

# WORLD TRADE ORGANIZATION

RESTRICTED

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**Negotiating Group on Maritime Transport Services**

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## COMMUNICATION FROM THE PHILIPPINES

### Response to the Questionnaire on Maritime Transport Services

The following communication is circulated at the request of the Philippines to members of the Negotiating Group on Maritime Transport Services.

#### **I. Market Structure**

##### Vessels

1.

STRUCTURE OF NATIONALLY-OWNED OR OPERATED FLEET (AS OF 31 DECEMBER 1994)		
Type of Vessels	Number of Vessels (National Flag)	Deadweight Tonnage (National Flag)
Tankers *	11	567,850.50
Ore/Bulk Carriers	250	11,710,124.66
General Cargo	61	1,134,058.36
Container Ships	10	183,020.00
Reefers	13	93,925.60
Specialized Cargo **	30	268,814.64
Ro-Ro	6	46,116.00
Ferries & Passenger	1	8,712.00
Multi-purpose	12	155,590.73
All Vessels	394	14,168,112.49

\* Includes liquified gas carriers, oil tankers and chemical tankers

\*\* Includes livestock carriers, car carriers

##### Trade

2-4. Total International Trade Carried By Sea (As of September 1993)

<u>FOB Value</u>	<u>Quantity</u>	<u>% Share of Total</u>
US\$ 20,763,178,344	48.99 million MT	77.70%

BreakdownExports

US\$ 8,119,340,549	14.12 million MT	29.00%
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Imports

US\$12,643,837,795	34.87 million MT	71.00%
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Carried by National Vessels (in 1992)

US\$ 2,063,641,000	7.34 million MT	14.98%
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No data available on the shares of partners' and cross trading vessels.

5. No data available.

Organization of Cargo

6. No data available.

7. No data available.

8. No data available.

9. The Philippines has no existing bilateral agreements on cargo-sharing.

10. No data available.

11. No data available.

Ports and Auxiliary Services

12. The total national port traffic for international trade cargoes as of end of 1992 was 48.99 million metric tons.

## International Trade Port Traffic in Major National Ports:

Batangas	-	10.88 million metric tons
Cagayan de Oro	-	8.55 million metric tons
Manila (North Harbor)	-	7.74 million metric tons
Manila (South Harbor)	-	6.30 million metric tons
Manila (MICT)	-	4.83 million metric tons
Tacloban	-	2.65 million metric tons
Davao	-	1.51 million metric tons
Iligan	-	1.46 million metric tons
Total		43.92 million metric tons

13. None, foreign equity participation in these services is limited to 40%. Participation of foreign suppliers in the governing boards is proportionate to the extent of foreign equity participation.

14. None, foreign equity participation in these services is limited to 40%.

## **II. Regulatory Structure**

1. The Maritime Industry Authority under the Department of Transportation and Communications is the main authority for matters related to shipping. However, it coordinates and liaises very closely with the Philippines Ports Authority, (also under the Department of Transportation and Communications); the Philippines Shippers' Bureau under the Department of Trade and Industry; the Philippine Coast Guard under the Department of National Defense; and the National Economic and Development Authority.

2-3. There is no specific legislation regulating bulk or liner shipping operations in the Philippines.

4. Accreditation with the Philippine Shippers Bureau is required of Philippine nationals engaged as freight forwarders, break-bulk agents, cargo consolidators and NVOCCS.

5. The Philippine Ports Authority is responsible for the administration and operation of all ports in the Philippines. Accreditation of private entities engaged in the provision of port-related auxiliary service activities is vested with the Philippine Ports Authority.

6. There is no national definition of "international maritime transport". It is generally understood however to be the carriage of goods and passengers by an oceangoing vessel from one port in the Philippines to another port in another country or between and among foreign ports.

7. "National shipping enterprise" is defined as an entity engaged in shipowing/shipchartering whose equity is at least 60% Filipino.

### **Market Access**

#### **8.a Maritime Transport Services Suppliers**

8.a.1 Accreditation with the Maritime Industry Authority (MARINA) is required for entities wishing to engage in the maritime business (excluding freight forwarding, break bulk agents, cargo consolidation, NVOCCS, shipchartering, shipowing, manning and crewing, and port auxiliary services).

8.a.2 Accreditation with the Philippine Shippers' Bureau for entities/individuals wishing to engage in freight forwarding, break bulk agents, cargo consolidation and NVOCC.

8.a.3 Registration/accreditation with MARINA for entities wishing to engage in overseas shipping specifically in shipowing and shipchartering.

8.a.4 Accreditation of manning/crewing agents is vested with the Philippine Overseas Employment Administration (POEA).

8.b Cargo reservation measures

- 8.b.1 Section 2: The transportation of persons or export or import of cargoes by water between the Philippines and another country which is procured, contracted for or obtained by any government office, agency or instrumentality, including all government-owned or controlled corporations or the payment for which cargoes is made or will ultimately be made from funds of the government or such instrumentality or corporation must make use of Philippine flag vessels (or carriers).
- 8.b.2 Section 3: Whenever export or import of cargoes and/or their transportation is to be paid from the proceeds of governments loans, credits or obligation, Philippine flag vessels must be utilized for such cargoes and/or their transportation.

