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[SHIPPING]

**REVIEW OF THE WORK PROGRAMME OF THE STANDING COMMITTEE
WITH SPECIAL EMPHASIS ON THE PREPARATIONS FOR UNCTAD IX**

Progress report by the UNCTAD secretariat

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INTRODUCTION

(i) The Standing Committee on Developing Services Sectors: Fostering Competitive Services Sectors in Developing Countries/Shipping was established in accordance with paragraph 70 of the Cartagena Commitment. At its first session, held in Geneva from 2 to 6 November 1992, it adopted its work programme covering the period between UNCTAD VIII and UNCTAD IX.

(ii) This progress report is not dealing with substantive issues covered by the agenda items 3 and 4, for which reference should be made to the documents TD/B/CN.4/46 (on multimodal transport) and TD/B/CN.4/47 (on technical assistance activities and human resource development). Nevertheless, to comply with the structure of the work programme these issues are briefly referred to in chapters III and V. The Committee may wish to take into account that this report has a complementary function to the other sessional documents and an impression of an imbalance might be created which arises from an effort to avoid repetitions and overlapping of issues which are presented in full length elsewhere. However, as this report is aiming at an overall assessment by the Standing Committee with regard to the work accomplished under the work programme, cross references have been made particularly in the part related to summary and conclusions deriving from the work as a whole in which multimodal transport and technical cooperation and human resource development have also played a major role.

(iii) Paragraph 68 of the Cartagena Commitment requests the Trade and Development Board to "conduct, midway between Conferences, a review and evaluation of the work programme of the intergovernmental machinery so as to ensure full integration of all work undertaken by UNCTAD and to establish or adjust priorities for the period up to the following Conference". In order to meet these requirements the Trade and Development Board, at its fortieth session, decided to make provision for the holding of a resumed session of the Trade and Development Board (25-27 May 1994) for the Mid-term Review.

(iv) In preparation of the resumed session of the Trade and Development Board, a Mid-term Review Informal Working Group composed of representatives of States members of UNCTAD was established. The Mid-term Review Informal Working Group held nine meetings. A report of the proceedings of these meetings is contained in TD/40(2)/L.7 and Add.1.

(v) With regard to the working of the Standing Committees, the following conclusion was recommended: "The Standing Committees have not been able to carry out enough of their work programmes to allow for an in-depth review of their performance at this stage". In any case as the Cartagena Commitment calls for such a review to be carried out immediately before UNCTAD IX it is for this session of the Committee to undertake a review of the work accomplished.

(vi) On the basis of the work programme the secretariat was requested to produce a list of specific outputs and activities to be submitted to the Trade and Development Board through its President. The list of outputs for sessional documents, background documents, recurrent publications and technical material (TD/B/EX(2)/3 - TD/B/CN.4/16), which was subsequently endorsed by the Trade and Development Board, was amended in the light of new developments and requirements by the second session of the Standing Committee. The annex to this report provides an overview of the outputs and activities carried out by the secretariat within the period under consideration. In addition, and as recommended by the second session of the Standing Committee, the secretariat has produced and distributed a semi-annual review (TD/B/CN.4/Misc.10) listing outputs which have been

accomplished during the period from July 1994 to June 1995. This informal document of the secretariat is intended to provide delegates with further information pertaining to the work programme.

(vii) In chapter VI the secretariat attempts to draw conclusions from the in-depth analysis of the various issues with the aim to facilitate the discussions with regard to the assessment of the work of this Standing Committee and possible recommendations to the Trade and Development Board.

(viii) The secretariat would also like to draw attention to the increasing number of requests for assistance in the area of improved transport efficiency and logistics. The secretariat has so far responded to these requests within the framework of its technical cooperation programmes. Delegations may wish to link their deliberations with considerations resulting from the United Nations International Symposium on Trade Efficiency (cf. TD/SYMP.TE/6).

(ix) As this third session is the last session before UNCTAD IX, delegations are invited to comment on the performance of the working of the Standing Committee. Any recommendation or conclusion in this regard could possibly form the basis for an assessment of the working of the Standing Committee.

Chapter I

SHIPPING

1. The work of the secretariat in the field of shipping has been based on the work programme as adopted by the Standing Committee on Developing Services Sectors: Shipping on its first session (TD/B/CN.4/13) and the recommendations adopted by the Standing Committee on its second session (TD/B/CN.4/39, Annex I).

A. Impact of progressive liberalization on the development of shipping services

2. At its second session the Standing Committee extensively discussed measures of progressive liberalization and their impact on the development of competitive shipping services. It emerged from these discussions that a wide diversity existed with regard to the stage of formulation and implementation of policy reform measures, depending *inter alia* on levels of development and the degree of involvement by the countries concerned in the supply of shipping services. Given this diversity and the limited experience so far accumulated, the Standing Committee requested the secretariat to continue to undertake comparative analyses of national shipping sectors and policy reform measures and to continue monitoring and reporting on measures taken aimed at fostering fair and competitive shipping services through progressive liberalization and associated policies.

3. In response to these requests the secretariat has prepared two reports which are available to the Standing Committee as background documents. These are:

- Progressive liberalization and the development of shipping services in developing countries - country experience (UNCTAD/SDD/SHIP/5); and
- Maritime policy reforms in the New Independent States of the former Soviet Union (NIS) (UNCTAD/SDD/SHIP/4).

4. Examples of experience with policy reform measures given in document UNCTAD/SDD/SHIP/5, support the observations made in the earlier report entitled "Progressive liberalization and the development of shipping services in developing countries" (TD/B/CN.4/34) that liberalization may have a substantial impact on the ability of developing country and country in transition shipping companies to participate in the supply of services. Many companies which had previously operated under the protection of stringent cargo reservation measures have suffered severe financial losses and some have gone out of business. While this can partly be considered a direct result of the implementation of liberalization policies, it certainly also reflects a lack of technological and organizational adaptation, which has become particularly visible and crucial with the advent of liberalized market access. Yet at the same time liberalization has opened opportunities for private sector companies in many developing countries and countries in transition, even though in general their participation in trade has often remained limited in the face of increasing competition from mainline global operators from developed countries.

