Annex [1] on [International] Maritime Transport Services [MU oppose; and other Maritime Services] [*CA/IS/PA*[2]]

ARTICLE 1. [**AU/NO/PA propose**: *Scope and] Definitions*

[**AU/CO/EU/HK/IS/MU/NO/PA/PE propose**: This Annex applies to measures by [~~the~~] Parties [**CH propose**: affecting] [**CA/MU/PE propose**: relating to**]** trade in maritime transport services] [**CH/MU/NZ propose**; **AU oppose**: as set out in each Party's Schedule and subject to any conditions, limitations or qualifications inscribed therein]. For the purpose of this Annex:

(a) "international maritime transport services[3]" means [**CR considering**: maritime transport of [**CA/CL/CO/IL/MX/MU/PE/PK/TR propose**: cargo][**CH/EU/JP/MX/NZ propose**; **PE oppose**: freight [**EU propose**:*[4]]][and/or] passengers between a port of a Party and a port of another Party or a non-Party].

(b) "maritime auxiliary services" means the following services:
   (i) "maritime cargo handling services" means activities exercised by stevedore companies, including terminal operators, but not including the direct activities of dockers, when this workforce is organized independently of the stevedoring or terminal operator companies. The activities covered include the organisation and supervision of:
      1. the loading/discharging of cargo to/from a ship;
      2. the lashing/unlashing of cargo;
      3. the reception/delivery and safekeeping of cargoes before shipment or after discharge;
   (ii) "storage and warehousing services" means storage services of frozen or refrigerated goods, bulk storage services of liquids or gases, and storage and warehousing services of other goods, including: cotton, grain, wool, tobacco, other farm products, and other household goods.;
   (iii) "customs clearance services" (alternatively "customs house brokers' services") means activities consisting in carrying out on behalf of another party customs formalities concerning import, export or through transport of cargoes, whether this service is the main activity of the service provider or a usual complement of its main activity;
   (iv) "container station and depot services" means activities consisting in storing containers, whether in port areas or inland, with a view to their stuffing/stripping, repairing and making them available for shipments;
   (v) "maritime agency services" means activities consisting in representing, within a given

[1] For purposes of this draft, we refer to the maritime transport services text as an "annex". As the architecture of the TISA takes shape, it is possible that it could be a "chapter" or "section".
[2] [**CA propose**: Nothing in this Annex shall be interpreted to apply to fishing vessels as defined under a Party's domestic law, nor does it apply to vessels or international maritime transport services suppliers that are subject to the *Agreement on Port State Measures to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*.]
[3] [**CO/CL/JP/KR/MX/NZ/TR/TW propose; CR/IS considering:** For greater certainty, international maritime transport services shall not include cabotage in maritime transport services.]
[4] [**EU propose**: Referred to as 'cargo' in some jurisdictions]

geographic area, as an agent the business interests of one or more shipping lines or shipping companies, for the following purposes:

1. marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, acquisition and resale of the necessary related services, preparation of documentation, and provision of business information;
2. acting on behalf of the companies in organising the call of the ship or taking over cargoes when required;

vi) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through the acquisition of transport and related services, preparation of documentation and provision of business information;

(c) [**AU/CA/CO/CR/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/PA/PE/PK/TR/TW propose**; **NZ considering**: "multi-modal transport" means the carriage of goods by at least two different modes of transport, [involving] [**PE propose; including]** an international sea-leg, on the basis of a single transport document[5];**]**

(d) **AU/CA/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/PA/PE/TR/TW propose**; **CR/NZ/PK considering**: "multi-modal transport operator" means the person on whose behalf the bill of lading/multi-modal transport document, or any other document evidencing a contract of multi-modal carriage of goods, is issued and who is responsible for the carriage of goods pursuant to the contract of carriage;**]**

(e) [**CA/EU/IS/NO/PA propose**; **KR/PE/MU oppose**: "feeder services" means the pre- and onward transportation by sea, between ports located in a Party [**CA/TR propose**; **EU oppose**: and in the case of the European Union, between ports in a Member State], of international cargo, including containerised cargo, [**AU** propose: or passengers,**]** en route to a destination, or from a port of shipment, outside the territory of that Party;**]]**

(f) [**AU/CA/NO/PE propose**; **PA considering**; **KR/TW oppose**: "maritime offshore services" means

