

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Negotiating Group on Maritime Transport Services**

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## COMMUNICATION FROM INDIA

### Conditional Offer on Maritime Transport Services

The following communication is being circulated at the request of India to Members of the Negotiating Group on Maritime Transport Services.

India has the honour to submit herewith its draft conditional offer on Maritime Transport Services.

India reserves the right to modify, reduce or withdraw this offer, in whole or in part, at any time, prior to the conclusion of the negotiations on Maritime Transport Services.

India also hereby submits the List of MFN Exemptions relating to Maritime Transport Services.

India further reserves the right to make technical changes to the offer and to correct any errors, omissions and inaccuracies.



## INDIA - CONDITIONAL OFFER ON MARITIME TRANSPORT SERVICES

The commitments in Maritime Transport are made in accordance with the General Agreement on Trade in Services. All commitments are subject to domestic laws, entry requirements, rules and regulations and the terms and conditions of the Directorate General of Shipping, Reserve Bank of India and any other competent authority in India.

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or sub-sector	Limitations on market access	Limitations on national treatment		Additional commitments	
<b>MARITIME TRANSPORT SERVICES.</b>  <u><b>International Transport</b></u> (Freight and passengers excluding cabotage and offshore transport as defined in Annex 'A')	(1)(a) Liner shipping :  - at least 40% of cargo carried by liner shipping companies must be reserved for Indian Flag ships  - preference will be given to Indian Flag vessels for government cargoes, exports from India on CIF/C&F and imports into India on FOB/FAS basis. Indian Flag vessels will have the first right of refusal for carrying such cargo and only thereafter can foreign flag ships be allowed to be unchartered/taken on international rental basis. Shipping arrangements for Government owned and controlled cargo will be made by Transchart Division of Ministry of Surface Transport.	(1)(a) In liner trades (Not restricted to liner conference trades) between India and such countries which are contracting partners to the UN Convention on a code of conduct for liner conferences, Indian shipping lines (not necessarily national shipping lines) have a preferential right over cargo.  - Select liner routes have been reserved for 3 national lines.		<u>Access to and use of Port facilities</u>  No measures shall be applied to the following services which deny reasonable and non-discriminatory access to international maritime transport suppliers 1. Pilotage 2. Towing, tug assistance and pushing. 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port captain services 6. Navigation aids 7. Shore-based operational services essential to ship operations, including	

**INDIA** (continued)

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
	<p>- foreign shipping companies are obliged to appoint Indian companies as general agents or have joint venture shipping companies with Indian companies to supply maritime agency services. Non-shipping companies can do so only by opening a regional office in India.</p> <p>(1)(b) Bulk and other international shipping</p> <p>- the transportation of crude oil, and of basic oil by products is to be carried out by Indian Flag vessels</p> <p>- preference will be given to Indian Flag vessels for government cargoes, exports on CIF/C&amp;F and imports on FOB/FAS basis. Indian flag vessels have the first right of refusal for carrying such cargo and only thereafter can foreign flag ships be allowed to be unchartered/taken on inter-national rental basis. Shipping arrangements for Govt. owned and controlled cargo will be made by Transchart Division of Ministry of Surface Transport.</p>	<p>(b) None, except that preference will be given to public sector undertakings for shipment of crude oil, petroleum products and by-products.</p>	<p>communications, water and electrical supplies. 8. Emergency repair facilities. 9. Anchorage, berth and berthing services.</p>

## INDIA (continued)

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or sub-sector	Limitations on market access	Limitations on national treatment		Additional commitments	
	<p>- foreign shipping companies are obliged to appoint Indian companies as general agents or have joint venture shipping companies with Indian companies to supply maritime agency services. Non-shipping companies can do so only by opening a regional office in India.</p>				
(1)(c)	Passenger: None	(1)(c)	None		
(2)	None	(2)	None		
(3)(a)	For operating a ship or a fleet under the Indian flag, it is necessary to establish a registered company, or a cooperative society under any Central Act or State Act having its principal place of business in India. This is in accordance with the provisions of the Indian Merchant Shipping Act (MSA), 1958. An Indian registered vessel can ply only if it has a licence issued under the MSA.	(3)(a)	None, except for registration of ship and issue of licence under the Merchant Shipping Act.		