5. Shipping companies of developing countries which have operated successfully in newly liberalized environments have been those which have introduced radical changes in operations, particularly by changing from break-bulk to containerised operations, in certain cases relying on chartered tonnage or slots and entering into consortia or other forms of cooperation with other shipping companies especially from developed countries.

6. Examples of developed countries demonstrate the important role being given to support measures designed to manage liberalization processes, in

particular to competition rules as a vital element in safeguarding functioning maritime transport markets. In designing and implementing liberalized maritime transport policies, developing countries and countries in transition may wish to consider a variety of support policies which need to be taken to ensure not only a desirable level of competition, but also of participation in trade by national carriers.

7. Given the importance attached by the Standing Committee at its second session to the extension of the scope of its activities to include countries in transition, the secretariat has prepared a "country study" on the experiences of the new independent States (NIS) of the former Soviet Union in the formulation and implementation of policy reform programmes in maritime transport.

8. The reform programmes of NIS are largely based on two equally important pillars, i.e. privatization of former State-owned shipping companies and liberalizing access to shipping markets. The speed and extent of privatization and liberalization programmes, however, differ considerably among the countries concerned. In order to improve the competitiveness of national merchant marines, the Russian Federation has most vigorously pursued privatization as a policy option even though practical results have been limited up to now. Other countries, such as the Baltic States and Ukraine, have embarked on commercialization programmes without initiating ownership transfer to the private sector.

9. Liberalization of shipping markets is part of the on-going process of economic restructuring that is presently taking place in the NIS. It provides the framework for a reduction in government involvement in shipping and the establishment of commercially viable enterprises. At present, however, the situation of most of the shipping industries of NIS is rather difficult. Companies that had enjoyed monopolistic positions in the former USSR trades today have to face competition without being necessarily prepared for it. The commercialization programmes have forced companies to compete for cargo, yet have neither made sufficient provisions for the adaptation of management structures, nor for improved access to finance necessary for the modernization of existing fleets.

10. The results of this study show a large degree of similarity with developing countries in all regions. Economies of developing countries and countries in transition are undergoing a process of progressive liberalization of market access, and privatization of former State-owned enterprises. This development affects the shipping and transport sectors more than other domestic economic activities because of the inherent international nature of the industry. In other words, the countries concerned, even if they so wish, can hardly escape the process of liberalization including the adverse short-term effects that this might have on their local shipping industry.

11. Experience gained so far clearly indicates that an adequate framework and regulatory mechanisms are required to back up the process of liberalization and privatization avoiding some of the major pitfalls, such as the inability to compete on commercial terms, or, in the case of privatization, the transfer from State to private monopolies. Such frameworks and mechanisms can include competition rules, incentives to national investors, promotional policies to the benefit of the local maritime industry, etc.

12. Even though the need for a proper management of the liberalization process is apparent, it is, at this stage, too early to judge the impact of the new policies. Available information indicates that a number of developing countries and countries in transition have embarked on policies of progressive liberalization of shipping markets backed by selective support measures without, however, necessarily formulating a comprehensive support policy. Furthermore, none of the countries concerned have up to now undertaken a thorough analysis of the impact of policy programmes and action.

Further experience will have to be accumulated to clearly establish the causal relationship between policy reform and specific market and fleet developments. Furthermore it should be equally clear that a certain time-frame is required for shipping companies to undertake the necessary management reform programmes thus enabling them to commercially compete for cargoes both in national trades as well as cross trades.

13. In order to avoid the proliferation of national measures which in one way or another will be taken, it would be desirable to discuss and establish the appropriateness of a harmonized approach to the problem of managing liberalization processes within the Standing Committee or, possibly, within a wider context at UNCTAD IX. The analysis of policy management methods and measures is particularly important given the fact that

- a number of developing countries and countries in transition have been able to seize the opportunities arising from economic globalization and liberalization in the field of shipping, while others continue to lag behind thus accentuating their economic marginalization;
- globalization and liberalization tend to create interlinkages and thus to reduce the autonomy of governments in economic management. This is particularly true in the field of shipping, an inherently international industry.

B. Changes in national practices covering shipper/ocean carrier relations

14. The world economy is characterized by the perceptible process of globalization of economic activities affecting both commercial and intergovernmental relations. At the macro level it leads to structural transformation of nations reflected in a large scale withdrawal of the public sector from economic activities, in increasing tendencies to enter into regional integration agreements and in parallel moves towards multilateral arrangements aimed at progressive liberalization of trade in goods and services. At the micro level, globalization is resulting in more flexible approaches to production and marketing as well as strengthening of links between companies in the production process.

15. While these phenomena have accelerated the integration of a number of developing countries and their industries in the global economy, they have also resulted in the marginalization of others, particularly the least developed among them. Many developing countries have up to now not been able to adapt existing institutional infrastructure and mechanisms to these new developments. Furthermore they often lack the know-how to keep pace with changes and to upgrade their management capabilities particularly in newly-emerging fields of activities, such as services. These countries see their competitive situation steadily deteriorating, as previous advantages based on preferential treatment are gradually losing in importance.

16. The implementation of globalized production processes and marketing arrangements has been made possible by policy reforms and, most important, by improvements in transport and communications. New production patterns have greatly benefitted from the responsiveness of the shipping industry to changing transport requirements of shippers. However, new opportunities offered by the shipping and transport industry have primarily benefitted large shippers. Small- and medium-sized shippers, particularly from developing countries, are often confronted with a wide choice of shipping opportunities which, however, they cannot effectively exercise due to lack of expertise and information.

17. Small- and medium-sized shippers will only be able to take advantage of the opportunities offered by developments in the liberalized transport sector, if a certain level of assistance is rendered. Such assistance will have to be permanently available and will have to be provided on a cooperative basis by the trading community itself. Shippers' councils would

constitute the obvious institutional framework for such assistance, if they overcome the public service approach still prevailing in many countries and are transformed into professional, service-oriented organizations.

18. A number of shippers' councils have already adapted to the changing needs of the trading community. Depending on the stage of development, two different directions can be discerned. Thus, some councils have developed into industry associations who see their primary role as shippers' lobbies *vis-à-vis* governments and intergovernmental organizations. Other councils, particularly in developing countries, continue to focus their activities on the relationship between buyers and sellers of transport services, with a reorientation towards the direct assistance mentioned above.

