

## **ANNEX XVI**

REFERRED TO IN ARTICLE 6.19

MARITIME TRANSPORT AND RELATED SERVICES



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Article 1

*Scope*

This Annex applies to measures by Parties affecting trade in maritime transport and related services.<sup>1</sup>

Article 2

*Definitions*

For the purposes of this Annex:

- (a) **international maritime transport services** means the supply of international maritime transport of cargo and passengers, including door to door or multi-modal transport operations;
- (b) **door to door** and **multi-modal transport** mean carriage of goods using more than one mode of transport, involving an international sea-leg, under a single transport document, and the supply or access to other modes of transport;<sup>2</sup>
- (c) **maritime auxiliary services** means the following services:
  - (i) **Maritime cargo handling services** are activities exercised by stevedore companies, including cargo handling activities of terminal operators, but not including any 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:
    - (aa) loading/discharging of cargo to/from a ship;
    - (bb) lashing/unlashing of cargo; and

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<sup>1</sup> This Annex applies without prejudice to the bilateral agreement on maritime transport between the Government of the Kingdom of Norway and the Government of the Republic of the Philippines which entered into force 6 March 2000.

<sup>2</sup> For the purpose of this definition, single transport document shall refer to a document that permits customers to conclude a single contract with a shipping company for a door to door transport operation.

- (cc) reception/delivery and safekeeping of cargoes before shipment or after discharge.
- (ii) **customs clearance services** (alternatively "customs house brokers' services") are activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
- (iii) **container station and depot services** are 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** are activities which consist of representing as an agent, within a given geographic area, the business interests of one or more shipping lines or shipping companies, for the following purposes:
  - (aa) 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;
  - (bb) acting on behalf of the companies organising the call of the ship or taking over cargoes when required.
- (v) **freight forwarding services** is any activity which consists 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) **feeder services** means the pre-transportation and onward transportation by sea, between ports located in a Party, of international cargo, including containerised cargo, *en route* to a destination, or from a port of shipment, outside the territory of that Party;
- (e) **crew members** means the master and any person employed on board 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;
- (f) **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*<sup>3</sup>

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 not introduce any unilateral measures and administrative, technical and other obstacles which could have discriminatory effects on the free supply of international maritime transport services.
3. Each Party shall grant to service suppliers of another Party non-discriminatory treatment<sup>4</sup> in its ports with regard to access to ports, the use of infrastructure and the following services of ports:
  - (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 services,<sup>5</sup> customs facilities and the assignment of berths and facilities for loading and unloading.<sup>6</sup>

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<sup>3</sup> This Article shall not apply to Switzerland.

<sup>4</sup> This provision does not require a Party to grant national treatment with regard to port fees and charges.

<sup>5</sup> For the purposes of this Annex, **supporting services** means: 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 Paper Series M No 77, Statistical Office of the United Nations, New York, 1991).

<sup>6</sup> For greater clarity, 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.

4. No Party may 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 in the form of subsidiaries, branches, or representative offices in accordance with its domestic laws, rules, and regulations. This commercial presence shall be subject to conditions of establishment and operation no less favourable than those accorded to subsidiaries, branches or representative offices of companies of the host Party.
6. A Party shall not 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.
7. International maritime transport service suppliers of a Party are permitted to reposition owned or leased empty containers or equivalent, not being carried as cargo against payment, between ports of another Party.
8. Each Party shall permit international maritime transport service suppliers of another Party to provide feeder services between ports located in that Party.

#### Article 4

##### ***Applicability of Domestic Laws, Rules, and Regulations***

1. The vessels and crew members of a Party shall observe the relevant domestic laws, rules and regulations of another Party, during their stay including 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 activities on the vessel or as a consequence thereof;
  - (c) where those involved in the matter are not members of the crew.
3. This Article does not restrict the rights of a Party to enforce its domestic laws, rules and regulations concerning port state control, immigration, customs, public health, protection of life, safety of vessels and security within ports, dangerous cargoes and pollution of the environment.
4. This Article does not apply to requests for a vessel to be arrested in pursuit of claims for which a lien may be placed.

