 1988 are preliminary.²Canada and the United States only.Source: ICAO. Annual Report of the Council - 1988.

TABLE 6
World Exports of Shipment¹, 1970-1987
 (US\$ million)

	1970	1975	1980	1985	1987
World	13,673.4	29,128.9	58,504.7	53,748.9	63,376.4
Developed market-economy countries	12,682.6	26,191.1	50,522.4	43,365.4	53,045.3
<u>Leading exporters²</u>					
Japan	1,000.0	3,266.1	7,418.7	7,635.4	7,836.0
France	1,217.0	2,914.0	6,541.5	5,484.9	6,747.1
Italy	749.0	1,393.8	3,338.4	2,971.9	5,248.6
Germany, Fed.Rep.	1,360.0	2,974.7	5,271.2	4,071.5	5,094.7
United States	1,110.0	2,100.5	4,256.0	4,467.5	4,668.0
Developing countries	983.8	2,741.1	6,544.1	8,110.2	8,201.3
<u>Leading exporters²</u>					
Korea, Rep. of	40.0	132.3	956.6	1,324.0	1,794.8
Singapore	11.0	100.8	550.5	682.3	879.3
Brazil	95.0	293.8	654.7	884.4	760.3
Turkey	5.0	74.1	29.9	607.2	615.5
Malaysia	2.0	29.1	200.4	352.3	614.2
Least developed countries	32.1	82.4	190.3	120.4	122.7
Socialist countries of Eastern Europe and Asia	7.0	196.7	1,438.2	2,273.2	2,129.7
<u>Of which:</u>					
China	0.0N	0.0N	0.0N	867.1	1,156.0
Poland	0.0N	0.0N	972.2	883.3	909.0

Source: IMF Balance of Payments Statistics

Note: Major shipowning countries such as Greece, the USSR, and Hong Kong do not report shipment statistics. Thus, the totals reported are based downward, and rankings may not be completely accurate.

¹ Shipment covers the freight, insurance and other distributive services in connection with merchandise trade.

² Expressed in order of importance for 1987.

TABLE 7

World Imports of Shipment¹, 1970-1987
(US\$ million)

	1970	1975	1980	1985	1987
World	16,456.3	42,835.3	86,004.8	77,521.6	90,172.0
Developed market-economy countries	12,036.1	26,400.0	49,527.9	49,040.3	65,037.9
<u>Leading importers²</u>					
United States	1,590.0	3,375.3	6,455.6	9,858.9	11,185.1
Japan	1,500.0	2,974.7	4,217.0	4,041.1	7,655.0
France	1,568.0	3,959.3	8,246.5	6,753.0	8,458.0
Germany, Fed. Rep.	1,670.0	3,096.1	5,987.0	4,883.8	6,814.5
Italy	1,200.0	2,253.5	5,061.6	4,448.2	6,611.5
Developing countries²	4,351.2	15,943.6	34,824.0	26,064.8	23,034.1
<u>Leading importers</u>					
Saudi Arabia	81.0	900.9	4,602.2	3,258.2	2,312.0
Singapore	152.0	455.3	1,237.8	1,507.8	1,979.7
Thailand	137.0	357.0	1,055.5	1,095.6	1,479.3
Indonesia	142.0	724.8	1,478.5	1,395.1	1,295.7
Malaysia	101.0	287.8	1,019.1	1,098.6	1,118.5
Least developed countries	263.4	881.4	2,039.1	1,799.8	1,321.1
Socialist countries of Eastern Europe and Asia	69.0	491.7	1,652.9	2,416.5	2,100.0
<u>Of which:</u>					
China	0.0N	0.0N	0.0N	1,292.5	1,328.0
Hungary	69.0	185.8	354.0	331.0	453.9
Poland	0.0n	0.0N	407.4	278.2	318.1

Source: IMF Balance of Payments Statistics

¹ Shipment covers the freight, insurance and other distributive services in connection with merchandise trade.