**INDIA** (continued)

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or sub-sector		Limitations on market access		Limitations on national treatment	Additional commitments
MARITIME AUXILIARY SERVICES Maritime Cargo Handling Services	(3)(b)	Other forms of commercial presence for the supply of International Maritime Transport Services (as per definitions): Unbound.		(3)(b) None	
	(4)(a)	Ships crews: Unbound		(4)(a) Unbound	
	(4)(b)	Key shore personnel: Unbound		(4)(b) Unbound	
	(1)	Unbound		(1) Unbound	
	(2)	None		(2) None	
	(3)	Unbound		(3) Unbound	
	(4)	Unbound		(4) Unbound	

# INDIA (continued)

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or sub-sector		Limitations on market access		Limitations on national treatment	
Storage and Warehousing Services in Ports	(1) Unbound	(1) Unbound	(1) Unbound		
	(2) None	(2) None	(2) None		
	(3) Unbound	(3) Unbound	(3) Unbound		
	(4) Unbound	(4) Unbound	(4) Unbound		
Customs Clearance Services	(1) Unbound	(1) Unbound	(1) Unbound		
	(2) None	(2) None	(2) None		
	(3) Unbound	(3) Unbound	(3) Unbound		
	(4) Unbound	(4) Unbound	(4) Unbound		
Container Station and Depot Services	(1) Unbound	(1) Unbound	(1) Unbound		
	(2) None	(2) None	(2) None		
	(3) Unbound	(3) Unbound	(3) Unbound		
	(4) Unbound	(4) Unbound	(4) Unbound		

**INDIA** (continued)

Modes of supply:		1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
Sector or sub-sector		Limitations on market access		Limitations on national treatment	Additional commitments
Maritime Agency Services		(1) Unbound	(1) Unbound	(1) Unbound	
		(2) None	(2) None	(2) None	
		(3) Unbound	(3) Unbound	(3) Unbound	
		(4) Unbound	(4) Unbound	(4) Unbound	
Maritime Freight Forwarding Services		(1) Unbound	(1) Unbound	(1) Unbound	
		(2) None	(2) None	(2) None	
		(3) Unbound	(3) Unbound	(3) Unbound	
		(4) Unbound	(4) Unbound	(4) Unbound	
International rental/charter of vessels with crew or on bareboat basis (excluding cabotage and offshore transport)		(1) Unbound	(1) Unbound	(1) Unbound	
		(2) None, except obtaining permission from Director General (Shipping) for chartering a foreign flag vessel in the absence of availability of a suitable Indian vessel.	(2) None, except vessels rented by Indian nationals are considered as foreign vessels	(2) None, except vessels rented by Indian nationals are considered as foreign vessels	
		(3) Unbound	(3) Unbound	(3) Unbound	
		(4) Unbound	(4) Unbound	(4) Unbound	



**INDIA** (continued)

Modes of supply:				
	1) Cross-border supply	2) Consumption abroad	3) Commercial presence	4) Presence of natural persons
<b>Sector or sub-sector</b>	<b>Limitations on market access</b>	<b>Limitations on national treatment</b>	<b>Additional commitments</b>	
Maintenance and repairs of seagoing vessels	(1) Unbound	(1) Unbound		
	(2) None	(2) None		
	(3) Unbound	(3) Unbound		
	(4) Unbound	(4) Unbound		

INDIA - LIST OF ARTICLE II (MFN) EXEMPTIONS ON MARITIME TRANSPORT SERVICES

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

## INDIA (continued)

### ANNEX A TO THE SCHEDULE

#### DEFINITIONS:

1. **"International Transport (Freight and Passengers)"**, for the purpose of this schedule, is to mean transportation of international Maritime Freight and Passengers by sea going vessels from the port of loading in one country to the port of discharge in another country.
2. **Cabotage:** This Schedule does to include any commitments on "Cabotage" or "Maritime Cabotage Transport Services" which are described as transportation of passengers or goods between any port located in India and any other port also located in India and traffic originating and terminating in the same port located in the country and further includes transportation of passengers or goods between a port located in India and installation and structures situated on the continental shelf of India.
3. **Offshore Transport:** for the purposes of the schedule only, "Offshore Transport" refers to shipping services involving the transportation of passengers or goods between a port located in India and any location, installation or structure associated with or incidental to the exploration or exploitation of natural resources of the continental shelf of India, the seabed of the Indian coastal seas and the subsoil of the seabed, or situated on the continental shelf of India.
4. **"Other forms of Commercial Presence for the supply of International Transport Services"** means ability for International Maritime Transport Service suppliers to undertake local activities which are necessary for the supply to their customers of a partially or fully integrated transport service, within which maritime transport constitutes a substantial element.