(i) maritime transport of goods or persons between any port [**CA propose**: of a Party] and any location [**CA propose**: situated in the offshore area of that Party in relation] [**CA oppose**: associated with or incidental to] [**CA propose**: the] exploration and [**CA propose**: /or] exploitation of [**CA propose**: the mineral or non-living] natural resources[6] [situated] [**CA propose**: of the Party's) offshore [**CA propose**: area], or between any such locations, and

(ii) [**CA propose**: any commercial] maritime [**CA propose**: activity in relation] to [**CA oppose**: domestic pushing and towing services, including anchor handling, associated with or incidental] to [**CA propose**: the transport], exploration [**CA**

[5] For the purpose of this definition, single transport document shall refer to a document that permits customers to conclude a single contract with a shipping company from a point of loading in one country to a point of delivery in another country **[CR propose:** For greater certainty, the scope of application of this definition shall not imply the supply of a transport service.**]**

[6] Except living organisms [**CO propose**: and gathering water for cooling purposes].

propose: and/or] exploitation of [**CA propose**: the mineral or non-living] natural resources [**CA propose**: of the Party's offshore area][7].]

[**CA/CO/IS/JP/KR/TW propose**; **PA oppose**: (g) "international maritime transport service supplier" means

(i) any juridical person of a Party, as defined in Article I.02 - Definitions and a branch of any such entity [**CO propose**: , that is engaged in the supply of international maritime transport services] ; or

(ii) any juridical person of a non-Party owned or controlled by nationals of a Party, if their vessels are registered in accordance with the legislation of that Party and flying the flag of that Party; or

(iii) for purposes of this Annex , a branch of a juridical person of a non-Party with substantive business operations in the territory of a Party, that is engaged in the supply of international maritime transport services.]

(h) "services at the port" mean pilotage; towing and the tug assistance; provisioning, fueling and watering; garbage collecting and ballast waste disposal; port captain's services; navigation aids; shore-based operational services essential to ship operations including communications, water and electrical supplies; emergency repair facilities; anchorage, berth and berthing services.

[***TR/US OPPOSE: ARTICLE 2. Cross-border supply***

1. [**EU/IS/NO propose**: Each Party shall undertake commitments without limitations to permit cross-border supply, as described in Article I-1, 2 (a) and (b), of international maritime transport services, except agency requirements in relation to liner shipping.]

[**AU/CO/PA propose**: 1. Each Party shall undertake commitments to permit cross-border supply, as described in Article I-1, 2(a) and (b), of international maritime transport services. Any terms, limitations and conditions on such commitments set out in each Party's schedule in accordance with Article II-1 (Schedule of Market Access Commitment) shall be limited to measures that a Party maintains on the date this Agreement takes effect, or the continuation or prompt renewal of any such measures.]

2. [**AU/CO/IS/NO propose**: Each Party shall undertake commitments without limitations to permit cross-border supply of the following maritime auxiliary services[8]: maritime agency services, freight forwarding services [**AU oppose**: and part of[9] maritime cargo handling services].]

3. [**EU/IS/NO propose**; **AU considering**: Subject to any terms, limitations, conditions, and qualifications set out in its Schedule, each Party shall permit cross-border supply of feeder services and maritime offshore services.]

[7] Except living organisms [**CO propose**: and gathering water for cooling purposes].

[8] For other maritime auxiliary services, commitments only to the extent that these are deemed technically feasible by each individual Party.

[9] Transshipment (board to board or via the quay) and/or the use of on-board cargo handling equipment.

[**CA/KR propose**; **AU/NO oppose**: Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on the cross-border supply of maritime transport services.]]

AU/CA/EU/IS/JP/NO/PA: further consideration is required to accommodate necessary flexibility CA: and, if necessary, to determine the appropriateness of including an exceptions clause in this Annex.

ARTICLE 3. Flagged vessels [and recognition of vessel certificates]

[**CO/HK/IS/JP/KR/MX/NO/NZ/PA/TR/TW propose**; **IL/US oppose**: A Party shall not adopt or maintain any measure that would restrict access of ships engaged in international maritime transport [**NZ propose**: services] and flying the flag of a Party, or international maritime transport services and service suppliers of a Party, to international maritime [**IS propose**: transport] markets and trades on a commercial and non-discriminatory basis.