² Expressed in order of importance for 1987.

TABLE 8

Distribution of world tonnage (grt and dwt) by groups¹
of countries of registration, 1970, 1986 and 1987
(Mid-year figures)

Flags of registration by Groups of countries	Tonnage and percentage shares ²						Increase in tonnage (mill. of dwt)	
	In grt (millions)			In dwt (millions)			1970- 1987 (average)	1986- 1987
	1970	1986	1987	1970	1986	1987		
World total	217.9 (100.0)	399.0 (100.0)	397.7 (100.0)	326.1 (100.0)	639.1 (100.0)	632.3 (100.0)	19.6	-6.8
Developed market- economy countries	141.8 (65.1)	156.0 (39.1)	140.5 (35.3)	209.7 (65.0)	243.8 (38.1)	216.2 (34.2)	2.1	-27.6
Open-registry countries ³	40.9 (18.8)	111.8 (28.0)	121.3 (30.5)	70.3 (21.6)	201.1 (31.5)	214.5 (33.9)	8.2	13.4
Total 2 & 3	182.0 (83.9)	267.8 (67.1)	261.8 (65.8)	282.2 (86.6)	444.9 (69.6)	430.7 (68.1)	10.2	-14.2
Socialist countries of Eastern Europe and Asia	19.5 (8.9)	47.2 (11.8)	48.4 (12.2)	21.7 (6.6)	60.7 (9.5)	62.4 (9.9)	2.4	1.7
Of which:								
in Eastern Europe	18.6 (8.5)	34.9 (8.7)	35.3 (8.9)	22.7 (6.2)	42.1 (6.6)	42.8 (6.8)	1.2	0.7
in Asia	0.9 (0.4)	12.3 (3.1)	13.1 (3.3)	1.2 (0.4)	18.6 (2.9)	19.6 (3.1)	1.1	1.0
Developing countries ⁴	14.5 (6.7)	79.8 (20.0)	83.0 (20.9)	20.5 (6.3)	127.0 (19.9)	132.3 (20.9)	6.7	5.3
Of which:								
in Africa	0.8	5.4	5.3	1.1	7.5	7.3	0.4	-0.2
in America	6.4	16.9	16.3	8.7	25.9	24.7	1.1	-1.2
in Asia ⁴	7.3	52.2	55.8	10.7	85.1	91.3	4.7	6.2
in Europe ⁴	-	4.9	4.9	2.2	7.9	7.8	0.4	-0.1
in Oceania	-	0.3	0.7	-	0.5	1.2	-	0.7
Other, unallocated	1.2 (0.5)	4.3 (1.1)	4.5 (1.1)	1.7 (0.5)	6.6 (1.0)	6.9 (1.1)	0.3	0.3

Source: UNCTAD, Review of Maritime Transport 1987 (TD/B/C.4/319)

¹ Excluding the United States Reserve Fleet and the United States and Canadian Great Lakes fleets, which in 1987 amounted respectively to 2.6, 1.4 and 1.8 million grt.

² Percentage shares are shown in brackets.

³ This group comprises Bahamas, Bermuda, Cyprus, Liberia and Panama.

⁴ Including Yugoslavia, classified as from 1986 as a developing country in Europe.

TABLE 9

World seaborne trade in 1970, 1985, 1986 and 1987 (est.)¹
by types of cargo and shares of groups of countries
 (Millions of tons and percentages of world total)