These activities include, but are not limited to:

- a. marketing and sales of maritime transport and related services through direct contact with customers, from quotation to invoicing, these services being those operated or offered by the service supplier itself or by service suppliers with which the service seller has established standing business arrangements;
- b. acquisition on their own about or on behalf of their customers (and the resale to their customers) for any transport and related services, including anchorage, berth and berth services, and onward transport services by any mode, particularly road and rail, inland waterways, necessary for the supply of the integrated services;
- c. the preparation of transport documents, customs documents, or other documents related to the origin and character of goods transported;
- d. the provision of business information, including computerised information systems and electronic data interchange;
- e. the setting up of business arrangements with any locally established shipping agency and the appointment of personnel recruited locally (or, in the case of foreign personnel, subject to horizontal commitments on movement of personnel);
- f. organizing any aspect of the call of the vessel or taking control over cargoes;

**INDIA** (continued)

- g. the provision of Ships Managers' Services.

**NOTE:** {In order to enforce certain standards and conditions which need to be fulfilled by shipping service suppliers, particularly those providing ship personnel and crew and also those engaged in providing ships management services, and to ensure that the owner, operator, agent or manager has:

- the capability of implementing international standards as well as IMO stipulations and recommendations;
- the necessary financial structure so that he is responsible and accountable;
- the capability of implementing, the safety; and marine pollution controls;
- fulfilled requirements of quality management and his operations are transparent;

a system of registration/licensing of shipping service supplier is under consideration in India}

5. **"Ship Managers"** means persons entering India as the agents or representatives of a ship's owner or operator for the purposes of assessing requirements, negotiating and authorising expenditures necessary to the maintenance and operations of a vessel as well as the Handling of Cargo.

6. **"Maritime Cargo Handling Services"** means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dock workers, when this workforce is organised independently of the stevedoring or terminal operator companies. The activities covered, include the organisation and supervision of:

- the loading/discharging of cargo to/from a ship;
- the lashing/unlashing of cargo;
- the reception/delivery and safekeeping of cargoes before shipment or after discharge.

The organisation and supervision includes the arrangements for (1) engaging skilled workers (dockworkers), (2) using all necessary equipment for on board or shore use and appropriate storage space, whether by ownership, rental or otherwise, (3) the checking of parcels and markings, the weighing and measuring of cargo, and (4) the administrative duties and responsibilities related to the services.

7. **"Maritime Freight Forwarding Services"** means the activity of organizing and monitoring shipments on behalf of shippers through providing such services as the arrangement of actual transport and related services, consolidation, aggregation, packing of cargo, preparation of documentation and provision of business information.

8. **"Maritime Agency Services"** means activities in representing, within a given geographic area, the business interests of one or more shipping lines or shipping companies for the following purposes:

- marketing and sales of maritime transport and related activities from quotation to invoicing (cargo booking and canvassing)
- issuance of bills of lading on behalf of the companies;

## INDIA (continued)

- acquisition and resale of other necessary related services (settlement of disbursements and claims) preparation of documentation, and provision of business information;
  - acting on behalf of the companies in organizing the call of the ship or taking control of cargoes;
  - to make arrangements in order to get all necessary port services required by the foreign vessel during its stay in Indian ports;
  - to appoint a stevedoring company for cargo loading and unloading on behalf of its principal;
  - to collect freight on behalf of the principal.
9. **"Customs Clearance Services"** (alternatively Customs House Agents/Brokers) means activities consisting of carrying out on behalf of another party customs formalities concerning import export or through transport of cargoes irrespective of whether this is the main or secondary activity of the service provider.
10. **"Government Cargo"** means cargo originating from other countries (import cargoes including crude oil), petroleum by products, coal, natural gas, raw materials for fertilizers, food-grains, etc) purchased by Indian Government Agencies/Departments or based on loan/credit agreements with other countries, as well as exports by Indian Government Agencies/Departments including Government aid.
11. **"Container Station and Depot Services"** means activities consisting of storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairs and making them available for shipments.
12. **"Maintenance and Repairs of Vessels"** means services such as repairs and management of vessels, mending, fixing or overhauling of a vessel, management of crew and marine insurance, provided on behalf of a maritime passenger or cargo transport business, or vessel leasing business.
13. **"International rental of vessels with crew or on bare-boat charter basis"** means rental and/or leasing services of all types of sea-going vessels with crew or on bare-boat basis (whereafter the ship will be manned by Indian nationals only during the period of rental/lease) for the purposes of international trade (like tankers, dry bulk cargo vessels, cargo and freight vessels, etc).