In determining the nationality of a vessel, each Party shall recognise the nationality of vessels of another Party on the basis of the certificate of registry duly issued by the competent authority of that other Party in compliance with that other Party's relevant laws and regulations.]

ARTICLE 4. Cargo-sharing arrangements

[**AU/CA/CO/EU/HK/IS/JP/NO/KR/PA propose**; **NZ/TR considering**: A Party shall not adopt or maintain cargo-sharing arrangements in any agreement concerning international maritime transport services. Any such arrangements in any agreement in force or signed prior to the date of entry into force of this Agreement shall be terminated upon the entry into force of this Agreement.]

CH/CL/TR/US consider reflecting linkages to core text on NT and MFN provisions

ARTICLE 5. Repositioning of* [CA/IL/KR/NZ/PA/PE propose: *empty containers]* *[*EU/IL/IS/NO/TW propose: *transport equipment]

[**AU/CA/CO/EU/IL/IS/JP/KR/MX/NO/PA propose**; **NZ considering**: Subject to [**AU propose**: Article 16 where appropriate] [AU oppose: any terms, limitations, conditions and qualifications set out in its schedule], each Party shall permit international maritime transport service suppliers to reposition owned/leased [**AU/EU/IL/IS/NO/TW propose**: transport equipment, such as] empty containers, not being carried as cargo against payment, between ports located in the Party.]

[CH/TR/US OPPOSE: ARTICLE 6. Commercial presence

1. [**CO/EU/IS/NO/PA propose**: Each Party shall undertake commitments without

limitations to permit supply of international maritime transport services through commercial presence, except in relation to the establishment of a registered company for the purpose of operating a fleet under the national flag of the State of establishment.]

2. [**NO propose**: Each Party shall undertake commitments without limitations to permit supply of maritime auxiliary services through commercial presence[10]].

3. [**CO/EU/IS/NO propose**; **PA considering**: Subject to any terms, limitations, conditions and qualifications set out in its Schedule, each Party shall permit supply through commercial presence of feeder services [**CO considering**: and of maritime offshore services.]]

4. [**CO/NO propose**: Subject to any terms, limitations, conditions and qualifications set out in its Schedule, each Party shall permit supply through commercial presence of pre- and onward road transport services]

[**CA/KR propose**; **AU/NO oppose**:

(a) Subject to a Party's schedule of specific commitments, a Party shall not adopt or maintain market access or national treatment limitations on commercial presence for the supply of international maritime transport services.]

5. Limitations on commercial presence for the supply of maritime transport services means any measure that would limit the ability for maritime transport service suppliers of another Party to undertake locally all activities that are necessary for the supply to their customers of a partially or fully integrated transport service, within which the maritime transport constitutes a substantial element.]

AU/CA/EU/IS/JP/NO/PA: further consideration is required to accommodate necessary flexibility [CA: and, if necessary, to determine the appropriateness of including an exceptions clause in this Annex].

[**AU/CA/IS/NO/PA/TW propose; JP considering:** ***ARTICLE 7: Access to and Use of Ports, Services at the Port, Maritime Auxiliary Services and Multimodal Transport Operations***

1. **[AU/CA/CH/CR/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/TR/TW propose; CL considering:** A Party shall not adopt or maintain any measure that would deny **[CH oppose; CR considering:** international maritime transport] services or service suppliers of any other Party the treatment accorded by that Party to its own like services or services suppliers or those of any other country with regard to:
   - access to ports,
   - use of infrastructure and services at the port,][**CR considering**: as well as
   - access to and use of [**AU/MX/NZ considering**: maritime auxiliary services and related services[11]]].

[10] This [paragraph] shall not be construed as limiting in any manner the ability of a Party to impose public utility concessions or licensing procedures in case of occupation of the public domain for maritime auxiliary services.
[11] For the purpose of this Annex, [US oppose: related services] are rental of vessels with crew (CPC 7213),

2. [**CA/IS/JP/MX/NO/TW propose**; **CR/EU considering**: Where a Party has undertaken commitments on feeder services or maritime offshore services, paragraph 1 of this Article shall apply equally to those services and service suppliers.]
3. [**AU/CA/CO/EU/HK/IL/IS/JP/KR/LI/MU/NO/PA/TR/TW propose**; **CR/MX/PE considering**: A Party shall not adopt or maintain any measure that would deny multimodal transport operators access to, and use of, road, rail or inland waterways transport services and related auxiliary services on [**AU/EU/JP/KR/MX/TR propose**: reasonable and] non-discriminatory terms and conditions for the purpose of carrying out multimodal transport operations , including the ability of the multimodal transport operator to arrange for the conveyance of its cargo on a timely basis , including priority over other cargo which has entered the port at a later date**.]**