19. Many shippers' councils are still struggling to adapt to the necessary changes, both with regard to new functions as well as corresponding organizational structures. In order to successfully transform existing councils, a process of professionalization has to be set in motion, which would include extensive human resource development programmes to enable council staff to provide the assistance needed by shippers. The document entitled "Changes in national practices covering shipper/ocean carrier relations" (UNCTAD/SDD/SHIP/2) makes a number of recommendations with regard to the necessary restructuring process. These recommendations are based on information provided by the shippers' councils as well as assistance activities that the secretariat has undertaken with councils wishing to engage in the process of transformation.

20. As most developing countries are primarily users of shipping services, questions relating to shipper/carrier relations in general and to the protection of shippers' interest and its institutional framework in particular, continue to be of special interest to them. The formulation and implementation of appropriate consumer policies with regard to shipping services, remain of particular importance to developing countries as a whole to ensure the expansion of their trade through the provision of quality low-price shipping services.

C. Ship finance for developing countries

21. Shipping continues to be a very capital-intensive industry and adequate access to capital markets be it as equity or loan capital is crucial for the success of any shipping venture. In view thereof, the Standing Committee has attached considerable importance to the analysis of prevailing ship financing arrangements and their adequacy for developing countries' operators. In doing so, the Standing Committee has revitalized an activity which had also figured prominently in the work programme of the suspended Committee on Shipping. Thus, in response to resolution 65 (XIV), the secretariat issued document UNCTAD/SHIP/642 in September 1992, which was widely disseminated among governments and industry circles, but not considered by the Standing Committee itself. Consequently, the report entitled "Ship finance for developing countries" (UNCTAD/SDD/SHIP/3) submitted to the Standing Committee, is based on the previous one and mainly covers new developments which have occurred since 1992, and that have an impact on the availability of ship finance for developing countries.

22. The report indicates that the demand for ship financing is increasing. Total ship financing for newbuilding is now estimated to be in excess of \$30.0 billion per annum, largely due to increasing capacity requirements to meet the expansion in world seaborne trade, to the continuing ageing of the global fleet and to the resulting need to replace technical obsolete tonnage.

23. For developing countries and countries in transition financing requirements for newbuildings and second-hand tonnage are estimated to exceed 93.3 billion over the 1993-1997 period. These capital requirements will be more difficult to finance because second-hand tonnage usually requires more equity participation than newbuildings and because the fleet profile for

these two country groups consists of many technically obsolete vessels. In addition, the shipping industry of developing countries, just as much as of other countries, has to compete for scarce capital with other industries that often provide for better short-term return on capital and reduced risks.

24. The difficulties faced by the industry to attract capital are not due to deficient capital market mechanisms. On the contrary financial institutions have been innovative in structuring loans and tailoring the main variables (term, balloon payments, moratoria, down payments etc.) to meet the cash flows of borrowers. Thus, the essential issue is the inability of the shipping industry to compete for the limited pool of global capital that can obtain higher yields from more profitable projects. These conditions can only be redressed by reducing the tonnage imbalance and eliminating promotional policies that distort markets by artificial prices or protectionism.

D. Review of Maritime Transport

25. The promotion of transparency was identified as one of the main sections of the work programme of the Standing Committee. In response thereto the secretariat continues to prepare and disseminate the annual Review of Maritime Transport, which provides, on a continuous basis, information on global developments in the field of shipping services, shipping markets and the evolution of national fleets, particularly of developing countries. Apart from global issues, the Review is increasingly dealing with developments in specific market segments and of particular geographic regions. Thus, the 1993 issue contains a special chapter on shipping and seaborne trade in Asia, while the 1994 edition will deal with particular aspects of the maritime sector of Latin American countries.

E. Other developments

26. In this context the Standing Committee may wish to recall the latest developments with regard to the United Nations Convention on a Code of Conduct for Liner Conferences. As of 31 December 1994, there were 78 countries Contracting parties to the Code and five signatories subject to ratification. In the course of 1994, two countries became Contracting parties, i.e. Spain (3 February 1994) and Qatar (31 October 1994).

27. It may furthermore be recalled that resolution 2 adopted at the resumed session of the first Review Conference: (1) requests the Registrar to provide guidance and assistance to Governments towards a better understanding and effective implementation of the Convention, (2) requests the Secretary-General of the United Nations to convene the next Review Conference in accordance with article 52 of the Convention, and (3) instructs the depositary to seek the views of all States entitled to attend the next Review Conference in preparing the relevant documentation for the Conference. Based on these requests, work continues to advise governments on code implementation through correspondence and, in exceptional cases, missions. The secretariat also continues to contribute to meetings/seminars organized by industry or governments aiming at a better understanding and effective implementation of the Code.

28. Pursuant to article 52 of the Code and the corresponding request contained in resolution 2 of the Review Conference, the secretariat is presently undertaking preliminary work towards the organization of the second Review Conference. The secretariat will orally inform the Standing Committee of the state of preparations and of any decisions which might need to be taken by governments entitled to attend the Review Conference. Given the time-frame for the next Review Conference provided for in article 52 of the Convention, the secretariat will commence late 1995/early 1996 seeking the views of governments in preparing the relevant documentation for the Conference.

Chapter II**PORTS AND PORT SERVICES**

29. Modern and efficient ports are necessary and powerful tools for facilitating trade and development. In addition to the traditional role of bringing goods to the consumer, ports are now serving international manufacturing which requires an efficient transportation network in which ports act as a node for maritime and land transport. Nowadays, ports must offer efficient and reliable services to ships and cargo, including documentation and customs procedures, to allow the timely flow of goods through the transport chain, which has, in fact, become a production chain. To assist in this flow, some countries have developed distribution or logistic centers in the port area which are used for the storage, preparation and transformation of cargo. Therefore, ports are no longer simply a place for cargo exchange but are a functional element in a logistics system. Thus a port can be a crucial element in developing a competitive advantage of a country and therefore Governments and port authorities need to adopt port policies to allow the nation to reap this potential benefit.

