European Community Shipowners' Associations

D. 4276/13
SF 8.880/8.300

ECSA Position on a Trade In Services Agreement

1. Introduction

This paper summarises the key demands and concerns of the European Community Shipowners' Associations (ECSA), the association representing the interests of the national shipowners' associations of the EU and Norway, on an international agreement on services. ECSA represents all trades, meaning dry bulk vessels, tankers, container vessels, cruising and ferry, specialised cargo vessels, vessels specialised for the offshore energy market, etc.

EU shipowners are of the view that an international agreement on services can be supported if strong commitments regarding maritime transport services are included.

2. What interests are at stake? EU shipping: an economically important industry operating in a global environment

Shipping is the backbone of international trade, some 90% of which is carried by sea. European shipowners control 40% of the world's merchant fleet and operate shipping services all over the world, including in trades between non EU countries, for instance between the Far East and Latin America (so called "cross trades"). European shipowners thus play a key role in European and international trade and business. Moreover, in recent years specialised shipping activities have developed in connection to the offshore industry, representing an important new maritime activity.

Shipowners contribute substantially to GDP and to employment - both directly and indirectly, on board and on shore.

The shipping industry is also at the core of the substantial wider maritime cluster. Shipowners create positive spill-over effects, in terms of value creation and employment, earnings and the balance of payments, to the maritime cluster, which encompasses seaports, equipment manufacturers, suppliers, shipyards, insurers, law firms, classification societies, banks and brokers.

For all these reasons, it is fair to say that a flourishing shipping industry is a very important contributor to and facilitator of international trade and the global economy.

3. EU shipowners welcome further liberalisation of world trade

As maritime transport providers in the external trade of the EU and in "cross trades", it will be evident that ECSA supports the liberalisation and promotion of world trade, both in services and in goods. Increase in trade means increase in transport. Increase in transport efficiency means increase in trade efficiency.

Moreover, given the international character of the business, shipowners have always underlined the need for global rules.

Maritime transport, even when considered already more liberalised than many other sectors, is in several States still confronted with a varying degree of barriers and/or discrimination in the free access to international markets, for instance through cargo-sharing arrangements between countries. They are confronted with restrictions in the access to and use of port services. Shipowners face in quite some countries limitations regarding carrying out of ancillary services, for instance through equity ceilings and discriminatory requirements on on-shore establishment. EU shipowners furthermore observe inconsistencies and reappearance of protectionism in some national maritime policies.

These barriers and adverse policies hamper the efficiency of international maritime transport services and thereby the efficient flow of goods and thus overall trade.

ECSA is confident that the upcoming Trade In Service Agreement (TISA) negotiations will offer a good framework and environment for addressing and largely eliminating such barriers. Once agreed, TISA should furthermore offer the necessary legal certainty for efficient operations.

4. TISA must be ambitious

ECSA is of the view that the WTO is the right place to discuss the liberalisation of services. Given the absence of progress in the WTO, ECSA considers TISA to be a good framework to advance the discussions; ultimately shipowners want a WTO agreement on trade in services.

In order to have added value, it is most important that the agreement is ambitious and is actively subscribed to and supported by as many WTO members as possible.

The aim of the TISA negotiations must be that meaningful commitments are made by a maximum of countries. In this context it is desirable that all major trading countries, such as the US, show their serious interest and understanding of the beneficial impact of a comprehensive agreement on services to international trade and their national economies. ECSA encourages the current group of countries engaged in the TISA negotiations to undertake all efforts to overcome the reluctance or abstention of any nations, and especially the BRIC countries (Brazil, Russia, India and China). They are crucial trade partners for EU shipowners and moreover their abstention should not offer a pretext for smaller and protectionist minded countries for not taking part.

TISA should in principle cover all services sectors and all ways of supply. Countries should agree to bind existing liberalisation to a highest extent possible and to improve market access with new commitments.

5. TISA should bring legal certainty and strong commitments on all modes of supply

<u>Legal certainty</u>
Notwithstanding the exceptions mentioned in this document, shipping largely has free access to markets today. However this is often the result of national legislation or practice but is not reflected in international binding agreements. Therefore, inscribing commitments at existing levels would already bring a desirable legal certainty in many States. Therefore, ECSA would welcome that, at least, existing levels of openness become binding (a ‘standstill’ clause).

To have added value, TISA should go beyond the current state of play and new commitments must be clearly inscribed in the agreement. Moreover, ECSA would welcome that TISA includes the clarification that new autonomous liberalisation reforms would automatically be binding and future elimination of discriminatory measures are automatically locked in the international agreement (a so called ‘ratchet’ provision).

