

AGREEMENT
ON MARITIME TRANSPORT
BETWEEN THE EUROPEAN COMMUNITY
AND ITS MEMBER STATES, OF THE ONE PART,
AND THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,
OF THE OTHER PART

THE KINGDOM OF BELGIUM,

THE KINGDOM OF DENMARK,

THE FEDERAL REPUBLIC OF GERMANY,

THE HELLENIC REPUBLIC,

THE KINGDOM OF SPAIN,

THE FRENCH REPUBLIC,

IRELAND,

THE ITALIAN REPUBLIC,

THE GRAND DUCHY OF LUXEMBOURG,

THE KINGDOM OF THE NETHERLANDS,

THE REPUBLIC OF AUSTRIA,

THE PORTUGUESE REPUBLIC,

THE REPUBLIC OF FINLAND,

THE KINGDOM OF SWEDEN,

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND,

Parties to the Treaty establishing the European Community, hereinafter referred to as "Member States of the Community", and

THE EUROPEAN COMMUNITY,

hereinafter referred to as "the Community",

of the one part, and

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA,

hereinafter referred to as "China",

of the other part,

TAKING INTO ACCOUNT the Trade and Economic Cooperation Agreement between the European Economic Community and the People's Republic of China of May 1985;

TAKING INTO ACCOUNT the importance of the maritime relations existing between the Community and its Member States and China;

BELIEVING that cooperation in the international maritime field between the Parties will be beneficial for the development of the trade and economic relations between China and the Community and its Member States;

WILLING to further strengthen and consolidate the relations, on the basis of equality and mutual benefit, in the field of international maritime transport;

RECOGNISING the importance of maritime transport services and wishing to promote even further multimodal transport involving a sea leg in order to increase efficiencies in the transport chain;

RECOGNISING the importance of further developing a flexible and market-oriented approach and the benefits to economic operators of both Parties of controlling and operating their own international cargo transport services in the context of an efficient international maritime transport system;

TAKING INTO ACCOUNT the existing bilateral maritime agreements between the Member States of the Community and China;

SUPPORTING multilateral negotiations on maritime transport services in the World Trade Organisation;

HAVE DECIDED to conclude this Agreement and to this end have designated their plenipotentiaries:

THE KINGDOM OF BELGIUM:

Isabelle DURANT

Deputy Prime Minister and Minister for Mobility and Transport

THE KINGDOM OF DENMARK:

Bendt BENDTSEN

Minister for Economic Affairs, Trade and Industry

THE FEDERAL REPUBLIC OF GERMANY:

Manfred STOLPE

Federal Minister for Transport, Building and Housing

Wilhelm SCHÖNFELDER

Ambassador, Permanent Representative of the Federal Republic of Germany

THE HELLENIC REPUBLIC:

Georgios ANOMERITIS

Minister for Mercantile Marine

THE KINGDOM OF SPAIN:

Francisco ÁLVAREZ-CASCOS FERNÁNDEZ

Minister for Internal Development

THE FRENCH REPUBLIC:

Pierre SELLAL

Ambassador, Permanent Representative of the French Republic

IRELAND:

Peter GUNNING

Deputy Permanent Representative of Ireland

THE ITALIAN REPUBLIC:

Pietro LUNARDI

Minister for Infrastructure and Transport

THE GRAND DUCHY OF LUXEMBOURG:

Henri GRETHEN

Minister for Economic Affairs, Minister for Transport

THE KINGDOM OF THE NETHERLANDS:

Roelf Hendrik de BOER

Minister for Transport, Communications and Public Works

THE REPUBLIC OF AUSTRIA:

Mathias REICHHOLD

Federal Minister for Transport, Innovation and Technology

THE PORTUGUESE REPUBLIC:

Luís Francisco VALENTE DE OLIVEIRA

Minister for Public Works, Transport and Housing

THE REPUBLIC OF FINLAND:

Kimmo SASI

Minister for Transport and Communications

THE KINGDOM OF SWEDEN:

Ulrica MESSING

Minister of Communications

THE UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND:

David JAMIESON

Parliamentary Under-Secretary of State for Transport

THE EUROPEAN COMMUNITY:

Bendt BENDTSEN

Minister for Economic Affairs, Trade and Industry of the Kingdom of Denmark

President-in-Office of the Council of the European Union

Loyola de PALACIO

Vice-President of the Commission of the European Communities

THE GOVERNMENT OF THE PEOPLE'S REPUBLIC OF CHINA:

Chunxian ZHANG

Minister for Communications of the People's Republic of China

WHO, having exchanged their full powers, found in good and due form,

HAVE AGREED AS FOLLOWS:

ARTICLE 1

AIM

This Agreement is aimed at improving the conditions under which maritime cargo transport operations are carried out to and from China, to and from the Community, as well as to and from the Community and China on the one hand and third countries on the other, for the benefit of economic operators of the Parties. It is based on the principles of freedom to provide maritime transport services, free access to cargoes and cross trades, unrestricted access to, and non-discriminatory treatment in, the use of ports and auxiliary services as well as regarding commercial presence. It covers all aspects of door to door services.

ARTICLE 2

SCOPE

1. This Agreement applies to the international maritime cargo transport and logistic services, including multimodal operations involving a sea leg, between the ports of China and of the Member States of the Community as well as to the international maritime cargo transport between the ports of the Member States of the Community. It also applies to cross trades and to the movement of equipment such as empty containers, not being carried as cargo against payment, between ports of China or between ports of a Member State of the Community.

If vessels of one Party sail from one port of the other Party to another or from one port of a Member State of the Community to another to load cargo for foreign countries or discharge cargo from abroad, it shall be regarded as a part of the international maritime transport.

This Agreement shall not apply to domestic transport purely between the ports of China or between the ports of any particular Member State of the Community.

2. This Agreement shall not affect the application of the bilateral maritime agreements concluded between China and the Member States of the Community for issues falling outside the scope of this Agreement.

3. This Agreement shall not affect the right of vessels of third parties to engage in cargo and passenger transport between the ports of the Parties or between the ports of either Party and a third party.

ARTICLE 3

DEFINITIONS

For the purpose of this Agreement:

- (a) "international maritime cargo transport and logistic services" cover the supply of services of international maritime transport of cargo, and the related cargo handling, storage and warehousing services, customs clearance services, container station and depot services, port and inland located, shipping agency services and freight forwarding services;
- (b) "multimodal transport operations" is the carriage of goods using more than one mode of transport including a sea-leg under a single document;

- (c) "shipping agency services" means activities consisting in representing, within a given geographic area, as an agent, the business interests of one or more shipping lines or shipping companies, for the following purposes:
- marketing and sales of maritime transport and related services, from quotation to invoicing, and issuance of bills of lading on behalf of the companies, contracting of the necessary related services, preparation of documentation, and provision of business information;
 - acting on behalf of the companies organising the call of the ship or taking over cargoes when required;
- (d) "freight forwarding services" means the activity consisting of organising and monitoring shipment operations on behalf of shippers, through contracting related services, preparation of documentation and provision of business information;
- (e) "shipping company" means a company which meets the following conditions:
- (i) being constituted in accordance with the public or private laws of China, or the Community or a Member State of the Community;
 - (ii) having its registered office or central administration or principal place of business in China or the Community respectively,
 - (iii) engaging in international shipping service with its owned or operated vessels.

Shipping companies established outside the Community or China and controlled by nationals of a Member State of the Community or of China respectively, shall also be beneficiaries of the provisions of this Agreement, if their vessels are registered in that Member State or in China in accordance with their legislation;

- (f) "subsidiary" means a company owned by a shipping company and having legal personality;
- (g) "branch office" means a place of business owned by a shipping company and not having legal personality;
- (h) "representative office" means a representative office of a shipping company of one Party established in the other Party;
- (i) "vessel" means any merchant ship registered in accordance with the laws of China, or the Community or its Member States in the vessel registration office of either Party under the national flag of that Party and engaged in international maritime transport, including vessels flying the flag of a third country but owned or operated by a shipping company of China or a Member State of the Community. However, this term does not include warships and any other non-commercial ships.