Exemptions from Sections 2 and 3 above:

When suitable Philippine-flag vessels are not available at reasonable freight rates and within a reasonable period of time;

When a relevant international agreement entered into, or an international convention adhered to, by the Philippine Government provides otherwise;

On the basis of reciprocity; and

In the case of export commodity groups determined as exempted by the Philippine Export Council.

- 8.b.2 Bilateral agreements entered into by the Philippines on cargo reservation.

8.c Employment of Aliens

- 8.c.1 Ship's Crew - 100% manning/crewing of Philippine-registered vessels by Filipino nationals.

Exemptions:

On specialized vessels where a supercargo or supernumerary may be employed for a maximum of six months only.

Foreign crew may be employed only in case of emergency in a foreign port but not exceeding 10 percent of its complement until such time Filipino citizens can be employed.

- 8.c.2 Executives and chief operating officers must be citizens and permanent residents of the Philippines.

9.a. None.

9.b. None.

10. The Philippine Constitution and the Corporation Law of the Philippines both provide for 40% maximum foreign capital participation.

11. Minimum conditions for granting the right to fly the national flag:
- 11.a Vessel must be of domestic ownership i.e., ownership is vested in citizens of the Philippines, corporations and/or associations organized under the laws of the Philippines at least 60% of the capital of which is owned by the citizens of the Philippines.
- 11.b Vessels chartered by Philippine nationals accredited with MARINA.
- 11.c Vessels completely manned by Filipino crew.
- 11.d Management and operational control of the vessel are in the hands of the Filipino owner/charterer.

#### National Treatment

- 12.a. None.
- 12.b. None.

#### Access to and Use of Port Facilities

13. All such services, except for ballast waste disposal, are offered and available to the user at the port.
14. Use of the services in 13 (above) is not mandatory. It depends on the needs and requirements of the vessel.
15. All such services are available on a non-discriminatory basis.
16. None.
17. None.
18. None.
19. None.

#### Most-favoured Nation Treatment

20. The Philippines is a Party to the UNCTAD Code of Conduct for Liner Conferences.
21. Through bilateral agreements which stipulate the provisions in the Liner Code for cargo sharing. Presently, there are no such agreements in force.
22. Executive Order No. 769 provides the mechanism for the negotiation and implementation of cargo sharing arrangements according to the terms stipulated in the Liner Code.
23. None.
24. None.
25. None.

26. Cabotage law requires that only national flag vessels may engage in domestic shipping, i.e. the carriage of goods and passengers from one port in the Philippines to another port in the Philippines.

#### Government Procurement

27. Please see 8.b (above).

28. All Philippine registered vessels must be repaired/drydocked at Philippine shipyards/ship repair facilities.

#### Competition Law

29. The Philippines has no anti-trust laws or regulations that apply specifically to activities in the maritime transport sector. However, the Philippine Constitution provides that " .... no combination in restraint of trade or unfair competition shall be allowed."

#### Shipping Conferences

30. The London-based Far Eastern Freight Conference (FEFC) is the only CLOSED conference whose operation extends to the Philippines and is represented by the Philippines Europe Conference (PEC). The other outbound shipping conferences, namely; the Asia North America Eastbound Rate Agreement (ANERA) and the Australian-New Zealand Eastern Shipping Conference (PAC) are OPEN Conferences.

31. No government entity so far has required that it be notified of conferences' legitimate activities.

32. The conferences are requested to advise the Philippine Shippers' Bureau (PSB) of any freight rate increases and their corresponding justification. The PSB may oppose freight rate increases it deems unjustified. However, the PSB has no enforcement mechanism to ensure compliance with tariffs whose notification is required.

33. Yes.

34. Loyalty arrangements are recognized only when the service contracts entered into by shippers and members of a conference (e.g., ANERA) are classified as such. In the implementation of the Terminal Handling Charge (THC), an agreement between the conference and outsiders generally exists.

#### Shipper/Carrier Relations

35. Depending on the trade route, the following are considered institutional arrangements between shippers and carriers:

- a. Time-volume contracts
- b. Service contracts
- c. Cargo consolidation (another party may be involved in this activity, e.g., the freight forwarder or cargo consolidator).

36. In most cases, freight rate negotiations and consultations are conducted when a general rate increase (GRI) is proposed by a liner shipping conference.

The Philippine Shippers' Bureau (PSB) conducts consultations and negotiations with shipping companies, associations of shipping interests, government authorities, and other institutions and persons, whether foreign or domestic, for the shipment of goods on time at reasonable rates and other shipping terms and conditions. The PSB is empowered to mediate and/or arbitrate disputes between members of associations of shipping interests and between the said members and non-members.