

ANNEX 4D

REFERRED TO IN ARTICLE 4.20

**INTERNATIONAL MARITIME TRANSPORT AND RELATED
SERVICES**

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INTERNATIONAL MARITIME TRANSPORT AND RELATED SERVICES

ARTICLE 1

Scope

This Annex applies to measures by Parties affecting trade in international maritime transport and related services.¹

ARTICLE 2

Definitions

For the purpose of this Annex:

- (a) “international maritime transport services” means the supply of international maritime transport of cargo and passengers;
- (b) “multi-modal transport” means the carriage of goods by at least two different modes of transport on the basis of a multi-modal transport contract;
- (c) “maritime auxiliary services” means the following services:
 - (i) “Maritime cargo handling services” means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
 - (A) the loading/discharging of cargo to/from a ship;
 - (B) the lashing/unlashing of cargo; and
 - (C) the reception/delivery and safekeeping of cargoes before shipment or after discharge.
 - (ii) “Customs clearance services” (alternatively “customs house brokers' services”) means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the

¹ “Trade in international maritime transport and related services” shall be understood in accordance with the definition contained in subparagraph (a)(i) of Article 4.3 (Definitions) of Chapter 4 (Trade in Services).

main activity of the service provider or a usual complement of its main activity;

- (iii) “Container station and depot services” means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
- (iv) “Maritime agency services” means activities consisting in representing, within a given geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:
 - (A) marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
 - (B) acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (v) “Freight forwarding services” means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;
- (d) “crew members” means the Master and any person employed onboard the vessel during a voyage in performance of functions related to the management, operation and maintenance of the vessel and any other person included in the crew list of that vessel;
- (e) “port” means a place where vessels may anchor or tie up for the purpose of shelter, repair, loading or discharge of cargo, embarking and disembarking of passengers, or for other such activities connected with water-borne commerce, and including all the land and water areas and the structure, equipment and facilities related to these functions.

ARTICLE 3

Non-Discriminatory Market Access

1. International maritime transport service suppliers of a Party shall have unrestricted access to international maritime markets and trades on a commercial and non-discriminatory basis.
2. The Parties shall abolish and abstain from introducing any unilateral measures and administrative, technical and other obstacles which could have discriminatory effects on the free supply of international maritime transport services.

3. A Party cannot adopt or maintain measures that deny services or service suppliers of another Party, the treatment accorded by that Party to its own services or service suppliers with regard to: access to ports, the use of infrastructure and services of ports², such as:

- (a) pilotage,
- (b) towing and tug assistance,
- (c) provisioning,
- (d) fuelling and watering,
- (e) garbage collection and ballast water disposal,
- (f) port captain services,
- (g) navigation aids,
- (h) shore-based operational services essential to ship operations, including communications, water and electrical supplies,
- (i) emergency repair,
- (j) anchorage, berth and berthing services,

and the use of maritime auxiliary services and supporting services³, as well as related fees and charges, customs facilities and the assignment of berths and facilities for loading and unloading.⁴

4. No Party can introduce cargo-sharing arrangements in future agreements with other countries concerning international maritime transport services.

5. With respect to activities covered by this Annex, a Party shall permit companies of another Party to have a commercial presence in its territory as inscribed in its Schedule of Specific Commitments.

6. A Party cannot adopt or maintain measures that prevent international maritime transport services suppliers of another Party from directly contracting with providers of other modes of transport for the provision of multi-modal transport services.

² As referred to in WTO Maritime Model Schedule – Additional Commitments.

³ For the purpose of this Annex, supporting services are: maintenance and repair of vessels (part of CPC 8868) and pushing and towing services (CPC 7214). The CPC numbers refer to the UN Provisional Central Product Classification (Statistical Papers Series M No 77, Statistical Office of the United Nations, New York, 1991).

⁴ For greater certainty, this provision does not oblige a Party to require private sector terminal operators and providers of maritime auxiliary or supporting services to accord access to and use of their services on non-discriminatory terms and conditions. The provisions of Article 3(3) do not apply to Switzerland and Liechtenstein since these countries are landlocked.

ARTICLE 4

Applicability of National Laws

1. The vessels and crew members of a Party shall observe the relevant laws, rules and regulations of another Party during their stay in the latter's territorial waters, inland waters and ports.
2. The competent authorities of a Party shall not interfere in the internal affairs of the vessels of another Party in its ports, except:
 - (a) at the request or with the consent of the diplomatic or consular authorities of the Party concerned;
 - (b) where peace and public order of the port or on shore have been affected or the public security disturbed through what has happened on the vessel or as a consequence thereof;
 - (c) where those involved in the matter are not members of the crew.
3. This clause does not apply to requests for a vessel to be arrested in pursuit of claims for which a lien may be placed. This clause does not restrict the rights of the Parties to enforce their regulations concerning immigration, customs, public health, protection of life, safety of vessels and security within ports, dangerous cargoes and pollution of the environment.

