

International Shipping and WTO Law

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22 August 2022

Outline

Background: international shipping and global trade

- Interdependence between trade (in goods) and international shipping
- International shipping as trade in services

WTO rules applicable to international shipping

- WTO rules on trade in goods
- WTO rules on trade in services

Put WTO law into perspective

- Recent trends in shipping including challenges
- Implications for future rules

International shipping and global trade

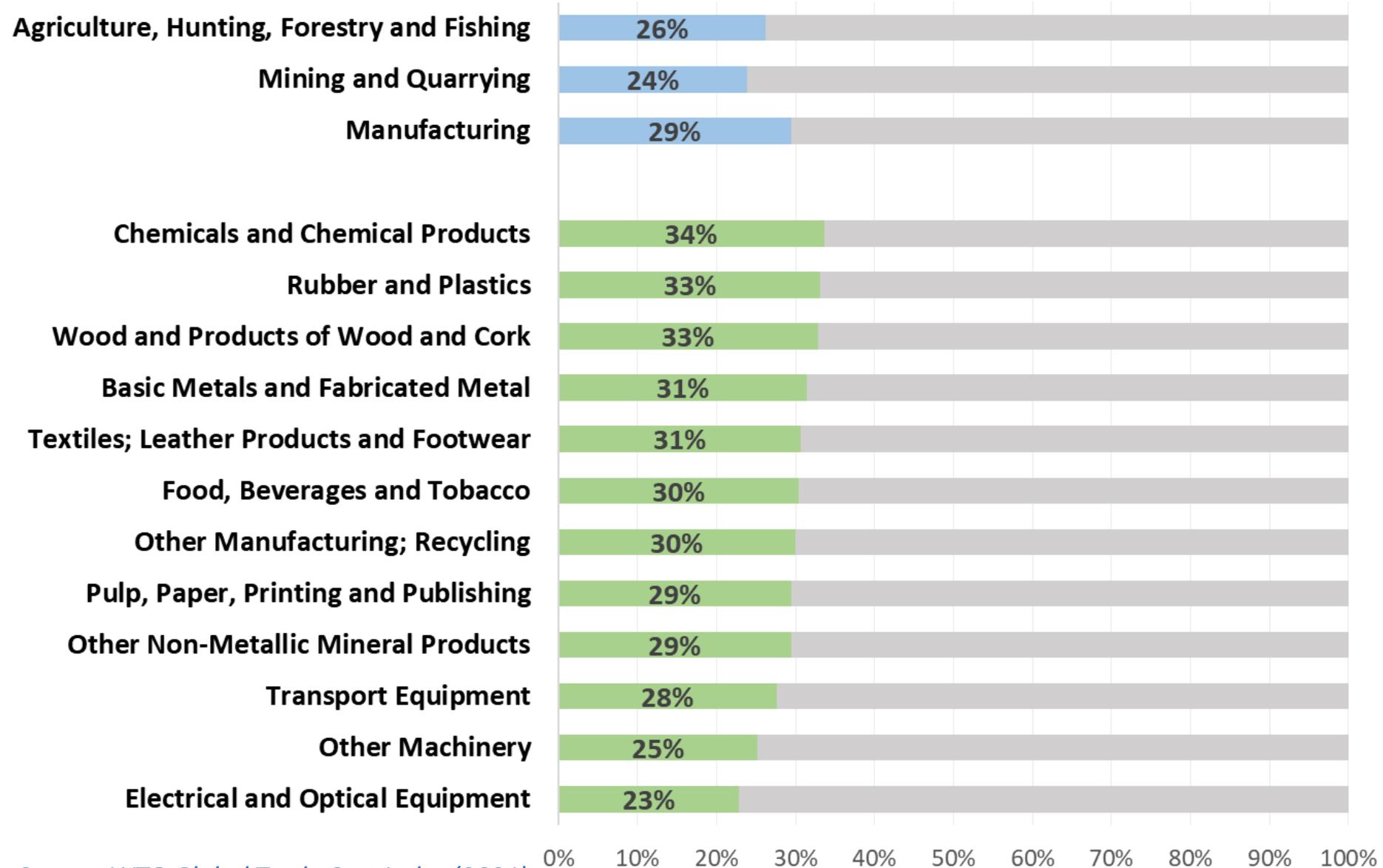
*"All trade is world trade; all
world trade is maritime trade."*

----- Sir Walter Raleigh

Maritime transport from trade perspectives

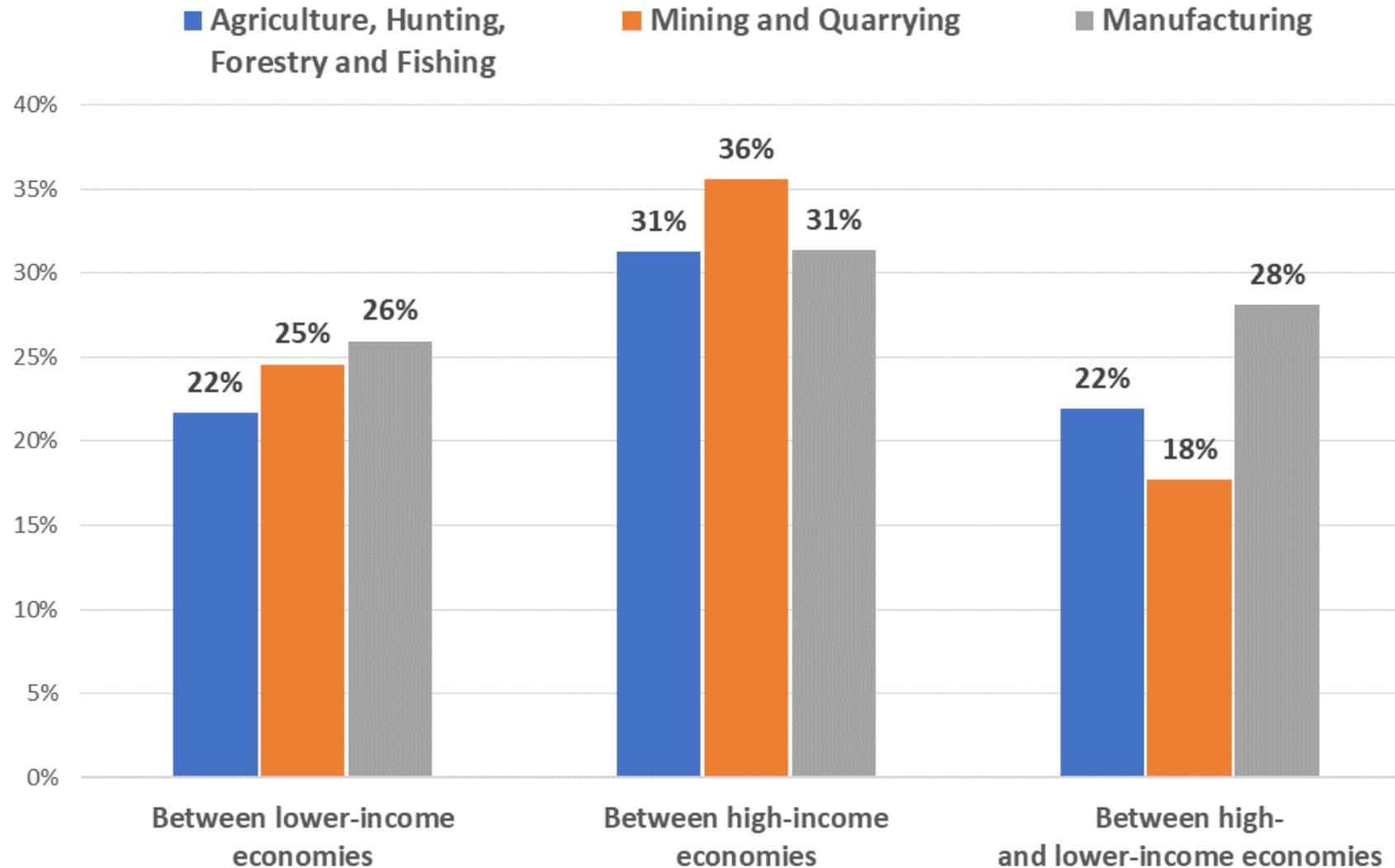
- Maritime transport, “lifeblood of global economy”, and critical for global trade. ([“trade costs”](#))
- Container shipping is a major driver of globalization and shaping global supply chains.
- Trade plays a critical role in shipping, affecting its volume, value, pattern, composition, and trends.
- The evolution of international trade shapes the structure of maritime shipping networks and port development (e.g., hub and spoke)
- Recent [“perfect storm”](#)
- Maritime transport as trade in its own right: **trade in services.**
- Maritime transport, in particular international shipping, as trade in services, is highly liberalized and probably the most globalized business: [the story of Ever Given.](#)
- Maritime transport as trade in services involves complex transactions, going beyond moving cargos or people.

Transport costs: The key determinant of variation of trade costs across sectors



Source: WTO Global Trade Cost Index (2021)

Transport costs: the main determinant of trade costs by direction of trade



Source: WTO Global Trade Cost Index (2021)

What happened to shipping during the COVID-19 pandemic?