30. Since world trade, and the subsequent transport costs, are part of a highly competitive market, all ports are directly involved in this international competition. To survive and prosper in such circumstances, port management needs to be given autonomy and be made accountable for its operational and financial performance. Ports are often a place in which international market forces become evident in the national economies. Governments have to steer a careful course to meet these challenges in order to take advantage of opportunities open by international trade and technological development and do so taking into consideration the level of social and economic development of the country. In a few countries in which the national fabric has collapsed ports are a vital sector to revitalize in order to rebuild the national administration and economy of these countries. Further, the United Nations International Symposium on Trade Efficiency recently held in Columbus, recognised the importance of transport for trade facilitation and recommended that governments encourage commercial practices and private investment, which is of particular significance for their port sector.

31. The progress accomplished in this programme (as indicated in TD/B/CN.4/13) to July 1994, was reported on in the progress report (TD/B/CN.4/36) prepared for the Committee. The main points are the convening, in 1993 in Geneva, of an Intergovernmental Group of Experts on Ports to assist the Standing Committee in its work because of the specialized nature of the subjects. The Group reviewed the four technical reports 1/ completed in 1992 and another two 2/ finalized in 1993. The Group carried out a comprehensive examination of the work so far carried out, indicated priorities for the approved work programme and prepared a report (TD/B/CN.4/28) on their findings and recommendations. This report was submitted to the last session of the Standing Committee. The Group considered there was a need for wider dissemination of the work done by the United Nations in the field of port organization and management which it considered of particular interest for developing countries and countries in transition. The Group considered training one of the most important domains where

1/ *The principles of modern port management and organization*, TD/BC.4/AC.7/13; *Port marketing and the challenge of the third generation ports*, TD/BC.4/AC.7/14; *Legal aspects of port management*, UNCTAD/SHIP/639; and *The management and development of human resources in ports*, UNCTAD/SHIP/644.

2/ *Strategic planning for port authorities*, UNCTAD/SHIP/646; and *Sustainable development for ports*, UNCTAD/SDD/PORT/1.

assistance by UNCTAD could be provided and recommended that the training programmes should be maintained and reinforced. .

32. The Standing Committee expressed its appreciation for the report of the Intergovernmental Group of Experts on Ports and believed that the group has made an important contribution to the implementation of the approved work programme. The Committee requested the secretariat to convene a second session of the Intergovernmental Group of Experts of Ports in early 1996 to assess the progress made in implementing the work programme, to review any new or outstanding issues in the fields of port efficiency, modernization and development and to make recommendations to the Standing Committee. A tentative date for this meeting would be 15-19 April 1996, a decision on the final date would be determined through the consultation mechanism of the Secretary General and endorsed by the Trade and Development Board.

33. As done for the first session of the Group, a policy seminar would be held before the meeting which would provide the opportunity for delegates from developing countries and countries in transition to receive information and raise questions on current developments in ports. This meeting for officials from governments, industry and regional bodies provides a global forum for discussion on policy and economic issues of port development. The provisional agenda for the second session will focus on factors affecting port performance (restructuring, financing, pricing techniques, cooperation, information technology) and human resource development. While focusing on these two issues, the Group will also review the reports prepared by the secretariat and comment on their applicability and dissemination and provide guidance on key issues to be considered in any future work programme.

34. At the time of writing, the study on *Strategic port pricing* (UNCTAD/SDD/PORT/2) has been completed and work is almost completed on the study on *A Comparative analysis of privatization, commercialization and decentralization* (UNCTAD/SDD/PORT/3). The first report provides a framework for ministries responsible for transport, port authorities and port managers on how pricing techniques can be used to improve the competitiveness of ports while keeping them financially viable. The second report analyses the objectives of institutional restructuring, the major methods of institutional reform, the conditions for their implementation and the control, adjustment and evolution of restructuring methods. These two reports will provide information to developing countries and countries in transition on how to make their port services more market oriented.

35. Work on sustainable development has required a joint approach with IMO. In fact, the subject is related to the adopted chapter 17 of Agenda 21 of the United Nations Conference on Environment and Development which calls on States to take necessary measures to prevent further degradation of the marine environment. In particular it requested that the necessary measures be taken to facilitate the establishment of port reception facilities for the collection of oil and chemical residues and garbage from ships as defined by the annexes of MARPOL 73/78. Therefore, cooperation has been initiated between UNCTAD and IMO aimed at designing a financial instrument that would ensure the funding of investments and operations of waste reception facilities in ports. A jointly prepared document entitled "Reception Facilities" (SPI 3/4) was submitted to the 3rd meeting of the Ship/Port Interface Working Group held at IMO, 24-28 October 1994. The document proposed the establishment of a fund for reception facilities, structured and organized on the principle that the "polluter pays" and to give an incentive to ships to use facilities. The Working group noted the requirements that need to be met and established a correspondence group to further develop the scheme in line with these requirements. The UNCTAD secretariat is a member of the correspondence group.

36. Another report on the subject of the relationship between cities and ports is being prepared in collaboration with the International Association of Cities and Ports. The subject is now important as a result of obsolescence

of port facilities due to technological changes and includes inland environmental features. Work has started on a study of *Financing port development* and on a study on *Regional cooperation in the ports field*.

37. To complement the publication of technical reports, two issues of the *Ports Newsletter* were prepared since the last meeting of the Committee, one in November 1994 and another in May 1995, which in addition to a review of UNCTAD's work in the ports field, included technical information on the most recent developments of direct interest to ports. The *Newsletter* is distributed to an informal network of 350 correspondents in over 160 countries and thirteen issues have been prepared. In addition, the secretariat has continued to cooperate with the International Association of Ports and Harbors (IAPH) to publish the UNCTAD Monographs on Port Management. These monographs, which are prepared by experts on a no-charge basis and are edited and published by the secretariat in English, French, Spanish and Arabic, provide information to managers on current port issues. They are distributed via the informal network and sold to interested parties through the official channels. The latest Monograph issued deals with *Marketing promotion tools for ports* (UNCTAD/SHIP/494(12)). Also, on a routine basis the secretariat continues to reply to frequent requests for port publication and training materials from both developing and developed countries.