ARTICLE 5

Recognition of Vessel Documents

1. Documents for a vessel of a Party which have been issued or recognised in accordance with the relevant international conventions such as International Maritime Organization (IMO) shall be recognised by the other Parties.
2. Each Party shall recognise the International Tonnage Certificate (1969) duly issued in accordance with Articles 7 and 8 of the International Convention on Tonnage Measurement of Ships, 1969, to the vessel registered by another Party. In cases where the port charges and expenses shall be collected on the basis of tonnage, the mentioned tonnage certificate (1969) shall be the basis of the calculation.

ARTICLE 6

Identity Documents, Entry and Transit of Seafarers

1. For the facilitation of international maritime transport services, each Party shall recognise the valid identification documents of seafarers/crew duly issued by the competent authorities of another Party.

These documents are:

- (a) in the case of Viet Nam, the “Seaman Passport”, “Seaman Book” and/or “Passport”;
 - (b) in the case of Iceland, the “Passport” and the “Sea Service Book”;
 - (c) in the case of Norway, the “Passport” and the “Sea Service Book”; and
 - (d) in the case of Switzerland, the “Passport” and the “Seaman Book”.
2. For nationals of third countries working on board vessels of a Party, the identity documents are those issued by the competent third country authorities.
3. Subject to immigration laws of a Party, a crew member on a vessel of another Party holding valid identity documents as described in paragraph 1 and 2 shall:
- (a) be admitted to the territory of that Party for temporary shore leave provided that the list of crew members is delivered to the passport control or the immigration authorities;
 - (b) be permitted to disembark a vessel as a crew member where this takes place in a port of that Party and leave the territory of that Party; and
 - (c) be admitted to the territory of that Party for the purpose of joining a vessel as a crew member, provided she or he is in possession of a declaration from the shipping company or its agent stating that she or he is to join a specific vessel at a port of that Party.
4. A Party cannot take discriminatory measures against the crew members of another Party during their stay in its ports and territory.
5. If a crew member of a Party requires medical observation or treatment of an illness during the stay of the vessel in a port of another Party, the competent authorities of the latter shall give permission for that crew member to stay in its territory for medical attention until declared able for travel by the competent medical authority, and for a period not exceeding three months. That other Party shall give medical aid in accordance with its national legislation.
6. Nothing in this Article shall be construed so as to limit the right of the Parties to deny any person whom they consider unacceptable from entering or remaining in its territory.

ARTICLE 7

Training and Terms of Employment⁵

1. Each Party shall allow companies or industry organisations of another Party to establish representation offices on its territory, which will be permitted to establish direct employment relationships with seafarers or potential seafarers in the latter Party. Such

⁵ This Article does not apply to Switzerland or Liechtenstein. For these Parties no rights and no obligations arise from this Article.

companies or industry organisations shall be allowed to provide financial support for activities such as training. Seafarers who have been provided this type of support may be required to be contractually bound for a specific period of time to employment with the company that has provided the said support.

2. Each Party shall, when accepting crew members of another Party on its vessels, do so in accordance with international agreements in force between them.

3. The terms of employment of a national of a Party serving as a crew member on a vessel of another Party shall be stated in the contract of employment.

4. Each Party shall respect and accept the terms and conditions of employment of the crew members of a vessel of another Party, as established by employment contracts, collective bargaining agreements, social welfare standards and conditions of work and applicable for crew members on board the registered vessels of that other Party.

ARTICLE 8

Rules on Labour Disputes

1. Any dispute or claims, including claims for torts arising from or related to the contract of employment or relations between a service supplier of a Party and a crew member of another Party, including but not limited to wage claims, and claims for damages as a result of the illness, personal injury or death of a crew member, shall be referred for determination and resolution solely to the exclusive jurisdiction of the competent courts, tribunals or authorities, as the case may be, of the Party in which the vessel is registered or of the Party of which the complainant is a national provided that the procedure does not conflict with national law. The Parties will provide the appropriate mechanisms for such cases to be heard when raised.

2. This Article does not affect request for a vessel to be arrested in pursuit of claims for which a lien may be placed.

ARTICLE 9

Assistance in Cases of Offences Committed by Crew on Board the Vessel

1. If a crime is allegedly committed against or by a national or a crew member of a Party aboard a vessel of another Party, the Party having jurisdiction shall investigate and take prompt action as per its national laws and international conventions, ensuring timely delivery of justice.

2. A Party may request another Party to obtain evidence and initiate proceedings in the case. The requested Party shall fully cooperate and shall decide, in accordance with its own laws, which action to take. The requested Party shall promptly communicate its decision to the other Party, and shall also inform the requesting Party of any procedural steps or measures taken.

3. All requests and communications between the Parties specified in this Article shall take place through diplomatic notes.