- Abrupt drop in demand in the first quarter of 2020; liners reduced capacity by slow steaming and blank sailings; containers piled up.
- Since the second half of 2020, surges in demand as a result of fiscal stimulus and e-commerce boom, particularly in the US.
- COVID measures led to slow port operations, slow customs procedures, difficulties in crew change, shortage of empty containers, warehousing space and port equipment, shortage of stevedores and truck drivers;
- Ever Given blocking the Suez Canal, closure of Chinese ports further strained the shipping industry

Bottlenecks along the maritime supply chain



Port congestions
and ship arrival
delays



Port and Inland logjams;
shortage of truckdrivers



Misallocation of
empty containers



Stranded seafarers;
difficulties in crew
changes



Shortage of warehouse
space



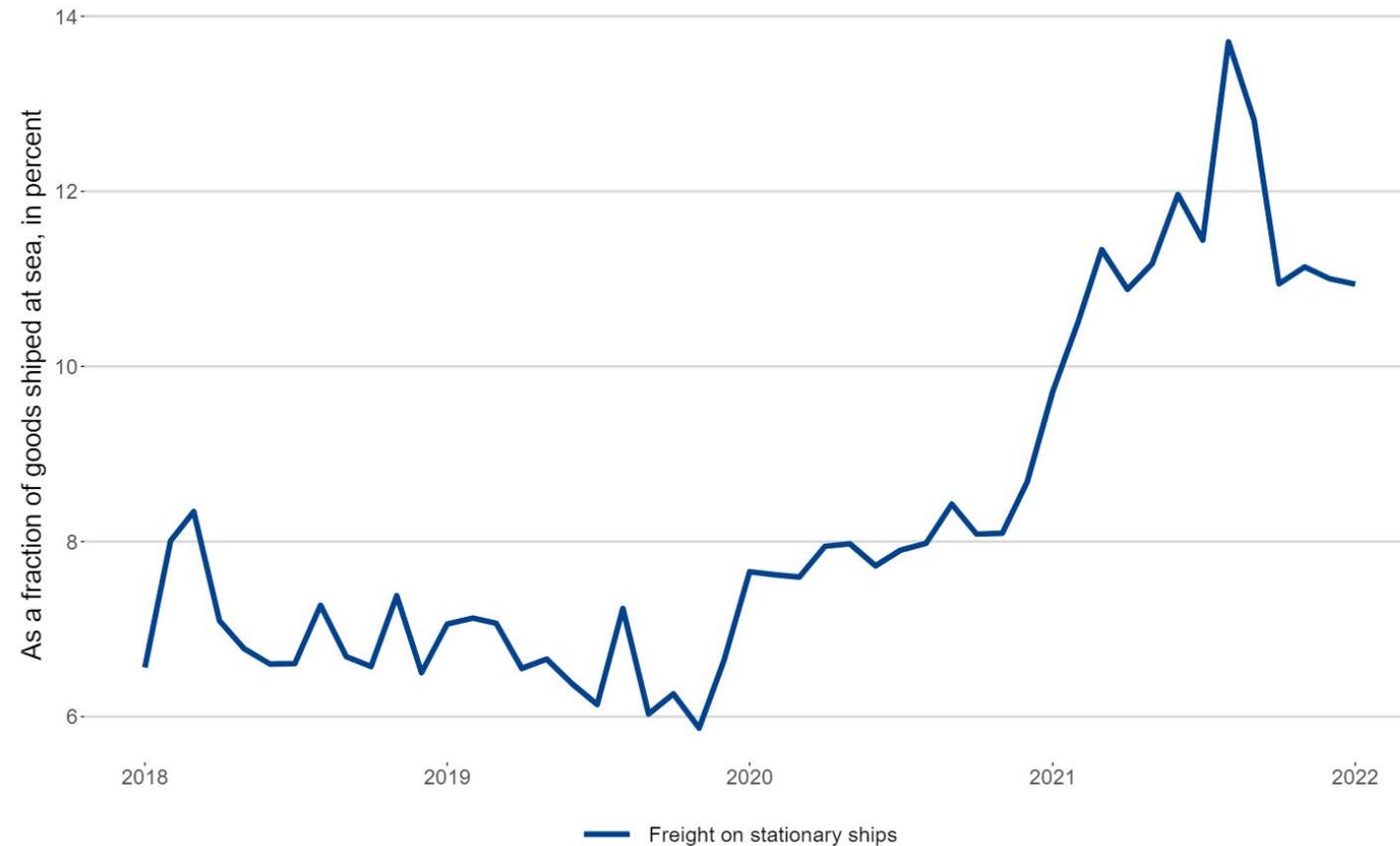
Shortage of
chassis

Global port congestions



Freight on stationary ships

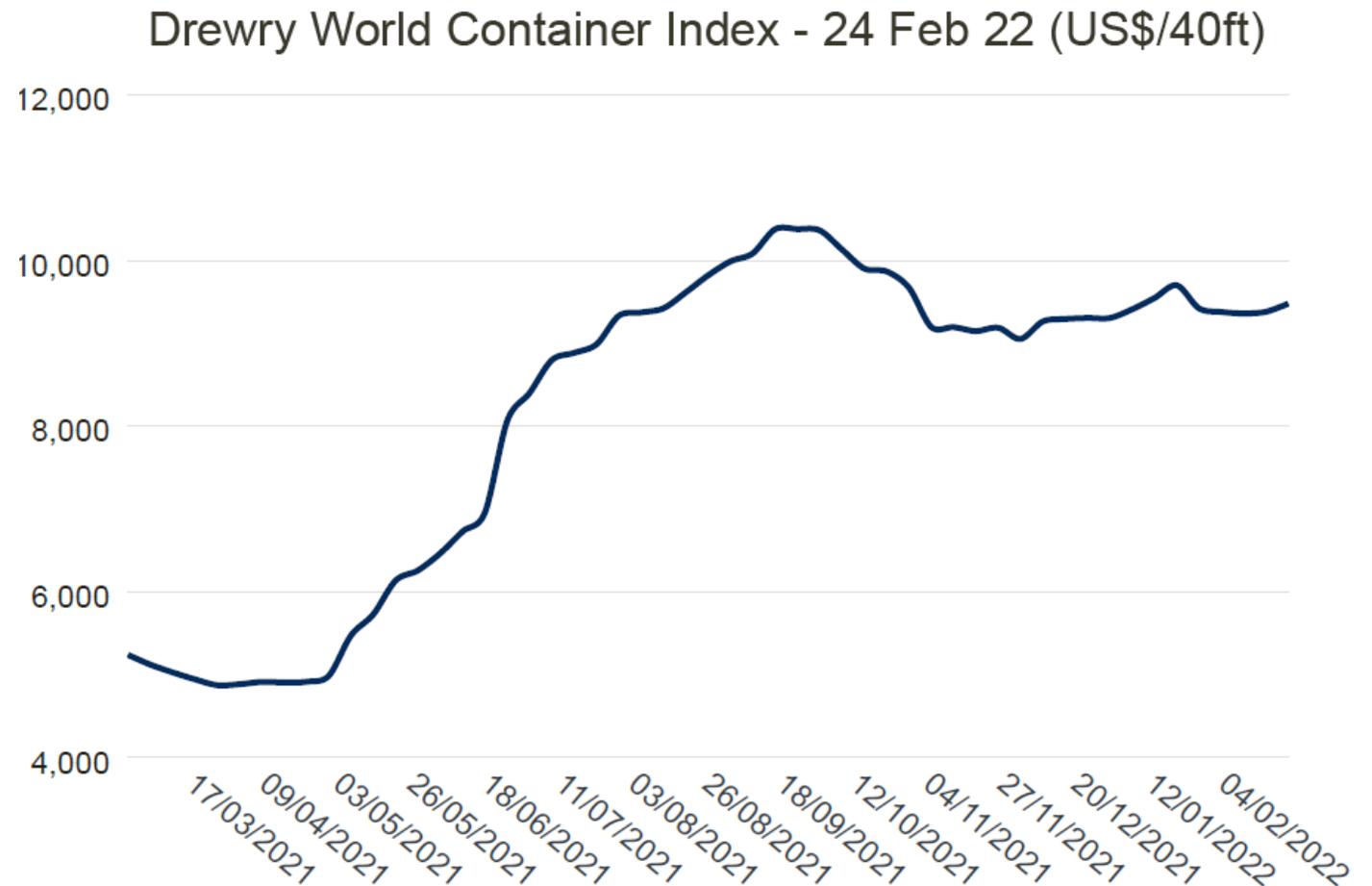
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Bottlenecks reduced effective shipping capacity nearly 14 %