38. UNCTAD's work in assisting port development in developing countries began in the late 60's and has made effective and practical inputs to the international port community, particularly in developing countries. Its reports, studies and monographs are regarded by practitioners as major references in the port field, continue to provide guidelines for governments and port authorities for port policy and development, and have often been the core for human resource development programmes. The steady demand for these documents and requests for training courses are an indication of the effectiveness of the UNCTAD work in the port field in general and of the current programme in particular. This demand also comes from the private sector, notably from consulting companies providing managerial inputs and training on a commercial basis or bilateral assistance packages, often using material produced by UNCTAD. Another likely reason is that there are numerous countries whose port organizations lack the ability to study the latest developments in ports and to train their staff in the modern techniques of port management and therefore rely on the recognized UNCTAD expertise in the ports field.

39. Further, the UNCTAD's contribution to the ports sector is probably the only one UN inter-regional approach targeted to the technical and economic issues faced by managers and Government officials responsible for ports. In this it follows the port industry characterized by the coexistence, and successfully functioning, of worldwide and regional port associations which retain both the global features of international trade and maritime transport as well as the peculiarities of each trading region. Other UN organizations are providing inputs on partial basis to this important sector, often in collaboration with UNCTAD. The IMO through the WMU is providing training on navigational aspects in ports, handling of dangerous goods and related security. This is being complemented by UNCTAD which also provides inputs on management and economic aspects of ports. The ILO, through its technical cooperation programme, is providing training for dock workers. The Economic Commissions are also making inputs at the regional level. Some of UNCTAD's large technical assistance programmes can use ports to develop trade points and to monitor transport chains as port authorities are often strong organization with good communication links and foreign exchange resources and would be a strong partner for important undertaking in the transport domain.

40. Preliminary conclusions are that this port development programme, benefiting from the available in-house experience, has been successful and made a positive contribution to the development of ports in developing countries. It has adapted to the widely different needs of countries which span from port development for serving a modern and global international

trade to managing ports to support humanitarian and peace-keeping operations undertaken by the UN. The programme has prepared and disseminated port studies that provide information to improve the competitiveness of port and port related services. It has substantially contributed to strengthen human resource development and has provided advice and assistance in the management of ports. The future orientation of this program should concentrate on helping international ports reach a minimum standard of performance and to better integrate the national economy with international trade. In particular the effects of institutional restructuring on performance should be studied as well as on the financing of infrastructure. This information should continue to be disseminated via the Ports Newsletter. Finally the secretariat's activities in port management training should be continued with new port management policy seminars being developed and where possible strengthened through extra-budgetary funds.

Chapter III**MULTIMODAL TRANSPORT**

41. Since agenda item 3 of the third session deals specifically with multimodal transport, containerization and technological developments, the secretariat prepared a report entitled "Competitive services in multimodal transport" (TD/B/CN.4/46) which is making a number of suggestions for action which the Standing Committee may wish to consider. To assist delegates in their deliberations,, this sessional document is also complemented by two background studies entitled "Facing the challenge of integrated transport services" (UNCTAD/SDD/MT/7) and "Multimodal Transport Handbook" (UNCTAD/SDD/MT/8).

42. Door-to-door transport is probably one of the most important transport subjects for developing countries and countries in transition to consider. At present there are very few multimodal transport operators in these countries, partly because door-to-door traffic is limited there, partly because of a lack of know-how. The consequence is that while this technology is developing and is being perfected in developed countries, transport providers elsewhere are not following this evolution and are thus not capable of providing their local traders with competitive multimodal transport services. The on-going process of liberalization and market access is, at the same time, sharpening competition. The result of this will be a marginalization of transport providers from developing countries and countries in transition that will be relegated to the status of subcontractors.

Chapter IV**MARITIME AND TRANSPORT LEGISLATION****A. Joint UNCTAD/IMO Intergovernmental Group of Experts - Seventh Session:
Review of the 1952 Convention on Arrest of Sea-going Ships**

43. The seventh session of the Joint UNCTAD/IMO Intergovernmental Group of Experts was held in Geneva from 5 to 9 December 1994. The session had been convened following the resolution adopted by the UN/IMO Conference of Plenipotentiaries on a Convention on Maritime Liens and Mortgages, which, having adopted the International Convention on Maritime Liens and Mortgages, 1993, recommended that "the relevant bodies of UNCTAD and IMO, in the light of the outcome of the Conference, reconvene the Joint Intergovernmental Group with a view to examining the possible review of the International Convention for the Unification of Certain Rules Relating to the Arrest of Sea-going Ships, 1952." See report of the Conference, A/CONF.162/8, annex I. The recommendations contained in the resolution were endorsed by the UNCTAD Trade and Development Board at its fourth (Pre-Sessional) Executive Session and by the IMO Assembly at its eighteenth session.

44. The Joint Group, having completed preliminary consideration of the subject, prepared a set of "Draft Articles for a Convention on Arrest of Ships": See report of the Joint UNCTAD/IMO Intergovernmental Group of Experts on its seventh session, TD/B/CN.4/GE.2/3, annex II. The draft articles were based on the Draft Revision of the 1952 Convention on Arrest of Ships prepared by the Comité Maritime International (CMI), the changes required as a result of the adoption of the International Convention on Maritime Liens and Mortgages, 1993 and the views expressed by delegations during the session.

45. The Joint Group, having held a preliminary exchange of views on the draft articles, agreed to continue the examination of the subject at its next session, which is to be held at IMO headquarters in London in October 1995.

B. General average

46. The Standing Committee on Developing Services Sectors/Shipping, at its second session, requested the secretariat "to inform the Committee, wherever appropriate, about developments concerning general average taking place within the relevant international organizations and industry, including CMI and IUMI": Para 14 of the recommendations adopted by the Standing Committee, TD/B/CN.4/39. Following this request a report entitled "General Average - Reform of the system" (UNCTAD/SDD/LEG/3) has been prepared and will be before the Committee.

47. It may be recalled that two reports had already been prepared by the secretariat on general average containing, inter alia, data and statistics concerning the extent and impact of general average, highlighting some of the problems which arise in the operation of the system, including problems encountered by developing countries: "The Place of General Average in Marine Insurance Today" (UNCTAD/SDD/LEG/1); "General Average - a preliminary analysis" (TD/B/CN.4/ISL/58). The documents had also reported on the work within the Comité Maritime International (CMI) on the revision of the York-Antwerp Rules 1974, as amended 1990, namely that the CMI International Sub-Committee (ISC), charged with the task of studying the law of general average and the York-Antwerp Rules, met twice and prepared recommendations for the revision of the Rules. The recommendations of the ISC were submitted to the CMI Conference which was held in Sydney in October 1994.