ARTICLE 12. Domestic regulation

[**AU/CO/JP/KR/NO/NZ/PA/TR propose**; **CA oppose**: A Party shall not adopt or maintain technical standards that are not based on objective and transparent criteria, such as competence and the ability to supply the service, and shall ensure that any technical standards do not constitute arbitrary or unjustifiable discrimination or a disguised restriction on trade in services. In determining whether a Party is in conformity with this Article , account shall be taken of international standards applied by that Party, such as international standards adopted by the International Maritime Organisation and the International Labour Organisation. In cases where Parties apply measures that deviate from the above mentioned international standards, their standards shall be based on non-discriminatory, objective and transparent criteria.]

This article should be considered in the context of horizontal DR disciplines that may be negotiated.

ARTICLE 13. Port fees and charges

[**AU/CA/CH/CL/CO/EU/HK/IL/IS/JP/KR/LI/MU/MX/NO/NZ/PA/PE/TR/TW propose**; **CR/PK considering**: (a) Each Party shall recognise the International Tonnage Certificate (1969) duly issued [**AU propose**: to a vessel of a Party] [**AU oppose**: in accordance with][AU propose: pursuant to] the International Convention on Tonnage Measurement of Ships, 1969 (the Convention). Tonnage based port charges and expenses shall be collected on the basis of tonnage as stated in the International Tonnage Certificate (1969) or, in case of a vessel not subject to the Convention, the certificate of registry.

[**AU/CA/CL/CO/EU/IL/IS/JP/KR/LI/MX/MU/NO/NZ/PA/PE/TW] propose**; **CH/CR/HK/PK considering**: (b) If a Party decides to carry out an inspection related to the tonnage of a vessel, such inspection shall be carried out in compliance with the Convention. [**TR propose**: This inspection shall be limited to verifying that the main characteristics of the ship correspond to the data given in the certificate, and in no case shall the exercise of such

---

maintenance and repair of vessels (part of CPC 8868) and pushing and towing services (CPC 7214). CPC numbers refer to the UN Provisional Central Product Classification (Statistical Papers Series M No 77, Statistical Office of the United Nations, New York, 1991).

inspection cause any delay to the ship.]

[TR propose; AU/CA/CR/US oppose: ARTICLE 14. Identity documents, entry and transit of seafarers

1. For the facilitation of international maritime transport, each Party shall recognize the valid identification documents of seafarers/crew duly issued or endorsed by the competent authorities of another Party.

2. Subject to immigration laws of a Party, a crew member on a vessel of another Party holding valid identity documents as described in paragraph 1 shall:

(a) notwithstanding Article 1.4 of the Annex on Movement of Natural Persons, be admitted to the territory of that Party for temporary shore leave without visa during the stay of the ship in the port of Contracting Parties provided that the list of crew members is delivered to the passport control or the immigration authorities;
(b) be permitted to leave the territory of that Party upon termination of his engagement on a vessel as a crew member where this takes place in a port of that Party;
(c) be admitted to the territory of that Party for the purpose of joining a vessel as a crew member, provided he is in possession of a declaration from the shipping company or its agent stating that he is to join a specific vessel at a port of that Party.

3. A Party cannot take discriminatory measures against the crew members of another Party during their stay in its ports and territory.

4. If a crew member of a Party requires medical observation or treatment of an illness during the stay of the vessel in a port of another Party, the competent authorities of the latter shall give permission for the said person to stay in its territory for a period [not exceeding *[.....]* months] until the medical condition of the person is fit for travel. That other Party shall give medical aid in accordance with national legislation.

AU/CA/EU/IS/JP/MU/NO/PA propose; PE considering: ***ARTICLE 16. Domestic Maritime Transport***

Notwithstanding any provision of this Annex, a Party shall not be required to take commitments in respect of maritime transport services to the extent that such services fall within the scope of its own cabotage regime, as such term is defined in its schedule of commitments to this agreement. For greater certainty, services covered by this Annex, which fall within the meaning of cabotage of a Party, should be identified as such within a Party's schedule of commitments.