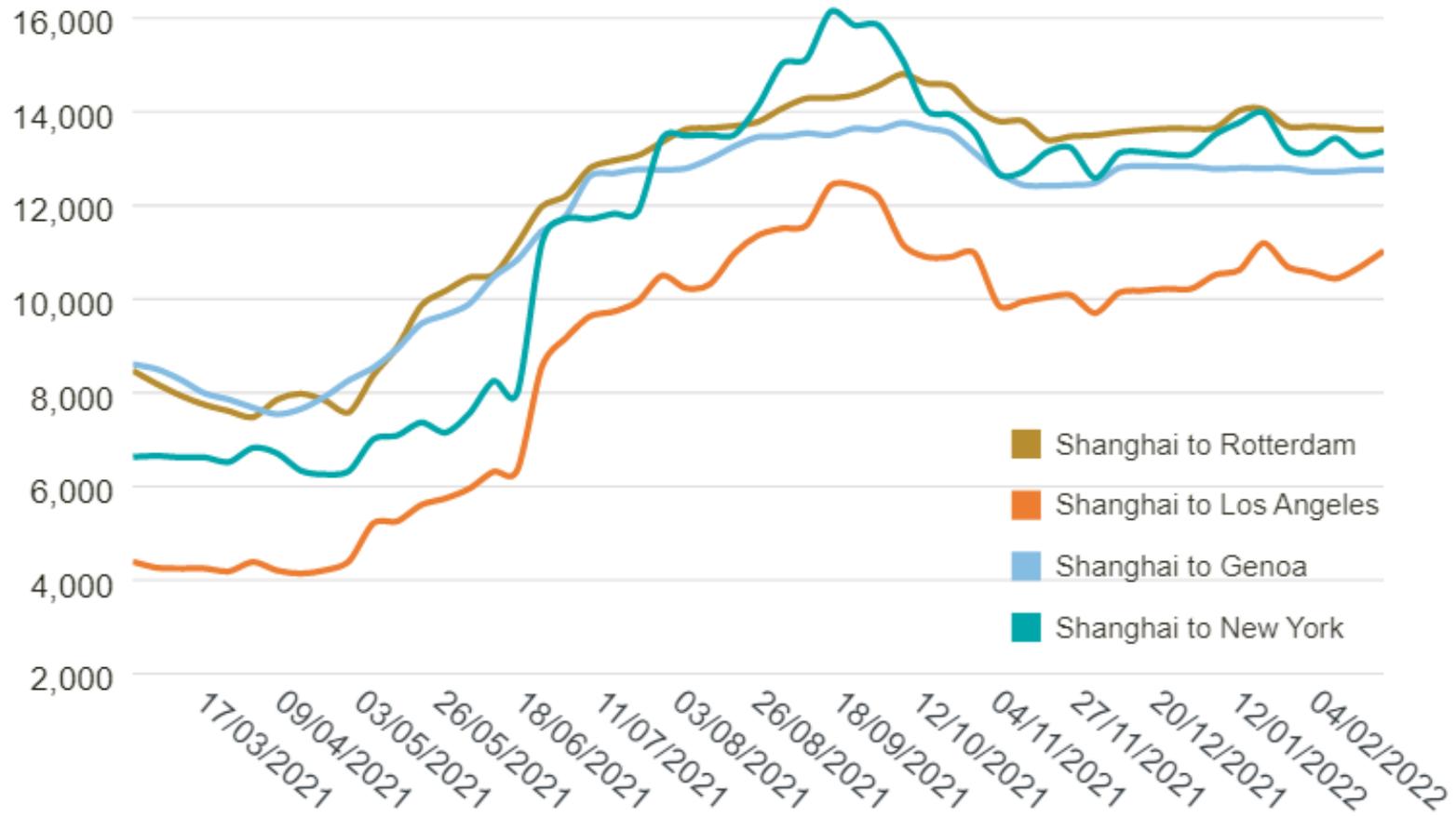
Bottlenecks reduce shipping capacity and push up shipping rates to record highs

- As of 24 Feb 2022, the average composite index of the World Container Index, assessed by Drewry for year-to-date, is \$9,458 per 40ft container, which is 81% higher than the same week in 2021, \$6,416 higher than the five-year average of \$3,041 per 40ft container.



Trade Routes from Shanghai

Trade Routes from Shanghai (US\$/40ft)



Spot freight rates by major route remain high

Route	10-Feb-22	17-Feb-22	24-Feb-22	Weekly change (%)	Annual change (%)
Composite Index	\$9,359	\$9,379	\$9,477	1% ▲	81% ▲
Shanghai - Rotterdam	\$13,665	\$13,612	\$13,625	0%	61% ▲
Rotterdam - Shanghai	\$1,396	\$1,402	\$1,439	3% ▲	1% ▲
Shanghai - Genoa	\$12,722	\$12,759	\$12,759	0%	48% ▲
Shanghai - Los Angeles	\$10,437	\$10,682	\$11,030	3% ▲	151% ▲
Los Angeles - Shanghai	\$1,250	\$1,247	\$1,247	0%	125% ▲
Shanghai - New York	\$13,437	\$13,063	\$13,160	1% ▲	99% ▲
New York - Rotterdam	\$1,235	\$1,214	\$1,198	-1% ▼	59% ▲
Rotterdam - New York	\$6,453	\$6,514	\$6,518	0%	179% ▲

Impacts of recent shipping disruptions

- Soaring trade costs: a challenge for all traders, but especially for SMEs who, compared with the larger players, are at a disadvantage when negotiating rates and difficult to absorb additional expenses and could see their margins eroded or retreat from world markets.
- Disrupted supply chain: Goods manufactured through global supply chains are most exposed to shipping disruptions. Globalized production processes entail a greater use of shipping, with intermediate goods often crossing borders multiple times within and between regions.
- Inflation: Pushing up consumer goods prices and exacerbating inflation, more severe impacts on countries relying on imported goods.

The story of Ever Given



Ever Given was **built** by *Imabari Shipbuilding* of **Japan** and is **owned** by another Japanese company (*Shoei Kisen Kaisha*), **insured** by the **UK** P&I club, **chartered** by the **Taiwanese** shipping line Evergreen Marine, flying under the **Panamanian flag**, **operated** by the Hamburg-based **German** company Bernhard Schulte Shipmanagement, and **manned** by the crew from **India**. After the incident, in July 2021, Ever Given received extensive **inspections** and the certificate of seaworthiness from its classification society the **American** Bureau of Shipping before resuming its journey. The incident took place during Ever Given's journey from Yantian, **China** to Rotterdam, **Netherland**, **carrying** 18000 containers. After completed its planned journey, Ever Given was **repaired** by a Chinese company in Qingdao, **China** in September 2022.

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WTO rules applicable to
international shipping

WTO: a rule-based trading system

<i>Umbrella Agreement</i>	Agreement establishing the WTO		
<i>3 broad areas of trade</i>	Goods	Services	Intellectual Property
<i>Basic principles</i>	GATT	GATS	TRIPS
<i>Additional details</i>	Other goods agreements and annexes	Services annexes	
<i>Market access commitments</i>	Members' schedules of commitments	Members' schedules of commitments (and MFN exemptions)	
<i>Dispute settlement</i>	Dispute settlement (based on the Agreements and commitments)		
<i>Transparency</i>	TRADE POLICY REVIEWS		

WTO rules on trade in goods and shipping

- Trade in goods (imports and exports) relies on transportation for cross-border movement of goods; more than 80% of traded goods are transported by sea; WTO rules governing imports and exports have bearing on international shipping. For example:
 - GATT Article I (MFN) applies to, *inter alia*, "all rules and formalities in connection with importation and exportation".
 - GATT Article III (National Treatment) prohibits discrimination against imported goods in the application of internal tax and regulatory measures, including those affecting transportation.
 - GATT Article V (Freedom of Transit) provides for freedom of transit of goods, vessels and other means of transport across the territory of WTO Members via the routes most convenient for international transit. This provision is applicable to the access to ports.

WTO rules on trade in goods and shipping

- GATT Article XI (General Elimination of Quantitative Restrictions) lays down a general obligation on WTO Members to eliminate quantitative restrictions" and "requires Members not to institute or maintain prohibitions or restrictions other than duties, taxes, or other charges, on the importation, exportation, or sale for export of any product destined for another Member".
- GATT Article XIII (Non-discriminatory Administration of Quantitative Restrictions) requires that when a Member introduces or maintains a quantitative restriction, it must ensure that it is administered in a non-discriminatory manner.
- Trade Facilitation Agreement establishes rules to expedite the movement, release and clearance of goods, including goods in transit. The TFA is applicable to the access to ports.
- The Case of Qatar vs. UAE (DS526); the case of Panama vs. Colombia (DS461)

WTO rules on trade in services: GATS

- Why do countries negotiate trade agreements?
- What are the main problems in services trade? In whose view?
- Challenges in establishing services trade rules
 - Adapt rules on goods trade to services trade and manage the complexity of services trade
 - Balance between trade liberalization and regulatory autonomy
- What is the GATS, the first services trade agreement, meant to address?
 - Objectives of the GATS: expansion of services trade; transparency of regulations; progressive liberalization

WTO rules on trade in services: why they are relevant for international shipping?



While highly liberalized, the maritime sector remains subject to regulations which may affect trade in maritime transport services. For example:

- There are measures related to market entry:
 - Restrictions on cabotage;
 - Restrictions on ship ownership and/or registration under the national flag;
 - Restrictions on foreign investment;
 - Restrictions on port-related services;
 - Cargo sharing agreements;
- There are measures related to movement of natural persons, such as quota or nationality requirement on the crew;
- Other discriminatory measures, e.g., tariffs, taxes, subsidies, access to and use of port services;
- Competition related measures;
- Transparency and other regulatory measures such as customs procedures, documentation requirements, etc.

Multilateral trade negotiations on maritime transport: a story without ending



- The Uruguay Round (1986-1994)
 - The GATS Annex on Negotiations on Maritime Transport Services;
- Extended negotiations (1994-1996)
 - Council Decision (S/L/24) adopted in June 1996
- The New Round (2001-present)
 - 10 negotiating proposals on maritime transport;
 - “Friends of maritime transport”;
 - More than 20 new offers on maritime transport;

Factors affecting negotiations on maritime transport

- Trade rules are shaped by trade powers, in particular by those with strong offensive interests. Leadership is key.
- Outcomes of trade negotiations usually represent the compromise reached between offensive interests and defensive interests.
- Market structure, industry trends and various trade or non-trade policy considerations (e.g. investment, employment, environment, even immigration) may play into offensive or defensive interests.