Country group	Year	Goods loaded				Goods unloaded			
		Petroleum		Dry Cargo	Total all goods	Petroleum		Dry cargo	Total all goods
		Crude	Products			Crude	Products		
(Trade in millions of tons)									
World total	1970	1,110	330	1,165	2,605	1,101	302	1,127	2,530
	1987	1,130	400	1,975	3,505	1,125	395	2,065	3,585
(Percentage share of each category of goods in total)									
World total	1970	42.6	12.7	44.7	100.0	43.5	11.9	44.6	100.0
	1987	32.2	11.4	56.4	100.0	31.4	11.0	57.6	100.0
(Percentage share of trade by groups of countries)									
Developed market-economy countries	1970	2.0	27.1	60.0	31.1	80.4	79.6	79.1	79.9
	1987	16.4	27.5	65.3	45.5	72.1	82.3	62.3	67.9
Socialist countries of Eastern Europe and Asia	1970	3.4	8.0	8.1	6.1	1.7	1.1	5.8	3.5
	1987	9.4	17.7	6.2	8.6	3.5	0.8	10.0	7.0
of which:									
in Eastern Europe	1970	3.4	8.0	6.9	5.6	1.2	1.0	3.8	2.3
	1987	6.0	16.0	4.9	6.6	3.2	0.5	6.4	4.8
in Asia	1970	-	-	1.2	0.5	0.5	0.1	2.0	1.2
	1987	3.4	1.7	1.3	2.0	0.3	0.3	3.6	2.2
Developing countries	1970	94.6	64.9	31.9	62.8	17.9	19.4	15.1	16.6
	1987	74.2	54.8	28.5	45.9	24.4	16.9	27.7	25.1

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Table 9 (continued)

Country group	Year	Goods loaded				Goods unloaded			
		Petroleum		Dry Cargo	Total all goods	Petroleum		Dry cargo	Total all goods
		Crude	Products			Crude	Products		
(Percentage share of trade by groups of countries)									
<u>of which:</u>									
in Africa	1970	25.5	2.4	9.1	15.2	1.7	4.7	3.6	2.9
	1986	21.8	8.1	5.0	10.6	5.9	2.3	4.6	4.7
in America	1970	12.2	35.4	13.8	16.0	10.5	5.6	4.4	7.2
	1986	11.7	12.2	13.8	13.0	5.5	4.1	4.4	4.7
in Asia	1970	56.9	27.0	8.1	31.3	5.5	8.5	6.7	6.4
	1986	40.9	34.8	9.6	22.4	12.1	9.4	18.5	15.5
in Europe	1970	-	-	-	-	-	0.1	0.1	-
	1986	-	0.2	0.3	0.2	0.7	0.5	0.8	0.8
in Oceania	1970	-	0.1	0.8	0.4	-	0.5	0.3	0.2
	1986	-	0.1	0.4	0.2	-	0.5	0.2	0.1

Source: UNCTAD, Review of Maritime Transport 1987 (TD/B/C.4/319)

¹ Including international cargoes loaded at ports of the Great Lakes and St. Lawrence system for unloading at ports of the same system, but excluding such traffic in main bulk commodities. At the time of publication figures for 1987 were available only as shown in the table.

² The estimates presented here reflect the inclusion of Yugoslavia in 1986 in the group "Developing countries in Europe"; in previous years Yugoslavia was classified as a developed market-economy country.

TABLE 10

Comparison between total cargo turnover and fleet ownership
by groups of countries, 1970 and 1985-1987
(In terms of dwt)