48. The Conference adopted a new set of Rules, known as the York-Antwerp Rules 1994, and recommended that they should be applied in the adjustment of general average as soon as practicable after 31 December 1994.

49. The report prepared by the UNCTAD secretariat, "The Place of General Average in Marine Insurance Today", had been circulated to delegations of the CMI Conference. Close co-operation had been maintained between the secretariats of UNCTAD, CMI, and indeed with other interested organizations, including the International Union of Marine Insurance (IUMI) and the International Association of European General Average Adjusters (AIDE).

50. The document, "General Average - Reform of the system", reports on the work carried out within the CMI, including a brief commentary on the changes introduced into the York-Antwerp Rules 1994.

51. It also reports on the activities of the IUMI on general average; namely that the General Average Working Party set up by IUMI produced a document containing a detailed statistical study of the general average system. The study highlights a number of unsatisfactory aspects of general average. It focuses on issues such as number, size and costs of general average incidents, the causes of general average by number and value of claims, type of ships involved, age of ships at time of general average, allocation of costs between hull and cargo, costs of administering general average, time taken to prepare general average adjustments and absorption clauses and their impact in reducing the number of incidents currently treated as general average. The findings of the IUMI report confirmed those of the UNCTAD secretariat study. The IUMI study was circulated to delegations attending the CMI Sydney Conference and to IUMI member associations. It was also submitted to the IUMI annual Conference, held in Toronto in September 1994. The subject was debated within the IUMI Conference and it was firmly stated that under no circumstances could IUMI accept expansion of the scope of general average.

52. IUMI is presently continuing its research concerning the impact of the new York-Antwerp Rules and on the shortcomings of the general average system, with a view to finding a commercial solution to the problems involved. It has, therefore, placed general average on the agenda for its next annual Conference.

53. The document further reports on the development within the London insurance market. The London market played an active part in the work carried out by IUMI prior to the Sydney Conference, including the preparation of the IUMI study. To address shortcomings identified by the IUMI study would have required far more fundamental reforms than those achieved at the CMI Conference. The London market has therefore decided to continue research and analysis into general average and sees this as independent of the outcome of the CMI Conference.

54. The purpose of its work will be to: (a) examine the potential for reform of various aspects of general average which appear unsatisfactory; (b) estimate the costs of the different constituent elements in the system; and (c) develop workable proposals for change. Some reforms, such as increased use of absorption clauses in hull policies, will be possible to implement through action by the insurance industry alone, others would require more general agreement among the maritime community.

55. As seen from the above, the insurance industry is continuing work towards an appropriate reform of the general average system. It should be noted, however, that the move towards reform of general average began following the commencement of work within UNCTAD on the subject, including recommendations for investigations by insurance interests into finding insurance solutions to the problems involved. It is therefore important that developments are kept under review and the Committee is informed of further developments and, indeed, of the final outcome.

C. Legal aspects of ship leasing in developing countries - A preliminary review

56. Pursuant to the work programme adopted by the Standing Committee on Developing Services Sectors at its first session, a report entitled "Legal aspects of ship leasing in developing countries - A preliminary review" (UNCTAD/SDD/LEG/4) has been prepared and will be before the Committee for consideration. The report attempts to provide information concerning the legal framework regulating ship leasing in developing countries. Information required for the preparation of the report was obtained, inter alia, by sending questionnaires to Governments of developing countries and to law firms and financial institutions involved in ship leasing operations. The findings of the secretariat confirm that utilization of ship leasing in developing countries is not very common and is inhibited by a number of factors. This is the case in spite of the fact that leasing provides a shipping company the entire possession and use of a vessel without capital outlay. (See "Container ship leasing", TD/B/C.4/339).

57. The preliminary report outlines the legal factors that might deter potential lessors from entering into ship leasing operations in developing countries - such as, inter alia, lack of tax incentives, outdated legislation on ship registration, liability of the lessor as registered owner of the vessel, risks in case of insolvency by the lessee and for latent defects of the vessel - and suggests some reforms to facilitate its use in those countries. The suggested reforms focus on:

(i) Providing lessor and lessee with tax incentives.

58. In the absence of tax benefits it seems that few financial institutions/lessors, if any, would be willing to enter into a leasing transaction. Thus it is suggested that legislation may be enacted in order to provide the lessor with capital allowances or other forms of tax depreciation and that these tax benefits to the lessor be reflected at a rate lower than the amount of interest and principal that might be required to be paid under a conventional ship mortgage loan. Furthermore, it is suggested that for those States wishing to tax the final acquisition of the ship by the lessee at the end of the contract, only the residual value of same should be considered for tax purposes.

(ii) Modern and comprehensive legislation on ship registration.

59. Taking into account that the lessor remains the registered owner of the ship during the contract, it is of paramount importance that his rights are fully protected. This protection could be achieved through a proper ship registration mechanism. Furthermore, and for those States wishing to enact legislation permitting bareboat registration, it is suggested that careful consideration should be given to relevant provisions of the UN Convention on Conditions for Registration of Ships, 1986 and to the International Convention on Maritime Liens and Mortgages, 1993. It is in the interest of mortgagees, lessors and lessees to ensure that there is uniformity and certainty in this area of international law.

(iii) Publicity of the ship leasing contract.

60. Having complete control and entire possession of the ship, the lessee is solely responsible for the operation of the vessel. The lessor has legal title to the property and as owner of the vessel can incur liabilities and obligations, many imposed by statute and many of which cannot be contracted out of. In order to protect the lessor against the risk of contractual liability, it seems advisable to provide the lessor with the possibility of registering (entering) the contract of leasing in a public register. This approach has been adopted by several countries in order to protect the lessor as the "formal" owner of the vessel against third party claims. The

protection afforded would not however prevent a maritime lien holder in enforcing his maritime lien by arresting the vessel and applying for a forced sale of the ship, irrespective of the fact that the lessor as her owner does not personally owe anything to the claimant. It is however assumed that publicity of the contract would improve the protection of the lessor vis-à-vis third party claimants.

(iv) Protection of lessors against insolvency.