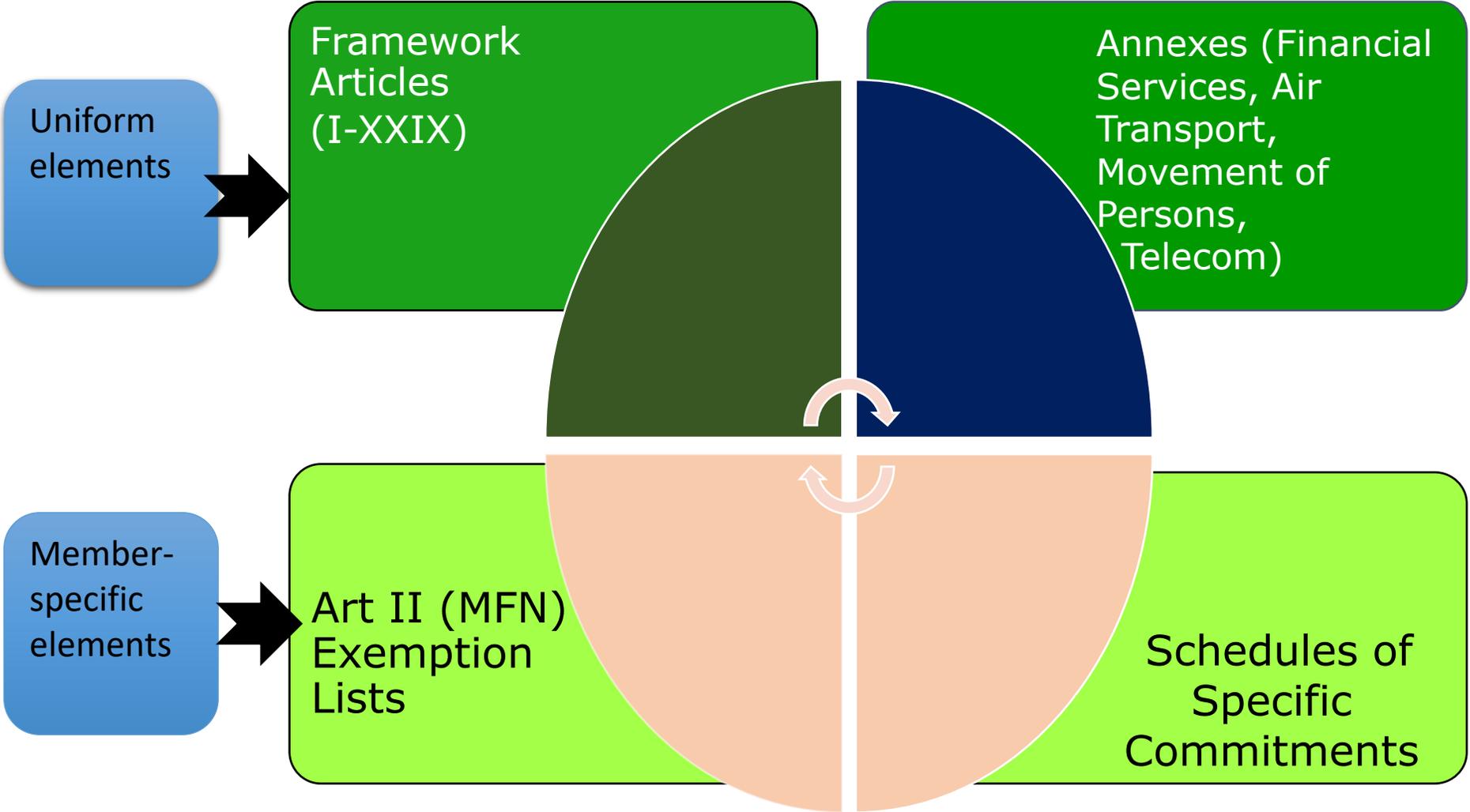
Legal status of maritime transport under the GATS (Decision by the Council on Trade in Services in 1996)

- Temporary suspension of MFN application to maritime transport services consisting of international shipping, auxiliary services and access to and use of port facilities.
- Such suspension of the MFN obligation applies only to uncommitted maritime transport services; in cases where commitments have been made by Members, those commitments must be applied on an MFN basis.
- MFN shall enter into force for international shipping, auxiliary services and access to and use of port facilities at the same time as the conclusion of the first round of progress liberalization negotiations under GATS Article XIX. Members may improve, modify or withdraw all or part of their commitments in maritime transport services 60 days before the conclusion of that negotiation.

How is the GATS structured?

- “Progressive liberalization” as a core principle which allows *gradual* reduction of barriers on *individual* country basis through trade negotiations:
 - A common set of disciplines for all Members: Framework articles of the GATS + Annexes;
 - A creative definition of trade in services allowing for “differentiated” commitments;
 - Individual “schedules” of specific commitments for each Member covering:
 - Market Access
 - National Treatment
 - Additional commitments

Structure of the GATS



GATS: Scope of application

- Scope of application: measures affecting trade in services at all government levels
- Trade in services is defined as the supply of services through four modes:
 - Cross-border supply
 - Consumption abroad
 - Commercial presence
 - Presence of natural persons
- Covering all services (excluding air traffic rights; services supplied in the exercise of governmental authority)

Services classification

1. Business Services
2. Communication
3. Construction
4. Distribution
5. Education
6. Environmental Services
7. Health Related Services
8. Financial Services
9. Tourism
10. Recreation, Culture, Sports
11. Transport
 - Air, **maritime**, inland waterways, road, rail, pipeline, and auxiliary services
12. Other Services

Maritime transport

W/120-CPC

11. TRANSPORT SERVICE

A. Maritime Transport Services

a. Passenger transportation	7211
b. Freight transportation	7212
c. Rental of vessels with crew	7213
d. Maintenance and repair of vessels	8868**
e. Pushing and towing services	7214
f. Supporting services for maritime transport	745**

H. Services auxiliary to all modes of transport

a. Cargo-handling services	741
b. Storage and warehouse services	742
c. Freight transport agency services	748
d. Other	749

Maritime Model Schedule (MMS)

There are four pillars:

Pillar 1: International transport

Pillar 2: Maritime auxiliary services

Pillar 3: Port services

Pillar 4: Multimodal transport



WTO definition of maritime transport services: all types of activities/businesses



Shipping

Freight and passenger transport



Auxiliary services

Cargo handling
Storage and warehousing
Freight forwarding



Port services

Pilotage and towage services
Fuelling, watering
Harbour master services



Multimodal transport

Multimodal transport by maritime carriers



Illustration of services trade

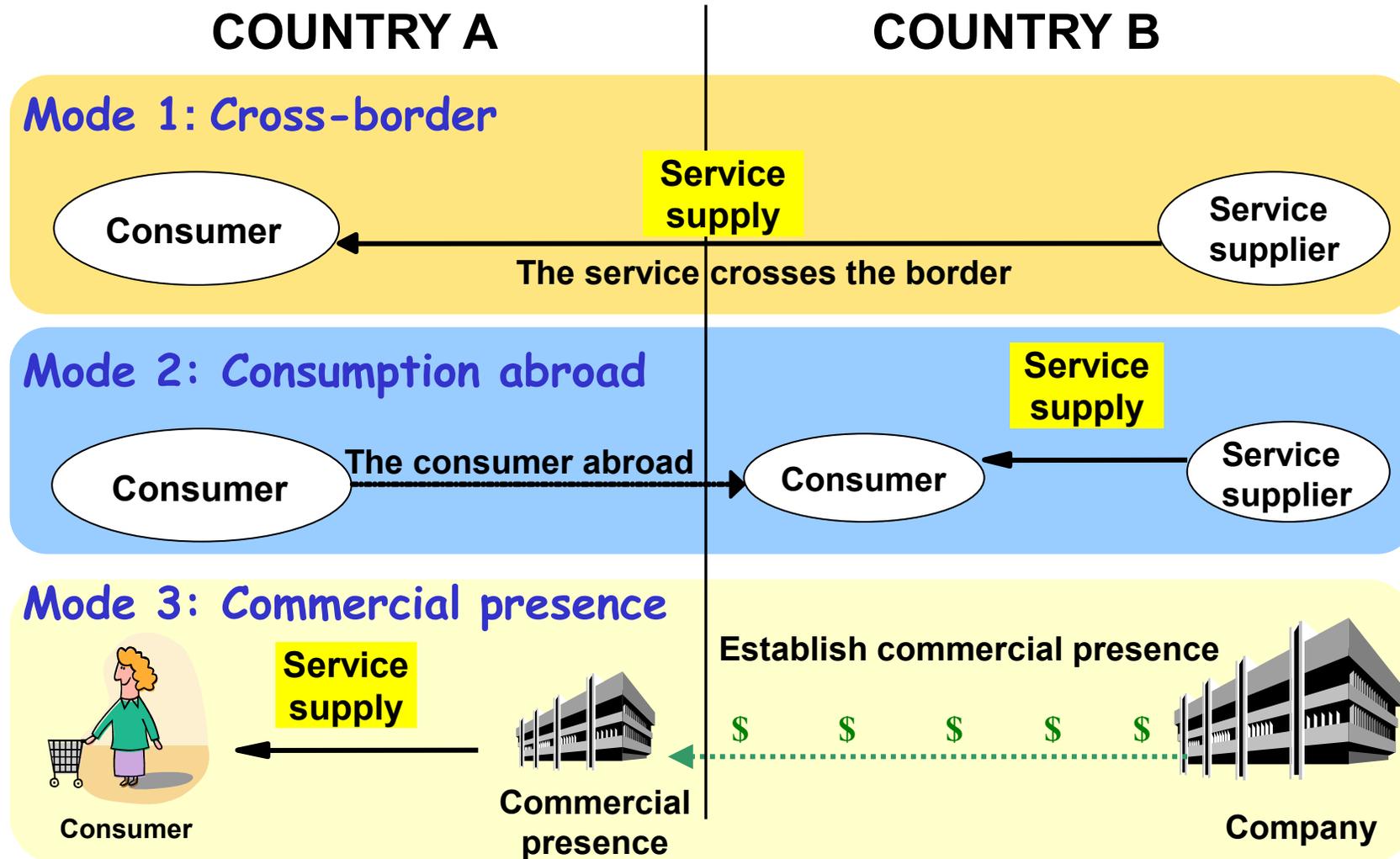
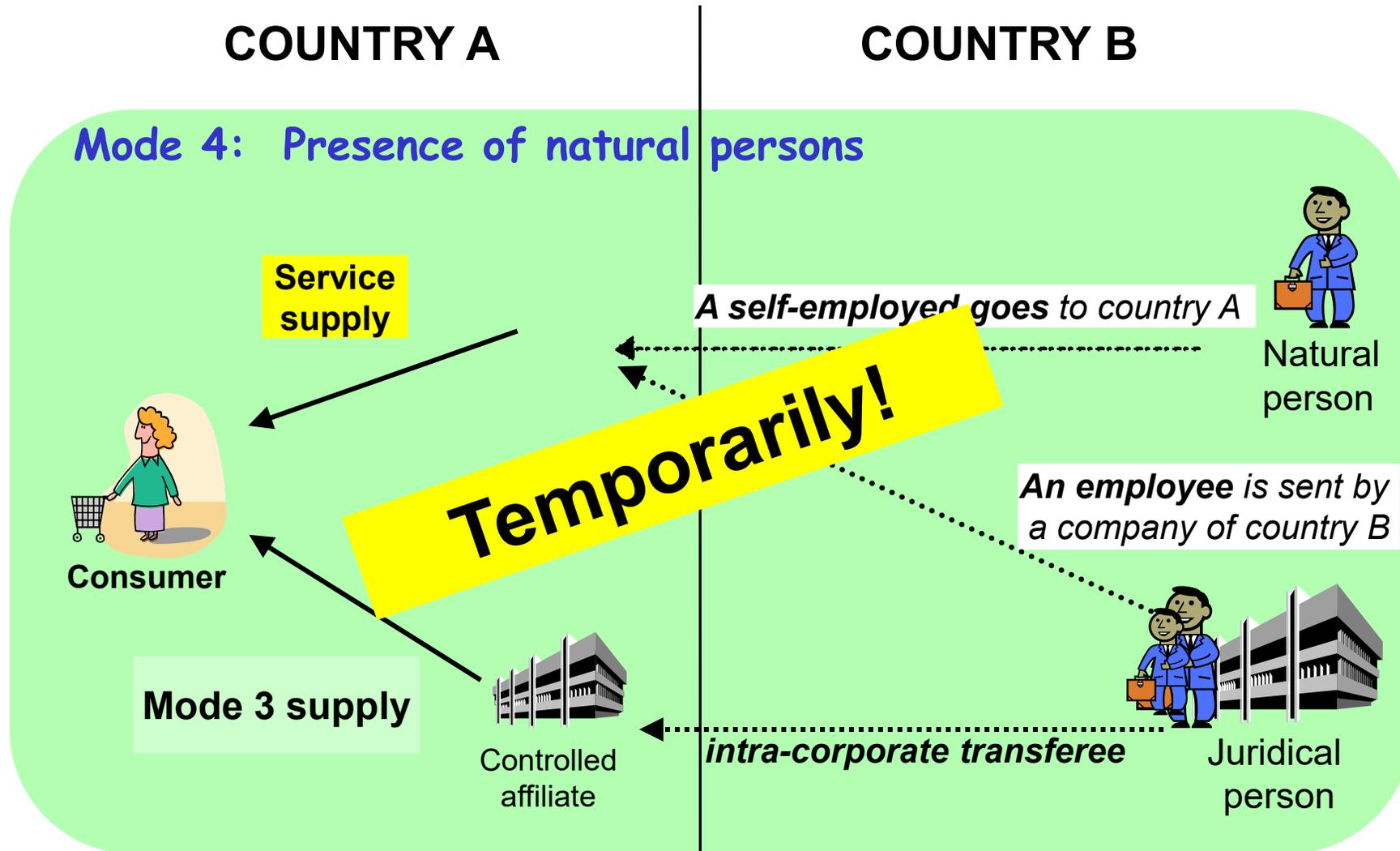