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, shall be recognised by the other Parties.
2. The Parties recognise the International Tonnage Certificate (1969) duly issued in accordance with the *International Convention on Tonnage Measurement of Ships, 1969*. In cases where the port charges and expenses are 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 Crew Members***

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

These documents are:

- (a) for the Philippines, the “Passport” and “Seafarer’s Identification and Record Book”;
  - (b) for Iceland, the “Passport” and the “Sea Service Book”;
  - (c) for Norway, the “Passport” and the “Sea Service Book”; and
  - (d) for Switzerland, the “Passport” and the “Seaman Book”.
2. For nationals of a non-party working on board vessels of a Party, the identity documents are those issued by the competent authorities of the non-party.
  3. Subject to the immigration laws, rules and regulations of a Party, a crew member on a vessel of another Party, holding valid identity documents referred to in paragraph 1, 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 he is in possession of a declaration from the

shipping company or its agent stating that he is to join a specific vessel at a port of that Party.

4. A Party shall not 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 the crew member to stay in its territory for medical attention until declared able for travel by the competent medical authority, for a period not exceeding three months. That Party shall give medical aid in accordance with its domestic laws, rules and regulations.

6. Nothing in this Article shall be construed so as to limit the right of a Party to deny any person whom they consider unacceptable from entering or remaining in its territory.

#### Article 7

##### ***Recruitment and Training***<sup>7</sup>

Each Party shall allow companies or industry organisations of another Party to establish a representation through a recruitment and placement agency on its territory, subject to the latter Party's laws, rules, regulations and policies. Such companies or industry organisations shall be allowed to provide financial support for training. Seafarers who agreed to avail of this support may, as a condition, be required to be contractually bound for a specific and reasonable period of time to serve the supporting company or industry organisation and its authorised recruitment and placement agency in accordance with the domestic laws, rules and regulations of each Party.

#### Article 8

##### ***Terms of Employment***

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

2. 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.

3. Each Party shall accept and respect 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 Party.

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<sup>7</sup> This Article shall not apply to Switzerland and Liechtenstein.

Article 9

***Rules on Labour Disputes***

1. Disputes 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 where the vessel is registered or of the Party of which the complainant is a national provided that the procedure does not conflict with domestic laws, rules and regulations. The Parties will provide the appropriate mechanisms for such cases to be heard when raised.
2. This article does not affect a request for a vessel to be arrested in pursuit of claims for which a lien may be placed.

Article 10

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

1. If an offense might have taken place or a crew member is suspected of having committed an offense on board of a vessel and under the domestic laws, rules, and regulations of the Party where a vessel is registered, that Party may request another Party to obtain evidence and take proceedings in the case.
2. The competent authorities of the requested Party shall examine the request and decide, in accordance with its domestic laws, rules and regulations, which action to take.
3. If the requested Party considers that the information supplied by the requesting Party is not adequate, it may ask for additional information.
4. Proceedings may not be taken by the requested Party, unless the alleged offense would be an offense if committed in its territory and if, under these circumstances, the offender would also be liable to sanctions under its domestic laws, rules and regulations.
5. The requested Party shall promptly communicate its decision to the requesting Party and inform it of any procedural acts performed or measures taken.
6. All requests and communications between the Parties specified in this Article shall take place through diplomatic notes.

Article 11

***Treatment of Crew Members***

1. If a vessel of a Party suffers ship wreck, is grounded or suffers any other damage in the territorial water of another Party, the competent authorities of the latter shall render

the same help and assistance to the members of the crew and passengers of that vessel as it may give to its nationals.

2. When a maritime accident occurs within their jurisdiction, the Parties shall conduct any investigation in a fair and expeditious manner and take steps to ensure that the crew are permitted to re-embark or to be repatriated without undue delay once interviewed or if their presence is otherwise no longer required for the investigation.

3. The seafarer's entitlement to repatriation is regulated in accordance with *International Labour Organization's Maritime Labour Convention 2006*, as amended.

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