Strong commitments on all modes of supply
TISA should include strong commitments on all modes of supply, more precisely on:

- Cross-border supply (mode 1): maritime transport services are in essence services supplied across borders, EU shipowners evidently want to be in the possibility to render cross-border services;

- Consumption abroad (mode 2): this way of supply refers to services that are consumed abroad, when the consumer moves physically from the territory of one State to receive the service in the territory of another State, for EU shipowners this means that they have access to tug services, cargo-handling services, pilotage, etc.

- Commercial presence (mode 3): EU shipowners want to be able to have their own representation in third countries: they want to be able to supply services through a subsidiary located in a foreign State to a recipient of the latter.

  ECSA underlines that it is very important to be able to have full control of the commercial presence in the foreign State. Today, shipping lines are often allowed to set up branches or subsidiaries in a foreign country, but not always at 100% equity. In maritime transport 100% equity is however particularly important as shipowners are more and more multimodal door-to-door operators part of international logistics networks. Shipping companies are asked by their customers to organise the door-to-door transport, not only covering the sea-leg. They therefore need to be able to establish branches and/or subsidiaries in the foreign States which must be able to organise the port calls and control all operational activities, as well as a range of ancillary services, like cargo handling, container stations and intermodal/inland transport, all at 100% equity. These local subsidiaries/branches offer training and substantial employment to locals in the third countries. The local branches should evidently have the possibility to transfer the money earned out of the country, too often third countries still restrict or hamper such transfers.

- Movement of natural persons (mode 4): EU shipowners want to be able to post management, mainly for intercompany transfers, as well as technical specialists and company trainees, overseas and want to be able to move staff working in subsidiaries in foreign States to work in the EU offices. Nowadays, stationing of company personnel abroad - if allowed - requires very often cumbersome procedures.

For all these modes of supply, ECSA is of the view that TISA in principle should foresee for maritime transport service providers to have unrestricted market access and to receive national treatment.

Indeed, once access is given to foreign service suppliers, they should be treated no differently from domestic players (‘national treatment’). ECSA underlines that vessels require unhindered access to ports, berths and a range of port services. If not, costs increase steeply, transport delays and the supply chain gets distorted. Therefore it is crucial that foreign shipowners are treated as national entities.

Shipowners are in some States confronted with preferential bilateral cargo-sharing arrangements, this is the case when States reserve the carriage between them for vessels which fly the flag of either of the involved States or which are operated by their national shipping companies. It follows that vessels operated by nationals of other States are excluded from the trade. ECSA requires the removal of cargo-sharing arrangements and any other Most Favoured Nations exemptions. This means that ‘each country accords immediately and unconditionally to services and service suppliers of any other country treatment no less favourable than that it accords to like services and service suppliers of any other country' (GATS II.1).

Shipowners underline that no trade-offs can be accepted between modes of supply, nor between tramp and liner / multimodal transport services to the detriment of the former.

Beneficiaries of these commitments should be the shipping companies established inside the EU; or shipping companies established outside the EU and controlled by nationals of a Member State, if their vessels are registered in that Member State and carry its flag (in sum: EU operated vessels).

EU shipowners' main and primary concern is the liberalisation of international maritime transport services. Many States around the world have cabotage (maritime transport operations within one country) restrictions in force. EU shipowners do not consider such restrictions on domestic cargoes a major barrier to international trade. However, international cargoes should be able to be freely transported until they reach their final destination, keeping their 'international' status until delivered.

ECSA is therefore of the opinion that due consideration and a constructive dialogue on an enhanced flexibility of the feedering of international containerised cargoes and international relay of cargo between the ports of the TISA countries must be considered. As it will most certainly further stimulate efficient and sustainable transport services to the benefit of overall trade.

6. Conclusion

ECSA is of the view that TISA should be a widely subscribed, well understood and implemented agreement with clear commitments on international maritime transport. TISA should be ambitious and inclusive, with the goal of attracting the largest number of countries as possible.

Maritime transport is crucial for the EU and the world economy, both as an industry in itself as well as a facilitator for international trade. ECSA therefore invites all countries involved in the TISA negotiations to take the concerns and desires of the EU shipowners well into account.

In summary, ECSA welcomes the TISA negotiations in as far as it leads to an international agreement on services which will:

- Remove existing barriers. Especially limitations in cross-border supply (mode 1) and commercial presence (mode 3);
- Offer legal certainty, including for existing liberalisation levels;
- Increase efficient maritime services and enhance maritime transport; and
- Facilitate and stimulate global trade and national economies.

June 2013

ECSA asbl vzw - Rue Ducale 67/B2, 1000 Brussels, Belgium - Phone +32 2 511 3940 - Fax +32 2 511 8092 - mail@ecsa.eu