Illustration of services trade



GATS definition of trade in services as applied to maritime transport



Mode 1

Cross-border supply

International shipping



Mode 2

Consumption abroad

Ship maintenance and repair



Mode 3

Commercial Presence

Shipping company sets up offices/JVs abroad



Mode 4

Movement of Natural persons

Foreign seafarers



Cross-border supply of maritime transport services

- Mode 1: the supply of a service from the territory of one Member into the territory of any other Member;
- Mode 2: the supply of a service in the territory of one Member to the service consumer of any other Member.
- GATS Article XXVIII (f): “Services of another Member” means a service which is supplied,
 - (i) from or in the territory of that other Member, or in the case of maritime transport, by a vessel registered under the laws of that other Member, or by a person of that other Member which supplies the service through the operation of a vessel and/or its use in whole or in part;

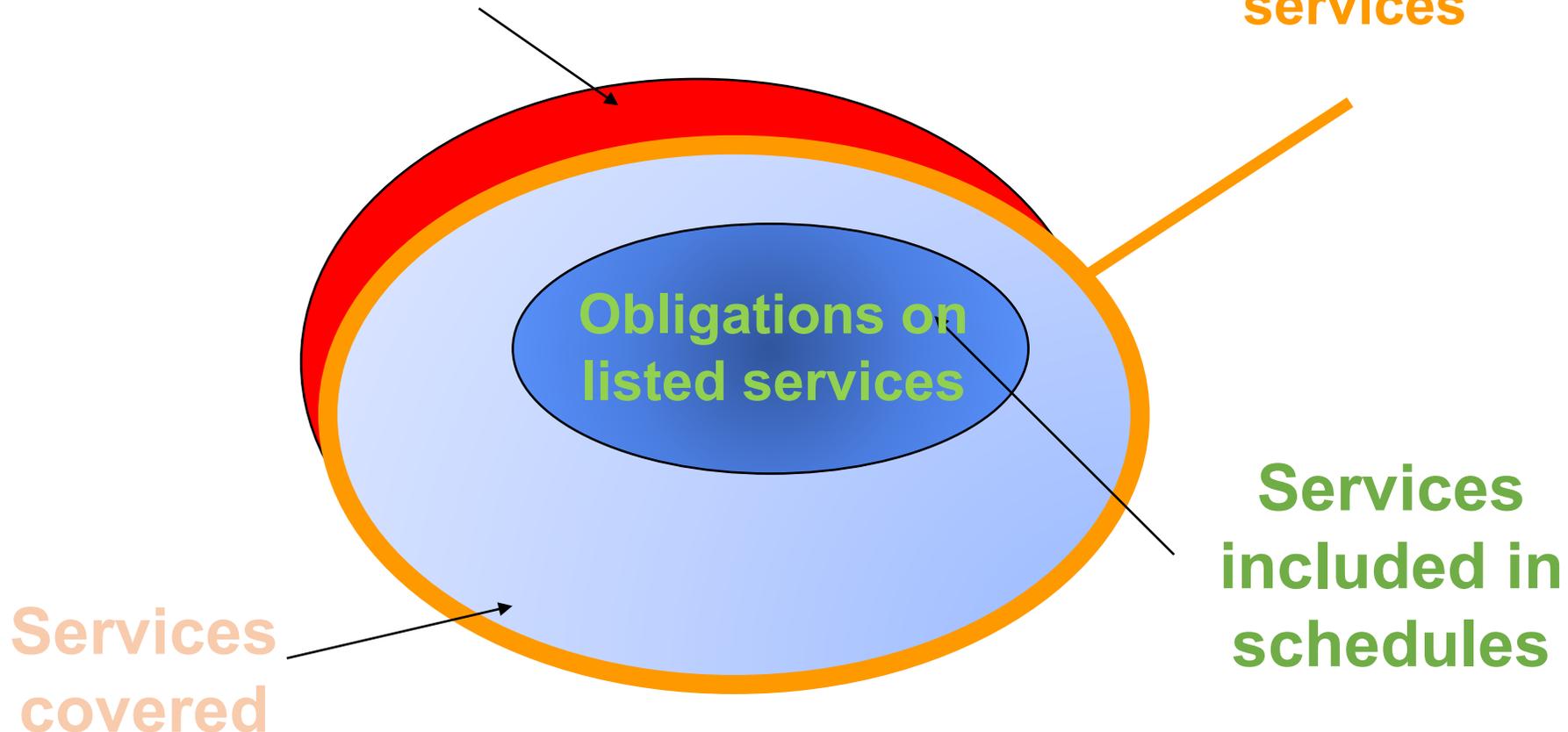
Sectoral coverage of the GATS



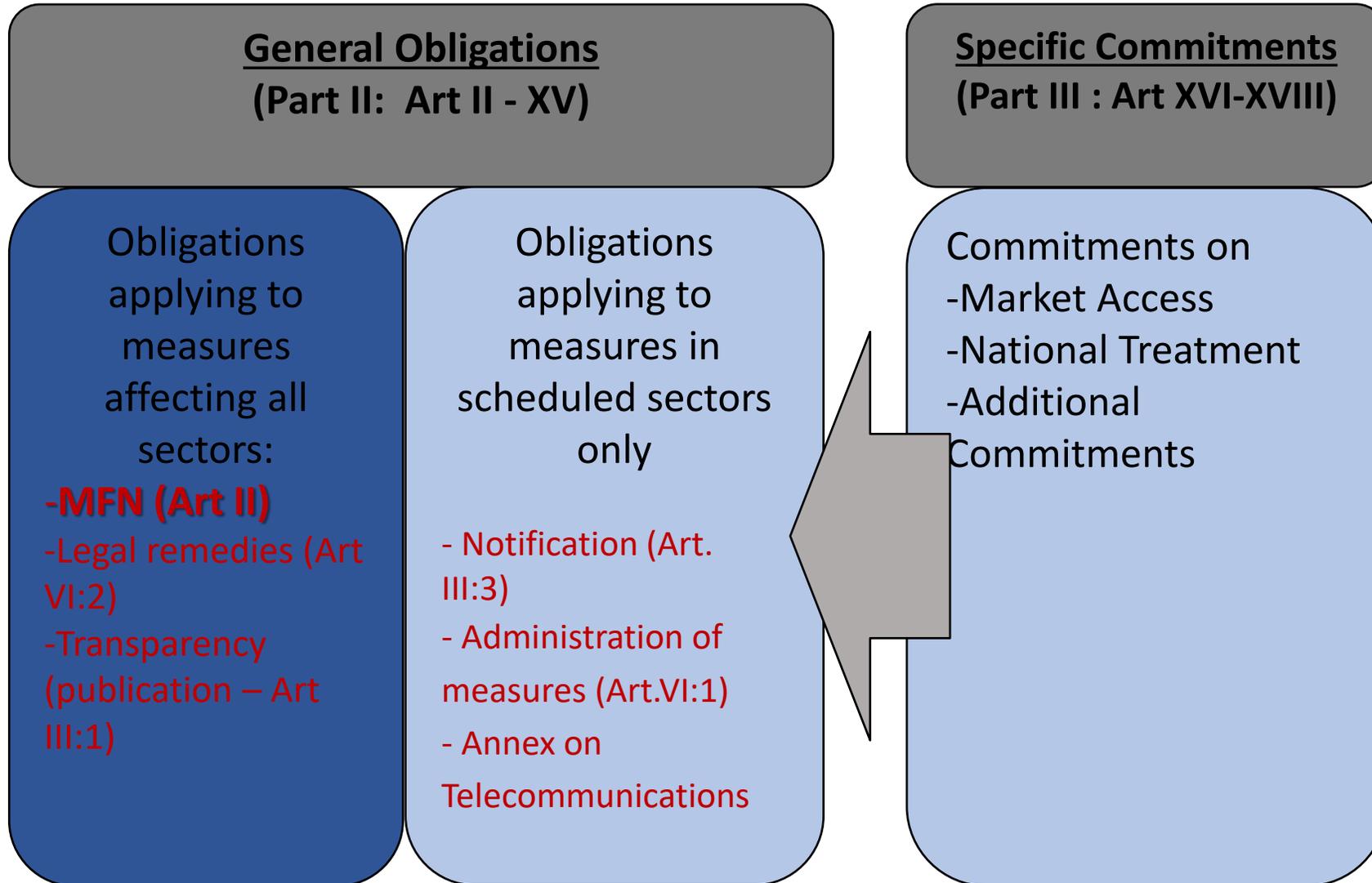
Services not covered (GATS not-applicable)

(“governmental services”,
services linked to air traffic rights)

Obligations on all
services



Logic of obligations under the GATS: two types of obligations



Core Obligation: Most-Favoured- Nation treatment (MFN) – Article II

“With respect to any measure covered by this Agreement, each Member shall accord immediately and unconditionally to services and service suppliers of any other Member treatment no less favourable than that it accords to like services and service suppliers of any other country” (Article II:1)

Application to shipping: for example, cargo-sharing agreements are inconsistent with the MFN under the GATS.

Permitted departures from MFN

- MFN Exemptions (Annex on Article II Exemptions)
- Economic Integration (Article V)
- & Labour Markets Integration Agreements (Article *Vbis*)
- Recognition (Article VII)
- *Elimination of regulation-related restrictions (licenses, certificates, etc.)*
- Other
 - - General and Security Exceptions (Art. XIV and *XIVbis*);
 - - Prudential carve-out in financial services.
- **Special status:** Maritime transport (Suspension of MFN to uncommitted international shipping, auxiliary services and access to and use of port facilities until conclusion of negotiations)

Core obligation: Market Access - Article XVI

1. With respect to market access through the modes of supply identified in Article I, each Member shall accord services and service suppliers of any other Member treatment no less favourable than that provided for under the terms, limitations and conditions agreed and specified in its Schedule.
2. **In sectors where market-access commitments are undertaken**, the measures which a Member shall not maintain or adopt either on the basis of a regional subdivision or on the basis of its entire territory, unless otherwise specified in its Schedule, are defined as:
 - a. Limitations on the number of service suppliers;
 - b. limitations on the total value of service transactions or assets;
 - c. limitations on the total number of service operations or on the total quantity of service output;
 - d. limitations on the total number of employees;
 - e. measures which restrict or require specific types of legal entity or joint venture;
 - f. limitations on the participation of foreign capital.

(Limitations 1-4 may be in the form of quotas or the requirement of an economic needs test)

Core obligation: National Treatment - Article XVII

1. **In the sectors inscribed in its Schedule**, and subject to any conditions and qualifications set out therein, each Member shall accord to services and service suppliers of any other Member, in respect of all measures affecting the supply of services, treatment no less favourable than that it accords to its own like services and service suppliers.
2. A Member may meet the requirement of paragraph 1 by according to services and service suppliers of any other Member, either formally identical treatment or formally different treatment to that it accords to its own like services and service suppliers.
3. Formally identical or formally different treatment shall be considered to be less favourable if it modifies the conditions of competition in favour of services or service suppliers of the Member compared to like services or service suppliers of any other Member

Common trade restrictions in maritime transport

- **Cabotage**
 - Under the Jones Act, the transportation of goods between US ports and on US waterways, known as cabotage, can only be carried out by a vessel that is US-owned, crewed (75% must be American citizens), registered and built
- **Cargo sharing**
 - Cargo sharing agreement reserves cargo transport to partners, in the types of sharing: equal between partners (50%-50%), equal with a third country (1/3 – 1/3 – 1/3) or 40-40-20 (40% for partners and 20% for third countries, like UN liner)
 - Reserve certain type of cargo to national fleet and/or partner fleet
- **Limitations on onshore establishment**