61. The interests of a lessor are considerably affected if the lessee's insolvency results in the commencement of bankruptcy proceedings against the lessee. The legal consequences of this are determined by the applicable national bankruptcy law. The report reviews some examples of existing legislation in developing countries aiming to secure that the lessor's real rights in the vessel are valid against the lessee's trustee in bankruptcy and creditors, including creditors who have obtained an attachment or execution. Reference is as well made to article 7 of the UNIDROIT Convention on International Financial Leasing, 1988. It is suggested that developing countries may wish to introduce legislation giving the lessor the right to terminate the ship leasing contract and to repossess the vessel upon commencement of bankruptcy proceedings against the lessee.

(v) Lessor's responsibility for latent defects of the vessel.

62. In most cases, although the vessel is ordered and purchased by the lessor, it is the lessee who selects the vessel and if it is to be a newbuilding, approves the building plans and supervises the construction process. It is for this very reason that contractual stipulations - such as those used in BARECON 89 (Part III) - always disclaim the responsibility of the lessor regarding the condition of the ship. The report reviews samples of existing legislation in developing countries and articles 8 and 12 of the UNIDROIT Convention on International Financial Leasing governing this important issue.

63. In order to ensure that the lessor should not incur any liability to the lessee in respect of the condition of the vessel, save in a few limited cases (e g, when the lessor intervenes in the selection of the shipyard), assigning in the meantime any remedies granted under the building contract in case of unsatisfactory performance to the lessee, it is suggested that developing States may introduce appropriate legislative reforms.

64. The report finally suggests that as a follow-up to this preliminary review, based on information received by the secretariat, further work should be undertaken in order to: (i) prepare model legislation as guidelines for developing countries who wish to promote ship leasing, (ii) promote awareness as to the operation and functioning of ship leasing and its potential advantage for developing countries.

Chapter V

HUMAN RESOURCES DEVELOPMENT AND TECHNICAL COOPERATION

65. Since agenda item 4 of the third session of the Standing Committee deals specifically with strengthening technical cooperation and human resource development, the secretariat prepared a report entitled "Technical Cooperation and Human Resource Development in Shipping, Ports and Multimodal Transport" (TD/B/CN.4/47). This comprehensive document describes all the activities conducted by the various sections and programmes and presents a number of suggestions for action which the Standing Committee may wish to consider.

66. The report also presents the findings of independent evaluations of three major programmes, Advance Cargo Information System (ACIS), TRAINMAR and Improving Port Performance (IPP) and confirm that, not only are these programmes making an important contribution to the development objectives, but they are doing so in a cost-effective manner.

Chapter VI

SUMMARY AND CONCLUSIONS

67. On the basis of the adopted work programme, the Committee has addressed a number of main issues in its work which emerged from the overall development changes in the world economy in the area of shipping, ports, multimodal transport and maritime and transport legislation.

68. In order to cope with the growing interdependence of the world economy and increasing globalization of production processes, as well as the trend towards progressive liberalization, international transport, particularly maritime transport, has to pass through a process of structural and organizational adjustments leading to an integration of shipping, ports and land-transport services. As far as developing countries and countries in transition to market economies are concerned, these developments affect their position both as consumers and as suppliers of shipping services. While a number of countries have seized the opportunities afforded by extended shipping opportunities, others, owing to a lack of expertise and information on the part of the trading communities, have not been able to take advantage of it and consequently continue to lag behind, thus aggravating the risk of further economic marginalization.

69. Progressive liberalization of shipping markets is part of the ongoing general process of economic restructuring and calls for the formulation of related policies at both the national and international levels. UNCTAD has monitored and analysed the success of, and problems encountered by, developing countries and countries in transition with regard to policy reform programmes aimed at fostering the development of commercially viable, competitive shipping services.

70. The strategy of fostering competitive shipping services is an ongoing one and it is too early to establish clearly a causal relationship between policy reform measures and specific market and fleet developments. The continuing process of progressive liberalization of shipping markets requires further analysis and, beyond that, the elaboration and development of tools enabling a proper management of liberalization and privatization. The resulting measures should ensure that all countries are put in a position to reap the benefits of new shipping opportunities, while at the same time enabling their service suppliers to undertake the necessary restructuring as smoothly as possible.

71. Ports can no longer be considered as terminal points of a transport mode but as an essential link in a transport chain. In the light of this, many ports have developed into service centres. The underlying concept of these services centres is to upgrade port activities from pure cargo handling at terminal points to offering a comprehensive transport service package. One of the means used by more and more countries to improve the efficiency of ports is the revision of the role of the public sector in ports. Many ports are actively pursuing programmes of privatization and commercialization. The various aspects of the changing role of ports in a transport chain are reflected in a number of studies prepared by the secretariat for submission to the second session of the Intergovernmental Group of Experts on Ports to be held early 1996 which in turn will submit its recommendations to the relevant governing body.

72. The slow expansion of multimodal transport towards developing countries is essentially due to a number of intersectoral problems involving governmental and commercial parties. Many developing countries have not yet realized that the implementation of multimodal transport based on appropriate coordination between parties can contribute to the development of national transport capabilities and economies. The secretariat will analyse the various processes and provide advice and assistance to governments as well as to commercial parties to enable them to set up the necessary

institutional, legal and operational environment for a better use of the multimodal transport concept linked to modern transport technology. To achieve transport efficiency governments are urged to implement coordinated intersectoral policies based on a progressive liberalization of the sector.

73. In the field of maritime and transport legislation, the activities of UNCTAD should, in a cooperative spirit with other organizations, aim at facilitating international trade and transport by promoting and establishing a framework of modern commercial, economic and administrative norms and standards within which the industry can operate efficiently. It is recognized that in a process of globalization, economic norms and standards as well as delineation of responsibilities gain a new momentum.

74. Technical cooperation has always been viewed by UNCTAD as an important complement to its research and policy analysis and it has been a prominent feature of UNCTAD's work on maritime and related transport services. These activities concentrate on assisting developing countries and countries in transition in the economic, commercial and legal aspects of maritime and multimodal transport. As such, they are complementary to the assistance available from other organizations. UNCTAD collaborates closely with these other organizations and a number of projects are conducted jointly.

75. Most of the projects are interconnected to the overall development approach of regions or subregions in order to respond to the increasing complexity of development issues. In the light of scarce resources UNCTAD should continue in its future work of technical cooperation and human resource development to focus on projects which have a major impact in the context of development dimensions in the sector under consideration.