Country Grouping	Year	Goods loaded and unloaded (millions of tons)		Total of goods loaded and unloaded (millions of tons)	Deadweight tonnage of merchant fleet (millions of tons)	Percentage of world total of goods loaded and unloaded	Percentage of world total of merchant fleet owned (dwt)
		Loaded	Unloaded				
Developed market-economy and open registry countries	1970	802.7	2,010.4	2,812.1	282.2	54.8	86.5
	1985	1,571.2	2,331.9	3,903.1	486.3	57.3	73.1
	1986	1,585.2	2,382.1	3,967.3	444.9	56.6	69.6
	1987	1,624.8	2,444.2	4,069.0	430.7	57.4	68.1
Socialist countries of Eastern Europe and Asia	1970	158.8	87.6	264.4	21.7	4.8	6.7
	1985	273.2	237.4	510.6	58.5	7.5	8.8
	1986	293.2	245.8	539.0	60.6	7.7	9.5
	1987	301.4	251.0	552.4	62.4	7.8	9.9
Developing countries	1970	1,643.3	431.6	2,074.9	20.5	40.4	6.3
	1985	1,538.0	855.7	2,393.7	113.4	35.2	17.1
	1986	1,599.6	902.6	2,502.2	127.0	35.7	19.9
	1987	1,578.8	890.0	2,469.0	132.4	34.8	20.9
World total	1970	2,604.8	2,529.6	5,134.4	326.1	100.0	100.0
	1985	3,382.3	3,425.0	6,807.3	664.8	100.0	100.0
	1986	3,478.0	3,530.5	7,008.5	639.1	100.0	100.0
	1987	3,505.0	3,585.2	7,090.2	632.3	100.0	100.0

Source: UNCTAD, Review of Maritime Transport 1987 (TD/B/C.4/319)

¹ The group of open registry countries comprises Bahamas, Bermuda, Cyprus, Liberia and Panama.

TABLE 11
Relative importance of inland freight transport
for selected European economies
(latest available year)

(based on total tonne-kilometres)

Country	Rail	Road	Inland waterway	Pipelines
Belgium	24	54	17	5
Denmark	16	75	-	9
Finland	28	71	1	-
France	32	47	6	16
Germany, Fed. Rep.	27	51	19	3
Hungary	57	31	5	7
Italy	11	84	-	5
Netherlands	4	41	49	6
Norway	22	53	-	25
Poland	68	21	1	10
Romania	85	7	3	6
Spain	9	88	-	3
Sweden	44	56	-	-
Switzerland	51	41	-	8
United Kingdom	13	79	-	8
AVERAGE (unweighted)	<u>33</u>	<u>53</u>	<u>6</u>	<u>7</u>

Source: United Nations, European Commission for Europe, Annual Bulletin of Transport Statistics for Europe, 1988

TABLE 12

**Mode of transport of international goods
entering selected European countries,
1986 (excluding transit)**

(shares based on total tonnage)

Country	Rail	Road	Inland waterway	Sea
Austria	36	27	12	-
Belgium-Luxembourg	6	21	19	37
Denmark	5	16	-	79
Finland	11	3	2	81
France	5	22	5	68
Germany, Fed. Rep.	10	16	26	24
Greece	2	15	-	83
Hungary	93	3	3	1
Ireland	16 ^a	-	-	84
Netherlands	1	14	12	72
Norway	5	13	-	81
Poland	80	-	-	19
Portugal	1	5	-	92
Spain	1	7	-	93
Sweden	6	11	-	82
Switzerland	22	41	21	16
United Kingdom	-	1	-	99
Yugoslavia	27	6	7	60
AVERAGE (unweighted, excluding Ireland)	<u>18^b</u>	<u>13^b</u>	<u>6</u>	<u>63</u>

Notes: (-) negligible
 (a) includes road
 (b) excluding Ireland

Source: United Nations, European Commission for Europe. Annual Bulletin of
Transport Statistics for Europe, 1988

TABLE 13

Percentage of total volume transported
with an international destination by mode
and selected European Communities Member States, 1984

(percentage and million tons)

Country	Road	Rail	Inland waterway	TOTAL ^a
Belgium	12	33	6	410
Germany, Fed. Rep.	3	12	42	2,731
Greece	-	15	-	175
France	3	16	36	1,446
Netherlands	10	16	58	580
United Kingdom	1	-	n.a.	1,455
AVERAGE	<u>6.5</u>	<u>15</u>	<u>28</u> ^b	

Notes: (-) negligible
 (n.a.) not available
 (a) Total pertains to the sum of road, rail and inland waterway
 (b) excludes the United Kingdom

Source: EUROSTAT, Regions, Statistical Yearbook, 1987