 - Establishment of registered companies for the purpose of operating a fleet under the national flag: Foreign investment shall not exceed 49 per cent of the total registered capital of the joint venture; the chairman of board of directors and the general manager of the joint venture shall be nationals
- **Limitations on the crew** (e.g., nationality requirements, quota)
 - Minimum 25 % of national officers in the crew of national ships.
 - Two-thirds of the crew of national ships, including the vessel's master, chief engineer and engine technician, must be nationals.
- **Discrimination on berthing pilotage priorities and fees**
- **Private monopoly in maritime cargo handling/storage and warehousing services in a landlord port**
- **Subsidies** are reserved to national shipping companies flying the national flag

Core Obligation: transparency – Article III

- Publication: publish all relevant measures of general application which pertain to or affect the operation of this Agreement
- Notification: inform the Council for Trade in Services of the introduction of any new, or any changes to existing, laws, regulations or administrative guidelines which significantly affect trade in services covered by specific commitments
- Enquiry point: establish one or more enquiry points to provide specific information to other Members on services measures
- Counter notification: notify the Council of measures taken by other Members.

Core Obligation: Domestic Regulation – Article VI

- Obligations to ensure due process:
 - Administer measures of general application in a reasonable, objective and impartial manner
 - Ensure the availability of the procedures for the review of administrative decisions affecting trade services
 - Ensure applicants to be duly informed
 - Provide adequate procedures to verify the competence of professionals of other Members
- To ensure that licensing and qualification requirements and technical standards do not constitute unnecessary barriers to trade in services
 - Develop necessary disciplines;
 - Provisionally, obligation to ensure that licensing and qualification requirements and technical standards do not nullify or impair specific commitments
- Application to maritime transport: regulations aimed to pursue shipping quality, safety or sustainability objectives must be based objective and transparency criteria, and not more burdensome than necessary to ensure the quality of the service.

Exceptional clauses under the GATS

- **Article XIV** (General Exceptions)
- **Article XIVbis** (Security Exceptions)
- **Article XII** (Balance of Payments)
- **'Prudential carve-out'** in financial services

Specific Commitments: Member-specific obligations under the GATS

- Each Member "shall set out in a schedule the specific commitments it undertakes". (Article XX)
- What constitutes specific commitments:
 - Market access (Art. XVI)
 - Mostly quantitative restrictions
 - National treatment (Art. XVII)
 - Discriminatory measures
 - Additional commitments (Art. XVIII)
 - Measures not subject scheduling under Articles XVI or XVII, including those regarding qualifications, standards or licencing matters

Rationale for Specific Commitments: Unnecessary Trade Barriers & Necessary Domestic Regulation

Trade Barriers

Market Access
(Article XVI)

Mainly quantitative restrictions

National Treatment
(Article XVII)

Discriminatory measures

Domestic Regulation

Article VI:4&5

Non-discriminatory

qualitative requirements:

Licensing and qualification
requirements and technical
standards

Maritime Model Schedule

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>TRANSPORT SERVICES</p> <p>MARITIME TRANSPORT SERVICES</p> <p>International Transport (freight and passengers) CPC 7211 and 7212 <u>less</u> cabotage transport</p> <p><i>[Option 2A would replace the above by:</i></p> <p>International Transport (freight and passengers) <u>less</u> cabotage (as defined below)]</p>	<p>1) [(a)<u>Liner Shipping</u>: None</p> <p>(b)<u>Bulk, tramp, and other international shipping, including passenger transportation</u>: None]</p> <p>2) [None]</p> <p>3) [(a) Establishment of registered company for the purpose of operating a fleet under the national flag of the State of establishment: unbound]</p> <p>(b) Other forms of commercial presence for the supply of international maritime transport services (as defined below - 2): none</p> <p>4) [(a) Ships' crews: unbound]</p> <p>(b) Key personnel employed in relation to a commercial presence as defined under mode 3 b) above</p>	<p>1) [(a) None</p> <p>(b) None]</p> <p>2) [None]</p> <p>3) [(a) Unbound]</p> <p>(b) None</p> <p>4) [(a) None]</p> <p>(b) None</p>	<p>The following services at the port are made available to international maritime transport suppliers on reasonable and non discriminatory terms and conditions</p> <ol style="list-style-type: none"> 1. Pilotage 2. Towing and the tug assistance 3. Provisioning, fuelling and watering 4. Garbage collecting and ballast waste disposal 5. Port Captain's services 6. Navigation aids 7. Shore-based operational services essential to ship operations including communications, water and electrical supplies 8. Emergency repair facilities [9. Anchorage, berth and berthing services]