Annex

As referred to in paragraph (vi) of the introduction of this progress report, the list of specific outputs and activities submitted to the Trade and Development Board and subsequently endorsed at its second (pre-sessional) executive session, is reproduced below in its original format for ease of reference. Document symbols/identification for these outputs have been shown in square brackets against each item.

1. Substantive services/meetings

- 1993 - United Nations Conference of Plenipotentiaries on a draft Convention on Maritime Liens and Mortgages; [A/CONF.162/8]
- Intergovernmental Group of Experts on Ports; [TD/B/CN.4/28]
- 1994 - Standing Committee on Developing Services Sectors: Shipping, second session; [TD/B/CN.4/39]
- Joint UNCTAD/IMO Intergovernmental Group of Experts for amending the 1952 Convention on Arrest of Ships; [TD/B/CN.4/GE.2/3]
- Intergovernmental Group of experts on Multimodal Transport; [Not mandated]
- 1995 - Shipping Policy Forum on Privatization/Commercialization of Shipping; [Not mandated]
- Intergovernmental Group of Experts on Ports; [postponed to early 1996]
- Standing Committee on Developing Services Sectors: Shipping, third session; [Report of 3rd session]

2. Outputs: Reports/studies on:(a) Sessional documents

- 1993 - Rules of procedure for the United Nations Plenipotentiaries Conference; [A/CONF.162/5]
- Compilation of comments and proposals by governments, IGO and NGOs on the draft Convention; [A/CONF.162/3/Add.1-3]
- Review of activities in the field of ports; [TD/B/CN.4/GE.1/2]
- 1994 - Liberalization of trade in shipping services - impact on developing countries; [TD/B/CN.4/34]
- Report of the IGE on ports; [TD/B/CN.4/35] (+)
- Review of the activities of the secretariat in the fields of multimodal transport, maritime legislation, technical assistance and human resources development; [TD/B/CN.4/36]
- Review of the activities in the field of multimodal transport; [Terminated]
- 1995 - Review of activities in the field of ports; [Under preparation]
- Comparative analysis of national shipping policies, including policies on privatization of shipping services; [UNCTAD/SDD/SHIP/4]
- Review of activities in the fields of maritime legislation, technical assistance and human resources development; [TD/B/CN.4/48]

(b) Background documents

- 1993 - Development of human resources in the field of ports; [UNCTAD/SHIP/644]
- Legal and regulatory aspects of port activities; [UNCTAD/SHIP/639]
- Strategic port planning; [UNCTAD/SHIP/646]
- Impact of mega multimodal transport operators; [UNCTAD/SDD/MT/4]
- Ship acquisition pre-feasibility study; [Coastal shipping - RAF/89/061]

- ECDC in Shipping; [UNCTAD/SDD/SHIP/1]
- Sustainable development of ports; [UNCTAD/SDD/PORT/1]
- Developments in containerization; [UNCTAD/SDD/MT/2]
- Completion on the work on general average; [UNCTAD/SDD/LEG/1]
- Implementation of the TRAINMAR Action Plan; [UNCTAD/SDD/TRN/1]
- 1994 - The impact of commercialization/privatization programmes on the development of shipping services; [UNCTAD/SDD/SHIP/5]
- Multimodal transport and trading opportunities; [UNCTAD/SDD/MT/5]
- Comparative analysis of privatization, commercialization and deregulation in the ports field; [UNCTAD/SDD/PORT/3]
- Strategic port pricing; [UNCTAD/SDD/PORT/2]
- Implementation of the 1978 United Nations Convention on the Carriage of Goods by Sea (Hamburg Rules); [Part of TD/B/CN.4/36]
- Ship acquisition pre-feasibility study; [Cair fibre study with FAO]
- 1995 - Developments in shipper/ocean carrier relations; [UNCTAD/SDD/SHIP/2]
- Potentialities for increased regional co-operation in the field of ports; [Under preparation]
- Financial aspects of ports management; [Under preparation]
- New developments in ship financing; [UNCTAD/SDD/SHIP/3]
- ECDC: Institutional and policy changes and their results; [Under preparation]
- Legal aspects of ship leasing in developing countries; [UNCTAD/SDD/LEG/4]
- Ship acquisition pre-feasibility study; [No request yet]
- Facing the challenge of integrated transport services; [UNCTAD/SDD/MT/7] (+)
- MT Handbook; [UNCTAD/SDD/MT/8]
- General average - Reform of the system; [UNCTAD/SDD/LEG/3] (+)

(c) Recurrent publications

Annual Review of Maritime Transport; [TD/B/CN.4/27 (1993), TD/B/CN.4/37 (1994) and under preparation for 1995]

(d) Technical material

- The UNCTAD Ports Newsletter; [Issues No. 9 and 10 for 1993, 11 and 12 for 1994, and 13 for 1995]
- The UNCTAD Multimodal Transport Newsletter; [Issues No. 5 and 6: UNCTAD/SDD/MT/1 for 1993 and UNCTAD/SDD/MT/6 for 1994]
- The TRAINMAR Newsletter, quarterly; [Issue No. 17 in Dec. 1993, none in 1994]
- The TRAINMAR Catalogue; [1 each year]
- The TRAINMAR network report; [1 each year]
- 1993 - 2 monographs on computerized container terminal management [UNCTAD/SHIP/494(10)] and on EDI in ports [UNCTAD/SHIP/494(11)]
- 2 sets of Improving Port Performance (IPP) courses; [IPP 4 on port pricing and IPP 5 on commercialization under preparation]
- 1994 - Course material for a workshop for potential multimodal transport operators; [TRAINMAR module 5.4]
- Educational programme on charter parties; [UNCTAD/SDD/LEG/2]
- 2 sets of Improving Port Performance (IPP) courses on human resources development and strategic planning; [Not yet started]
- 2 Monographs; [UNCTAD/SHIP/494(12) on marketing tools for ports and issue No 13 under preparation]
- 1995 - 2 sets of IPP courses on port computerization/EDI and marketing; [Not started]
- 2 Monographs; [Pending contributions]
- Multiship Model II, Version 7 (Computer Software); [Outside expertise required]