ARTICLE 4

SUPPLY OF SERVICES

1. Each Party shall continue to grant non-discriminatory treatment to vessels flying the flag of the other Party or operated by nationals or companies of the other Party, as compared to the treatment accorded to its own vessels, with regard to access to ports, the use of infrastructure and auxiliary maritime services of those ports, as well as related fees and charges, customs formalities and assignment of berths and facilities for loading and unloading.
2. The Parties undertake to apply effectively the principle of unrestricted access to the international maritime market and traffic on a non-discriminatory and commercial basis.
3. In applying the principles of paragraphs 1 and 2, the Parties shall:
 - (a) not introduce cargo sharing clauses in future agreements with third countries concerning maritime transport services and terminate such provisions in the case they exist in previous bilateral agreements within a reasonable period of time;
 - (b) abolish, upon entry into force of this Agreement, all unilateral administrative, technical, or other measures, which could constitute an indirect restriction and have discriminatory effects on the free supply of services in international maritime transport;

- (c) abstain from implementing on entry into force of this Agreement administrative, technical or legislative measures which could have the effect of discriminating against nationals or companies of the other Party in the supply of services in international maritime transport.

4. One Party shall allow shipping companies of the other Party to have access to and use of, on a non-discriminatory basis and on agreed terms between the companies concerned, feeder services provided by shipping companies registered in the former Party for the international cargo between the ports of China or between the ports of a Member State of the Community.

ARTICLE 5

COMMERCIAL PRESENCE

In respect of activities for the provision of international maritime cargo transport and logistic services, including door-to-door multimodal transport operations, each Party shall permit the shipping companies of the other Party, to establish wholly-owned or jointly-invested subsidiaries, branch or representative offices and, as regards subsidiaries and branch offices to engage in economic activities, in accordance with its laws and regulations. Such activities include, but are not limited to:

- 1) cargo soliciting and booking of space;

- 2) making, confirming, handling and issuing of the bill of lading, including the commonly accepted through bill of lading in the international maritime transport; preparation of documentation concerning transport documents and customs documents;
- 3) fixing, collecting and remitting freight and other charges incurred on the basis of the service contracts or tariff rates;
- 4) negotiating and signing service contracts;
- 5) signing contracts for trucking, railway transport, cargo dealing and other related auxiliary services;
- 6) quoting and publishing tariff rates;
- 7) engaging in marketing activities related to their service ;
- 8) owning the equipment necessary for the economic activities;
- 9) provision of business information by any means, including computerised information systems and electronic data interchange, subject to any non-discriminatory restrictions concerning telecommunications;
- 10) setting up joint ventures with any locally established shipping agency to engage in agency-related businesses, such as organising the call of the vessels or taking delivery of cargoes for shipment.

ARTICLE 6

TRANSPARENCY

1. Each Party shall, after prior consultation and appropriate pre-notice, publish promptly all relevant measures of general application, which pertain to or affect the operation of this Agreement.
2. Where publication as referred to in paragraph 1 is not practicable, such information shall be made otherwise publicly available.
3. Each Party shall respond promptly to all requests by the other Party for specific information on any of its measures of general application within the meaning of paragraph 1.

ARTICLE 7

DOMESTIC REGULATION

1. The Parties shall ensure that all measures of general application affecting trade in international maritime transport services are administered in a reasonable, objective and impartial manner.

2. In those cases where authorisation is required, the competent authorities of a Party shall, within a reasonable period of time after the submission of an application considered complete under domestic laws and regulations, inform the applicant of the decision concerning the application. At the request of the applicant, the competent authorities of a Party shall provide, without undue delay, information concerning the status of the application.