Maritime Model Schedule

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>TRANSPORT SERVICES</p> <p>MARITIME TRANSPORT SERVICES</p> <p>International Transport (freight and passengers) CPC 7211 and 7212 <u>less</u> cabotage transport</p> <p><i>[Option 2A would replace the above by:</i></p> <p>International Transport (freight and passengers) <u>less</u> cabotage (as defined below)]</p>			<p><i>[Option 1 would replace the Note to the Schedule by the following:</i></p> <p>Where road, rail, inland waterways [and][coastal and inland shipping] [and related auxiliary] services are not otherwise fully covered in this schedule, a multimodal transport operator shall have the ability to rent, hire or charter trucks, railway carriages [ships] or barges and related equipment, for the purpose of onward forwarding of international cargoes carried by sea, or have access to and use of these forms of transport services for the purpose of providing multimodal transport services.]</p>

Maritime Model Schedule

Sector or sub-sector	Limitations on market access	Limitations on national treatment	Additional commitments
<p>MARITIME TRANSPORT SERVICES</p> <ul style="list-style-type: none"> - Maritime Cargo Handling Services (as defined below - 4) - Storage and Warehousing Services CPC 742 [as amended] - Customs Clearance Services (as defined below - 5) - Container Station and Depot Services (as defined below - 6) - Maritime Agency Services (as defined below - 7) - [Maritime] Freight Forwarding Services (as defined below - 8) 	<ul style="list-style-type: none"> 1) None/Unbound* 2) None 3) None/None** 4) None 	<ul style="list-style-type: none"> 1) None/Unbound* 2) None 3) None 4) Non 	



GATS limited application to maritime transport services due to unfinished negotiations

- **No MFN obligation for uncommitted services** related to international shipping, auxiliary services and access to and use of port facilities until the end of the negotiations.
- WTO Members' **existing maritime commitments** and related MFN exemptions, which are not definitive.

WTO Members' commitments on maritime transport



Out of 164 WTO Members, 62 have included commitments on maritime transport services; 71 have listed MFN exemptions.

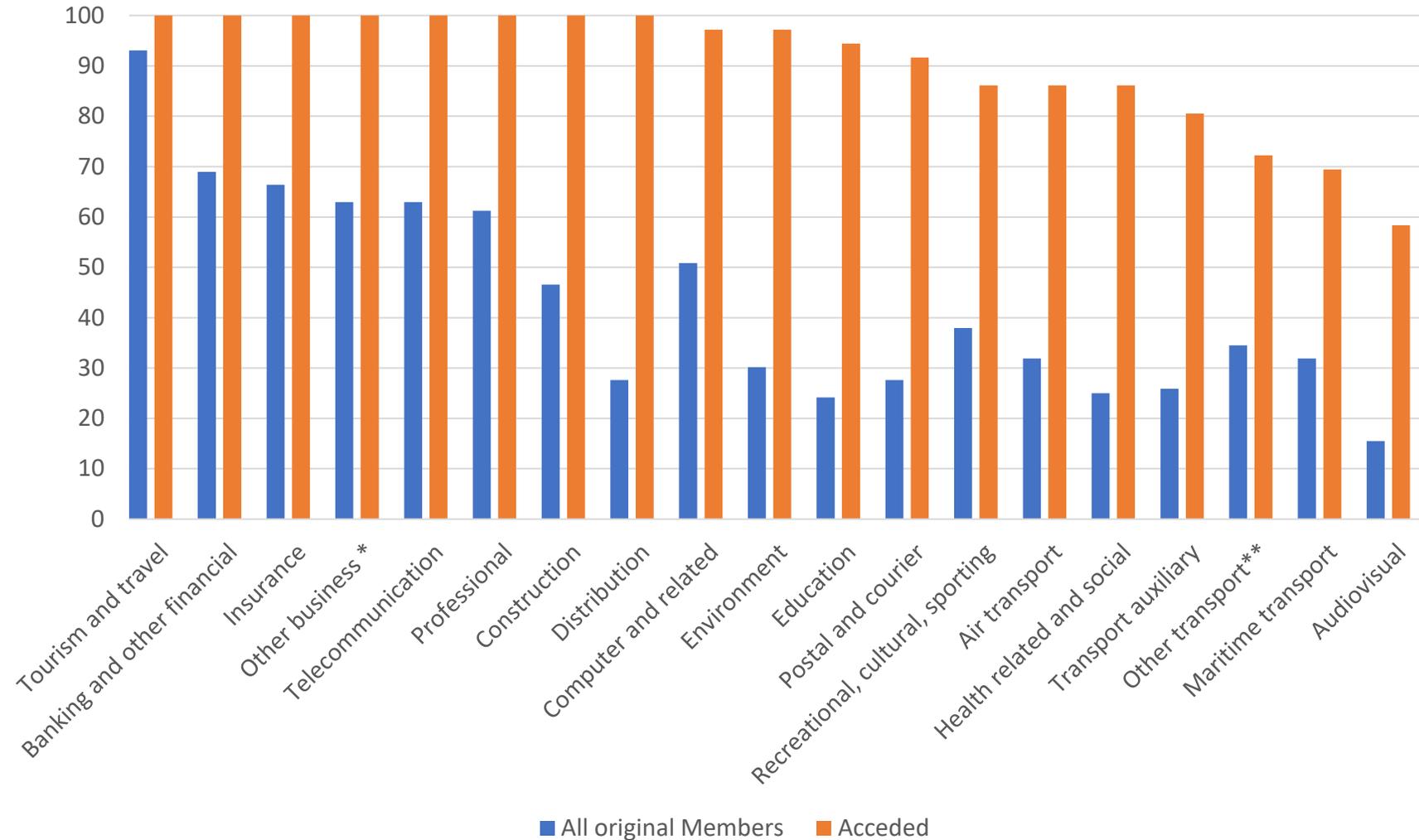


Maritime cabotage is generally excluded from commitments.



Otherwise, there are no clear patterns of commitments. This may reflect the diversity of national legislation in the sector.

Multilateral bindings: Sectoral coverage of commitments



Case study (i)

2018 amendments to the Code of the Russian Federation on Commercial Maritime Navigation:

Article 4. Operation of ships sailing under the State flag of the Russian Federation for commercial navigation

1. The following is exercised by the ships sailing under the State Flag of the Russian Federation unless otherwise is provided by international treaties of the Russian Federation, the Code or resolutions of the Government of the Russian Federation adopted in accordance with the above:
 - 1) coasting;
 - 2) icebreaker assistance, search and rescue operations, salvage of the equipment lost in the sea, hydro technical, subsurface and technical and other such works in internal sea waters and/or territorial sea of the Russian Federation;
 - 3) Maritime resource studies, exploration and exploitation of mineral resources of the seabed and its subsoil resources in internal waters and/or territorial sea of the Russian Federation, in exclusive economic zone of the Russian Federation and continental shelf of the Russian Federation

Case study (i)

2018 amendments to the Code of the Russian Federation on Commercial Maritime Navigation:

2. With the purpose of the Code the **coasting** is the shipment of cargo, passengers and their luggage and/or towage:

- 1) in internal sea waters and/or territorial sea of the Russian Federation without crossing the State Border of the Russian Federation;
- 2) out of internal sea waters and/or territorial sea of the Russian Federation towards man-made islands, installations and constructions located in exclusive economic zone of the Russian Federation and/or continental shelf of the Russian Federation;
- 3) into internal sea waters and/or territorial sea of the Russian Federation from man-made islands, , installations and constructions located in exclusive economic zone of the Russian Federation and/or continental shelf of the Russian Federation;
- 4) between man-made islands, , installations and constructions located in exclusive economic zone of the Russian Federation and/or continental shelf of the Russian Federation;
- 5) out of internal seawaters and/or territorial sea of the Russian Federation into internal seawaters and/or territorial sea of the Russian Federation crossing the State Border of the Russian Federation

Case study (i)

2018 amendments to the Code of the Russian Federation on Commercial Maritime Navigation:

.....

3. The following is executed exclusively by using the ships sailing under the State Flag of the Russian Federation:

- 1) Pilotage, sanitary, quarantine and other control, safety and preservation of maritime environment in internal seawaters and/or territorial sea of the Russian Federation as well as icebreaker assistance and ice pilotage in the basin of the Northern Sea Route
- 2) sea shipping of oil, natural gas (incl. in liquefied form), gas condensate and coal extracted on the territory of the Russian Federation and/or on the territory under the jurisdiction of the Russian Federation including continental shelf of the Russian Federation, and
- 3) storage of oil and oil products, natural gas (incl. in liquefied form), gas condensate and coal unless such storage is executed on board the ship in the basin of the Northern Sea Route

Questions: is the new regulation consistent with Russia's commitments under the GATS

Russia's relevant commitments under the GATS:

Sectors or subsectors	Limitation on market access	Limitation on national treatment	Additional commitments
International Transport (CPC 7211, CPC 7212), less cabotage transport (1)	<p>(1) (a) <u>Liner Shipping:</u></p> <p>None, except the following:</p> <ul style="list-style-type: none"> - the priority right to take part in the conduct of the Production Sharing Agreement (2) as carriers belongs to the juridical persons of the Russian Federation. <p>(b) <u>Bulk, tramp, and other international shipping including passenger transportation:</u></p> <p>None, except for the following:</p> <ul style="list-style-type: none"> - the priority right to take part in the conduct of the Production Sharing Agreement as carriers belongs to the juridical persons of the Russian Federation. <p>(2) None, except for the following:</p> <ul style="list-style-type: none"> - the priority right to take part in the conduct of the Production Sharing Agreement as carriers belongs to the juridical persons of the Russian Federation. Production sharing agreements for the exploration, development and production of mineral raw materials. 	<p>(1) (a) None, except as indicated in the column "Limitations on market access".</p> <p>(b) None, except as indicated in the column "Limitations on market access".</p> <p>(2) None, except as indicated in the column "Limitations on market access".</p>	<p>The following services are made available to international maritime transport suppliers on reasonable and non-discriminatory terms and conditions at trade ports:</p> <ul style="list-style-type: none"> -Pilotage (for the Russian flagged vessels the use of pilotage services may be optional); -Ice-breaking services; -Towing and tug assistance; -Provisioning, fuelling and watering; -Garbage collecting and ballast waste disposal; -Port Captain's services; -Navigation aids (lighthouse, aids to navigation, radar vessel traffic services, other electronic aids and systems to enhance safety of navigation, etc.); -Shore-based operational services essential to ship operations, including communications, water and electrical supplies; -Emergency repair facilities; -Anchorage, berth and berthing services.