3. To ensure that measures relating to technical standards and licensing requirements and procedures do not constitute unnecessary barriers to trade, requirements shall be based on objective, non-discriminatory, pre-established and transparent criteria, such as the ability to supply the service; and in the case of licensing procedures, not in themselves be a restriction on or a barrier to the supply of the service.

ARTICLE 8

KEY PERSONNEL

The wholly-owned or jointly-invested subsidiaries, branch or representative offices of the shipping companies of one Party established in the other Party shall be entitled to employ key personnel, in accordance with the legislation in force in the host country, irrespective of their nationality. Each Party shall facilitate the acquisition of work permits and visas for foreign employees.

ARTICLE 9

PAYMENTS AND CAPITAL MOVEMENTS

1. Revenues of nationals or companies of one Party derived from international maritime transport and multimodal operations in the other Party may be settled in freely convertible currencies.
2. The revenues and expenses of the economic activities of the subsidiaries and branch and representative offices of the shipping companies of a Party established in the other Party may be settled in the currency of the host country. The balance after the payment of the local fees by the abovementioned shipping companies, subsidiaries, branch or representative offices may be freely remitted abroad at the exchange rate of the bank on the date of remittance.

ARTICLE 10

MARITIME COOPERATION

The Parties shall, for the purpose of promoting the development of their maritime industry, encourage their competent authorities, shipping companies, ports, relevant research institutions, universities and colleges to cooperate, including, but not limited to, the following fields:

- 1) exchange of views related to their activities in the framework of international maritime organisations;

- 2) formulate and perfect the legislation relating to maritime transport and market administration;
- 3) promote efficient transport service for international sea trade by the effective exploitation of the ports and fleets of the Parties;
- 4) guarantee shipping safety and prevent marine pollution;
- 5) promote maritime education and training, especially the training of seafarers;
- 6) exchange personnel scientific information and technology;
- 7) enhance their efforts to combat piracy and terrorism.

ARTICLE 11

CONSULTATIONS AND SETTLEMENT OF DISPUTES

1. The Parties shall establish appropriate procedures to ensure the proper implementation of this Agreement.
2. Should any dispute between the Parties arise from the interpretation or application of this Agreement, their competent authorities shall seek to resolve the dispute through friendly consultation. In the event that no agreement is reached, it shall be settled through diplomatic channels.

ARTICLE 12

AMENDMENT

This Agreement may be amended by a written agreement between the Parties and the amendment will come into force in accordance with the procedures specified in Article 15(2).

ARTICLE 13

TERRITORIAL APPLICATION

This Agreement shall apply, on the one hand, to the territories in which the Treaty establishing the European Community is applied and under the conditions laid down in that Treaty and, on the other hand, to the territory of China.

ARTICLE 14

AUTHENTIC TEXT

This Agreement is drawn up in duplicate in the Danish, Dutch, English, Finnish, French, German, Greek, Italian, Portuguese, Spanish, Swedish and Chinese languages, each of these texts being equally authentic.

ARTICLE 15

DURATION AND ENTRY INTO FORCE

1. This Agreement is concluded for a period of five years. It shall be tacitly renewed on a yearly basis unless one of the Parties denounces it in writing six months before the date of expiry.
2. This Agreement will be approved by the Parties in accordance with their own procedures.

This Agreement shall enter into force on the first day of the second month following the date on which the Parties notify each other that the procedures referred to in the first subparagraph have been completed.

3. If this Agreement is less favourable on certain issues than existing bilateral agreements between individual Member States of the Community and China, the more favourable provisions shall prevail without prejudice to Community obligations and taking into account the Treaty establishing the European Community. The provisions of this Agreement replace those of previous bilateral agreements concluded between Member States of the Community and China, if the latter provisions are either inconsistent with the former, save for the situation referred to in the preceding sentence, or identical to them. Provisions of existing bilateral agreements not covered by this Agreement shall continue to apply.