Russia's relevant commitments under the GATS:

Sectors or subsectors	Limitation on market access	Limitation on national treatment	Additional commitments
<p>Maritime auxiliary services</p> <p>Cargo-handling services</p>	<p>(1) Unbound. (2) None. (3) None, except the following: - commercial presence is allowed only in form of a juridical person of the Russian Federation. (4) Unbound, except as indicated in Part I "Horizontal commitments"</p>	<p>(1) Unbound. (2) None. (3) None, except as indicated in the column "Limitations on market access". (4) None, except as indicated in Part I "Horizontal commitments".</p>	
<p>Storage and warehousing services (CPS 742*);</p> <p>Container station and depot services</p>	<p>(1) Unbound (2) None. (3) None, except the following: - commercial presence is allowed only in form of a juridical person of the Russian Federation. (4) Unbound, except as indicated in Part I "Horizontal commitments".</p>	<p>(1) Unbound (2) None. (3) None, except as indicated in the column "Limitations on market access". (4) Unbound, except as indicated in Part I "Horizontal commitments"</p>	

Footnotes to Russia's commitments

1. Cabotage: Without prejudice to the scope of activities which may be considered as "cabotage" under the relevant legislation of the Russian Federation, this schedule does not include "maritime cabotage services", which are assumed to cover transportation of passengers or goods between the ports located in the Russian Federation and transportation of passengers and goods between a port located in the Russian Federation and installations or structures situated on the continental shelf of the Russian Federation as well as transportation of passengers and goods within the territorial waters of the Russian Federation.
2. Production sharing agreements for the exploration, development and production of mineral raw materials

Case study (ii)

- UNCLOS Article 234 Ice-covered areas:

“Coastal States have the right to adopt and enforce non-discriminatory laws and regulations for the prevention, reduction and control of marine pollution from vessels in ice-covered areas within the limits of the exclusive economic zone, where particularly severe climatic conditions and the presence of ice covering such areas for most of the year create obstructions or exceptional hazards to navigation, and pollution of the marine environment could cause major harm to or irreversible disturbance of the ecological balance. Such laws and regulations shall have due regard to navigation and the protection and preservation of the marine environment based on the best available scientific evidence.”

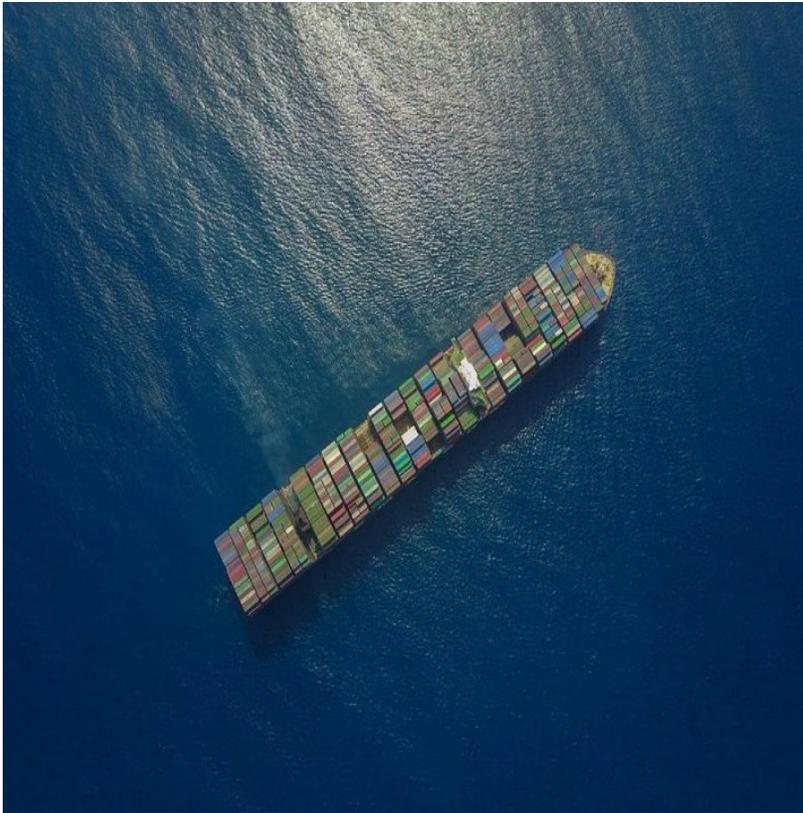
- **Implementation of Article 234 by Russia:** A Russian law requires all vessels passing through the Northern Sea Route to be piloted by Russians. Russia also requires that passing vessels pay tolls and provide advance notice of their plans to use the route.

Questions: Is the GATS applicable? If so, are Russia's regulations consistent with its obligations under the GATS?

Put WTO law into perspective

- Recent trends in shipping
- Implications for future rules

Trends in the maritime sector: what are their implications for trade policies?



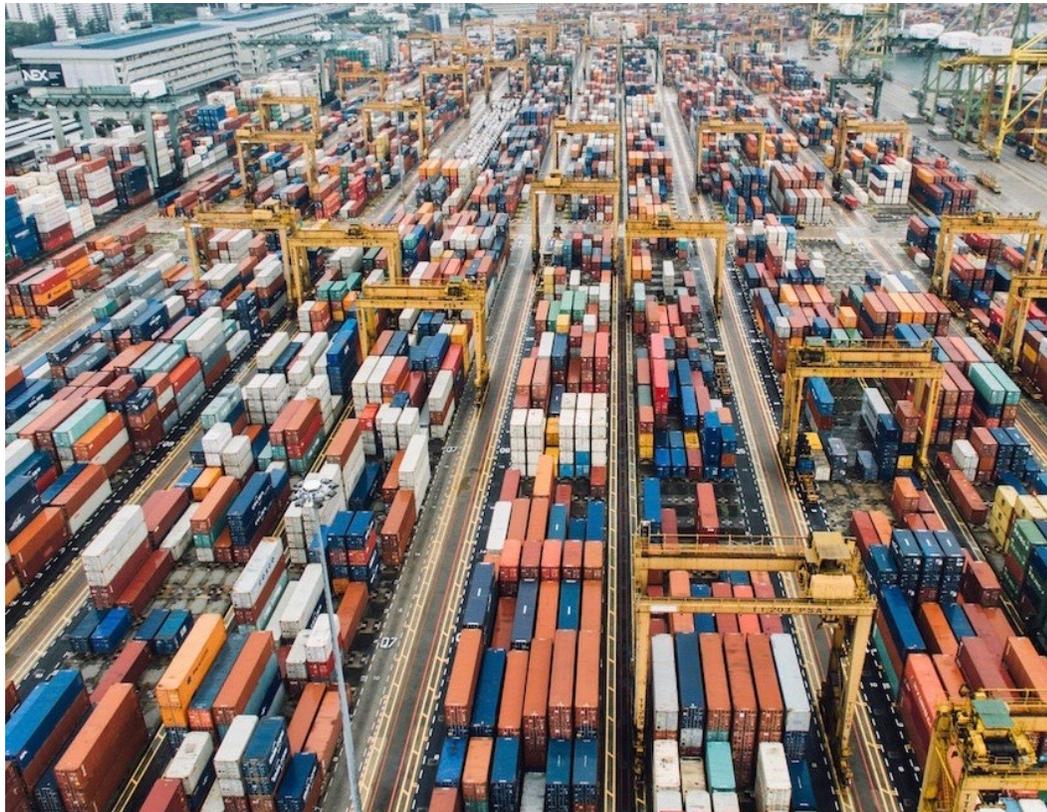
- Further liberalization shadowed by new protectionist tendencies
- Market consolidation and concentration
- Vessel upsizing
- Automation and digitalization
- Intermodal transport gaining more importance
- Decarbonization
- Shipping connectivity for small and remote economies worsening

(Proposed) Maritime chapter in recent trade agreements

- Trade in Services Agreement (TiSA, until December 2016); Canada-EU FTA; EU-Japan FTA; EU-Mexico FTA; and EU-Singapore FTA contain a similar maritime chapter (annex). Main elements include:
 - A **broader definition** of the sector:
 - Four pillars + feeder, dredging, transport of empty containers, etc.
 - **Free and equal access**:
 - Freedom to supply
 - National treatment
 - Non-discriminatory access to and use of ports and port services.



Do we need updated trade rules on maritime transport?



- Impact of economic slowdown
 - De-globalization or new trade patterns
- Technological advances
- Further market consolidation
- Tightened environmental requirements
- Any motivation for trade-off in and outside of the sector?

THANK YOU

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